May 12, 2013

Model Legislative Veto Act

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MODEL LEGISLATIVE VETO ACT**

(a) IN GENERAL.—If the Commission shall prescribe any rule in accordance with its organic act or legislation amending its organic act, all such rules shall be promulgated in accordance with the Model Legislative Veto Act (this “Act”). No rule of the Commission promulgated under this Act shall take effect except as provided under subsection (b).

(b) CONGRESSIONAL REVIEW OF COMMISSION RULE-MAKING.—Any rule, the effectiveness of which is subject to this section, shall take effect no earlier than 90 calendar days after a copy of such rule was submitted by the Commission to both Houses of Congress or on such later date as provided in such rule.

1. Recess and Adjournment. The Commission may not submit any rule to the House of Representatives during any adjournment or recess of the House of Representatives. The Commission may not submit any rule to the Senate during any adjournment or recess of the Senate.

2. Single House Disapproval, Presidential Veto, and Congressional Override. If on or prior to 60 calendar days after a copy of such rule was submitted to both Houses of Congress, either House of Congress passes an order disapproving of the rule, then the presiding officer of that House of Congress shall authenticate the disapproval order and also present the disapproval order within 10 calendar days of passage “to the President of the United States.” Before the disapproval order “shall take effect,” the disapproval order “shall be approved by” the President, “or being disapproved by” the President, the disapproval order “shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill” by Article I, Section 7, Clause 2 of the United States Constitution.

3. Resubmission by the Commission. If a congressional disapproval order takes effect, then the Commission is prohibited from submitting or resubmitting to Congress the same rule or a substantially similar rule again during the remainder of the two-year term of the House or Senate which passed the disapproval order. Any rule submitted or resubmitted to Congress in violation of this subsection is void in all respects.

4. Congressional Anti-Tacking Policy. A congressional disapproval order taking effect under the authority of this Act may not take the form of a bill, act, statute, joint resolution, simple resolution, concurrent resolution, or vote. Any such congressional disapproval order may only identify a single Commission rule it disapproves. If any such congressional disapproval order purports to affect legal relations in any other way, the entire disapproval order is void in all respects.

(c) Judicial Review.—A matter, issue, question, case, or controversy arises under this Act if it arises under this Act or if it arises in connection with any congressional disapproval order passed pursuant to this Act or if it arises under any Commission rule promulgated under this Act.

(d) Severability.—If any section or subsection of this Act is held to be unconstitutional by any court, administrative law judge, or commission, the remainder of this Act shall not be affected by the holding.
1 “Commission,” as used in this Act, extends to the highest decision-making authority within the affected or named Executive Branch agency and to any individual or body under the authority of the Commission which has final rule-making authority. “Commission,” as used in this Act, extends both to traditional “principal officers” within an Executive Branch department and to multi-member bodies atop so-called Executive Branch independent agencies.

2 “Rule,” as used in this Act, extends to statutory instruments, regulations, determinations, decisions, and orders (excluding quasi-judicial orders arising in Executive Branch adversarial litigation). My own view is that allowing Congress to intervene in quasi-judicial proceedings implicates Bill of Attainder principles. See U.S. CONST. art. I, § 9, cl. 3.

3 It may make sense to add a provision tolling the 60 calendar days during any recess and/or adjournment of the House, Senate, and Congress.

4 Section (b)(2), particularly the italicized language, is modelled on United States Constitution Article I, Section 7, Clause 3, which states:

   Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.


5 Id.

6 Id.

7 Id.

8 Id.

9 Id.

10 U.S. CONST. art. I, § 7, cl. 2 (the Presentment Clause or Veto Clause):

   Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the
United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

The primary purpose of this provision is to prevent the courts from applying the enrolled bill rule in the context of adjudicating disputes in regard to intra-congressional delegations per the ORV Clause. See Field v. Clark, 143 U.S. 649 (1892) (Harlan, J.); see also The Queen on the Application of Jackson v H.M. Attorney General, [2005] UKHL 56, [2006] 1 AC 262, 2005 WL 2493309.