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OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 295
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. K. Jordan

S. Ben Fogle, Attorney

SUMMARY

- Permits the General Assembly to review any executive order of the President of the United States, any federal agency rule, or any federal congressional action to determine its constitutionality.
- Requires the Attorney General, upon the General Assembly's recommendation, to review the order, rule, or action to determine its constitutionality and whether the state should seek an exemption from its application or seek to have it declared unconstitutional.
- Allows the General Assembly, if the Attorney General declines to pursue action, to declare unconstitutional the order, rule, or action by a majority vote.
- Prohibits the state, any political subdivision, or any person that receives public funds from implementing any order, rule, or action that restricts a person's rights, or that the Attorney General or the General Assembly by a majority vote determines to be unconstitutional.

DETAILED ANALYSIS

General Assembly review of federal actions

The bill allows the General Assembly to "review" any executive order issued by the President of the United States, federal agency rule, or federal "congressional action" to determine the constitutionality of the order, rule, or action. The process is as follows: upon recommendation of the General Assembly, the Attorney General is required to review the order, rule, or action, and determine its constitutionality. The Attorney General also must determine whether the state should seek an "exemption" from the application of the order, rule, or action or seek to have the order, rule, or action declared unconstitutional.

If the Attorney General “decline[s] to pursue action” based on the General Assembly’s determination, the General Assembly may declare the order, rule, or action unconstitutional by majority vote.

The bill then prohibits the state, any political subdivision of the state, or any “person that receives public funds” from implementing any order, rule, or action that “restricts a person’s rights,” or that the Attorney General or the General Assembly by a majority vote determines to be unconstitutional.¹

COMMENT

The bill may be open to a challenge on the grounds of potential conflict with the principle of separation of powers and the home rule clause of the Ohio Constitution.

The Ohio Constitution prohibits the General Assembly from exercising any judicial power except as provided in the Ohio Constitution.² Additionally, a court may examine whether the bill violates the home rule provisions of the Ohio Constitution, which reserve the power of local self-government and supplemental police powers to Ohio’s municipalities and charter counties.³ The bill may be found to be unconstitutional to the extent it prohibits a municipal corporation or charter county from acting within its home rule authority.

HISTORY

Action	Date
Introduced	05-06-21

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¹ R.C. 101.03.

² Ohio Constitution, Article II, Section 32.

³ Ohio Const., Art. XVIII, sec. 3 and Art. X, sec. 3.