

As Engrossed: 3/21/95

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Senator Ross**

A Bill

ACT 943 OF 1995
SENATE BILL 680

For An Act To Be Entitled

8 "AN ACT ENABLING THE DIRECTOR OF THE DEPARTMENT OF
9 POLLUTION CONTROL AND ECOLOGY TO GRANT VARIANCES AND
10 TEMPORARY OPERATIONAL AUTHORITY PURSUANT TO THE WATER AND
11 AIR POLLUTION CONTROL ACT; AND FOR OTHER PURPOSES."

Subtitle

14 "THE ENVIRONMENTAL VARIANCES ACT"

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

18 SECTION 1. Arkansas Code Title 8, Chapter 4, Subchapter 2 is amended by
19 adding the following section:

20 "§ 8-4-230. Variances and interim authority.

21 (a) Unless otherwise prohibited by preemptive federal law, the director
22 may, for *compelling reasons and good cause shown*, grant:

23 (1) temporary variances from the requirements of any permit; or

24 (2) interim authority to construct or operate during the pendency
25 of any applicable public notice period.

26 Such variance or interim authorization shall not exceed a period of ninety
27 (90) days, except when a longer period is justified by circumstances beyond
28 the applicant_s control.

29 (b) In considering any request for a variance pursuant to subsection
30 (a)(1), the director shall consider the environmental and public health
31 effects of the temporary variance and any economic advantage obtained by the
32 party requesting the variance over other similarly situated facilities
33 operating in accordance with similar permit conditions. In addition, the
34 director may take into account the following factors:

35 (1) whether strict compliance with permit terms is inappropriate
36 because of conditions beyond the control of the person requesting the

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1 variance;

2 (2) whether strict compliance would result in substantial
3 curtailment or closing down of a business, plant, or operation;

4 (3) whether the variance request is prompted by recurrent or
5 avoidable compliance problems;

6 (4) a review of the operational history of the requesting
7 facility; and

8 (5) whether the public interest will be served by a temporary
9 variance.

10 (c) When considering any request for interim authority during the
11 pendency of a public notice period pursuant to subsection (a)(2), the director
12 may take into account the following factors in addition to the applicable
13 factors of subsection (b):

14 (1) whether the applicable permitting applications were timely
15 and completely submitted;

16 (2) whether the delay in final permitting action is attributable
17 to actions or omissions of the department;

18 (3) whether contractual or other business obligations will become
19 due before the applicable public comment period expires; and

20 (4) whether the public interest will be served by construction or
21 operation during the pendency of public notice.

22 (d) Every director_s decision to grant a variance or interim authority
23 to construct or operate shall be publicly noticed, at the applicant_s expense,
24 within ten (10) business days of the director_s decision. Any member of the
25 public may object to the director_s decision within ten (10) business days of
26 the notice. Any variance or interim authority granted by the director during
27 this notice and comment period is contingent upon the right of the public to
28 object. Any actions of the applicant in reliance upon the grant of the
29 variance or interim authority during the public comment period are strictly at
30 the applicant_s own risk, and no actions or expenditures by the applicant
31 during this period shall be construed as accruing equities in the applicant_s
32 favor.

33 (e) An applicant who has been denied a variance or interim authority,
34 or a third-party who submitted timely objections during the subsection (d)
35 comment period, may appeal the director_s final decision. Such an action

1 shall be processed as a permit appeal under A.C.A. § 8-4-205, provided however
2 that the decision of the director shall remain in effect during the appeal,
3 the adjudicatory review shall be completed as expeditiously as possible, and a
4 final decision shall be issued by the commission within sixty (60) days unless
5 all parties agree to extend the review time.

6 (f) Any party aggrieved by a commission decision on a request for
7 variance or interim authority may appeal as provided by applicable law."

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9 SECTION 2. Arkansas Code 8-4-304 is amended to read as follows:

10 "§ 8-4-304. Applicability of water pollution provisions.

11 All provisions of §§ 8-4-101 - 8-4-106 and 8-4-201 - 8-4-230 relating to
12 water pollution shall apply to this subchapter unless manifestly inconsistent
13 therewith, including, but not limited to, the provisions of §§ 8-4-205,
14 8-4-212 - 8-4-214, and 8-4-218 - 8-4-229 relating to hearings before the
15 commission, notice, right to appeal, and procedure, and § 8-4-230 relating to
16 variances and interim authority."

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18 SECTION 3. All provisions of this act of a general and permanent nature
19 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
20 Revision Commission shall incorporate the same in the Code.

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22 SECTION 4. If any provision of this act or the application thereof to
23 any person or circumstance is held invalid, such invalidity shall not affect
24 other provisions or applications of the act which can be given effect without
25 the invalid provision or application, and to this end the provisions of this
26 act are declared to be severable.

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28 SECTION 5. All laws and parts of laws in conflict with this act are
29 hereby repealed.

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31 SECTION 6. EMERGENCY. It is hereby found and determined by the General
32 Assembly that, in order to avoid the needless disruption of business in this
33 state, the director of the Department of Pollution Control and Ecology should
34 be given authority to grant temporary variances and interim authority to
35 construct or operate regulated activities. Therefore, an emergency is hereby

1 declared to exist and this act being necessary for the immediate preservation
2 of the public peace, health and safety shall be in full force and effect from
3 and after its passage and approval.

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/s/Ross

APPROVED: 4-5-95

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