

State of Arkansas
76th General Assembly
Regular Session, 1987
By: Representative Flanagin

HOUSE BILL 1368

"AN ACT TO ESTABLISH A SYSTEM OF LEGISLATIVE REVIEW OF ADMINISTRATIVE RULES AND REGULATIONS PROMULGATED BY STATE AGENCIES, TO ENABLE EACH BIENNIAL SESSION OF THE GENERAL ASSEMBLY TO ENACT SUCH LAWS AS MAY BE DEEMED ADVISABLE TO MINIMIZE ABUSE OF THE RULE-MAKING POWER OF STATE AGENCIES AND TO STRENGTHEN AND CLARIFY LEGISLATIVE INTENT WHERE DEEMED NECESSARY WITH RESPECT TO RULE-MAKING POWER GRANTED TO STATE AGENCIES; TO REPEAL ACT 583 OF 1973 AS AMENDED; AND FOR OTHER PURPOSES."

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

SECTION 1. For the purposes of this Act, the following terms shall have the respective meanings as herein set forth, unless the context hereof clearly indicates otherwise.

(a) "State agency" shall mean any officer, office, board, commission, department, council, bureau, institution or other agency of the State of Arkansas having authority by law to promulgate administrative rules and regulations.

(b) "Joint Interim Committee of the General Assembly" shall mean and include the Joint Interim Committees of the General Assembly as established by Subsection III of Section 2 of Act 90 of 1973, as amended, and Act 289 of 1975, as amended.

For the purposes of this Act the Joint Interim Committees listed below shall have jurisdiction to review the administrative rules and regulations of the agencies and programs listed under the respective Joint Interim Committees.

Public Health, Welfare and Labor. Department of Labor and Employment Security Division and Boards, Liquified Petroleum Gas Board, Department of

Health and Boards, Spinal Cord Commission, Department of Pollution Control and Ecology and Boards, Statewide Health Coordinating Council, Child Care Facility Review Board, Department of Human Services and Boards except Office on Aging, Commission on Community Based Rehabilitation, Disability Determination - Social Security Administration, Board of Sanitarians, Psychology Examiners Board, Podiatry Board, Wastewater Plant Operator's Licensing Committee, State Health Planning and Development, Veterinary Medical Examining Board, Embalmers and Funeral Directors, Dental Examiners, Chiropractic Examiners, Pharmacy Board, Optometry Board, Inhalation Therapy Examination Board, Hearing Aid Dispensers Board, Coal Mine Examiners Board, Cemetery Board, State Medical Board, Board of Physical Therapy, Therapy Technology Board, Radiation Control Agency, Speech Pathology and Audiology, Cosmetology Board, Social Work Registration Board, Barber Examiners Board, Nursing Board, Rural Medical Practice Student Loan, Water Well Construction.

Joint Public Retirement and Social Security Programs. Highway Retirement System, Teacher Retirement System, State Police Retirement System, Judicial Retirement System, Quasi-Judicial Retirement System, Public Employees Retirement System.

Public Transportation. Transportation Commission, Arkansas Highway Department, Waterways Commission, Motor Vehicle Commission.

Revenue and Taxation. Racing Commission and Racing Division of Department of Finance and Administration, Revenue Services Division of Department of Finance and Administration, Tax Division-Public Service Commission, Assessment Coordination-Public Service Commission.

State Agencies and Governmental Affairs. Alcoholic Beverage Control Department and Board, Department of Veteran Affairs, State Building Services, War Memorial Stadium Commission, State Capitol Grounds Commission, Capitol Zoning-District Commission, Claims Commission, Governor's Mansion Commission, Commission on Law Enforcement Standards, Department of Finance and Administration-Management Services, Arkansas Crime Commission, Board of Finance, Department of Computer Services, State Police Department, State Military Department, Private Investigators and Private Security Agencies, Aeronautics Department, Public Accountancy Board, Revenue Department Building Commission, Soybean Promotion Board, Adjutant General, Civil Air Patrol, Office of Emergency Services, Veteran's Child Welfare Service Office, Air National Guard, Professional Engineers and Land Surveyors, Police Commission,

Professional Soil Classifiers, Contractors Licensing Board, Collection Agencies, Consumer Advisory Board, Architects, Abstractors Board of Examiners, Real Estate Commission, Athletic Commission, Election Commissioners Board, Mobile Home Commission.

Judiciary. Department of Correction and Boards, Judicial Department, Justice Building Commission, Prosecutor Coordinator Commission.

Education. Boards and Department of Education, Board and Department of Vocational-Technical Education, Student Loan Authority, Student Loan Guarantee Program, State Board of Higher Education, Department of Higher Education, All Vocational-Technical Schools, All Community Colleges, All Institutions of Higher Education, Post-Secondary Education Planning Commission.

Insurance and Commerce. Public Service Commission - Utilities Division, Savings and Loan Association Board, State Bank Department and Board, State Insurance Department, State Securities Department, Savings and Loan Board, Burial Association Board, State Employees Insurance Advisory Committee.

Agriculture and Economic Development. Soil and Water Resources Commission, Livestock and Poultry Commission, State Plant Board, Bureau of Standards, Department of Parks and Tourism and Board, Department of Natural and Cultural Heritage and Boards, Forestry Commission, Geology Commission, Oil and Gas Commission, Board of Registration for Foresters, Department of Arkansas Industrial Development and Commission, Game and Fish Commission.

Aging and Legislative Affairs. Office on Aging - Department of Human Services.

Any regulations promulgated by a state agency or board which is not listed above shall be delegated to the Joint Interim Committee on State Agencies and Governmental Affairs in order to determine the germane Joint Interim Committee to refer such regulations.

(c) "Rule or regulation" shall mean rules, regulations, or any written form of policy directive having the force of a rule or regulation issued by a state agency, which applies to group or individuals other than state agencies.

SECTION 2. At least thirty (30) days before any state agency having the authority by law to promulgate rules and regulations, shall promulgate any rule or regulation, or revise, amend or change a rule or regulation then in effect, the state agency shall file with the appropriate Joint Interim Committee of the Arkansas General Assembly by mailing or delivering a copy

thereof to the Bureau of Legislative Research for review and referral to said Committee at its next-following regular or special meeting. The Bureau of Legislative Research shall then assign such proposed rule or regulation or the revision, amendment or change in any existing rule or regulation, to an appropriate staff person for study and review prior to the next regular meeting of the Joint Interim Committee to which the same shall be referred for review. Such review by the Bureau of Legislative Research shall be for the purpose of:

(1) determining whether the rule or regulation is contrary to legislative intent as stated in the law under which the rule or regulation has been promulgated or is purported to have been promulgated; and

(2) determining whether such proposed rule or regulation exceeds the authority granted to the state agency under its rule-making power.

The written findings and comments of the Bureau of Legislative Research shall be submitted to the appropriate Joint Interim Committee to which the proposed rule or regulation is referred at the time said rule or regulation is considered by the Committee.

SECTION 3. (A) At the next regular or special meeting of a Joint Interim Committee, all proposed administrative rules and regulations filed with the Bureau of Legislative Research for referral to said Committee received subsequent to the last meeting of the Committee or designated subcommittee thereof, shall be placed on the agenda for the meeting of such Joint Interim Committee, together with staff report and comments in regard to each such proposed rule or regulation, for review and consideration by such Joint Interim Committee.

(B) Notice that such item is being placed on the meeting agenda of said Joint Interim Committee may be furnished to the various State agencies involved upon direction of the Co-chairmen of the Joint Interim Committee who shall be represented at such Joint Interim Committee meeting to explain the proposed rule or regulation, and to answer questions in regard thereto if raised by the Committee.

(C) Upon conclusion of the Committee's consideration of a proposed rule or regulation, the Committee or designated subcommittee thereof shall notify the state agency of its advice, if any, in regard to such rule or regulation.

(D) The purpose of this Section is intended to enable the appropriate

Joint Interim Committees of the General Assembly and the state agencies to jointly discuss the purposes and reasons for changes in rules being promulgated by the agencies, in order to enable the Committees to perform a legislative oversight function of keeping the General Assembly informed with respect to abuse or misuse of State agency rule-making power in those instances where the Committees believe the state agencies have exceeded the authority granted to the agencies by statute or have exceeded the legislative intent as expressed in the statutes. In addition, this Section intends to enable the state agencies to be aware of the recommendations and comments of the appropriate Joint Interim Committees during the course of efforts to promulgate and adopt rules and regulations or amendments to existing rules and regulations.

It is not the intent of this Section that the procedures set forth in this Act shall be a limitation or an undue hindrance to the exercise by each state agency of its rule-making power and authority. In the event a Joint Interim Committee determines that an agency is exceeding its statutory authority or legislative intent as expressed in existing statutes, the Committee shall convey such information, together with recommendations for changes, to the General Assembly in the manner set forth in Section 4 of this Act, for action at the next regular session of the General Assembly.

SECTION 4. Each Joint Interim Committee of the Arkansas General Assembly shall submit a report to the next-following regular session of the General Assembly in the event the Joint Interim Committee recommends legislation to (i) clarify legislative intent with respect to the rule-making power or authority of the agency, (ii) for the purpose of clarifying, modifying, or restricting the rule-making authority of the state agency, or (iii) to repeal the rule-making power or authority of the agency or commission if the Committee believes the same is being abused or is contrary to the public interest.

SECTION 5. Whenever a state agency shall finalize the promulgation of a rule or regulation or a revision, amendment or change in such rule or regulation, a copy thereof shall be filed with the Bureau of Legislative Research if such rule or regulation contains any changes from the initial filing of the rule or regulation.

SECTION 6. At the beginning of each biennium of each odd-numbered year, all state agencies shall refile all regulations in force with the Bureau of Legislative Research. The Bureau of Legislative Research may exempt agencies from this provision.

SECTION 7. Whenever the General Assembly is meeting in regular or special session the House of Representatives and Senate standing committees may meet jointly at a time agreed upon by both Chairmen to review regulations filed since the interim period.

SECTION 8. That Act 583 of 1973 and Act 136 of 1979 are hereby repealed.

