

SECOND REGULAR SESSION

# HOUSE BILL NO. 1668

## 102ND GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE MATTHIESEN.

2882H.011

DANA RADEMAN MILLER, Chief Clerk

---

### AN ACT

To repeal section 137.073, RSMo, and to enact in lieu thereof one new section relating to the inflationary growth factor for assessment growth.

---

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 137.073, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 137.073, to read as follows:

137.073. 1. As used in this section, the following terms mean:

(1) "General reassessment", changes in value, entered in the assessor's books, of a substantial portion of the parcels of real property within a county resulting wholly or partly from reappraisal of value or other actions of the assessor or county equalization body or ordered by the state tax commission or any court;

(2) "Tax rate", "rate", or "rate of levy", singular or plural, includes the tax rate for each purpose of taxation of property a taxing authority is authorized to levy without a vote and any tax rate authorized by election, including bond interest and sinking fund;

(3) "Tax rate ceiling", a tax rate as revised by the taxing authority to comply with the provisions of this section or when a court has determined the tax rate; except that, other provisions of law to the contrary notwithstanding, a school district may levy the operating levy for school purposes required for the current year pursuant to subsection 2 of section 163.021, less all adjustments required pursuant to Article X, Section 22 of the Missouri Constitution, if such tax rate does not exceed the highest tax rate in effect subsequent to the 1980 tax year. This is the maximum tax rate that may be levied, unless a higher tax rate ceiling is approved by voters of the political subdivision as provided in this section;

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (4) "Tax revenue", when referring to the previous year, means the actual receipts from  
18 ad valorem levies on all classes of property, including state-assessed property, in the  
19 immediately preceding fiscal year of the political subdivision, plus an allowance for taxes  
20 billed but not collected in the fiscal year and plus an additional allowance for the revenue  
21 which would have been collected from property which was annexed by such political  
22 subdivision but which was not previously used in determining tax revenue pursuant to this  
23 section. The term "tax revenue" shall not include any receipts from ad valorem levies on any  
24 property of a railroad corporation or a public utility, as these terms are defined in section  
25 386.020, which were assessed by the assessor of a county or city in the previous year but are  
26 assessed by the state tax commission in the current year. All school districts and those  
27 counties levying sales taxes pursuant to chapter 67 shall include in the calculation of tax  
28 revenue an amount equivalent to that by which they reduced property tax levies as a result of  
29 sales tax pursuant to section 67.505 and section 164.013 ~~[or as excess home dock city or~~  
30 ~~county fees as provided in subsection 4 of section 313.820]~~ in the immediately preceding  
31 fiscal year but not including any amount calculated to adjust for prior years. For purposes of  
32 political subdivisions which were authorized to levy a tax in the prior year but which did not  
33 levy such tax or levied a reduced rate, the term "tax revenue", as used in relation to the  
34 revision of tax levies mandated by law, shall mean the revenues equal to the amount that  
35 would have been available if the voluntary rate reduction had not been made.

36 2. (1) Whenever changes in assessed valuation are entered in the assessor's books for  
37 any personal property, in the aggregate, or for any subclass of real property as such subclasses  
38 are established in Section 4(b) of Article X of the Missouri Constitution and defined in  
39 section 137.016, the county clerk in all counties and the assessor of St. Louis City shall notify  
40 each political subdivision wholly or partially within the county or St. Louis City of the change  
41 in valuation of each subclass of real property, individually, and personal property, in the  
42 aggregate, exclusive of new construction and improvements. All political subdivisions shall  
43 immediately revise the applicable rates of levy for each purpose for each subclass of real  
44 property, individually, and personal property, in the aggregate, for which taxes are levied to  
45 the extent necessary to produce from all taxable property, exclusive of new construction and  
46 improvements, substantially the same amount of tax revenue as was produced in the previous  
47 year for each subclass of real property, individually, and personal property, in the aggregate,  
48 except that the rate shall not exceed the greater of the most recent voter-approved rate or the  
49 most recent voter-approved rate as adjusted under subdivision (2) of subsection 5 of this  
50 section.

51 (2) Any political subdivision that has received approval from voters for a tax increase  
52 after August 27, 2008, may levy a rate to collect substantially the same amount of tax revenue  
53 as the amount of revenue that would have been derived by applying the voter-approved

54 increased tax rate ceiling to the total assessed valuation of the political subdivision as most  
55 recently certified by the city or county clerk on or before the date of the election in which  
56 such increase is approved, increased by the percentage increase in the consumer price index,  
57 as provided by law, except that the rate shall not exceed the greater of the most recent voter-  
58 approved rate or the most recent voter-approved rate as adjusted under subdivision (2) of  
59 subsection 5 of this section. Such tax revenue shall not include any receipts from ad valorem  
60 levies on any real property which was assessed by the assessor of a county or city in such  
61 previous year but is assessed by the assessor of a county or city in the current year in a  
62 different subclass of real property.

63 (3) Where the taxing authority is a school district for the purposes of revising the  
64 applicable rates of levy for each subclass of real property, the tax revenues from state-  
65 assessed railroad and utility property shall be apportioned and attributed to each subclass of  
66 real property based on the percentage of the total assessed valuation of the county that each  
67 subclass of real property represents in the current taxable year.

68 (4) As provided in Section 22 of Article X of the constitution, a political subdivision  
69 may also revise each levy to allow for inflationary assessment growth occurring within the  
70 political subdivision. The inflationary growth factor for any such subclass of real property or  
71 personal property shall be limited to the actual assessment growth in such subclass or class,  
72 exclusive of new construction and improvements, and exclusive of the assessed value on any  
73 real property which was assessed by the assessor of a county or city in the current year in a  
74 different subclass of real property, but not to exceed the ~~consumer price index or five~~  
75 ~~percent, whichever is~~ lower of the following:

76 (a) The consumer price index; or

77 (b) The following percentage:

78 a. For revisions under this subsection occurring before January 1, 2025, five  
79 percent; or

80 b. For revisions under this subsection occurring on or after January 1, 2025,  
81 three percent.

82 (5) Should the tax revenue of a political subdivision from the various tax rates  
83 determined in this subsection be different than the tax revenue that would have been  
84 determined from a single tax rate as calculated pursuant to the method of calculation in this  
85 subsection prior to January 1, 2003, then the political subdivision shall revise the tax rates of  
86 those subclasses of real property, individually, and/or personal property, in the aggregate, in  
87 which there is a tax rate reduction, pursuant to the provisions of this subsection. Such  
88 revision shall yield an amount equal to such difference and shall be apportioned among such  
89 subclasses of real property, individually, and/or personal property, in the aggregate, based on  
90 the relative assessed valuation of the class or subclasses of property experiencing a tax rate

91 reduction. Such revision in the tax rates of each class or subclass shall be made by computing  
92 the percentage of current year adjusted assessed valuation of each class or subclass with a tax  
93 rate reduction to the total current year adjusted assessed valuation of the class or subclasses  
94 with a tax rate reduction, multiplying the resulting percentages by the revenue difference  
95 between the single rate calculation and the calculations pursuant to this subsection and  
96 dividing by the respective adjusted current year assessed valuation of each class or subclass to  
97 determine the adjustment to the rate to be levied upon each class or subclass of property. The  
98 adjustment computed herein shall be multiplied by one hundred, rounded to four decimals in  
99 the manner provided in this subsection, and added to the initial rate computed for each class  
100 or subclass of property.

101       **(6)** For school districts that levy separate tax rates on each subclass of real property  
102 and personal property in the aggregate, if voters approved a ballot before January 1, 2011, that  
103 presented separate stated tax rates to be applied to the different subclasses of real property and  
104 personal property in the aggregate, or increases the separate rates that may be levied on the  
105 different subclasses of real property and personal property in the aggregate by different  
106 amounts, the tax rate that shall be used for the single tax rate calculation shall be a blended  
107 rate, calculated in the manner provided under subdivision (1) of subsection 6 of this section.

108       **(7)** Notwithstanding any provision of this subsection to the contrary, no revision to  
109 the rate of levy for personal property shall cause such levy to increase over the levy for  
110 personal property from the prior year.

111       3. (1) Where the taxing authority is a school district, it shall be required to revise the  
112 rates of levy to the extent necessary to produce from all taxable property, including state-  
113 assessed railroad and utility property, which shall be separately estimated in addition to other  
114 data required in complying with section 164.011, substantially the amount of tax revenue  
115 permitted in this section. In the year following tax rate reduction, the tax rate ceiling may be  
116 adjusted to offset such district's reduction in the apportionment of state school moneys due to  
117 its reduced tax rate. However, in the event any school district, in calculating a tax rate ceiling  
118 pursuant to this section, requiring the estimating of effects of state-assessed railroad and  
119 utility valuation or loss of state aid, discovers that the estimates used result in receipt of  
120 excess revenues, which would have required a lower rate if the actual information had been  
121 known, the school district shall reduce the tax rate ceiling in the following year to compensate  
122 for the excess receipts, and the recalculated rate shall become the tax rate ceiling for purposes  
123 of this section.

124       (2) For any political subdivision which experiences a reduction in the amount of  
125 assessed valuation relating to a prior year, due to decisions of the state tax commission or a  
126 court pursuant to sections 138.430 to 138.433, or due to clerical errors or corrections in the  
127 calculation or recordation of any assessed valuation:

128 (a) Such political subdivision may revise the tax rate ceiling for each purpose it levies  
129 taxes to compensate for the reduction in assessed value occurring after the political  
130 subdivision calculated the tax rate ceiling for the particular subclass of real property or for  
131 personal property, in the aggregate, in a prior year. Such revision by the political subdivision  
132 shall be made at the time of the next calculation of the tax rate for the particular subclass of  
133 real property or for personal property, in the aggregate, after the reduction in assessed  
134 valuation has been determined and shall be calculated in a manner that results in the revised  
135 tax rate ceiling being the same as it would have been had the corrected or finalized assessment  
136 been available at the time of the prior calculation;

137 (b) In addition, for up to three years following the determination of the reduction in  
138 assessed valuation as a result of circumstances defined in this subdivision, such political  
139 subdivision may levy a tax rate for each purpose it levies taxes above the revised tax rate  
140 ceiling provided in paragraph (a) of this subdivision to recoup any revenues it was entitled to  
141 receive had the corrected or finalized assessment been available at the time of the prior  
142 calculation.

143 4. (1) In order to implement the provisions of this section and Section 22 of Article X  
144 of the Constitution of Missouri, the term improvements shall apply to both real and personal  
145 property. In order to determine the value of new construction and improvements, each county  
146 assessor shall maintain a record of real property valuations in such a manner as to identify  
147 each year the increase in valuation for each political subdivision in the county as a result of  
148 new construction and improvements. The value of new construction and improvements shall  
149 include the additional assessed value of all improvements or additions to real property which  
150 were begun after and were not part of the prior year's assessment, except that the additional  
151 assessed value of all improvements or additions to real property which had been totally or  
152 partially exempt from ad valorem taxes pursuant to sections 99.800 to 99.865, sections  
153 135.200 to 135.255, and section 353.110 shall be included in the value of new construction  
154 and improvements when the property becomes totally or partially subject to assessment and  
155 payment of all ad valorem taxes. The aggregate increase in valuation of personal property for  
156 the current year over that of the previous year is the equivalent of the new construction and  
157 improvements factor for personal property. Notwithstanding any opt-out implemented  
158 pursuant to subsection 14 of section 137.115, the assessor shall certify the amount of new  
159 construction and improvements and the amount of assessed value on any real property which  
160 was assessed by the assessor of a county or city in such previous year but is assessed by the  
161 assessor of a county or city in the current year in a different subclass of real property  
162 separately for each of the three subclasses of real property for each political subdivision to the  
163 county clerk in order that political subdivisions shall have this information for the purpose of  
164 calculating tax rates pursuant to this section and Section 22, Article X, Constitution of

165 Missouri. In addition, the state tax commission shall certify each year to each county clerk  
166 the increase in the general price level as measured by the Consumer Price Index for All Urban  
167 Consumers for the United States, or its successor publications, as defined and officially  
168 reported by the United States Department of Labor, or its successor agency. The state tax  
169 commission shall certify the increase in such index on the latest twelve-month basis available  
170 on February first of each year over the immediately preceding prior twelve-month period in  
171 order that political subdivisions shall have this information available in setting their tax rates  
172 according to law and Section 22 of Article X of the Constitution of Missouri. For purposes of  
173 implementing the provisions of this section and Section 22 of Article X of the Missouri  
174 Constitution, the term "property" means all taxable property, including state-assessed  
175 property.

176 (2) Each political subdivision required to revise rates of levy pursuant to this section  
177 or Section 22 of Article X of the Constitution of Missouri shall calculate each tax rate it is  
178 authorized to levy and, in establishing each tax rate, shall consider each provision for tax rate  
179 revision provided in this section and Section 22 of Article X of the Constitution of Missouri,  
180 separately and without regard to annual tax rate reductions provided in section 67.505 and  
181 section 164.013. Each political subdivision shall set each tax rate it is authorized to levy  
182 using the calculation that produces the lowest tax rate ceiling. It is further the intent of the  
183 general assembly, pursuant to the authority of Section 10(c) of Article X of the Constitution  
184 of Missouri, that the provisions of such section be applicable to tax rate revisions mandated  
185 pursuant to Section 22 of Article X of the Constitution of Missouri as to reestablishing tax  
186 rates as revised in subsequent years, enforcement provisions, and other provisions not in  
187 conflict with Section 22 of Article X of the Constitution of Missouri. Annual tax rate  
188 reductions provided in section 67.505 and section 164.013 shall be applied to the tax rate as  
189 established pursuant to this section and Section 22 of Article X of the Constitution of  
190 Missouri, unless otherwise provided by law.

191 5. (1) In all political subdivisions, the tax rate ceiling established pursuant to this  
192 section shall not be increased unless approved by a vote of the people. Approval of the higher  
193 tax rate shall be by at least a majority of votes cast. When a proposed higher tax rate requires  
194 approval by more than a simple majority pursuant to any provision of law or the constitution,  
195 the tax rate increase must receive approval by at least the majority required.

196 (2) When voters approve an increase in the tax rate, the amount of the increase shall  
197 be added to the tax rate ceiling as calculated pursuant to this section to the extent the total rate  
198 does not exceed any maximum rate prescribed by law. If a ballot question presents a stated  
199 tax rate for approval rather than describing the amount of increase in the question, the stated  
200 tax rate approved shall be adjusted as provided in this section and, so adjusted, shall be the  
201 current tax rate ceiling. The increased tax rate ceiling as approved shall be adjusted such that

202 when applied to the current total assessed valuation of the political subdivision, excluding  
203 new construction and improvements since the date of the election approving such increase,  
204 the revenue derived from the adjusted tax rate ceiling is equal to the sum of: the amount of  
205 revenue which would have been derived by applying the voter-approved increased tax rate  
206 ceiling to total assessed valuation of the political subdivision, as most recently certified by the  
207 city or county clerk on or before the date of the election in which such increase is approved,  
208 increased by the percentage increase in the consumer price index, as provided by law. Such  
209 adjusted tax rate ceiling may be applied to the total assessed valuation of the political  
210 subdivision at the setting of the next tax rate. If a ballot question presents a phased-in tax rate  
211 increase, upon voter approval, each tax rate increase shall be adjusted in the manner  
212 prescribed in this section to yield the sum of: the amount of revenue that would be derived by  
213 applying such voter-approved increased rate to the total assessed valuation, as most recently  
214 certified by the city or county clerk on or before the date of the election in which such  
215 increase was approved, increased by the percentage increase in the consumer price index, as  
216 provided by law, from the date of the election to the time of such increase and, so adjusted,  
217 shall be the current tax rate ceiling.

218 (3) The governing body of any political subdivision may levy a tax rate lower than its  
219 tax rate ceiling and may, in a nonreassessment year, increase that lowered tax rate to a level  
220 not exceeding the tax rate ceiling without voter approval in the manner provided under  
221 subdivision (4) of this subsection. Nothing in this section shall be construed as prohibiting a  
222 political subdivision from voluntarily levying a tax rate lower than that which is required  
223 under the provisions of this section or from seeking voter approval of a reduction to such  
224 political subdivision's tax rate ceiling.

225 (4) In a year of general reassessment, a governing body whose tax rate is lower than  
226 its tax rate ceiling shall revise its tax rate pursuant to the provisions of subsection 4 of this  
227 section as if its tax rate was at the tax rate ceiling. In a year following general reassessment, if  
228 such governing body intends to increase its tax rate, the governing body shall conduct a  
229 public hearing, and in a public meeting it shall adopt an ordinance, resolution, or policy  
230 statement justifying its action prior to setting and certifying its tax rate. The provisions of this  
231 subdivision shall not apply to any political subdivision which levies a tax rate lower than its  
232 tax rate ceiling solely due to a reduction required by law resulting from sales tax collections.  
233 The provisions of this subdivision shall not apply to any political subdivision which has  
234 received voter approval for an increase to its tax rate ceiling subsequent to setting its most  
235 recent tax rate.

236 6. (1) For the purposes of calculating state aid for public schools pursuant to section  
237 163.031, each taxing authority which is a school district shall determine its proposed tax rate  
238 as a blended rate of the classes or subclasses of property. Such blended rate shall be

239 calculated by first determining the total tax revenue of the property within the jurisdiction of  
240 the taxing authority, which amount shall be equal to the sum of the products of multiplying  
241 the assessed valuation of each class and subclass of property by the corresponding tax rate for  
242 such class or subclass, then dividing the total tax revenue by the total assessed valuation of  
243 the same jurisdiction, and then multiplying the resulting quotient by a factor of one hundred.  
244 Where the taxing authority is a school district, such blended rate shall also be used by such  
245 school district for calculating revenue from state-assessed railroad and utility property as  
246 defined in chapter 151 and for apportioning the tax rate by purpose.

247 (2) Each taxing authority proposing to levy a tax rate in any year shall notify the clerk  
248 of the county commission in the county or counties where the tax rate applies of its tax rate  
249 ceiling and its proposed tax rate. Each taxing authority shall express its proposed tax rate in a  
250 fraction equal to the nearest one-tenth of a cent, unless its proposed tax rate is in excess of one  
251 dollar, then one/one-hundredth of a cent. If a taxing authority shall round to one/one-  
252 hundredth of a cent, it shall round up a fraction greater than or equal to five/one-thousandth of  
253 one cent to the next higher one/one-hundredth of a cent; if a taxing authority shall round to  
254 one-tenth of a cent, it shall round up a fraction greater than or equal to five/one-hundredths of  
255 a cent to the next higher one-tenth of a cent. Any taxing authority levying a property tax rate  
256 shall provide data, in such form as shall be prescribed by the state auditor by rule,  
257 substantiating such tax rate complies with Missouri law. All forms for the calculation of rates  
258 pursuant to this section shall be promulgated as a rule and shall not be incorporated by  
259 reference. The state auditor shall promulgate rules for any and all forms for the calculation of  
260 rates pursuant to this section which do not currently exist in rule form or that have been  
261 incorporated by reference. In addition, each taxing authority proposing to levy a tax rate for  
262 debt service shall provide data, in such form as shall be prescribed by the state auditor by rule,  
263 substantiating the tax rate for debt service complies with Missouri law. A tax rate proposed  
264 for annual debt service requirements will be prima facie valid if, after making the payment for  
265 which the tax was levied, bonds remain outstanding and the debt fund reserves do not exceed  
266 the following year's payments. The county clerk shall keep on file and available for public  
267 inspection all such information for a period of three years. The clerk shall, within three days  
268 of receipt, forward a copy of the notice of a taxing authority's tax rate ceiling and proposed  
269 tax rate and any substantiating data to the state auditor. The state auditor shall, within fifteen  
270 days of the date of receipt, examine such information and return to the county clerk his or her  
271 findings as to compliance of the tax rate ceiling with this section and as to compliance of any  
272 proposed tax rate for debt service with Missouri law. If the state auditor believes that a taxing  
273 authority's proposed tax rate does not comply with Missouri law, then the state auditor's  
274 findings shall include a recalculated tax rate, and the state auditor may request a taxing  
275 authority to submit documentation supporting such taxing authority's proposed tax rate. The



276 county clerk shall immediately forward a copy of the auditor's findings to the taxing authority  
277 and shall file a copy of the findings with the information received from the taxing authority.  
278 The taxing authority shall have fifteen days from the date of receipt from the county clerk of  
279 the state auditor's findings and any request for supporting documentation to accept or reject in  
280 writing the rate change certified by the state auditor and to submit all requested information to  
281 the state auditor. A copy of the taxing authority's acceptance or rejection and any information  
282 submitted to the state auditor shall also be mailed to the county clerk. If a taxing authority  
283 rejects a rate change certified by the state auditor and the state auditor does not receive  
284 supporting information which justifies the taxing authority's original or any subsequent  
285 proposed tax rate, then the state auditor shall refer the perceived violations of such taxing  
286 authority to the attorney general's office and the attorney general is authorized to obtain  
287 injunctive relief to prevent the taxing authority from levying a violative tax rate.

288 (3) In the event that the taxing authority incorrectly completes the forms created and  
289 promulgated under subdivision (2) of this subsection, or makes a clerical error, the taxing  
290 authority may submit amended forms with an explanation for the needed changes. If such  
291 amended forms are filed under regulations prescribed by the state auditor, the state auditor  
292 shall take into consideration such amended forms for the purposes of this subsection.

293 7. No tax rate shall be extended on the tax rolls by the county clerk unless the political  
294 subdivision has complied with the foregoing provisions of this section.

295 8. Whenever a taxpayer has cause to believe that a taxing authority has not complied  
296 with the provisions of this section, the taxpayer may make a formal complaint with the  
297 prosecuting attorney of the county. Where the prosecuting attorney fails to bring an action  
298 within ten days of the filing of the complaint, the taxpayer may bring a civil action pursuant to  
299 this section and institute an action as representative of a class of all taxpayers within a taxing  
300 authority if the class is so numerous that joinder of all members is impracticable, if there are  
301 questions of law or fact common to the class, if the claims or defenses of the representative  
302 parties are typical of the claims or defenses of the class, and if the representative parties will  
303 fairly and adequately protect the interests of the class. In any class action maintained  
304 pursuant to this section, the court may direct to the members of the class a notice to be  
305 published at least once each week for four consecutive weeks in a newspaper of general  
306 circulation published in the county where the civil action is commenced and in other counties  
307 within the jurisdiction of a taxing authority. The notice shall advise each member that the  
308 court will exclude him or her from the class if he or she so requests by a specified date, that  
309 the judgment, whether favorable or not, will include all members who do not request  
310 exclusion, and that any member who does not request exclusion may, if he or she desires,  
311 enter an appearance. In any class action brought pursuant to this section, the court, in  
312 addition to the relief requested, shall assess against the taxing authority found to be in

313 violation of this section the reasonable costs of bringing the action, including reasonable  
314 attorney's fees, provided no attorney's fees shall be awarded any attorney or association of  
315 attorneys who receive public funds from any source for their services. Any action brought  
316 pursuant to this section shall be set for hearing as soon as practicable after the cause is at  
317 issue.

318         9. If in any action, including a class action, the court issues an order requiring a taxing  
319 authority to revise the tax rates as provided in this section or enjoins a taxing authority from  
320 the collection of a tax because of its failure to revise the rate of levy as provided in this  
321 section, any taxpayer paying his or her taxes when an improper rate is applied has erroneously  
322 paid his or her taxes in part, whether or not the taxes are paid under protest as provided in  
323 section 139.031 or otherwise contested. The part of the taxes paid erroneously is the  
324 difference in the amount produced by the original levy and the amount produced by the  
325 revised levy. The township or county collector of taxes or the collector of taxes in any city  
326 shall refund the amount of the tax erroneously paid. The taxing authority refusing to revise  
327 the rate of levy as provided in this section shall make available to the collector all funds  
328 necessary to make refunds pursuant to this subsection. No taxpayer shall receive any interest  
329 on any money erroneously paid by him or her pursuant to this subsection. Effective in the  
330 1994 tax year, nothing in this section shall be construed to require a taxing authority to refund  
331 any tax erroneously paid prior to or during the third tax year preceding the current tax year.

332         10. Any rule or portion of a rule, as that term is defined in section 536.010, that is  
333 created under the authority delegated in this section shall become effective only if it complies  
334 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.  
335 This section and chapter 536 are nonseverable and if any of the powers vested with the  
336 general assembly pursuant to chapter 536 to review, to delay the effective date, or to  
337 disapprove and annul a rule are subsequently held unconstitutional, then the grant of  
338 rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid  
339 and void.

✓