

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1044**

**Bill Subtitle: TO ENACT THE "MILEAGE REIMBURSEMENT FAIRNESS ACT".**

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### **Basic Change :**

Representative Bell

Currently the mileage reimbursement rate is set by memo from the CFO of the State to state agency directors and institutions of higher education. This bill will require the CFO to promulgate a rule, under the Arkansas Administrative Procedures Act (AAPA) to change the mileage reimbursement rate from \$.42 per mile and the change will only be effective until July 1<sup>st</sup> of each odd number year. At that point the rate reverts back to \$.42 per mile.

Currently legislators and employees of the Legislature are paid at varying rates for mileage reimbursements. This bill would require everyone to be paid the same rate for personal use of a vehicle on State business.

An emergency rule to change the mileage reimbursement rate can be temporarily implemented if needed while the permanent rule is being promulgated.

### **Revenue Impact :**

Savings of \$267, 909 per year.

### **Taxpayer Impact :**

None

### **Resources Required :**

None

### **Time Required :**

Minimal

### **Procedural Changes :**

Changes to the mileage rate must be promulgated as a rule through the AAPA. Currently, the rate is changed by memorandum from CFO to the State agencies and higher institutions.

### **Other Comments :**

None

### **Legal Analysis :**

Ark. Code Ann. § 19-4-903(b)(2)(A) states that, unless otherwise provided by law, reimbursement for the use of privately owned motor vehicles while traveling on official business for the state shall not exceed the allowable rate of the Internal Revenue Service (IRS) per mile for business use of privately owned motor vehicles. HB1044 amends this code section by changing this reimbursement to a flat 42 cents per mile and takes out the "unless otherwise provided by law" language. The bill authorizes the Chief Fiscal Officer of the State (CFO) to promulgate rules to increase or decrease this reimbursement rate, but this modification shall expire on the next following July 1 of an odd-numbered year. The bill requires the Legislative Council to review the CFO's modification of this reimbursement rate. The bill

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states that the provisions concerning this reimbursement rate apply to all officers and employees of state government, including constitutional officers and state elected officials.

Other than the provision that the reimbursement rate shall not exceed the IRS rate, the bill does not provide guidelines as to the circumstances that must be present for the CFO to modify this reimbursement rate. Article 4, Section 2 of the Arkansas Constitution, the basis for the separation of powers doctrine, states that no branch of government shall exercise any power belonging to either of the others. The Arkansas Supreme Court has stated that the determination of whether a state statute violates separation of powers should be focused on whether the statute gives absolute, unregulated, and undefined discretion to a government agency and whether reasonable guidelines have been provided by which the administrative body is to exercise its discretionary power. *Hobbs v. Jones*, 2012 Ark. 293. The Court in *Hobbs* also stated that this type of undefined discretion could also constitute an unlawful delegation of legislative power to the executive branch. The fact that this bill provides no real guidelines for the CFO to use in determining when the reimbursement rate should be increased or decreased possibly raises separation of powers and unlawful delegation questions.

Ark. Code Ann. § 10-3-309(b)(1)(A) requires state agencies (which by statutory definition includes the CFO), upon promulgation of a rule, to file a copy of the rule with the Bureau of Legislative Research, which in turn submits the rule to the Legislative Council for review. The Legislative Council has assigned its rule review duties to the Rules Committee of the Legislative Council. This bill would not change the current procedure that is used by the Chief Fiscal Officer (or the Department of Finance and Administration) to submit rules to the Legislative Council for review.