

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.

1 State of Arkansas  
2 86th General Assembly  
3 Regular Session, 2007  
4

As Engrossed: S1/18/07 S1/31/07

# A Bill

SENATE BILL 55

5 By: Senator Altes

6 *By: Representatives Norton, Medley, E. Brown, Glidewell, Key, M. Martin, Schulte, Walters, Wells,*  
7 *Reynolds, Hoyt, Maxwell, Rosenbaum, Garner*

## For An Act To Be Entitled

11 AN ACT CONCERNING ADMINISTRATIVE RULES THAT  
12 IMPACT SMALL BUSINESS; AND FOR OTHER PURPOSES.

### Subtitle

15 AN ACT CONCERNING ADMINISTRATIVE RULES  
16 THAT IMPACT SMALL BUSINESS.

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

21 SECTION 1. Arkansas Code Title 25, Chapter 15 is amended to add an  
22 additional subchapter to read as follows:

23 25-15-301. Definitions.

24 As used in this act:

25 (1)(A) "Agency" means each board, commission, department, office,  
26 or other authority of the government of the State of Arkansas whether or not  
27 within or subject to review by another agency.

28 (B) "Agency" does not include the General Assembly and the  
29 judiciary;

30 (2)(A) "Rule" means any agency statement of general  
31 applicability and future effect that implements, interprets, or prescribes  
32 law or policy or describes the organization, procedure, or practice of any  
33 agency and includes, but is not limited to, the amendment or repeal of a  
34 prior rule.

35 (B) "Rule" does not mean:

36 (i) Statements concerning the internal management of



1 an agency and statements that do not affect the private rights or procedures  
2 available to the public;

3 (ii) Declaratory rulings issued pursuant to § 25-15-  
4 206; or

5 (iii) Intra-agency memoranda; and

6 (3) "Small business" means a for-profit enterprise consisting of  
7 no more than one hundred (100) employees regardless of whether the employees  
8 are full-time or part-time employees.

9  
10 25-15-302. Determination of effect of proposed rule on small  
11 businesses.

12 (a)(1) Before submitting a proposed rule for adoption, amendment, or  
13 repeal, an agency first shall determine whether the proposed rule affects  
14 small businesses.

15 (2) However, this section does not apply to a rule:

16 (A) Adopted on an emergency basis;

17 (B) That is federally mandated; or

18 (C) That substantially codifies existing state or federal  
19 law.

20 (b) As part of its analysis, the agency shall examine whether a means  
21 exists to make the rule less costly for small businesses without compromising  
22 the objective of the rule.

23 (c) If the proposed rule affects small businesses, the agency shall  
24 prepare an economic impact statement before undertaking the promulgation  
25 process.

26  
27 25-15-303. Economic impact statement.

28 (a) An agency required to prepare an economic impact statement under §  
29 25-15-302(c) shall comply with this section.

30 (b) The agency shall prepare an economic impact statement that sets  
31 forth the following:

32 (1) The type or types of small businesses that will be directly  
33 affected by the proposed rule, bear the cost of the proposed rule, or  
34 directly benefit from the proposed rule;

35 (2) A description of how small businesses will be adversely  
36 affected;

1           (3) A reasonable determination of the dollar amounts the  
2 proposed rule will cost small businesses in terms of fees, administrative  
3 penalties, reporting, recordkeeping, equipment, construction, labor,  
4 professional services, revenue loss, or other costs associated with  
5 compliance;

6           (4) A reasonable determination of the dollar amounts of the  
7 costs to the agency of implementing the proposed rule, as well as the  
8 financial benefit to the agency of implementing the rule;

9           (5) Whether and to what extent alternative means exist for  
10 accomplishing the objectives of the proposed rule that might be less  
11 burdensome to small businesses and why such alternatives are not being  
12 proposed; and

13           (6) A comparison of the proposed rule with federal and state  
14 counterparts.

15           (c) The agency shall submit the economic impact statement and the  
16 proposed rule to the Director of the Department of Economic Development.

17           (d)(1) Within ten (10) days of the receipt of the economic impact  
18 statement and the proposed rule, the director shall provide detailed  
19 information in writing to the agency regarding whether, in the reasoned  
20 opinion of the director, the agency has satisfactorily completed the economic  
21 impact statement and whether the agency has taken sufficient measures to  
22 balance the objectives of the proposed rule with the interests of the  
23 affected small businesses.

24           (2)(A) In performing these duties, the director may elicit views  
25 and information from, and shall serve as the point of contact for, small  
26 business organizations and associations, state and federal agencies, and  
27 other parties who have comments, objections, or opinions concerning the  
28 proposed rule.

29           (B) If appropriate, the director shall convey these  
30 communications to the agency.

31           (3) In addition to commenting upon a proposed rule, the director  
32 may review existing rules and make recommendations to agencies to amend rules  
33 that may have an unduly negative impact on small businesses.

34           (e)(1) Upon receiving from the director the information described in  
35 this section, the agency shall promptly consider the information.

36           (2)(A) If the agency determines that no action shall be taken in

1 response to the information received from the director, the agency may  
2 respond in writing to the director and explain its reasons for this  
3 determination.

4 (B) If the agency determines that amendment of a proposed  
5 rule or adoption, amendment, or repeal of an existing rule is warranted, the  
6 agency shall indicate this in its response.

7 (3) Upon completing the requirements of subdivision (e)(2) of  
8 this section, the agency may initiate the process for the adoption of a rule.

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10 SECTION 2. Arkansas Code § 25-15-204(a), concerning the adoption,  
11 amendment, or repeal of administrative rules, is amended to read as follows:

12 (a) Prior to the adoption, amendment, or repeal of any rule, the  
13 agency shall:

14 (1)(A) Give at least thirty (30) days' notice of its intended  
15 action. The thirty-day period shall begin on the first day of the  
16 publication of notice.

17 (B) The notice shall include a statement of the terms or  
18 substance of the intended action or a description of the subjects and issues  
19 involved and the time, the place where, and the manner in which interested  
20 persons may present their views ~~thereon~~ on the intended action or the  
21 subjects and issues involved.

22 (C) The notice shall be mailed to any person specified by  
23 law and to all persons who have requested advance notice of rule-making  
24 proceedings.

25 (D)(i) Unless otherwise provided by law, the notice shall  
26 be published in a newspaper of general daily circulation for three (3)  
27 consecutive days and, when appropriate, in those trade, industry, or  
28 professional publications that the agency may select.

29 (ii) The notice shall be published by the Secretary  
30 of State on the Internet for thirty (30) days in accordance with § 25-15-218;  
31 ~~and~~

32 (2)(A) Afford all interested persons reasonable opportunity to  
33 submit written data, views, or arguments, orally or in writing.

34 (B) Opportunity for oral hearing must be granted if  
35 requested by twenty-five (25) persons, by a governmental subdivision or  
36 agency, or by an association having no fewer than twenty-five (25) members.

1 (C) The agency shall fully consider all written and oral  
2 submissions respecting the proposed rule before finalizing the language of  
3 the proposed rule and filing the proposed rule as required by subsection (d)  
4 of this section.

5 (D) Upon adoption of a rule, the agency, if requested to  
6 do so by an interested person either prior to adoption or within thirty (30)  
7 days thereafter, shall issue a concise statement of the principal reasons for  
8 and against its adoption, incorporating therein its reasons for overruling  
9 the considerations urged against its adoption.

10 (E) When rules are required by law to be made on the  
11 record after opportunity for an agency hearing, the provisions of that law  
12 shall apply in place of this subdivision (a)(2); and

13 (3) Comply with § 25-15-301 et seq.  
14

15 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
16 General Assembly of the State of Arkansas that small businesses represent a  
17 vital part of the economy of the State of Arkansas; that this act will  
18 protect small businesses from inadvertent financial harm caused by  
19 administrative rules; and that this act should become effective as soon as  
20 possible to shield small businesses from potential harm. Therefore, an  
21 emergency is declared to exist and this act being immediately necessary for  
22 the preservation of the public peace, health, and safety shall become  
23 effective on:

24 (1) The date of its approval by the Governor;

25 (2) If the bill is neither approved nor vetoed by the Governor,  
26 the expiration of the period of time during which the Governor may veto the  
27 bill; or

28 (3) If the bill is vetoed by the Governor and the veto is  
29 overridden, the date the last house overrides the veto.  
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31 /s/ Altes  
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