Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1	State of Arkansas	A D:11		
2	82nd General Assembly	A Bill	Act 147 of 1999	
3	Regular Session, 1999		HOUSE BILL 1227	
4				
5	By: Representative Hendren			
6				
7				
8	For An Act To Be Entitled			
9	"AN ACT TO REVISE AND CLARIFY ARKANSAS CODE ANNOTATED			
10	§ 8-4-230 PERTAINING TO ENVIRONMENTAL VARIANCES AND			
11	INTERIM AUTHORITIES; TO ALLOW THE ARKANSAS DEPARTMENT			
12	OF ENVIRONMENTAL QUALITY TO GRANT VARIANCES AND			
13	INTERIM AUTHORITIES DURING THE ENTIRE PERMIT ISSUANCE			
14	PROCESS; AND	FOR OTHER PURPOSES."		
15				
16	Subtitle			
17	"AN ACT	TO ALLOW THE ARKANSAS DEPARTM	IENT	
18	OF ENVIRONMENTAL QUALITY TO GRANT			
19	VARIANCES AND INTERIM AUTHORITIES DURING			
20	THE ENTIRE PERMIT ISSUANCE PROCESS."			
21				
22				
23	BE IT ENACTED BY THE GENE	ERAL ASSEMBLY OF THE STATE OF A	ARKANSAS:	
24				
25	SECTION 1. Arkansas	s Code 8-4-230 is amended to re	ead as follows:	
26	"8-4-230. Vari ances	and interim authority.		
27	(a)(1) Unless other	rwise prohibited by preemptive	federal law, the	
28	director may, for compell	ing reasons and good cause she	own, grant:	
29	(A) Tempo	prary variances from the requi	rements of any permit	
30	issued by the department; or			
31	(B) Interim authority to construct or operate during the			
32	<del>pendency of any applicable public notice period</del> application review and permit			
33	issuance process.			
34	(2) Such variance or interim <del>authorization</del> <u>authority</u> shall not			
35	exceed a period of ninety (90) days, except when a longer period is justified			
36	by circumstances beyond the applicant's control. The Department may grant $a$			

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1 request for an extension to a variance or interim authority at any time prior 2 to the expiration date. 3 (3) The department may require an initial processing fee of \$200 for requests for a variance or interim authority request. This fee shall not be 4 required for requests for extension of any variance or interim authority. 5 (b)(1) In considering any request for a variance pursuant to subdivision 6 7 (a)(1)(A) of this section, the director shall consider: (A) The environmental and public health effects of the 8 9 temporary variance; and 10 (B) Any economic advantage obtained by the party requesting 11 the variance over other similarly situated facilities operating in accordance 12 with similar permit conditions which did not request a variance. 13 (2) In addition, the director may take into account the following 14 factors: 15 (A) Whether strict compliance with permit terms is 16 inappropriate because of conditions beyond the control of the person 17 requesting the variance; 18 (B) Whether strict compliance would result in substantial 19 curtailment or closing down of a business, plant, or operation; 20 (C) Whether the variance request is prompted by recurrent or 21 avoidable compliance problems; 22 (D) A review of the operational history of the requesting 23 facility; and 24 (E) Whether the public interest will be served by a temporary 25 vari ance. (c) When considering any request for interim authority during the 26 27 pendency of a public notice period pursuant to subdivision (a)(1)(B) of this 28 section, the director may take into account the following factors in addition 29 to the applicable factors of subsection (b) of this section: (1) Whether the applicable permitting applications were timely and 30 31 completely submitted; (2) Whether there has been a delay in the final permitting 32 action is attributable to actions or omissions of the department caused by 33 conditions beyond the control of the person requesting the interim authority; 34 (3) Whether contractual or other business obligations will become 35 due before the applicable public comment period expires a proper permit can be 36

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1	<u>i ssued;</u> and		
2	(4) Whether the public interest will be served by construction or		
3	operation during the <del>pendency of public notice</del> <u>application review and permit</u>		
4	issuance process.		
5	(d) After a review of the applicable factors, the director may:		
6	(1) Grant an unconditional variance or interim authority to the		
7	requesting party;		
8	(2) Grant a conditional variance or interim authority to the		
9	requesting party. Such conditions shall be designed to be protective of human		
10	health and the environment and must be clearly stated or referenced in the		
11	variance or interim authority document; or		
12	(3) Deny the request for variance or interim authority. If a denial		
13	is issued, the director shall clearly state the reason(s) for the denial in a		
14	written response to the applicant.		
15	(d)(e)(1) Every director's decision to grant <u>or deny</u> a variance or		
16	interim authority to construct or operate shall be publicly noticed <del>, at the</del>		
17	applicant's expense, within ten (10) business days of the director's decision.		
18	The applicant shall be responsible for the expense of publication of any		
19	decision to grant a variance or interim authority. The department shall be		
20	responsible for the expense of publication of any decision to deny a variance		
21	<u>or interim authority.</u>		
22	(2) Any member of the public may object to the director's decision		
23	within ten (10) business days of the notice.		
24	(3) Any variance or interim authority granted by the director		
25	during this notice and comment period is contingent upon the right of the		
26	public to object.		
27	(4) Any actions of the applicant in reliance upon the grant of <del>the</del>		
28	<u>a</u> variance or interim authority during the <del>public comment period</del> <u>application</u>		
29	review and permit issuance process are strictly at the applicant's own risk,		
30	and no actions or expenditures by the applicant during this period shall be		
31	construed as accruing equities in the applicant's favor.		
32	(5) The ten (10) day public notice requirement shall not apply to a		
33	director's decisions to grant an extension to a variance or interim authority.		
34	(f) The director may also for compelling reasons or good cause shown,		
35	revoke or modify the conditions of any variance or interim authority		
36	previously granted.		

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1 (e)(q)(1) An applicant who has been denied a variance or interim 2 authority or had a variance or interim authority revoked, or a third party who 3 submitted timely objections during the comment period provided for in subsection (d)(e) of this section, may appeal the director's final decision. 4 5 (2)(A) Such an action shall be processed as a permit appeal under  $\S$ 6 8-4-205. 7 (B) Provided, however, that: (i) The decision of the director shall remain in effect 8 9 during the appeal; 10 (ii) The adjudicatory review shall be completed as 11 expeditiously as possible; and 12 (iii) A final decision shall be issued by the commission 13 within sixty (60) days unless all parties agree to extend the review time. 14 (f) (h) Any party aggrieved by a commission decision on a request for 15 variance or interim authority may appeal as provided by applicable law." 16 17 SECTION 2. All provisions of this act of a general and permanent nature 18 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code 19 Revision Commission shall incorporate the same in the Code. 20 If any provision of this act or the application thereof to 21 SECTION 3. 22 any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without 23 24 the invalid provision or application, and to this end the provisions of this act are declared to be severable. 25 26 27 SECTION 4. All laws and parts of laws in conflict with this act are 28 hereby repealed. 29 30 31 APPROVED: 2/18/1999 32 33 34 35 36

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