



SR0357

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SENATE RESOLUTION

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WHEREAS, Section 4 of the Executive Reorganization Implementation Act sets forth procedures and requirements regarding Executive Orders issued under Section 11 of Article V of the Illinois Constitution; and

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WHEREAS, Section 3.2 of the Executive Reorganization Implementation Act provides that reorganization occurs when, among other circumstances, an Executive Order abolishes any agency that does not have or will not have, upon the taking effect of reorganization, any functions; consolidates the functions of an agency; or establishes a new agency to perform all or any part of the functions of an existing agency or agencies; and

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WHEREAS, Section 3.1 of the Executive Reorganization Implementation Act specifies that the term "agency directly responsible to the Governor" includes, subject to limited exceptions, any office, officer, division, or part thereof, as well as any other office, nonelective officer, department, division, bureau, board, or commission in the executive branch of State government; and

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WHEREAS, The Governor issued Executive Order 13-05 with the stated purpose of abolishing or consolidating entities whose

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1 functions are obsolete or redundant; and

2 WHEREAS, Executive Order 13-05 purports to: (1) abolish  
3 gubernatorially-created entities without contravening a  
4 statute; (2) abolish statutorily-created entities in  
5 contravention of enabling statutes; (3) consolidate several  
6 councils with oversight over rivers into one Rivers of Illinois  
7 Coordinating Council in contravention of several statutes; and  
8 (4) provide a list of entities that already have been abolished  
9 either by statute or expiration; and

10 WHEREAS, Executive Order 13-05 qualifies as an executive  
11 reorganization order and is subject to Article V, Section 11 of  
12 the Illinois Constitution and the Executive Reorganization  
13 Implementation Act because it attempts to abolish or  
14 consolidate entities that are directly responsible to the  
15 Governor in contravention of various statutes enumerated in the  
16 Order; and

17 WHEREAS, Executive Order 13-05 was delivered in its  
18 entirety to the Secretary of the Senate and the Clerk of the  
19 House of Representatives on April 1, 2013; and

20 WHEREAS, No executive reorganization order delivered to  
21 the General Assembly may take effect until the 60-day period  
22 has expired; and

1           WHEREAS, The 60-day period for the General Assembly to  
2           disapprove Executive Order 13-05 expires on May 31, 2013; and

3           WHEREAS, The introductory paragraphs of Executive Order  
4           13-05 claim that the portions of the Order that do not  
5           contravene a statute are effective immediately and do not need  
6           to be delivered to the General Assembly for consideration,  
7           regardless of the fact that the Executive Order in its entirety  
8           was delivered to the General Assembly; and

9           WHEREAS, Executive Order 13-05 contains a severability  
10          clause that purports to preserve the portions of the Order not  
11          found invalid or not disapproved by the General Assembly,  
12          thereby relying on the notion that the General Assembly does  
13          not have jurisdiction over Executive Order 13-05 as a whole,  
14          but, instead, has the authority only to disapprove the portions  
15          that contravene a statute; and

16          WHEREAS, Section 11 of Article V of the Illinois  
17          Constitution requires an Executive Order that proposes a  
18          reassignment or reorganization in contravention of a State  
19          statute to be delivered to the General Assembly and authorizes  
20          either house of the General Assembly, by record vote of a  
21          majority of the members elected, to disapprove the Executive  
22          Order; and

1           WHEREAS, The General Assembly has the constitutional and  
2 statutory authority to consider each Executive Order that  
3 contravenes a statute; and

4           WHEREAS, The reorganization proposed by Executive Order  
5 13-05 contravenes the statutes that create the affected  
6 entities, which are enumerated in that Executive Order; and

7           WHEREAS, The Executive Reorganization Implementation Act  
8 requires each executive order that proposes a reorganization to  
9 be transmitted to the General Assembly by the Governor; and

10           WHEREAS, The language of the Constitution and the Executive  
11 Reorganization Implementation Act give the General Assembly  
12 the authority to consider and disapprove any executive  
13 reorganization order that contravenes a statute; and

14           WHEREAS, Executive Order 13-05 is structurally defective  
15 because it attempts to draw a distinction between the  
16 effectiveness of provisions that contravene a statute and those  
17 that do not in a single Executive Order, when the Constitution  
18 and the Executive Reorganization Implementation Act make it  
19 clear that any executive order that contravenes a statute in  
20 any manner is subject to disapproval by the General Assembly;  
21 and

1           WHEREAS, An executive reorganization order may abolish an  
2 agency directly responsible to the Governor, but Executive  
3 Order 13-05 attempts to abolish entities created by Press  
4 Release of the Governor, including the Governor's Agriculture  
5 Advisory Council of Farmers and Farm Families, the Asian  
6 Advisory Council, the Education Accountability Task Force, the  
7 Racial Profiling Task Force, and the Visual Media Task Force,  
8 which never had the force or effect of law; and

9           WHEREAS, Executive Order 13-05 seeks to consolidate the  
10 listed Rivers Councils into a single "Rivers of Illinois  
11 Coordinating Council", a new entity created by the Order; and

12           WHEREAS, The provisions related to the consolidation of the  
13 Rivers Councils fail to provide for the transfer or other  
14 disposition of personnel records, documents, books,  
15 correspondence, and other property, both real and personal,  
16 affected by the reorganization in violation of subsection (d)  
17 of Section 4 of the Executive Reorganization and Implementation  
18 Act; and

19           WHEREAS, The provisions related to consolidation of the  
20 Rivers Councils further fail to provide for the transfer of  
21 unexpended balances of appropriations and other funds  
22 available for use in connection with any function or agency

1 affected by the reorganization, in violation of subsection (e)  
2 of Section 4 of the Executive Reorganization and Implementation  
3 Act; therefore, be it

4 RESOLVED, BY THE SENATE OF THE NINETY-EIGHTH GENERAL  
5 ASSEMBLY OF THE STATE OF ILLINOIS, that pursuant to Article V,  
6 Section 11 of the Illinois Constitution, the Senate hereby  
7 disapproves Executive Order 13-05 in its entirety; and be it  
8 further

9 RESOLVED, That the Executive Order 13-05 shall not become  
10 effective; and be it further

11 RESOLVED, That copies of this resolution be delivered to  
12 the Governor and the Speaker of the House of Representatives.