

**REPORT OF THE
ADMINISTRATIVE RULES AND REGULATIONS SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL**

November 20, 2009

Mr. Co-Chairmen:

The Subcommittee on Administrative Rules and Regulations met at 9:00 a.m. on Monday, November 16, 2009, in Room 151 of the State Capitol. The following committee members attended: Senator Percy Malone, Co-Chair and Representative Mike Burris Co-Chair; Vice Co-Chair Senator John Paul Capps; Senators Kim Hendren, Randy Lavery, and Cecile Bledsoe; Representatives Stephanie Flowers, Monty Davenport, Bill Sample, and Johnnie Roebuck. Other legislators attended as follows: Senators David Wyatt and Bill Pritchard; Representatives Rick Green, Steve Cole, Steve Harrelson, Billy Gaskill, Richard Carroll, Randy Stewart, Mark Martin, Mike Patterson, Curren Everett, Bill Abernathy, Garry L. Smith, Eddie Cooper, David Rainey, and Jane English.

1. The Committee completed its review of the following rules filed pursuant to A.C.A. § 10-3-309:

ARKANSAS AGRICULTURE DEPARTMENT

- a. Arkansas Milk Stabilization Program Grants

DEPARTMENT OF CORRECTION

- a. AR 008; Judicial Decisions, Affidavits and Lawsuits

ARKANSAS DEVELOPMENT FINANCE AUTHORITY

- a.. 2010 Compliance Monitoring Policies and Procedures Manual for the Low Income Housing Tax Credit Program
- b. 2010 Multifamily Housing Minimum Design Standards
- c. 2010 Housing Credit Program Qualified Allocation Plan

DEPARTMENT OF EDUCATION

- a. Public School End-of-Course Assessments and Remediation
- b. Public Charter Schools
- c. Calculation Methods for Declining Enrollment and Student Growth Funding for Public School Districts

- d. Reimbursement by School Districts for Election Expenses
- e. Identifying and Governing the Arkansas Fiscal Assessment and Accountability Program
- f. Highly Qualified Teachers
- g. Regulatory Basis of Accounting
- h. Waiver of the Earnings Limitation under Arkansas Teacher Retirement System
- i. Calculation of Arkansas Smart Core Incentive Funding
- j. Limited Charter Schools

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

- a. Revisions to Rules of the Board of Registration for Professional Engineers and Land Surveyors

DEPARTMENT OF ENVIRONMENTAL QUALITY, REGULATED STORAGE TANKS DIVISION

- a. Regulation No. 12; Storage Tanks

DEPARTMENT OF FINANCE AND ADMINISTRATION, REVENUE DIVISION

- a. Rule 2007-4; Charitable Bingo and Raffle Rule

DEPARTMENT OF ARKANSAS HERITAGE, ARKANSAS HISTORIC PRESERVATION

- a. Arkansas Historic Rehabilitation Income Tax Credit Program
- b. Arkansas Civil War Sesquicentennial Historical Marker Program

DEPARTMENT OF HUMAN SERVICES, CHILDREN AND FAMILY SERVICES

- a. DCFS Policy Manual; Board Rate/Adoption Subsidy Increase

DEPARTMENT OF HUMAN SERVICES, DEVELOPMENTAL DISABILITIES SERVICES

- a. DDS Policy #1086; Human Development Center Admission and Discharge Rules

DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES

- a. Assisted Living Facilities II
- b. Official Notice DMS-2009-A-1, DMS-2009-X-1, DMS-2009-II-1, DMS 2009-L-1, DMS-2009-R-1; Billing for Essure Procedure and Device
- c. Official Notice DMS-2009-W-1; FFY 2010-ICD-9-CM Diagnosis Codes
- d. State Plan Amendment #2009-013 and Independent Choices Update #18

INSURANCE DEPARTMENT

- a. Rule 57; Insurance Department Administrative and Regulatory Fees

OIL AND GAS COMMISSION

- a. Rule G-1; Abandoned or Leaking Well and Well Site Remediation
- b. Rule H-1; Class II Disposal and Class II Commercial Disposal Well Permit Application Procedures

STATE BOARD OF OPTOMETRY

- a. Chapter I, Article II; Applications for Examination

DEPARTMENT OF PARKS AND TOURISM

- a. CY 2010 Arkansas State Parks Fees and Rates

STATE BOARD OF PHARMACY

- a. Regulation 09; Pharmaceutical Care/Patient Counseling

2. **The State Board of Public Accountancy presented rules to comply with Act 93 of 2009. Rules 6, 7, 10, 12, and 14 were filed as emergency rules and subsequently as a permanent promulgation. Rule 1 was also filed, but not under the emergency provisions of the APA. These rules concern a licensure procedure for out-of-state CPAs. Rule 12 increases an application fee from \$50 to \$110 for those non-resident licensed CPAs who do not qualify to practice in Arkansas under substantially equivalent provisions of Act 93. While the board is authorized to determine fees for applications, administering exams, and registration and annual renewal fees, Act 93 does not contain a specific authority for the application fee increase. The committee also questioned the board's decision to put the rules into effect on**

an emergency basis. The committee recommended that these rules be placed on the next agenda.

3. **The State Board of Optometry presented an amendment to Chapter III, Article III, Procedures for Emergency Situations in Optometrist Clinics. In this rule, the board is deleting the requirement that optometrist licensees mail a copy of the written procedure on how to handle emergency situations within the clinic to the board office. The committee does not agree that this practice should be discontinued, and the current practice indicates that the optometrist knows the rules and abides by them. Mr. Bill Trice, the board's attorney, advised that he would take this concern back to the board, and this rule was deferred until the next meeting.**
4. **The State Board of Optometry also presented an amendment to Chapter V, Article VIII, Prescribing Oral Steroids. The board is deleting the requirement that "[i]f the history suggests contraindications for the use of oral steroids, before prescribing a steroid, a consult with the patient's family doctor, a physician, or an ophthalmologist should be duly noted in the record." Since oral steroids are controlled drugs, the committee felt that the optometrists should maintain and document the contact with other physicians when prescribing them. Mr. Bill Trice, the board's attorney, advised that he would take this concern back to the board, and this rule was deferred until the next meeting.**
5. **Representative Steve Cole presented Interim Study Proposal 2009-190 requesting that the Administrative Rules and Regulations Subcommittee to study the implementation of Act 971 of 2009. This was referred to committee by the Legislative Council at its meeting on October 16, 2009. Representative Cole indicated that he would like the Department of Higher Education and the Arkansas Higher Education Coordinating Board to postpone the implementation of the act until the intent of Act 971 is resolved. Part of the study would include a review of whether the uniform measurable exit standards should be implemented by administrative rule and an analysis of the legislative intent behind requiring collaboration between the Arkansas Higher Education Coordinating Board and state-supported institutions of higher education.**

The interim study proposal was adopted for study, and the committee will work with the sponsor on how it will be studied.

Respectfully submitted,

Senator Percy Malone

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Representative Mike Burris

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