

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999

A Bill

HOUSE BILL 1227

4
5 By: Representative Hendren
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For An Act To Be Entitled

9 "AN ACT TO REVISE AND CLARIFY ARKANSAS CODE ANNOTATED
10 § 8-4-230 PERTAINING TO ENVIRONMENTAL VARIANCES AND
11 INTERIM AUTHORITIES; TO ALLOW THE ARKANSAS DEPARTMENT
12 OF ENVIRONMENTAL QUALITY TO GRANT VARIANCES AND
13 INTERIM AUTHORITIES DURING THE ENTIRE PERMIT ISSUANCE
14 PROCESS; AND FOR OTHER PURPOSES."

Subtitle

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17 "AN ACT TO ALLOW THE ARKANSAS DEPARTMENT
18 OF ENVIRONMENTAL QUALITY TO GRANT
19 VARIANCES AND INTERIM AUTHORITIES DURING
20 THE ENTIRE PERMIT ISSUANCE PROCESS."
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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25 SECTION 1. Arkansas Code 8-4-230 is amended to read as follows:

26 "8-4-230. Variances and interim authority.

27 (a)(1) Unless otherwise prohibited by preemptive federal law, the
28 director may, for compelling reasons and good cause shown, grant:

29 (A) Temporary variances from the requirements of any permit
30 issued by the department; or

31 (B) Interim authority to construct or operate during the
32 ~~pendency of any applicable public notice period~~ application review and permit
33 issuance process.

34 (2) Such variance or interim ~~authorization~~ authority shall not
35 exceed a period of ninety (90) days, except when a longer period is justified
36 by circumstances beyond the applicant's control. The Department may grant a

1 request for an extension to a variance or interim authority at any time prior
 2 to the expiration date.

3 (3) The department may require an initial processing fee of \$200 for
 4 requests for a variance or interim authority request. This fee shall not be
 5 required for requests for extension of any variance or interim authority.

6 (b)(1) In considering any request for a variance pursuant to subdivision
 7 (a)(1)(A) of this section, the director shall consider:

8 (A) The environmental and public health effects of the
 9 temporary variance; and

10 (B) Any economic advantage obtained by the party requesting
 11 the variance over other similarly situated facilities operating in accordance
 12 with similar permit conditions which did not request a variance.

13 (2) In addition, the director may take into account the following
 14 factors:

15 (A) Whether strict compliance with permit terms is
 16 inappropriate because of conditions beyond the control of the person
 17 requesting the variance;

18 (B) Whether strict compliance would result in substantial
 19 curtailment or closing down of a business, plant, or operation;

20 (C) Whether the variance request is prompted by recurrent or
 21 avoidable compliance problems;

22 (D) A review of the operational history of the requesting
 23 facility; and

24 (E) Whether the public interest will be served by a temporary
 25 variance.

26 (c) When considering any request for interim authority during the
 27 pendency of a public notice period pursuant to subdivision (a)(1)(B) of this
 28 section, the director may take into account the following factors in addition
 29 to the applicable factors of subsection (b) of this section:

30 (1) Whether the applicable permitting applications were timely and
 31 completely submitted;

32 (2) Whether ~~the~~ there has been a delay in the final permitting
 33 action is attributable to actions or omissions of the department caused by
 34 conditions beyond the control of the person requesting the interim authority;

35 (3) Whether contractual or other business obligations will become
 36 due before the ~~applicable public comment period expires~~ a proper permit can be

1 issued; and

2 (4) Whether the public interest will be served by construction or
3 operation during the ~~pendency of public notice~~ application review and permit
4 issuance process.

5 (d) After a review of the applicable factors, the director may:

6 (1) Grant an unconditional variance or interim authority to the
7 requesting party;

8 (2) Grant a conditional variance or interim authority to the
9 requesting party. Such conditions shall be designed to be protective of human
10 health and the environment and must be clearly stated or referenced in the
11 variance or interim authority document; or

12 (3) Deny the request for variance or interim authority. If a denial
13 is issued, the director shall clearly state the reason(s) for the denial in a
14 written response to the applicant.

15 ~~(d)(e)~~ (1) Every director's decision to grant or deny a variance or
16 interim authority to construct or operate shall be publicly noticed, at the
17 applicant's expense, within ten (10) business days of the director's decision.
18 The applicant shall be responsible for the expense of publication of any
19 decision to grant a variance or interim authority. The department shall be
20 responsible for the expense of publication of any decision to deny a variance
21 or interim authority.

22 (2) Any member of the public may object to the director's decision
23 within ten (10) business days of the notice.

24 (3) Any variance or interim authority granted by the director
25 ~~during this notice and comment period~~ is contingent upon the right of the
26 public to object.

27 (4) Any actions of the applicant in reliance upon the grant of ~~the~~
28 a variance or interim authority during the public comment period application
29 review and permit issuance process are strictly at the applicant's own risk,
30 and no actions or expenditures by the applicant during this period shall be
31 construed as accruing equities in the applicant's favor.

32 (5) The ten (10) day public notice requirement shall not apply to a
33 director's decisions to grant an extension to a variance or interim authority.

34 (f) The director may also for compelling reasons or good cause shown,
35 revoke or modify the conditions of any variance or interim authority
36 previously granted.

1 ~~(e)~~(g)(1) An applicant who has been denied a variance or interim
 2 authority or had a variance or interim authority revoked, or a third party who
 3 submitted timely objections during the comment period provided for in
 4 subsection ~~(d)~~(e) of this section, may appeal the director's final decision.

5 (2)(A) Such an action shall be processed as a permit appeal under §
 6 8-4-205.

7 (B) Provided, however, that:

8 (i) The decision of the director shall remain in effect
 9 during the appeal;

10 (ii) The adjudicatory review shall be completed as
 11 expeditiously as possible; and

12 (iii) A final decision shall be issued by the commission
 13 within sixty (60) days unless all parties agree to extend the review time.

14 ~~(f)~~(h) Any party aggrieved by a commission decision on a request for
 15 variance or interim authority may appeal as provided by applicable law.”

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 17 SECTION 2. All provisions of this act of a general and permanent nature
 18 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
 19 Revision Commission shall incorporate the same in the Code.

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 21 SECTION 3. If any provision of this act or the application thereof to
 22 any person or circumstance is held invalid, such invalidity shall not affect
 23 other provisions or applications of the act which can be given effect without
 24 the invalid provision or application, and to this end the provisions of this
 25 act are declared to be severable.

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 27 SECTION 4. All laws and parts of laws in conflict with this act are
 28 hereby repealed.

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