

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**

A Bill

HOUSE BILL 1104

4 **By: Representatives Flanagin, Barclay, Dietz, Allen, Argue, Arnold, Baker,**
5 **Beatty, Blair, Brown, Calhoun, Carter, Davis, Dawson, Easley, Fairchild,**
6 **Forgey, Gibson, Gilbert, Goodwin, Henry, Hogue, Holland, Horn, Hunton,**
7 **Hutchinson, Jones, Jordan, King, McCoy, McGee, McGinnis, McJunkin,**
8 **McKissack, O. Miller, Mills, Mitchell, Mitchum, Moreland, Mullenix, Murphy,**
9 **Northcutt, Parkerson, Pollan, Porter, Pryor, Purdom, Jim Roberts, Jacqueline**
10 **Roberts, Rorie, Sanson, Schernayder, Smith, Steele, Stephens, Stewart,**
11 **Teague, Thicksten, Thurman, Townsend, Tullis, Wagner, Walker, Watts, Willems,**
12 **J. Wilson, M. Wilson, B. Wood, K. Wood, Wooldridge and Wyrick**

For An Act To Be Entitled

16 "AN ACT TO ESTABLISH A SYSTEM OF LEGISLATIVE REVIEW OF
17 ADMINISTRATIVE RULES AND REGULATIONS PROMULGATED BY STATE
18 AGENCIES, TO ENABLE EACH BIENNIAL SESSION OF THE GENERAL
19 ASSEMBLY TO ENACT SUCH LAWS AS MAY BE DEEMED ADVISABLE TO
20 MINIMIZE ABUSE OF THE RULE-MAKING POWER OF STATE AGENCIES
21 AND TO STRENGTHEN AND CLARIFY LEGISLATIVE INTENT WHERE
22 DEEMED NECESSARY WITH RESPECT TO RULE-MAKING POWER GRANTED
23 TO STATE AGENCIES; TO REPEAL ARKANSAS CODE 10-3-309 AS
24 AMENDED; AND FOR OTHER PURPOSES."

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

28 SECTION 1. For the purposes of this act, the following terms shall have
29 the respective meanings as herein set forth, unless the context hereof clearly
30 indicates otherwise.

31 (a) "State agency" shall mean any officer, office, board, commission,
32 department, council, bureau, institution or other agency of the state of
33 Arkansas having authority by law to promulgate administrative rules and
34 regulations.

35 (b) "Joint interim committee of the General Assembly" shall mean and

1 include the joint interim committees of the General Assembly as established by
2 *Arkansas Code 10-3-203(3)(A) and 10-3-701.*

3 For the purposes of this act, the joint interim committees listed below
4 shall have jurisdiction to review the administrative rules and regulations of
5 the agencies and programs listed under the respective joint interim
6 committees.

7 Public Health, Welfare and Labor. Department of Labor and Employment
8 Security Division and Boards, Liquified Petroleum Gas Board, Department of
9 Health and Boards, Spinal Cord Commission, Department of Pollution Control and
10 Ecology and Boards, Statewide Health Coordinating Council, Child Care Facility
11 Review Board, Department of Human Services and Boards except Office on Aging,
12 Commission on Community Based Rehabilitation, Disability Determination -
13 Social Security Administration, Board of Sanitarians, Psychology Examiners
14 Board, Podiatry Board, Wastewater Plant Operator's Licensing Committee, State
15 Health Planning and Development, Veterinary Medical Examining Board, Embalmers
16 and Funeral Directors, Dental Examiners, Chiropractic Examiners, Pharmacy
17 Board, Optometry Board, Inhalation Therapy Examination Board, Hearing Aid
18 Dispensers Board, Coal Mine Examiners Board, Cemetery Board, State Medical
19 Board, Board of Physical Therapy, Therapy Technology Board, Radiation Control
20 Agency, Speech Pathology and Audiology, Cosmetology Board, Social Work
21 Registration Board, Barber Examiners Board, Nursing Board, Rural Medical
22 Practice Student Loan, Water Well Construction.

23 Joint Public Retirement and Social Security Programs. Highway Retirement
24 System, Teacher Retirement System, State Police Retirement System, Judicial
25 Retirement System, Quasi-Judicial Retirement System, Public Employees
26 Retirement System.

27 Public Transportation. Transportation Commission, Arkansas Highway and
28 Transportation Department, Waterways Commission, Motor Vehicle Commission.

29 Revenue and Taxation. Racing Commission and Racing Division of
30 Department of Finance and Administration, Revenue Services Division of
31 Department of Finance and Administration, Tax Division-Public Service
32 Commission, Assessment Coordination-Public Service Commission.

33 State Agencies and Governmental Affairs. Alcoholic Beverage Control
34 Department and Board, Department of Veterans Affairs, State Building Services,
35 War Memorial Stadium Commission, State Capitol Grounds Commission, Capitol
36 Zoning-District Commission, Claims Commission, Governor's Mansion Commission,

1 Commission on Law Enforcement Standards, Department of Finance and
 2 Administration-Management Services, Arkansas Crime Commission, Board of
 3 Finance, Department of Computer Services, State Police Department, State
 4 Military Department, Private Investigators and Private Security Agencies,
 5 Aeronautics Department, Public Accountancy Board, Revenue Department Building
 6 Commission, Soybean Promotion Board, Adjutant General, Civil Air Patrol,
 7 Office of Emergency Services, Veteran's Child Welfare Service Office, Air
 8 National Guard, Professional Engineers and Land Surveyors, Police Commission,
 9 Professional Soil Classifiers, Contractors Licensing Board, Collection
 10 Agencies, Consumers Advisory Board, Architects, Abstractors Board of
 11 Examiners, Real Estate Commission, Athletic Commission, Election Commissioners
 12 Board, Mobile Home Commission.

13 Judiciary. Department of Correction and Board of Correction, Judicial
 14 Department, Justice Building Commission, Prosecutor Coordinator Commission.

15 Education. Boards and Department of Education, Board and Department of
 16 Vocational-Technical Education, Student Loan Authority, Student Loan Guarantee
 17 Program, State Board of Higher Education, Department of Higher Education, all
 18 vocational-technical schools, all community colleges, all institutions of
 19 higher education, Post-Secondary Education Planning Commission.

20 Insurance and Commerce. Public Service Commission - Utilities Division,
 21 Savings and Loan Association Board, State Bank Department and Board, State
 22 Insurance Department, State Securities Department, Savings and Loan Board,
 23 Burial Association Board, State Employees Insurance Advisory Committee.

24 Agriculture and Economic Development. Soil and Water Resources
 25 Commission, Livestock and Poultry Commission, State Plant Board, Bureau of
 26 Standards, Department of Parks and Tourism and Board, Department of Arkansas
 27 Heritage and Boards, Forestry Commission, Geology Commission, Oil and Gas
 28 Commission, Board of Registration for Foresters, Department of Arkansas
 29 Industrial Development and Commission, Game and Fish Commission.

30 Aging and Legislative Affairs. Office on Aging - Department of Human
 31 Services.

32 *Any regulations promulgated by a state agency or board which are not*
 33 *listed above shall be reviewed by the Joint Interim Committee on State*
 34 *Agencies and Governmental Affairs until such time as the Legislative Council*
 35 *determines the most appropriate joint interim committee to review the rules*

1 and regulations of that agency. *Provided, the Legislative Council shall not*
2 *refer any administrative rules and regulations for review by the Legislative*
3 *Council or a subcommittee of the Council.*

4 (c) "Rule or regulation" shall mean rules, regulations, or any written
5 form of policy directive having the force of a rule or regulation issued by a
6 state agency, which applies to groups or individuals other than state
7 agencies.

8
9 SECTION 2. At least thirty (30) days before any state agency having
10 the authority by law to promulgate rules and regulations, shall promulgate any
11 rule or regulation, or revise, amend or change a rule or regulation then in
12 effect, the state agency shall file with the appropriate joint interim
13 committee of the Arkansas General Assembly by mailing or delivering a copy
14 thereof to the Bureau of Legislative Research for review and referral to said
15 committee at its next-following regular or special meeting. The Bureau of
16 Legislative Research shall then assign such proposed rule or regulation or the
17 revision, amendment or change in any existing rule or regulation, to an
18 appropriate staff person for study and review prior to the next regular
19 meeting of the joint interim committee to which the same shall be referred for
20 review. Such review by the Bureau of Legislative Research shall be for the
21 purpose of:

22 (1) determining whether the rule or regulation is contrary to
23 legislative intent as stated in the law under which the rule or regulation has
24 been promulgated or is purported to have been promulgated; and

25 (2) determining whether such proposed rule or regulation exceeds the
26 authority granted to the state agency under its rule-making power.

27 The written findings and comments of the Bureau of Legislative Research
28 shall be submitted to the appropriate joint interim committee to which the
29 proposed rule or regulation is referred at the time said rule or regulation is
30 considered by the committee.

31

32 SECTION 3. (A) At the next regular or special meeting of a joint
33 interim committee, all proposed administrative rules and regulations filed
34 with the Bureau of Legislative Research for referral to said committee
35 received subsequent to the last meeting of the committee or designated

1 subcommittee thereof, shall be placed on the agenda for the meeting of such
2 joint interim committee, together with staff report and comments in regard to
3 each such proposed rule or regulation, for review and consideration by such
4 joint interim committee.

5 (B) Notice that such item is being placed on the meeting agenda of said
6 joint interim committee may be furnished to the various state agencies
7 involved upon direction of the co-chairmen of the joint interim committee in
8 order that the agency may be represented at such joint interim committee
9 meeting to explain the proposed rule or regulation, and to answer questions in
10 regard thereto if raised by the committee.

11 (C) Upon conclusion of the committee's consideration of a proposed rule
12 or regulation, the committee or designated subcommittee thereof shall notify
13 the state agency that it has completed its review of the rule or regulation.

14 (D) The purpose of this section is intended to enable the appropriate
15 joint interim committees of the General Assembly and the state agencies to
16 jointly discuss the purposes and reasons for changes in rules being
17 promulgated by the agencies, in order to enable the committees to perform a
18 legislative oversight function of keeping the General Assembly informed with
19 respect to abuse or misuse of state agency rule-making power in those
20 instances where the committees believe the state agencies have exceeded the
21 authority granted to the agencies by law or have exceeded the legislative
22 intent as expressed in the Arkansas Code. In addition, this section intends
23 to enable the state agencies to be aware of the recommendations and comments
24 of the appropriate joint interim committees during the course of efforts to
25 promulgate and adopt rules and regulations or amendments to existing rules and
26 regulations.

27 It is not the intent of this section that the procedures set forth in
28 this act shall be a limitation or an undue hindrance to the exercise by each
29 state agency of its rule-making power and authority. In the event a joint
30 interim committee determines that an agency is exceeding its legal authority
31 or legislative intent as expressed in existing law, the committee shall convey
32 such information, together with recommendations for changes, to the General
33 Assembly in the manner set forth in Section 4 of this act for action at the
34 next regular session of the General Assembly.

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1 SECTION 4. *The respective joint interim committees of the General*
2 *Assembly are hereby authorized to adopt appropriate procedures and practices,*
3 *including the utilization of subcommittees, to enable the committee to carry*
4 *out its responsibilities under the provisions of this act.*

5 SECTION 5. Each joint interim committee of the Arkansas General
6 Assembly shall submit a report to the next-following regular session of the
7 General Assembly in the event the joint interim committee recommends
8 legislation to (i) clarify legislative intent with respect to the rule-making
9 power or authority of the agency, (ii) for the purpose of clarifying,
10 modifying, or restricting the rule-making authority of the state agency, or
11 (iii) to repeal the rule-making power or authority of the agency or commission
12 if the committee believes the same is being abused or is contrary to the
13 public interest.

14
15 SECTION 6. Whenever a state agency shall finalize the promulgation of a
16 rule or regulation or a revision, amendment or change in such rule or
17 regulation, a copy thereof shall be filed with the Bureau of Legislative
18 Research if such rule or regulation contains any changes from the initial
19 filing of the rule or regulation.

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21 SECTION 7. Whenever the General Assembly is meeting in regular or
22 special session, the House of Representatives and Senate standing committees
23 may meet jointly at a time agreed upon by both chairmen to review regulations
24 filed since the interim period.

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26 SECTION 8. All provisions of this act of a general and permanent nature
27 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
28 Revision Commission shall incorporate the same in the Code.

29
30 SECTION 9. If any provision of this act or the application thereof to
31 any person or circumstance is held invalid, such invalidity shall not affect
32 other provisions or applications of the act which can be given effect without
33 the invalid provision or application, and to this end the provisions of this
34 act are declared to be severable.

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