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# Proposed Rulemaking

Title

Promulgated by:  
State Aid Street Committee

**Title 27. Transportation** MARK-UP

**Chapter VI. State Aid Street Committee, Arkansas Department of Transportation, State Highway Commission**

**Subchapter A. Generally**

**Part 160. Rules of Procedure for the State Aid Street Committee**

**Subpart 1. Generally**

**27 CAR § 160-101. Statement of organization and operations.**

(a) The State Aid Street Committee is an agency of state government created by Acts 2011, No. 1032, Arkansas Code § 27-72-413, as defined by Arkansas Code § 25-15-202(2)(A).

(b) The General Assembly has delegated to the committee regulatory authority over the awarding of grants to municipalities from the State Aid Street Fund.

(c) Ultimate authority for the operation of the agency is in the committee.

(d) The individual charged with the day-to-day operations is referred to as chair, or in his or her absence the vice-chair, who is selected by the committee.

(e) From time to time, the committee may promulgate rules.

**27 CAR § 160-102. Information for public guidance.**

(a)(1) The State Aid Street Committee makes available a list of persons holding certain responsibilities for handling Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq., requests so that the public may:

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- (A) Obtain information about the committee; or
- (B) Make submissions or requests.

(2) The names, mailing addresses, telephone numbers, and electronic addresses can be obtained from the:

Operations and Programs Officer  
Arkansas Municipal League  
P.O. Box 38  
North Little Rock, AR 72115-0038  
Phone: 501-374-3484

(b) The committee and the State Aid Division of the Arkansas Department of Transportation have a list of official forms used by the committee and a list of all formal, written statements of policy and written interpretative memoranda, and orders, decisions and opinions, which may be obtained from the committee.

(c) Copies of all forms used by the committee, written statements of policy and written interpretive memoranda, and all grants issued by the committee may be obtained from the Operations and Programs Officer, Arkansas Municipal League or the:

State Aid Engineer  
State Aid Division of the Arkansas Department of Transportation  
10324 Interstate 30  
P.O. Box 2261  
Little Rock, AR 72203-2261  
Phone: 501-569-2346

**27 CAR § 160-103. General organization.**

(a)(1) Election of officers will be held annually at the State Aid Street Committee's first meeting in January of each year.

(2) These officers shall perform the duties prescribed by:

- (A) Applicable law;
- (B) This part; and
- (C) The parliamentary authority adopted by the State Aid Street

Committee.

(b)(1) The business of the State Aid Street Committee will be conducted in public meetings pursuant to Robert’s Rules of Order.

(2) All meetings will be conducted in conformity with the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq.

(3) Regular meetings will be held at least twice each year.

(4) Special meetings will be held:

(A) On the call of the chair or vice-chair; or

(B) At the request of any member of the State Aid Street Committee.

(c) A quorum for the transaction of business is a majority of the members entitled to vote.

(d)(1) The State Aid Street Committee may create standing and ad hoc committees.

(2) The State Aid Street Committee chair will select members of committees.

(3) A quorum for the transaction of committee business is a majority of the number of voting members of the committee.

(e)(1) The State Aid Street Committee will prepare the agenda for regular and special meetings.

(2) The agenda will be distributed to State Aid Street Committee members and made available to the public in advance of the meeting.

(3) The agenda should state with specificity the items that will be considered at a meeting or workshop.

(4) The agenda should include the following topics as applicable:

(A) The call to order;

(B) Review of minutes;

(C) Old business;

(D) New business;

- (E) Other business;
- (F) Rulemaking hearings; and
- (G) Public comment.

(5)(A) The order of the agenda items is intended to be flexible and may be adjusted to meet the needs of the State Aid Street Committee.

(B) Additionally, the agenda may be amended by appropriate motion.

## **27 CAR § 160-104. Rulemaking.**

### **(a) Authority.**

(1) The State Aid Street Committee, subject to the rulemaking authority of the state aid engineer pursuant to Arkansas Code § 27-72-405, has been authorized by the General Assembly to promulgate rules, Arkansas Code § 27-72-413(d).

(2) The committee follows the procedural requirements of the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., in particular Arkansas Code §§ 25-15-203 and 25-15-204, as amended.

(3) Additionally, the committee is required to abide by the provisions of Arkansas Code § 10-3-309, as amended.

(b) **Initiation of rulemaking.** The process of adopting a new rule or amending or repealing an existing rule (hereinafter referred to as rulemaking) may be initiated by request of the committee, or third parties outside the committee may petition for the issuance, amendment, or repeal of any rule.

### **(c) Petition to initiate rulemaking.**

(1)(A) Third parties may initiate rulemaking to adopt, amend, or repeal a rule by filing a petition with the committee to initiate rulemaking.

(B) The petition must contain:

- (i) The name, address, and telephone number of the petitioner;
- (ii) The specific rule or action requested;
- (iii) The reasons for the rule or action requested; and
- (iv) Facts showing that the petitioner:
  - (a) Is regulated by the committee; or

(b) Has a substantial interest in the rule or action requested.

(2) The petition to initiate rulemaking shall be filed with the committee in care of the Operations and Programs Officer, Arkansas Municipal League, with a copy to the state aid engineer, State Aid Division of the Arkansas Department of Transportation.

(3)(A) Within thirty (30) days after submission of the petition, the committee will either:

- (i) Deny the petition, stating its reasons in writing; or
- (ii) Initiate rulemaking.

(B) A special meeting will be called if necessary to meet this time frame.

(d) **Prefiling with the Bureau of Legislative Research.** Thirty (30) days before the public comment period ends, the committee will file with the Bureau of Legislative Research the text of the proposed rule or amendment as well as a financial impact statement and a bureau questionnaire as provided by Arkansas Code § 10-3-309.

(e) **Public input.**

(1)(A) Before finalizing language of a proposed new rule or an amendment to, or repeal of, an existing rule, the committee will receive public input through written comments and/or oral submissions.

(B) The committee will designate in its public notice the format and timing of public comment.

(2) Any public hearing will provide affected persons and other members of the public a reasonable opportunity for presentation of evidence, arguments, and oral statements within reasonable conditions and limitations imposed by the committee to avoid:

- (A) Duplication;
- (B) Irrelevant comments;
- (C) Unnecessary delay; or
- (D) Disruption of the proceedings.

(3)(A) The committee chair, any member of the committee, or any person designated by the committee may preside at the public hearing.

(B) The committee must ensure that the personnel responsible for

preparing the proposed rule or amendment are available, and will notify third parties initiating rule changes to be available to:

- (i) Explain the proposal; and
- (ii) Respond to questions or comments regarding the proposed rule.

(4) The committee must preserve the comments made at the public hearing by:

- (A) A certified court reporter; or
- (B) Recording instruments.

(5)(A) Any person may submit written statements within the specified period of time.

- (B) All timely, written statements will be:
  - (i) Considered by the committee; and
  - (ii) Made a part of the rulemaking record.

**(f) Notice of rulemaking.**

(1) The committee will give notice of proposed rulemaking to be published pursuant to Arkansas Code § 25-15-204.

(2) The notice will:

- (A) Set any written comment period; and
- (B) Specify the time, date, and place of any public hearing.

**(g) Decision to adopt a rule.**

(1) The committee will not finalize language of the rule or decide whether to adopt a rule until the period for public comment has expired.

(2) Before acting on a proposed rule, the committee will consider:

- (A) All of the written submissions and/or oral submissions received in the rulemaking proceeding or any memorandum summarizing such oral submissions; and
- (B) Any regulatory analysis or fiscal impact statement issued in the rulemaking proceedings.

(3) The committee may use its own experience, specialized knowledge, and judgment in the adoption of a rule.

**(h) Variance between adopted rule and published notice of proposed rule.**

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(1) The committee may not adopt a rule that differs from the rule proposed in the published notice of the intended rulemaking on which the rule is based unless:

(A) The final rule is in character with the original scheme and was a logical outgrowth of the notice and comments stemming from the proposed rule; or

(B) The notice fairly apprised interested persons of the subject and the issues that would be considered so that those persons had an opportunity to comment.

(2) In determining whether the final rule is in character with the original scheme and was a logical outgrowth of the notice and comments, and that the notice of intended rulemaking provided fair warning that the outcome of that rulemaking proceeding could be the rule in question, the committee must consider the following factors:

(A) The extent to which persons who will be affected by the rule should have understood that the rulemaking proceeding on which it is based could affect their interests;

(B) The extent to which the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the notice of intended rulemaking; and

(C) The extent to which the effects of the rule differ from the effects of the proposed rule contained in the notice of intended rulemaking.

(i) **Concise statement of reasons.**

(1)(A) When requested by an interested person, either prior to the adoption of a rule or within thirty (30) days after its adoption, the committee shall issue a concise statement of the principal reasons for and against its adoption of the rule.

(B) Requests for such a statement must be in writing and be delivered to the committee in care of the Operations and Programs Officer, Arkansas Municipal League, with a copy to the state aid engineer, State Aid Division of the department.

(C) The request should indicate whether the statement is sought for all or only a specified part of a rule.

(D) A request will be considered to have been submitted on the date on which it is received by the Operations and Programs Officer, Arkansas Municipal

League.

(2) The concise statement of reasons must contain:

(A) The committee's reasons for adopting the rule;

(B) An indication of any change between the text of the proposed rule and the text of the rule as finally adopted, with explanations for any such change; and

(C) The principal reasons urged in the rulemaking procedure for and against the rule, and the committee's reasons for overruling the arguments made against the rule.

(j) **Contents.**

(1) The committee shall cause its rules to be published and made available to interested persons.

(2) The publication must include:

(A) The text of the rule;

(B) A note containing the following:

(i) The date the committee adopted or amended the rule;

(ii) The effective date of the rule;

(iii) Any findings required by any provisions of law as a prerequisite to adoption for effectiveness of the rule; and

(iv) Citation to the entire specific statutory or other authority authorizing the adoption of the rule; and

(C) The publication of the rule must state the date of publication.

(k) **Format.** The published rules of the committee will be organized substantially in the following format:

(1) Statement of organization and operations;

(2) Information for public guidance;

(3) General organization;

(4) Rulemaking;

(5) Emergency rulemaking;

(6) Declaratory orders; and

(7) Et seq. Substantive rules and other rules of the committee.

**(l) Incorporation by reference.**

(1) By reference in a rule, the committee may incorporate all or any part of a code, standard, rule, or other matter if the committee finds that copying the matter in the committee's rule would be unduly cumbersome, expensive, or otherwise inexpedient.

(2) The reference in the committee rule must:

(A) Fully and precisely identify the incorporated matter by title, citation, date, and edition, if any;

(B) Briefly indicate the precise subject and general contents of the incorporated matter; and

(C) State that the rule does not include any later amendments or editions of the incorporated matter.

(3) The committee may incorporate such a matter by reference in a proposed or adopted rule only if the committee makes copies of the incorporated matter readily available to the public.

(4) The rules must state how and where copies of the incorporated matter may be obtained at cost from:

(A) The committee; and

(B) An agency of the United States, this state, another state, or the organization, association, or persons originally issuing that matter.

(5) The committee must retain permanently a copy of any materials incorporated by reference in a rule of the committee.

**(m) Filing.**

(1) After the committee formally adopts a new rule or amends a current rule or repeals an existing rule, and after the rule change has been reviewed by the Legislative Counsel, the committee will file final copies of the rule:

(A) With the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research; or

(B) As otherwise provided by Arkansas Code § 25-15-204(d).

(2) Proof of filing a copy of the rule, amendment, or repeal with the Secretary

of State, the library, and the bureau will be kept in a file maintained by the committee.

(3) Notice of the rule change will be posted on the committee web page.

## **27 CAR § 160-105. Emergency rulemaking.**

### **(a) Request for emergency rulemaking.**

(1) The proponent of a rule may request the State Aid Street Committee to adopt an emergency rule.

(2) In addition to the text of the proposed rule or amendment to an existing rule and any other information required by 27 CAR § 160-104(c), the proponent will provide a written statement setting out the facts or circumstances that would support a finding of imminent peril to the public:

- (A) Health;
- (B) Safety; or
- (C) Welfare.

### **(b) Finding of an emergency.**

(1) Upon receipt of the written statement requesting an emergency rulemaking and documents or other evidence submitted in support of the assertion that an emergency exists, the committee will make an independent judgment as to whether the circumstances and facts constitute an imminent peril to the public health, safety, or welfare requiring adoption of the rule upon fewer than thirty (30) days' notice.

(2) If the committee determines that the circumstances warrant emergency rulemaking, it will make a written determination that sets out the reasons for the committee's finding that an emergency exists.

(3) Upon making this finding, the committee may:

- (A) Proceed to adopt the rule without any prior notice or hearing; or
- (B) Determine to provide an abbreviated notice and hearing.

### **(c) Effective date of emergency rule.**

(1) The emergency rule will be effective immediately upon filing, or at a stated time less than ten (10) days thereafter, if the committee finds that this effective date is necessary because of imminent peril to the public:

- (A) Health;
- (B) Safety; or
- (C) Welfare.

(2) The committee will file with the rule:

(A) Its written findings justifying the determination that emergency rulemaking is appropriate; and

(B) If applicable, the basis for the effective date of the emergency rule being less than ten (10) days after the filing of the rule pursuant to Arkansas Code § 25-15-204(e).

(3) The committee will take appropriate measures to make emergency rules known to persons who may be affected by them.

## **27 CAR § 160-106. Declaratory orders.**

### **(a) Purpose and use of declaratory orders.**

(1) A declaratory order is a means of resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or grants over which the State Aid Street Committee has authority.

(2) A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules, or grants may apply to the petitioner's particular circumstances.

(3) A declaratory order is not the appropriate means for:

- (A) Determining the conduct of another person; or
- (B) Obtaining a policy statement of general applicability from the

committee.

(4) A petition or declaratory order must describe the potential impact of statutes, rules, or grants upon the petitioner's interests.

(b) **The petition.** The process to obtain a declaratory order is begun by filing with the committee in care of the Operations and Programs Officer, Arkansas Municipal League, with a copy to the state aid engineer, State Aid Division of the Arkansas Department of Transportation, a petition that provides the following information:

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(1) The caption, which shall read: Petition for Declaratory Order Before the State Aid Street Committee;

(2) The name, address, telephone number, and facsimile number of the petitioner;

(3) The name, address, telephone number, and facsimile number of the attorney of the petitioner;

(4) The statutory provision or provisions, committee rule or rules, or committee grant or grants on which the declaratory order is sought;

(5) A description of how the statutes, rules, or grants may substantially affect the petitioner and the petitioner's particular set of circumstances, and the question or issue on which petitioner seeks a declaratory order;

(6) The signature of the petitioner or petitioner's attorney;

(7) The date; and

(8) Request for a hearing, if desired.

**(c) Agency disposition.**

(1) The committee may hold a hearing to consider a petition for declaratory order.

(2) If a hearing is held, it shall be conducted in accordance with Arkansas Code §§ 25-15-208 and 25-15-213.

(3) The committee may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts.

(4) Within ninety (90) days of the filing of the petition, the committee will render a final order denying the petition or issuing a declaratory order.

**27 CAR § 160-107. Substantive rules — Project criteria.**

(a) In order to qualify for funding, roadway conditions for overlays must be:

(1) Fair;

(2) Fair to poor; or

(3) Poor.

(b)(1) Construction funding for overlay projects will be capped at four hundred

~~thousand dollars (\$400,000)three hundred thousand dollars (\$300,000).~~

(2) If bids exceed the cap, then the city must:

(A) Agree to pay the overage amount; or

(B) Scale back the project.

(c)(1) Projects requiring design work will be granted preliminary approval but not considered for construction funding until the engineering has been completed.

(2) For these projects, a ~~four hundred thousand dollar~~ five hundred thousand dollar (\$500,000) cap will apply for construction funding and a one-hundred-sixty-thousand-dollar cap will apply for engineering costs (the total cost of engineering design and inspection).

(3) The city will be responsible to pay any overage of the engineering costs and/or construction costs.

(d)(1) As part of the chair's day-to-day operations, the State Aid Street Committee has authorized the chair to concur in the routine award of construction contracts administered by the Arkansas Department of Transportation and, for both the contract award and during construction, approve construction funding increases of more than ten percent (10%) over a project's initial approved amount not to exceed the maximum capped amount for the type of project.

(2) At the request of any committee member, a special meeting will be held to approve the funding increases and/or concur in the contract awards.

(3) When requesting concurrence in award and/or approval for funding increases, the state aid engineer will email the request to the chair and copy the committee members.

(4) After the construction contracts are awarded, the projects' approved amounts will be adjusted to match the appropriate share of the award amount.

(e) Municipalities may submit to the committee one (1) project request per year on a calendar year basis.

(f) Municipalities that have had a project approved for funding must wait until the following calendar year to submit another project.

(g) In the event of an emergency, as determined by the committee, the restrictions

set out in subsections (b), (e), and (f) of this section may be suspended by a two-thirds (2/3) vote of a quorum at a regular or special meeting called for that purpose.