

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 951 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: H3/27/09

A Bill

HOUSE BILL 2265

5 By: Representatives Nickels, Carter, Harrelson
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8 **For An Act To Be Entitled**

9 AN ACT TO REPEAL ACT 218 OF 2009 WHICH PROVIDES
10 CERTAIN APPEALS FROM THE ARKANSAS PUBLIC SERVICE
11 COMMISSION TO BE MADE TO THE COURT OF APPEALS;
12 AND FOR OTHER PURPOSES.
13

14 **Subtitle**

15 TO REPEAL ACT 218 OF 2009 WHICH PROVIDES
16 CERTAIN APPEALS FROM THE ARKANSAS PUBLIC
17 SERVICE COMMISSION TO BE MADE TO THE
18 COURT OF APPEALS.
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 *SECTION 1. Arkansas Code §§ 26-24-101, 26-24-123, and 26-26-1610 as*
24 *amended by Act 218 of 2009 are repealed.*

25 ~~*SECTION 1. Arkansas Code § 26-24-101 is amended to read as follows:*~~
26 ~~*26-24-101. Divisions created.*~~

27 ~~*For the purpose of assisting it in the carrying out of its functions,*~~
28 ~~*powers, and duties, there is created within the Arkansas Public Service*~~
29 ~~*Commission the following divisions:*~~

30 ~~*(1)(A) A Tax Division which shall have the responsibility of*~~
31 ~~*performing all functions and duties regarding assessment and equalization of*~~
32 ~~*properties of public utilities and public carriers;*~~

33 ~~*(B)(i)(a) All rules, regulations, and procedures to be*~~
34 ~~*followed by the division in assessing public utilities shall be promulgated*~~
35 ~~*by the commission, and all assessments of public utilities made by the*~~



1 ~~division shall be upon the approval of the commission;~~

2 ~~(b) Any person aggrieved by any assessment of~~
 3 ~~any public utility made by the division and approved by the commission shall,~~
 4 ~~upon petition, be entitled to a hearing before the commission, and appeals~~
 5 ~~from the rulings of the commission shall be to the circuit court Court of~~
 6 ~~Appeals upon the record made before the commission in the manner provided by~~
 7 ~~law §§ 23-2-422 — 23-2-424;~~

8 ~~(ii)(a) All rules, regulations, and procedures to be~~
 9 ~~followed by the division in assessing public carriers shall be promulgated by~~
 10 ~~the Arkansas Transportation Commission, and all assessments of public~~
 11 ~~carriers made by the division shall be upon the approval of the Arkansas~~
 12 ~~Transportation Commission Arkansas Highway Commission;~~

13 ~~(b) Any person aggrieved by any assessment of~~
 14 ~~any public carrier made by the division and approved by the Arkansas~~
 15 ~~Transportation Commission Arkansas Highway Commission shall, upon petition,~~
 16 ~~be entitled to a hearing before that commission, and appeals from the rulings~~
 17 ~~of the commission shall be to the circuit court Court of Appeals upon the~~
 18 ~~record made before the commission in the manner provided by law;~~

19 ~~(2) An Assessment Coordination Division, the duties of which~~
 20 ~~shall be such of those formerly imposed upon the Arkansas Assessment~~
 21 ~~Coordination Department as shall be assigned to the division by the~~
 22 ~~commission. None of the duties so assigned shall relate to the assessment of~~
 23 ~~the properties of public carriers or public utilities.~~

24
 25 ~~SECTION 2. Arkansas Code § 26-24-123 is amended to read as follows:~~

26 ~~26-24-123. Appeal of actions or orders.~~

27 ~~(a)(1) Any taxpayer A party to a proceeding aggrieved by the action or~~
 28 ~~an order of the Arkansas Public Service Commission respecting the assessment~~
 29 ~~or equalization of property shall have the right of appeal to the circuit~~
 30 ~~court and thence to the Arkansas Supreme Court, the original assessment that~~
 31 ~~has been fixed by the commission, may obtain a review of the order in the~~
 32 ~~Court of Appeals as provided by §§ 23-2-422 — 23-2-424.~~

33 ~~(2) The review of the order may be had by filing, within thirty~~
 34 ~~(30) days from the date of the action or order appealed, in the Court of~~
 35 ~~Appeals, a notice of appeal stating:~~

36 ~~(A) The nature of the proceeding before the commission;~~

1 ~~(B) The identity of the order complained of;~~

2 ~~(C) The reasons why the order is claimed to be unlawful;~~

3 ~~and~~

4 ~~(D) A prayer that the order of the commission be modified,~~
5 ~~remanded, or set aside in whole or in part.~~

6 ~~(3) No appeal shall lie from the action or order of the~~
7 ~~commission on original assessments unless the property owner shall have first~~
8 ~~exhausted his or her remedy before the commission by way of a petition for~~
9 ~~review.~~

10 ~~(b)(1) All appeals from the commission involving the assessment or~~
11 ~~equalization of property locally assessed may be either to the circuit court~~
12 ~~of the county where the property is located or the Pulaski County Circuit~~
13 ~~Court.~~

14 ~~(2) All appeals involving the assessment or equalization of~~
15 ~~property, the original assessment of which has been fixed by the commission,~~
16 ~~shall be the Pulaski County Circuit Court.~~

17 ~~(b)(1)(A) A copy of the notice of appeal shall immediately be~~
18 ~~transmitted by the Clerk of the Court of Appeals to the Secretary of the~~
19 ~~Arkansas Public Service Commission.~~

20 ~~(B) Within thirty (30) days from the service of the notice~~
21 ~~of appeal, the commission shall file with the Court of Appeals the record~~
22 ~~upon which the order complained of was entered.~~

23 ~~(2)(A) The record shall consist of a complete transcript of the~~
24 ~~record in the case made before the commission that shall include a copy of~~
25 ~~all the following in the case:~~

26 ~~(i) Pleadings;~~

27 ~~(ii) Proceedings;~~

28 ~~(iii) Testimony;~~

29 ~~(iv) Exhibits;~~

30 ~~(v) Orders;~~

31 ~~(vi) Findings; and~~

32 ~~(vii) Opinions.~~

33 ~~(B) The parties and the commission may stipulate that only~~
34 ~~a specified portion of the record as made before the commission shall be~~
35 ~~included in the transcript to be filed with the Court of Appeals.~~

36 ~~(c) All appeals shall be taken within thirty (30) days from the date~~

1 ~~of the action or order appealed from by filing a written notice with the~~
2 ~~commission and shall be tried de novo.~~

3 ~~(c)(1) Upon the filing of the notice of appeal and the record, the~~
4 ~~Court of Appeals shall have original and exclusive jurisdiction, to affirm,~~
5 ~~modify, or set aside the order of the commission in whole or in part.~~

6 ~~(2) An objection to any order of the commission shall not be~~
7 ~~considered by the Court of Appeals unless the objection was raised before the~~
8 ~~commission in the application for rehearing.~~

9 ~~(3) The findings of the commission as to facts, if supported by~~
10 ~~substantial evidence, are conclusive.~~

11 ~~(d) No appeal shall lie from the action or order of the commission on~~
12 ~~original assessments unless the property owner shall have first exhausted his~~
13 ~~remedy before the commission by way of petition for review.~~

14
15 ~~SECTION 3. Arkansas Code § 26-26-1610 is amended to read as follows:~~
16 ~~26-26-1610. Notice of assessment—Review and refunds.~~

17 ~~(a) After the Tax Division of the Arkansas Public Service Commission~~
18 ~~shall have completed the original assessment of any property within its~~
19 ~~jurisdiction, it shall, as soon as practicable, give notice in writing by~~
20 ~~first-class mail to the owner, officer, agent, or attorney making the~~
21 ~~statement, or, if no statement has been filed, then the notice is to be~~
22 ~~forwarded by first-class mail to the party or company against which the~~
23 ~~assessment has been made, showing the total amount of the assessment.~~

24 ~~(b)(1) If the owner of the property so assessed is dissatisfied with~~
25 ~~the assessment made by the division, as approved by the Arkansas Public~~
26 ~~Service Commission or the Arkansas Transportation Commission, the owner,~~
27 ~~within ten (10) days from date of notice, may file with the appropriate~~
28 ~~commission a written petition for review of the assessment.~~

29 ~~(2)(A) All hearings on the petition shall be had before the~~
30 ~~appropriate commission or its agent, on or before November 1 after assessment~~
31 ~~notice has been given.~~

32 ~~(B) The appropriate commission shall issue its order on~~
33 ~~the petition within two hundred forty (240) days after the date the petition~~
34 ~~for review is filed.~~

35 ~~(3) However, hearings Hearings on petitions for review of~~
36 ~~assessments of bus lines, motor carriers, airlines, water transportation~~

1 ~~companies, and private car companies, which assessments are certified to the~~
2 ~~Director of the Department of Finance and Administration for collection of~~
3 ~~tax, shall be to the appropriate commission or its agent, on or before~~
4 ~~December 31 of the assessing year.~~

5 ~~(c)(1) The party or company, on an appeal to the Pulaski County~~
6 ~~Circuit Court during the pendency of a petition for review and on appeal from~~
7 ~~an order or finding of the appropriate commission, during the pendency of a~~
8 ~~pending final judgment after any appeal, shall pay all taxes due before the~~
9 ~~date on which penalties are attached based upon the original assessment.~~

10 ~~(2) If on or prior to the final date for the payment of taxes~~
11 ~~without penalty, the final judgment of the court shall have been entered, all~~
12 ~~taxes due shall be based upon the amount of the assessment arising under the~~
13 ~~final judgment.~~

14 ~~(d)(1) In the event any company shall not have paid, on or before the~~
15 ~~final date for payment of taxes without penalty, all taxes due based upon the~~
16 ~~assessment record on the tax rolls on the final date, then the company shall~~
17 ~~be required to pay, in addition to these taxes and by reason of the~~
18 ~~delinquency, all penalties at the time provided by law, together with the~~
19 ~~costs as shall have accrued.~~

20 ~~(2)(A) At the time the payment is made, the company shall, in~~
21 ~~writing, advise the official to whom payment of taxes, penalties, and costs~~
22 ~~have been paid that a specified amount thereof is being paid under protest.~~

23 ~~(B)(i) Upon receipt of the payment and written protest,~~
24 ~~the collecting official shall cause the specified amount set forth by the~~
25 ~~company to be deposited in an Ad Valorem Tax Protest Fund.~~

26 ~~(ii) If, as a result of any final judgment, the~~
27 ~~company shall be entitled to a refund, then the collecting official shall~~
28 ~~cause a refund, as determined by the final judgment, to be made from the~~
29 ~~fund; and the remaining, if any, or the whole, if no refund is due the~~
30 ~~company, shall be distributed for the benefit of the respective taxing units~~
31 ~~entitled thereto."~~

32
33 SECTION 2. Arkansas Code § 26-24-101 is re-enacted to read as follows:

34 "For the purpose of assisting it in the carrying out of its functions,
35 powers, and duties, there is created within the Arkansas Public Service
36 Commission the following divisions:

1 (1)(A) A Tax Division which shall have the responsibility of
2 performing all functions and duties regarding assessment and equalization of
3 properties of public utilities and public carriers;

4 (B)(i)(a) All rules, regulations, and procedures to be
5 followed by the division in assessing public utilities shall be promulgated
6 by the commission, and all assessments of public utilities made by the
7 division shall be upon the approval of the commission;

8 (b) Any person aggrieved by any assessment of
9 any public utility made by the division and approved by the commission shall,
10 upon petition, be entitled to a hearing before the commission, and appeals
11 from the rulings of the commission shall be to the circuit court upon the
12 record made before the commission in the manner provided by law;

13 (ii)(a) All rules, regulations, and procedures to be
14 followed by the division in assessing public carriers shall be promulgated by
15 the Arkansas Transportation Commission, and all assessments of public
16 carriers made by the division shall be upon the approval of the Arkansas
17 Transportation Commission;

18 (b) Any person aggrieved by any assessment of
19 any public carrier made by the division and approved by the Arkansas
20 Transportation Commission shall, upon petition, be entitled to a hearing
21 before that commission, and appeals from the rulings of the commission shall
22 be to the circuit court upon the record made before the commission in the
23 manner provided by law;

24 (2) An Assessment Coordination Division, the duties of which
25 shall be such of those formerly imposed upon the Arkansas Assessment
26 Coordination Department as shall be assigned to the division by the
27 commission. None of the duties so assigned shall relate to the assessment of
28 the properties of public carriers or public utilities."

29
30 SECTION 3. Arkansas Code § 26-24-123 is re-enacted to read as follows:

31 "(a) Any taxpayer aggrieved by the action or order of the Arkansas
32 Public Service Commission respecting the assessment or equalization of
33 property shall have the right of appeal to the circuit court and thence to
34 the Arkansas Supreme Court.

35 (b)(1) All appeals from the commission involving the assessment or
36 equalization of property locally assessed may be either to the circuit court

1 of the county where the property is located or the Pulaski County Circuit
2 Court.

3 (2) All appeals involving the assessment or equalization of
4 property, the original assessment of which has been fixed by the commission,
5 shall be the Pulaski County Circuit Court.

6 (c) All appeals shall be taken within thirty (30) days from the date
7 of the action or order appealed from by filing a written notice with the
8 commission and shall be tried de novo.

9 (d) No appeal shall lie from the action or order of the commission on
10 original assessments unless the property owner shall have first exhausted his
11 remedy before the commission by way of petition for review."

12
13 SECTION 4. Arkansas Code § 26-26-1610 is re-enacted to read as
14 follows:

15 "(a) After the Tax Division of the Arkansas Public Service Commission
16 shall have completed the original assessment of any property within its
17 jurisdiction, it shall, as soon as practicable, give notice in writing by
18 first-class mail to the owner, officer, agent, or attorney making the
19 statement, or, if no statement has been filed, then the notice is to be
20 forwarded by first-class mail to the party or company against which the
21 assessment has been made, showing the total amount of the assessment.

22 (b)(1) If the owner of the property so assessed is dissatisfied with
23 the assessment made by the division, as approved by the Arkansas Public
24 Service Commission or the Arkansas Transportation Commission, the owner,
25 within ten (10) days from date of notice, may file with the appropriate
26 commission a written petition for review of the assessment.

27 (2) All hearings on the petition shall be had before the
28 appropriate commission or its agent, on or before November 1 after assessment
29 notice has been given. However, hearings on petitions for review of
30 assessments of bus lines, motor carriers, airlines, water transportation
31 companies, and private car companies, which assessments are certified to the
32 Director of the Department of Finance and Administration for collection of
33 tax, shall be to the appropriate commission or its agent, on or before
34 December 31 of the assessing year.

35 (c)(1) The company, on an appeal to the Pulaski County Circuit Court
36 from an order or finding of the appropriate commission, during the pendency

1 of a final judgment after any appeal, shall pay all taxes due before the date
2 on which penalties are attached based upon the original assessment.

3 (2) If on or prior to the final date for the payment of taxes
4 without penalty, the final judgment of the court shall have been entered, all
5 taxes due shall be based upon the amount of the assessment arising under the
6 final judgment.

7 (d)(1) In the event any company shall not have paid, on or before the
8 final date for payment of taxes without penalty, all taxes due based upon the
9 assessment record on the tax rolls on the final date, then the company shall
10 be required to pay, in addition to these taxes and by reason of the
11 delinquency, all penalties at the time provided by law, together with the
12 costs as shall have accrued.

13 (2)(A) At the time the payment is made, the company shall, in
14 writing, advise the official to whom payment of taxes, penalties, and costs
15 have been paid that a specified amount thereof is being paid under protest.

16 (B)(i) Upon receipt of the payment and written protest,
17 the collecting official shall cause the specified amount set forth by the
18 company to be deposited in an Ad Valorem Tax Protest Fund.

19 (ii) If, as a result of any final judgment, the
20 company shall be entitled to a refund, then the collecting official shall
21 cause a refund, as determined by the final judgment, to be made from the
22 fund; and the remaining, if any, or the whole, if no refund is due the
23 company, shall be distributed for the benefit of the respective taxing units
24 entitled thereto.”

25
26 /s/ Nickels

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28 **APPROVED: 4/6/2009**