



Department of Transformation and Shared Services

Governor Asa Hutchinson
Secretary Amy Fecher

September 28, 2021

Jessica C. Whittaker, Administrator
Administrative Rules Review Section
Bureau of Legislative Research
One Capitol Mall, 5th floor
Little Rock, Arkansas 72201

Via: Electronic Mail

Re: October Act 595 Report

Office of Personnel Management (OPM)

1. Rule for OPM to Review Training Materials on Divisive Concepts, Act 1100 of 2021

This Act prohibits the propagation of divisive concepts and requires a review of Department training materials. The Act defines "divisive concept" and provides that agencies are prohibited from teaching, instructing, or training any employee, staff member, or other individual to adopt or believe any divisive concept. This Act requires state agencies to issue a policy incorporating the requirements of the prohibition. The Department of Transformation and Shared Services (TSS) will assist Departments in implementing policies. The Act also requires the TSS Secretary to develop rules to enforce the requirements of the Act.

Status: Being drafted.

The Acts effective date is January 1, 2022.

2. Repealing Prior OPM Rules Regarding Grievance Procedures, Act 1054 of 2019

OPM is repealing the grievance rules that were based on Arkansas Code Annotated § 21-1-703, which was repealed in 2019. The grievance rules and procedures were replaced with the State Arkansas Grievance Policy and Procedures and issued to Departments in April 2020.

Status: Repeal drafted and being reviewed.

3. To Create the Arkansas Public Service Internship Program, Act 379 of 2021

TSS has determined that Act 379 of 2021 requires TSS to establish the Arkansas Public Service Internship Program and for the Office of Personnel Management to issue a policy establishing the program. Almost all OPM personnel policies are not promulgated as rules. Since the internship program is a short-term employment in an extra-help position, TSS does not believe promulgation of rules under the A.P.A. is applicable.

Status: TSS has submitted a letter to BLR seeking an exemption from promulgating rules on this program.

Office of the Secretary

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Division of Building Authority (DBA)

1. DBA Minimum Standards and Criteria, Act 440 of 2021

Act 440 amends the award procedure for public improvement contracts by increasing the threshold for several criteria such as observation by registered professionals, notice requirements, and bid bond to \$50,000 (from \$25,000 or \$35,000). The Act also amends the emergency contracting procedures for counties and municipalities by limiting emergency contracts addressing an unforeseen or unavoidable emergency in which human life, health, or public property is in jeopardy and it requires a written statement regarding the emergency.

Status: Drafting complete in internal review process

Promulgation Deadline: Act 440 does not specify a deadline.

Employee Benefits Division (EBD)

1. To Transfer the Duties of the State and Public School Life and Health Insurance Board to the State Board of Finance, Act 1004 of 2021

This Act replaced the State and Public School Life and Health Insurance Board with the Board of Finance and required legislative oversight of certain actions. TSS reviewed Act 1004 and determined that rulemaking is not required or needed for the Board to carry out the requirements of the Act.

Status: TSS has submitted a letter to BLR seeking an exemption from promulgating rules on this program.

Office of State Procurement (OSP)

1. Rule Governing Time Period of Submission for Resolution of Protested Solicitations and Awards, Act 487 of 2021

The proposed amendment to the rule establishes that protested solicitations and awards shall be submitted in writing within fourteen (14) days after the calendar day on which the contract is awarded or the notice of anticipation to award the contract is posted, whichever occurs first.

Status: Rule drafted and being reviewed.

Promulgation Deadline: Act 487 does not specify a deadline.

2. Approval Process for OSP to Procure a Commodity or Service for Its Own Use Through Participation in a Cooperative Purchase Agreement, Act 488 of 2021

The proposed amendment to the rule provides that whenever OSP desires to procure a commodity or service for its own use through participation in a cooperative purchase agreement, its director shall submit a request for approval to the TSS Secretary, who may elect to deny the request or to advance it to the Governor for approval.

Status: Being drafted.

Promulgation Deadline: Act No. 488 does not specify a deadline.

Contact:

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September 28, 2021

The Honorable Kim Hammer
The Honorable Les Eaves
Administrative Rules Subcommittee
Arkansas Legislative Council
State Capitol Building
Little Rock, Arkansas 72201

Via: Email to Jessica C. Whittaker

Dear Senator Hammer and Representative Eaves:

Act 1004 of 2021 was identified by the Bureau of Legislative Research (BLR) in its Report on the Acts of the 2021 Regular Session Requiring New Rulemaking (Report) under "Section IV: Acts Requiring Action that Could Fall Within the Scope of Rulemaking." As you are aware, Act 1004 of 2021 replaced the State and Public School Life and Health Insurance Board with the Board of Finance (Board) and required legislative oversight of certain actions of the Board.

The Department of Transformation and Shared Services (TSS) reviewed Act 1004 and determined that rulemaking is not required or needed for the Board to carry out the requirements in Act 1004 of 2021. There are currently no rules promulgated by the Employee Benefits Division, the Board, or the previous board.

Pursuant to Act 585 of 2021, TSS provides this letter as its written request to be excluded from any requirement to promulgate rulemaking associated with Act 1004 of 2021.

Respectfully,

A handwritten signature in blue ink that reads "Amy Fecher". The signature is fluid and cursive.

Amy Fecher

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Via: Email to Jessica C. Whittaker

Dear Senator Hammer and Representative Eaves:

Act 379 of 2021 was identified by the Bureau of Legislative Research (BLR) in its Report on the Acts of the 2021 Regular Session Requiring New Rulemaking (Report) under "Section IV: Acts Requiring Action that Could Fall Within the Scope of Rulemaking." Act 379 of 2021 established the Arkansas State Government Internship Program for eligible graduate students and undergraduate students to obtain experience working in the cabinet-level Departments.

The Department of Transformation and Shared Services (TSS) reviewed Act 379 and determined that rulemaking is not required or needed for TSS to carry out the requirements of Act 379 of 2021. The Administrative Procedures Act defines a rule to mean "an agency statement of general applicability and future effect" but does not mean "a statement that concerns the internal management of a state agency and that does not affect the private rights or procedures available to the public." The process of selecting interns for the program is similar to the process Departments use for filling a vacant position. That process, including advertising a position, reviewing qualified candidates, and selecting a final candidate, does not require rulemaking. Instead, Act 379 requires the TSS Office of Personnel Management to develop a policy to administer the program that includes the process for cabinet-level Departments to request the use of available pool positions for the internship program.

Pursuant to Act 595 of 2021, TSS provides this letter as its written request to be excluded from any requirement to promulgate rulemaking associated with Act 379 of 2021.

Respectfully,

Amy Fecher

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