

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

# A Bill

HOUSE BILL 1982

4  
5 By: Representative Booker

## For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED §§ 8-4-223, 8-4-  
10 226 AND 8-4-227 REGARDING APPEALS FROM THE ARKANSAS  
11 POLLUTION CONTROL & ECOLOGY COMMISSION TO CIRCUIT COURT;  
12 AND FOR OTHER PURPOSES."

## Subtitle

15 "AN ACT TO CHANGE THE PROCEDURE FOR  
16 FILING APPEALS FROM THE ARKANSAS  
17 POLLUTION CONTROL & ECOLOGY COMMISSION  
18 TO CIRCUIT COURT."

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

21  
22 SECTION 1. Arkansas Code 8-4-223 is hereby amended as follows:

23 "8-4-223. Appeals - Notice.

24 (a)(1) Within thirty (30) days after service of a copy of the final  
25 order, rule, regulation, or other final determination, ~~the appellant shall~~  
26 ~~serve a notice of appeal on~~ of the commission, through its secretary, the  
27 appellant may file a notice of appeal with the circuit court of the county in  
28 which the business, industry, municipality, or thing involved is situated.

29 (2) ~~However, during the thirty-day period and for good cause~~  
30 ~~shown, the court may extend the time not to exceed an additional sixty (60)~~  
31 ~~days.~~ A copy of the notice of appeal shall be served upon the secretary of  
32 the commission by personal delivery or by mail with a return receipt  
33 requested.

34 (b)(1) The notice of appeal shall ~~refer to~~ state the action of the  
35 commission appealed from, shall specify the grounds of the appeal, including  
36 points of both law and fact which are asserted or questioned by the appellant,

1 and may contain any other allegations or denials of fact pertinent to the  
2 appeal.

3 (2) The notice of appeal shall state an address within the state at  
4 which service of ~~notice~~ a response to the notice of appeal and other papers in  
5 the matter may be made upon the appellant.

6 (c) ~~The original~~ Upon filing the notice of appeal, ~~with proof of~~  
7 ~~service, shall be filed by the appellant~~ with the clerk of the circuit court,  
8 the circuit court ~~within ten (10) days after service of the notice upon the~~  
9 ~~commission, and thereupon the court shall have jurisdiction of the appeal."~~

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11 SECTION 2. Arkansas Code 8-4-226 is amended to read as follows:

12 "8-4-226. Appeal - ~~Return~~ Response by commission and record.

13 (a)(1) Within thirty (30) days after service ~~and filing~~ of the notice  
14 of appeal, on the commission secretary, through its director shall make,  
15 ~~certify, and the commission shall file with the clerk of the circuit court~~  
16 having jurisdiction of the appeal a ~~return comprised of a copy of any~~  
17 ~~application, petition, or other material paper whereon the action of the~~  
18 ~~commission appealed from was based; a copy of the order, rule, regulation, or~~  
19 ~~decision appealed from; all testimony, exhibits, and other evidence submitted~~  
20 ~~to the commission; a statement of any findings of fact or rulings or~~  
21 ~~conclusions of law made by the commission in the matter; and such other~~  
22 ~~statements, admissions, or denials upon questions of law or fact raised by the~~  
23 ~~appeal as the commission may deem pertinent~~ response to the notice of appeal  
24 and the record upon which the final order, rule, regulation, or other final  
25 determination complained of was entered.

26 (2) The thirty-day period for filing a response to the notice of  
27 appeal and the record by the commission may be extended by the court for cause  
28 shown for not more than an additional sixty (60) days.

29 (3) The record shall consist of a copy of any application or  
30 petition, all pleadings, or other material paper whereon the action of the  
31 commission appealed from was based; a statement of any findings of fact,  
32 rulings, or conclusions of law made by the commission; a copy of the final  
33 order, rule, regulation, or other final decision appealed from; and all  
34 testimony, exhibits, and other evidence submitted to the commission in the  
35 case. The parties to the appeal may stipulate that only a specified portion  
36 of the record shall be filed with the circuit court.

1           (4) A response to the notice of appeal filed by the commission  
 2 shall consist of any statements, admissions, or denials upon the questions of  
 3 law or fact raised in the notice of appeal as the commission may deem  
 4 pertinent.

5           (b) Within the time allowed for making and filing the ~~return,~~  
 6 response, a copy ~~thereof~~ of the response shall be mailed to or served upon the  
 7 appellant or his attorney.

8           (c)(1) The allegations or new matter in the ~~return~~ response shall be  
 9 deemed to be denied by the appellant unless expressly admitted, and no further  
 10 pleadings shall be interposed.

11           (2) Otherwise, the allegations of the ~~notices~~ notice of appeal and  
 12 ~~return~~ response shall have like effect as the pleadings in a civil action and  
 13 shall be subject to like proceedings, so far as applicable."  
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15           SECTION 3. Arkansas Code 8-4-227 is amended to read as follows:

16           "8-4-227. Appeal - Review by court.

17           (a) The appeal shall be heard and determined by the court upon the  
 18 issues raised by the notice of appeal and ~~return~~ response according to the  
 19 rules relating to the trial of civil actions, so far as applicable.

20           (b) If, before the date set for hearing, application is made to the  
 21 court for leave to present additional evidence and the court finds that the  
 22 evidence is material and that there were good reasons for failure to present  
 23 it in the proceeding before the agency, then the court may order that the  
 24 additional evidence be taken before the agency upon such conditions as may be  
 25 just. The agency may modify its findings and decision by reason of the  
 26 additional evidence and shall file that evidence and any modifications, new  
 27 findings, or decisions with the reviewing court.

28           (c)(1) The review shall be conducted by the court without a jury and  
 29 shall be confined to the record, except that in cases of alleged  
 30 irregularities in procedure before the agency, not shown in the record,  
 31 testimony may be taken before the court.

32           (2) The court shall, upon request, hear oral argument and receive  
 33 written briefs.

34           (d) The court may affirm the decision of the ~~agency~~ commission or  
 35 vacate or suspend the decision, in whole or part, and remand the case to the  
 36 commission for further action in conformity with the decision of the court if

1 the action of the commission is:

- 2 (1) In violation of constitutional or statutory provisions;
- 3 (2) In excess of the agency's statutory authority;
- 4 (3) Made upon unlawful procedure;
- 5 (4) Affected by other error or law;
- 6 (5) Not supported by substantial evidence or record; or
- 7 (6) Arbitrary, capricious, or characterized by abuse of
- 8 discretion."

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10 SECTION 4. All provisions of this act of a general and permanent nature  
11 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
12 Revision Commission shall incorporate the same in the Code.

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14 SECTION 5. If any provision of this act or the application thereof to  
15 any person or circumstance is held invalid, such invalidity shall not affect  
16 other provisions or applications of the act which can be given effect without  
17 the invalid provision or application, and to this end the provisions of this  
18 act are declared to be severable.

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20 SECTION 6. All laws and parts of laws in conflict with this act are  
21 hereby repealed.

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