

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

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

As Engrossed: S2/19/99

A Bill

SENATE BILL 30

4
5 By: Senator Mahony
6
7

For An Act To Be Entitled

8 "THE REVISED ADMINISTRATIVE PROCEDURE ACT."

Subtitle

9 "THE REVISED ADMINISTRATIVE PROCEDURE
10 ACT."
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15

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
17

18 SECTION 1. The Arkansas Code Revision Commission is hereby instructed
19 to place this Act under a newly created Title 29 and to follow the numbering
20 and catchline provisions provided under Section 2 of this Act.
21

22 SECTION 2. Arkansas Code Title 29 is hereby created and Chapters 1, 2,
23 3, 4, and 5 shall read as follows:

24 "Chapter 1. GENERAL PROVISIONS.

25 29-1-101. Short Title.

26 This Act may be cited as the Revised Administrative Procedure Act.
27

28 29-1-102. Definitions. As used in this Act:

29 (1) 'Adjudicative proceeding' means the process for formulating and
30 issuing an order;

31 (2) 'Agency' means a board, commission, department, officer, or other
32 administrative unit of this state, including the agency head, and one (1) or
33 more members of the agency head or agency employees or other persons directly
34 or indirectly purporting to act on behalf or under the authority of the agency
35 head. The term does not include the General Assembly, the courts, or the
36 constitutional officers in the exercise of powers derived directly from the

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1 Arkansas Constitution. The term does not include a political subdivision of
2 the state or any of the administrative units of a political subdivision, but
3 it does include a board, commission, department, officer, or other
4 administrative unit created or appointed by joint or concerted action of an
5 agency and one (1) or more political subdivisions of the state or any of their
6 units. To the extent it purports to exercise authority subject to any
7 provision of this Act, an administrative unit otherwise qualifying as an
8 'agency' shall be treated as a separate agency even if the unit is located
9 within or subordinate to another agency. The term does not include the
10 Arkansas Public Service Commission, the Commission of Pollution Control and
11 Ecology, the Workers' Compensation Commission and the Employment Security
12 Department, it being determined that existing laws governing such agencies
13 provide adequate procedures for these agencies;

14 (3) 'Agency action' means:

15 (A) The whole or a part of a rule or an order;

16 (B) The failure to issue a rule or an order; or

17 (C) An agency's performance of, or failure to perform, any other
18 duty, function, or activity, discretionary or otherwise;

19 (4) 'Agency head' means an individual or body of individuals in whom
20 the ultimate legal authority of the agency, with respect to the matter at
21 issue, is vested by any provision of law. Unless provided otherwise by
22 provision of law, no less than two-thirds (2/3) of the members eligible to
23 vote of a multi-member agency head constitute a quorum authorized to act in
24 the name of the agency; provided however, that no rule of an agency may
25 establish a quorum of less than one-half (1/2) of the members of a multi-
26 member agency head eligible to vote;

27 (5) 'Day' or 'Days' means calendar days. In computing any period of
28 time prescribed or allowed by this Act, the day of the act, event or default
29 from which the designated period of time begins to run shall not be included.
30 The last day of the period so computed shall be included, unless it is a
31 Saturday, Sunday, or legal holiday, in which event the period runs until the
32 end of the next day which is not a Saturday, Sunday, or legal holiday. When
33 the period of time prescribed or allowed is less than eleven (11) days,
34 intermediate Saturdays, Sundays, or legal holidays shall be excluded in the
35 computation. As used in this definition, 'legal holiday' means those days
36 designated as a holiday by the President or Congress of the United States or

1 designated by the laws of this State;

2 (6) 'License' means a franchise, permit, certification, approval,
3 registration, charter, or similar form of authorization required by law;

4 (7) 'Order' means an agency action of particular applicability that
5 determines the legal rights, duties, privileges, immunities, or other legal
6 interests of one (1) or more specific persons where, prior to such agency
7 action, constitutional or statutory law requires an opportunity for an
8 evidentiary hearing that must be determined on the record of that proceeding.

9 A final order means the whole or part of any agency order other than a
10 nonfinal order. A nonfinal order includes an initial order and means the
11 whole or part of any agency order that the agency intends to be preliminary,
12 preparatory, procedural, or intermediate with regard to subsequent agency
13 action; The term does not include:

14 (A) An executive order issued by the Governor pursuant to 29-1-
15 104;

16 (B) A disciplinary sanction against a student;

17 (C) A decision regarding employment, compensation or disciplinary
18 sanction of a public employee; and

19 (D) A decision reading a disciplinary sanction, assignment or
20 classification of inmates of a correctional or detention facility;

21 (8) 'Party to agency proceedings,' or 'party' in context so indicating,
22 means any of the following:

23 (A) A person to whom the agency action is specifically directed;
24 or

25 (B) A person named as a party to an agency proceeding or allowed
26 to intervene or participate as a party in the proceeding;

27 (9) 'Party to judicial review or civil enforcement proceedings,' or
28 'party' in context so indicating, means any of the following:

29 (A) A person who files a petition for judicial review or civil
30 enforcement; or

31 (B) A person named as a party in a proceeding for judicial review
32 or civil enforcement or allowed to participate as a party in the proceeding;

33 (10) 'Person' means an individual, partnership, corporation,
34 association, governmental subdivision or unit thereof, or public or private
35 organization or entity of any character;

36 (11) 'Presiding officer' means an individual who presides at any stage

1 of an adjudicative proceeding;

2 (12) 'Provision of law' means the whole or a part of the federal or
3 state constitution, or of any federal or state:

4 (A) Statute;

5 (B) Rule of court;

6 (C) Executive order; or

7 (D) Rule of an agency;

8 (13) 'Rule' means the whole or a part of an agency statement, other
9 than an order, that implements, interprets, or prescribes law or policy, or
10 the organization, procedure, or practice requirements of an agency. The term
11 includes the amendment, repeal, or suspension of an existing rule. The term
12 shall not include publications of manuals, tables, and schedules of rates
13 prepared by the Assessment Coordination Department which are furnished to the
14 various county assessors as aids in the assessment of real and personal
15 property. The term shall include those agricultural land values established
16 by the Assessment Coordination Department pursuant to Arkansas Code 26-26-407;
17 and

18 (14) 'Rule making' means the process for formulation and adoption of a
19 rule.

20
21 29-1-103. Applicability and Relation to Other Laws.

22 (a) This Act applies to all agencies and all proceedings not expressly
23 exempted by law, mentioning this Act by name or number.

24 (b) This Act creates only procedural rights and imposes only procedural
25 duties. They are in addition to those created and imposed by other statutes.
26 To the extent that any other statute would diminish a right created or duty
27 imposed by this Act, the other statute is superseded by this Act, unless the
28 other statute expressly provides otherwise, mentioning this Act by name or
29 number. However, where this Act expressly refers to another statute and
30 incorporates its contents, or defers to another statute, that other statute
31 controls whether or not it mentions this Act by name or number. No reference
32 in this Act shall be considered as an indication of legislative intent to
33 subject an agency to the provisions of this Act where the agency, by
34 constitutional law, statute or court decision, is exempt from all or a portion
35 of this Act.

36 (c) An agency may grant procedural rights to persons in addition to

1 those conferred by this Act so long as rights conferred upon other persons by
2 any provision of law are not substantially prejudiced.

3 (d) An agency may exercise only that authority delegated to it by some
4 provision of law and not otherwise prohibited by law.

5
6 29-1-104. Waiver

7 Except to the extent precluded by another provision of law, a person may
8 wave any right conferred upon that person by this Act.

9
10 29-1-105. Informal Settlements.

11 Except to the extent precluded by another provision of law, informal
12 settlement of matters that may make unnecessary more elaborate proceedings
13 under this Act is encouraged. Agencies shall establish by rule specific
14 procedures to facilitate informal settlement of matters. This section does
15 not require any party or other person to settle a matter pursuant to informal
16 procedures.

17
18 29-1-106. Conversion of Proceedings.

19 (a) At any point in an agency proceeding the presiding officer or other
20 agency official responsible for the proceeding, for cause stated:

21 (1) May convert the proceeding to another type of agency
22 proceeding provided for by this Act if the conversion is appropriate, is in
23 the public interest, and does not substantially prejudice the rights of any
24 party; and

25 (2) If required by any provision of law, shall convert the
26 proceeding to another type of agency proceeding provided for by this Act.

27 (b) A conversion of a proceeding of one type to a proceeding of another
28 type may be effected only upon notice to all parties to the original
29 proceeding and an opportunity to present argument on that issue. An order
30 converting one type of proceeding to another type of proceeding is a final
31 order.

32 (c) If the presiding officer or other agency official responsible for
33 the original proceeding would not have authority over the new proceeding to
34 which it is to be converted, that officer or official, in accordance with
35 agency rules, shall secure the appointment of a successor to preside over or
36 be responsible for the new proceeding.

1 (d) To the extent feasible and consistent with the rights of parties
2 and the requirements of this Act pertaining to the new proceeding, the record
3 of the original agency proceeding shall be used in the new agency proceeding.

4 (e) After a proceeding is converted from one type to another, the
5 presiding officer or other agency official responsible for the new proceeding
6 shall do all of the following:

7 (1) Give additional notice to parties or other persons as is
8 necessary to satisfy the requirements of this Act pertaining to the new
9 proceeding;

10 (2) Dispose of the matters involved without further proceedings
11 if sufficient proceedings have already been held to satisfy the requirements
12 of this Act pertaining to the new proceedings; and

13 (3) Conduct or cause to be conducted any additional proceedings
14 necessary to satisfy the requirements of this Act pertaining to the new
15 proceeding.

16 (f) Each agency shall adopt rules to govern the conversion of one type
17 of proceeding to another. Those rules shall include an enumeration of the
18 factors to be considered in determining whether and under what circumstances
19 one type of proceeding will be converted to another.

20
21 29-1-107. Copying Costs.

22 In situations where this Act provides for public inspection and copying,
23 the agency, by rule, may require payment of reasonable copying costs for any
24 copies so made.

25
26 Chapter 2 - PUBLIC ACCESS TO AGENCY LAW AND POLICY.

27
28 29-2-101. Administrative Rules Coordinator - Publication, Compilation,
29 Indexing, and Public Inspection of Rules.

30 (a) The Director of the Bureau of Legislative Research shall serve as
31 the Administrative Rules Coordinator.

32 (b) The Administrative Rules Coordinator shall prescribe a uniform
33 numbering system, form, style, and electronic format for all proposed and
34 adopted rules caused to be published by that office.

35 (c) The Administrative Rules Coordinator shall cause the Administrative
36 Bulletin to be published on an Internet web site it maintains for that purpose

1 and shall be updated at least once per week. For purposes of calculating
2 adherence to time requirements imposed by this Act, contents of the
3 Administrative Bulletin are deemed published on the date the contents are
4 available on the Internet web site. The Administrative Rules Coordinator may
5 also cause a printed version of the Administrative Bulletin to be published.
6 The Administrative Bulletin shall contain:

7 (1) Notices of proposed rule adoption prepared so that the text
8 of the proposed rule shows the text of any existing rule proposed to be
9 changed and the change proposed;

10 (2) Newly filed adopted rules prepared so that the text of the
11 newly filed adopted rule shows the text of any existing rule being changed and
12 the change being made;

13 (3) Any other notices and materials designated by law or by the
14 Administrative Rules Coordinator for publication therein; and

15 (4) An index to its contents by date of publication in the
16 Administrative Bulletin, agency and subject.

17 (d) The Administrative Rules Coordinator shall cause the Administrative
18 Bulletin Archive, containing information previously published in the
19 Administrative Bulletin, to be maintained on an Internet web site. The
20 archive shall also contain an index to its contents by date of publication in
21 the Administrative Bulletin, agency and subject.

22 (e) The Administrative Rules Coordinator shall cause the Administrative
23 Code to be compiled, indexed by agency and subject, and published on an
24 Internet site it maintains for that purpose. All of the effective rules of
25 each agency shall be so published and indexed in the Administrative Code. The
26 Administrative Rules Coordinator may also cause a printed version of the
27 Administrative Code and supplements to be published.

28 (f) The Administrative Rules Coordinator may omit from the
29 Administrative Bulletin, archive or code any proposed or adopted rule the
30 publication of which would be unduly cumbersome, expensive, or otherwise
31 inexpedient, if:

32 (1) Knowledge of the rule is likely to be important to only a
33 small class of persons;

34 (2) On application to the issuing agency, the proposed or adopted
35 rule in printed or processed form is made available at no more than its cost
36 of reproduction; and

1 (3) The Administrative Bulletin, Archive or Code contains a
2 notice stating in detail the specific subject matter of the omitted proposed
3 or adopted rule and how a copy of the omitted material may be obtained.

4 (g) Each agency shall also make available for public inspection and
5 copying those portions of the Administrative Bulletin and Administrative Code
6 containing all rules adopted or used by the agency in the discharge of its
7 functions, and the index to those rules.

8 (h) Except as otherwise required by a provision of law, subsections (c)
9 through (g) of this section do not apply to rules governed by 29-3-116, and
10 the following provisions shall apply instead:

11 (1) Each agency shall maintain an official, current, and dated
12 compilation that is indexed by subject, containing all of its rules within the
13 scope of 29-3-116. Each addition to, change in, or deletion from the official
14 compilation shall also be dated, indexed, and a record thereof kept. Except
15 for those portions containing rules governed by 29-3-116(2), the compilation
16 shall be made available for public inspection and copying. Certified copies
17 of the full compilation shall also be furnished to the Administrative Rules
18 Coordinator, and members of the Administrative Rules Review Committee, and be
19 updated by the agency at least every thirty (30) days.

20 (2) A rule subject to the requirements of this subsection shall
21 not be relied on by an agency to the detriment of any person who does not have
22 actual, timely knowledge of the contents of the rule until the requirements of
23 subdivision (1) of this subsection are satisfied. The burden of proving that
24 knowledge is on the agency. Subdivision (1) of this subsection is also
25 inapplicable to the extent necessary to avoid imminent peril to the public
26 health, safety, or welfare.

27
28 29-2-102. Public Inspection and Indexing of Agency Orders.

29 (a) In addition to other requirements imposed by any provision of law,
30 each agency shall make all written final orders available for public
31 inspection and copying and index them by name and subject. An agency shall
32 delete from those orders identifying details to the extent required by any
33 provision of law or necessary to prevent a clearly unwarranted invasion of
34 privacy or release of trade secrets. In each case the justification for the
35 deletion shall be explained in writing and attached to the order.

36 (b) A written final order may not be relied on as precedent by an

1 agency to the detriment of any person until it has been made available for
2 public inspection and indexed in the manner described in subsection (a) of
3 this section. This provision is inapplicable to any person who has actual
4 timely knowledge of the order. The burden of proving that knowledge is on the
5 agency.

6
7 (c) The provisions of this section shall not apply to:

8 (1) Orders of the Department of Finance and Administration
9 containing information confidential under § 26-18-303;

10 (2) Orders of the Department of Finance and Administration
11 containing information confidential under the provisions of the Federal
12 Driver's License Protection Act, 18 U.S.C. § 2721, as in effect on January 1,
13 1999;

14 (3) Orders of the Department of Finance and Administration
15 containing information under § 27-50-901 et seq;

16 (4) Orders which are the result of proceedings involving
17 applications for public assistance, public benefits, child welfare or other
18 proceedings deemed confidential by provision of law.

19
20 29-2-103. Declaratory Orders.

21 (a) Any person may petition an agency for a declaratory order as to the
22 applicability to specified circumstances of a statute, rule, or order within
23 the primary jurisdiction of the agency. An agency shall issue a declaratory
24 order in response to a petition for that order unless the agency determines
25 that issuance of the order under the circumstances would be contrary to a rule
26 adopted in accordance with subsection (b) of this section. However, an agency
27 shall not issue a declaratory order that would substantially prejudice the
28 rights of a person who would be a necessary party and who does not consent in
29 writing to the determination of the matter by a declaratory order proceeding.

30 (b) Each agency shall adopt rules that provide for: the form,
31 contents, and filing of petitions for declaratory orders, the procedural
32 rights of persons in relation to the petitions, and the disposition of the
33 petitions. Those rules shall describe the classes of circumstances in which
34 the agency will not issue a declaratory order and shall be consistent with the
35 public interest and with the general policy of this Act to facilitate and
36 encourage agency issuance of reliable advice.

1 (c) Within fifteen (15) days after receipt of a petition for a
2 declaratory order, an agency shall give notice of the petition to all persons
3 to whom notice is required by any provision of law and may give notice to any
4 other persons.

5 (d) Persons who qualify under 29-4-209(a)(2) and (3) as an intervenor
6 and who file timely petitions for intervention according to agency rules may
7 intervene in proceedings for declaratory orders. Other provisions of Title
8 29, Chapter 4 apply to agency proceedings for declaratory orders only to the
9 extent an agency so provides by rule or order.

10 (e) Within thirty (30) days after receipt of a petition for a
11 declaratory order an agency, in writing, shall do one (1) of the following:

12 (1) Issue an order declaring the applicability of the statute,
13 rule, or order in question to the specified circumstances;

14 (2) Set the matter for specified proceedings;

15 (3) Agree to issue a declaratory order by a specified time; or

16 (4) Decline to issue a declaratory order, stating the reasons for
17 its action.

18 (f) A copy of all orders issued in response to a petition for a
19 declaratory order shall be mailed promptly to the petitioner and any other
20 parties.

21 (g) A declaratory order has the same status and binding effect as any
22 other order issued in an agency adjudicative proceeding. A declaratory order
23 shall contain the names of all parties to the proceeding on which it is based,
24 the particular facts on which it is based, and the reasons for its conclusion.

25 (h) If an agency has not issued a declaratory order within sixty (60)
26 days after receipt of a petition therefor, the petition is deemed to have been
27 denied.

28 (i) For purposes of this section, the term "agency" does not apply to
29 the Revenue Division of the Department of Finance and Administration.

30
31 29-2-104. Required Rule Making.

32 In addition to other rule-making requirements imposed by law, each
33 agency shall do all of the following:

34 (1) Adopt as a rule, a description of the organization of the agency
35 which states the course and method of its operations, the administrative
36 subdivisions of the agency and the programs implemented by each of them, a

1 statement of the mission of the agency and the methods by which and location
2 where the public may obtain information or make submissions or requests;

3 (2) Adopt rules of practice setting forth the nature and requirements
4 of all formal and informal procedures available to the public, including a
5 description of all forms and instructions that are to be used by the public in
6 dealing with the agency;

7 (3) As soon as feasible and to the extent practicable, adopt rules, in
8 addition to those otherwise required by this Act, embodying appropriate
9 standards, principles, and procedural safeguards that the agency will apply to
10 the law it administers; and

11 (4) As soon as feasible and to the extent practicable, adopt rules to
12 supersede principles of law or policy lawfully declared by the agency as the
13 basis for its decisions in particular cases.

14
15 29-2-105. Model Rules of Procedure.

16 In accordance with the rule-making requirements of this Act, the
17 Arkansas Attorney General shall adopt model rules of procedure appropriate for
18 use by all agencies. The model rules shall deal with all general functions
19 and duties performed in common by several agencies. To the extent an agency
20 adopts the model rules, it shall do so in accordance with the rule-making
21 requirements of this Act.

22
23 CHAPTER 3 - RULEMAKING.

24
25 SUBCHAPTER 1 - ADOPTION AND EFFECTIVENESS OF RULES.

26
27 29-3-101. Advice on Possible Rules before Notice of Proposed Rule
28 Adoption.

29 (a) In addition to seeking information by other methods, an agency,
30 before publication of a notice of proposed rule adoption under 29-3-103, may
31 solicit comments from the public on a subject matter of possible rule making
32 under active consideration within the agency by causing notice to be published
33 in the Administrative Bulletin of the subject matter and indicating where,
34 when, and how persons may comment.

35 (b) Each agency may also appoint committees to comment, before
36 publication of a notice of proposed rule adoption under 29-3-103, on the

1 subject matter of a possible rule making under active consideration within the
2 agency. The membership of those committees shall be published at least
3 quarterly in the Administrative Bulletin.

4
5 29-3-102. Public Rule-making Docket.

6 (a) Each agency shall maintain a current, public rule-making docket.

7 (b) The rule-making docket shall contain a listing of the precise
8 subject matter of each possible rule currently under active consideration
9 within the agency for proposal under 29-3-103 of this Act, the name and
10 address of agency personnel with whom persons may communicate with respect to
11 the matter, and an indication of the present status within the agency of that
12 possible rule.

13 (c) The rule-making docket shall list each pending rule-making
14 proceeding. A rule-making proceeding is pending from the time it is commenced,
15 by publication of a notice of proposed rule adoption, to the time it is
16 terminated, by publication of a notice of termination or the rule becoming
17 effective. For each rule-making proceeding, the docket shall indicate all of
18 the following:

19 (1) The subject matter of the proposed rule;

20 (2) A citation to all published notices relating to the
21 proceeding;

22 (3) Where written submissions on the proposed rule may be
23 inspected;

24 (4) The time during which written submissions may be made;

25 (5) The names of persons who have made written requests for an
26 opportunity to make oral presentations on the proposed rule, where those
27 requests may be inspected, and where and when oral presentations may be made;

28 (6) Whether a written request for the issuance of a regulatory
29 analysis of the proposed rule has been filed, whether that analysis has been
30 issued, and where the written request and analysis may be inspected;

31 (7) The current status of the proposed rule and any agency
32 determinations with respect thereto;

33 (8) Any known timetable for agency decisions or other action in
34 the proceeding;

35 (9) The date of the rule's adoption;

36 (10) The date or dates the rule is to be or was considered by the

1 Administrative Rules Review Committee and an indication of any action taken by
2 that committee on the rule;

3 (11) The date of the rule's filing, indexing, and publication;
4 and

5 (12) When the rule will become effective.

6
7 29-3-103. Notice of Proposed Rule Adoption.

8 (a) At least forty-five (45) days before the adoption of a rule an
9 agency shall submit notice of its proposed rule adoption or other contemplated
10 action for publication in the Administrative Bulletin within ten (10) business
11 days of submission. The notice of proposed rule adoption shall include all of
12 the following:

13 (1) A short explanation of the purpose of the proposed rule;

14 (2) The specific legal authority authorizing the proposed rule;

15 (3) Subject to 29-2-101(f), the text of the proposed rule showing
16 the text of any existing rule being changed;

17 (4) Where, when, and how persons may present their views on the
18 proposed rule; and

19 (5) Where, when, and how persons may request an oral proceeding
20 on the proposed rule if the notice does not already provide for one.

21 (b) At least forty-five (45) days before the adoption of a rule, an
22 agency shall also publish notice of its proposed rule adoption as specified by
23 provision of law, or if no manner of publication is so specified, then in
24 those newspapers of general daily circulation and, where appropriate, in those
25 trade, industry, or professional publications which the agency may select.
26 Such publication shall include, at minimum, the information described in
27 subsection (a) (1), (2), (4) and (5) above.

28 (c) Within three (3) days after its publication in the Administrative
29 Bulletin, the agency shall cause a copy of the notice of proposed rule
30 adoption to be mailed to each person who has made a timely request to the
31 agency for a mailed copy of the notice. An agency may charge persons for the
32 actual cost of providing them with mailed copies.

33 (d) An agency may publish a notice of proposed rule adoption and hold a
34 rule-making proceeding on the notice after the enactment of a statute
35 authorizing it to adopt the proposed rule and before the effective date of
36 such statute as long as any rule adopted on the basis of that proceeding

1 states that it will not become effective until a specified date on or after
2 the effective date of the authorizing statute.

3
4 29-3-104. Public Participation.

5 (a) For at least thirty (30) days after publication of the notice of
6 proposed rule adoption in the Administrative Bulletin, an agency shall afford
7 persons the opportunity to submit in writing argument, data, and views on the
8 proposed rule.

9 (b)(1) An agency shall schedule an oral proceeding on a proposed rule
10 if, within twenty (20) days after the published notice of proposed rule
11 adoption in the Administrative Bulletin, a written request for an oral
12 proceeding is submitted by the Administrative Rules Review Committee, a
13 political subdivision, an agency, twenty-five (25) persons, or an association
14 having not less than twenty-five (25) members. If the agency receives more
15 than one (1) request for an oral proceeding, the requests may be consolidated
16 in one oral proceeding. At that proceeding, persons may present oral argument,
17 data, and views on the proposed rule.

18 (2) An oral proceeding on a proposed rule, if required, may not
19 be held earlier than twenty (20) days after notice of its location and time is
20 published in the Administrative Bulletin.

21 (3) The agency head, a member of the agency head, or another
22 person designated by the agency, shall preside at a required oral proceeding
23 on a proposed rule. The person presiding shall have knowledge of the purpose
24 and subject matter of the proposed rule. If the agency does not preside, the
25 presiding official shall prepare a memorandum for consideration by the agency
26 summarizing the contents of the presentations made at the oral proceeding.
27 Oral proceedings shall be open to the public and be recorded by stenographic
28 or other means.

29 (4) Each agency shall issue rules for the conduct of oral rule-
30 making proceedings. Those rules may include provisions calculated to prevent
31 undue repetition in the oral proceedings.

32
33 29-3-105. Regulatory Analysis.

34 (a) An agency shall issue a regulatory analysis of a proposed rule if,
35 within twenty (20) days after the published notice of proposed rule adoption
36 in the Administrative Bulletin, a written request for the analysis is made by

1 the Administrative Rules Review Committee, a political subdivision, an agency,
2 an association having not less than twenty-five (25) members, or twenty-five
3 (25) persons signing the request.

4 (b) Except to the extent that the written request expressly waives one
5 or more of the following, the regulatory analysis shall contain all of the
6 following:

7 (1) A description of the classes of persons who probably will be
8 affected by the proposed rule, including classes that will bear the costs of
9 the proposed rule and classes that will benefit from the proposed rule;

10 (2) A description of the probable quantitative and qualitative
11 impact of the proposed rule, economic or otherwise, upon affected classes of
12 persons, including a description of the nature and amount of all the different
13 kinds of costs that would be incurred in complying with the proposed rule;

14 (3) The probable costs to the agency and to any other agency of
15 the implementation and enforcement of the proposed rule and any anticipated
16 effect on state revenues;

17 (4) A determination of whether there are less costly methods or
18 less intrusive methods for achieving the purpose of the proposed rule; and

19 (5) A description of any alternative methods for achieving the
20 purpose of the proposed rule that were seriously considered by the agency and
21 the reasons why they were rejected in favor of the proposed rule.

22 (c) Each regulatory analysis shall include quantification of the data
23 to the extent practicable and shall take account of both short-term and long-
24 term consequences.

25 (d) Notwithstanding any other time period specified in this Act, a
26 concise summary of the regulatory analysis shall be published in the
27 Administrative Bulletin at least ten (10) days before the earliest of the
28 following:

29 (1) The end of the period during which persons may make written
30 submissions on the proposed rule;

31 (2) The end of the period during which an oral proceeding may be
32 requested; or

33 (3) The date of any required oral proceeding on the proposed
34 rule.

35 (e) In the case of a rule adopted without prior notice and an
36 opportunity for public participation in reliance upon 29-3-108, the summary

1 shall be published within seventy (70) days of the request.

2 (f) The published summary of the regulatory analysis shall also
3 indicate where persons may obtain copies of the full text of the regulatory
4 analysis and where, when, and how persons may present their views on the
5 proposed rule and demand an oral proceeding thereon if one is not already
6 provided.

7 (g) If the agency has made a good faith effort to comply with the
8 requirements of subsections (a) through (c) of this section, the rule may not
9 be invalidated on the ground that the contents of the regulatory analysis are
10 insufficient or inaccurate.

11
12 29-3-106. Time and Manner of Rule Adoption.

13 (a) An agency shall not adopt a rule until the period for making
14 written submissions and oral presentations has expired and the period for
15 requesting a regulatory analysis has expired.

16 (b) Within one hundred eighty (180) days after the later of the
17 publication of the notice of proposed rule adoption, or the end of oral
18 proceedings thereon, an agency shall adopt a rule pursuant to the rule-making
19 proceeding or terminate the proceeding by publication of a notice to that
20 effect in the Administrative Bulletin.

21 (c) Before the adoption of a rule, an agency shall consider the written
22 submissions, oral submissions or any memorandum summarizing oral submissions,
23 and any regulatory analysis, provided for by this Act.

24 (d) Within the scope of its delegated authority, an agency may use its
25 own experience, technical competence, specialized knowledge, and judgment in
26 the adoption of a rule.

27
28 29-3-107. Variance between Adopted Rule and Published Notice of
29 Proposed Rule Adoption.

30 (a) An agency shall not adopt a rule that differs from the rule
31 proposed in the notice of proposed rule adoption on which the rule is based
32 unless all of the following apply:

33 (1) The differences are within the scope of the matter announced
34 in the notice of proposed rule adoption and are in character with the issues
35 raised in that notice;

36 (2) The differences are a logical outgrowth of the contents of

1 that notice of proposed rule adoption and the comments submitted in response
2 thereto; and

3 (3) The notice of proposed rule adoption provided fair warning
4 that the outcome of that rule-making proceedings could be the rule in
5 question.

6 (b) In determining whether the notice of proposed rule adoption
7 provided fair warning of the outcome of that rule-making proceeding could be
8 the rule in question, the agency shall consider all of the following factors:

9 (1) The extent to which persons who will be affected by the rule
10 should have understood that the rule-making proceeding on which it is based
11 could affect their interests;

12 (2) The extent to which the subject matter of the rule or issues
13 determined by the rule are different from the subject matter or issues
14 contained in the notice of proposed rule adoption; and

15 (3) The extent to which the effects of the rule differ from the
16 effects of the proposed rule contained in the notice of proposed rule
17 adoption.

18
19 29-3-108. General Exemption from Public Rule-making Procedures.

20 (a) To the extent an agency for good cause finds that any requirements
21 of 29-3-103 through 29-3-107 are unnecessary, impossible, impracticable, or
22 contrary to the public interest in the process of adopting a particular rule,
23 those requirements shall not apply. The agency shall incorporate the required
24 finding and a brief statement of its supporting reasons in each rule adopted
25 in reliance upon this subsection.

26 (b) In an action contesting a rule adopted under subsection (a) of this
27 section, the burden is upon the agency to demonstrate that any omitted
28 requirements of 29-3-103 through 29-3-107 were impracticable, unnecessary, or
29 contrary to the public interest in the particular circumstances involved.

30 (c) Within two (2) years after the effective date of a rule adopted
31 under subsection (a) of this section, the Administrative Rules Review
32 Committee, an agency, an association having not less than twenty-five (25)
33 members, or twenty-five (25) persons by signing the request, may request the
34 agency to hold a rule-making proceeding thereon according to the requirements
35 of 29-3-103 through 29-3-107. The request shall be in writing and filed with
36 the agency and the Administrative Rules Coordinator. Notice of the filing of

1 the request shall be published in the next issue of the Administrative
2 Bulletin. The rule in question ceases to be effective one hundred eighty
3 (180) days after the request is filed. However, an agency, after the filing
4 of the request, may subsequently adopt an identical rule in a rule-making
5 proceeding conducted pursuant to the requirements of 29-3-103 through 29-3-
6 107.

7
8 29-3-109. Exemption for Certain Rules.

9 (a) An agency need not follow the provisions of 29-3-103 through 29-3-
10 108 in the adoption of a rule that only defines the meaning of a statute or
11 other provision of law or precedent if the agency does not possess delegated
12 authority to bind the courts to any extent with its definition. A rule
13 adopted under this section shall include a statement that it was adopted under
14 this section when it is published in the Administrative Bulletin, and there
15 shall be an indication to that effect adjacent to the rule when it is
16 published in the Administrative Code.

17 (b) A reviewing court shall determine wholly de novo the validity of a
18 rule within the scope of subsection (a) of this section that is adopted
19 without complying with the provisions of 29-3-103 through 29-3-108.

20
21 29-3-110. Concise Explanatory Statement.

22 (a) At the time it adopts a rule, an agency shall issue a concise
23 explanatory statement containing all of the following:

24 (1) A summary of the principal reasons urged for and against the
25 rule;

26 (2) The agency's reasons for adopting the rule including the
27 agency's reasons for overruling the considerations urged against its adoption;
28 and

29 (3) An indication of any change between the text of the proposed
30 rule contained in the published notice of proposed rule adoption and the text
31 of the rule as finally adopted, with the reasons for any change.

32 (b) Only the reasons contained in the concise explanatory statement may
33 be used by any party as justifications for the adoption of the rule in any
34 proceeding in which its validity is at issue.

35
36 29-3-111. Contents, Style and Form of Rule.

1 (a) Each rule adopted by an agency shall contain the text of the rule
2 and all of the following:

3 (1) The date the agency adopted the rule;

4 (2) A concise statement of the purpose of the rule;

5 (3) A reference to all rules repealed, amended, or suspended by
6 the rule;

7 (4) A reference to the specific statutory or other authority
8 authorizing adoption of the rule;

9 (5) Any findings required by any provision of law as a
10 prerequisite to adoption or effectiveness of the rule; and

11 (6) The effective date of the rule if other than that specified
12 in 29-3-115(a).

13 (b) To the extent feasible, each rule shall be written in clear and
14 concise language understandable to persons who may be affected by it.

15 (c) An agency may incorporate, by reference in its rules and without
16 publishing the incorporated matter in full, all or any part of a code,
17 standard, rule, or regulation that has been adopted by an agency of the United
18 States or of this state, another state, or by a nationally or internationally
19 recognized organization or association, if incorporation of its text in agency
20 rules would be unduly cumbersome, expensive, or otherwise inexpedient. The
21 reference in the agency rules shall fully identify the incorporated matter by
22 location, date, and otherwise, and shall state that the rule does not include
23 any later amendments or editions of the incorporated matter. An agency may
24 incorporate by reference the matter in its rules only if the agency,
25 organization, or association originally issuing that matter makes copies of it
26 readily available to the public. The rules shall state where copies of the
27 incorporated matter may be inspected, and copied or purchased at cost, at the
28 agency issuing the rule, and where copies are available from the entity
29 originally issuing that matter. If an agency adopts standards by reference to
30 another publication, and the State Library does not already possess a copy of
31 the publication, the agency shall purchase, provide and deposit a copy of the
32 publication containing the standards in the State Library where it shall be
33 made available for inspection and reference. In those cases where the purchase
34 of an additional copy would be an unreasonable expense, the State Library may
35 waive this requirement if the publication can be temporarily and promptly
36 obtained for review by the State Library upon request.

1 (d) In preparing its rules pursuant to this Act, each agency shall
2 follow the uniform numbering system, form, and style prescribed by the
3 Administrative Rules Coordinator.

4
5 29-3-112. Agency Rule-making Record.

6 (a) An agency shall maintain for a period of at least five (5) years an
7 official rule-making record for each rule it proposes by publication in the
8 Administrative Bulletin of a notice of proposed rule adoption, or adopts. The
9 record and materials incorporated by reference shall be available for public
10 inspection.

11 (b) The agency rule-making record shall contain all of the following:

12 (1) Copies of all publications in the Administrative Bulletin
13 with respect to the rule or the proceeding upon which the rule is based;

14 (2) Copies of any portions of the agency's public rule-making
15 docket containing entries relating to the rule or the proceeding upon which
16 the rule is based;

17 (3) All written petitions, requests, submissions, and comments
18 received by the agency and all other written materials that are unprivileged
19 and that are not required by statute to be kept confidential that were
20 considered by the agency in connection with the formulation, proposal, or
21 adoption of the rule or the proceeding upon which the rule is based;

22 (4) Any official transcript of oral presentations made in the
23 proceeding upon which the rule is based or, if not transcribed, any tape
24 recording or stenographic record of those presentations, and any memorandum
25 prepared by a presiding official summarizing the contents of those
26 presentations;

27 (5) A copy of any regulatory analysis prepared for the proceeding
28 upon which the rule is based;

29 (6) A copy of the rule and explanatory statement filed with the
30 Administrative Rules Coordinator;

31 (7) All petitions for exceptions to, amendments of, or repeal or
32 suspension of, the rule;

33 (8) A copy of any request filed pursuant to 29-3-108(c);

34 (9) A copy of any objection to the rule filed by the
35 Administrative Rules Review Committee pursuant to 29-3-204(d) and the agency's
36 response; and

1 (10) A copy of any filed executive order with respect to the
2 rule.

3 (c) Upon judicial review, the record required by this section
4 constitutes the official agency rule-making record with respect to a rule.
5 Except as provided in 29-3-110(b) or otherwise required by a provision of law,
6 the agency rule-making record may not constitute the exclusive basis for
7 agency action on that rule or for judicial review thereof.

8
9 29-3-113. Invalidity of Rules Not Adopted According to Act - Time
10 Limitation.

11 (a) A rule adopted after December 31, 1999 is invalid unless adopted in
12 substantial compliance with the provisions of 29-3-102 through 29-3-108 and
13 29-3-110 through 29-3-112.

14 (b) An action to contest the validity of a rule on the grounds of its
15 noncompliance with any provision of 29-3-102 through 29-3-108 or 29-3-110
16 through 29-3-112 shall be commenced within two (2) years after the effective
17 date of the rule.

18
19 29-3-114. Filing of Rules.

20 (a) An agency shall file with the Administrative Rules Coordinator each
21 rule it adopts and all rules existing on the effective date of this Act that
22 have not previously been filed with the Administrative Rules Coordinator
23 pursuant to the requirements of this Act. The filing with the Administrative
24 Rules Coordinator shall be accomplished as soon after adoption of the rule as
25 is practicable and in no event later than ten (10) days following the
26 adoption. At the time of filing, each rule adopted after the effective date
27 of this Act shall have attached to it the explanatory statement required by
28 29-3-110. The Administrative Rules Coordinator shall affix to each rule and
29 statement a certification of the time and date of filing and keep a permanent
30 register open to public inspection of all filed rules and attached explanatory
31 statements. In filing a rule, each agency shall use a standard form
32 prescribed by the Administrative Rules Coordinator. Each agency shall also
33 provide the Secretary of State a copy of all rules existing on the effective
34 date of this Act.

35 (b) The Administrative Rules Coordinator shall transmit to the Secretary
36 of State and the Administrative Rules Review Committee a copy of each filed

1 rule, explanatory statement and certification of the time and date of filing,
2 as soon after filing as is practicable.

3
4 29-3-115. Effective Date of Rules.

5 (a) Except to the extent subsection (b) or (c) of this section provides
6 otherwise, each rule adopted after the effective date of this Act becomes
7 effective thirty (30) days after the later of:

8 (1) Its filing with the Administrative Rules Coordinator; or

9 (2) Its publication and indexing in the Administrative Bulletin.

10 (b)(1) A rule becomes effective on a date later than that established
11 by subsection (a) of this section if a later date is required by another
12 statute or specified in the rule.

13 (2) A rule may become effective immediately upon its filing or on
14 any subsequent date earlier than that established by subsection (a) of this
15 section if the agency establishes an effective date and finds that one (1) or
16 more of the following applies:

17 (A) The earlier effective date is required by constitution,
18 state or federal statute, court order, federal regulation or federal
19 administrative order;

20 (B) The rule only confers a benefit or removes a
21 restriction on the public or some segment thereof;

22 (C) The rule only delays the effective date of another rule
23 that is not yet effective;

24 (D) The earlier effective date is necessary to avoid
25 immediate danger to the public health, safety, or welfare;

26 (E) The earlier effective date is necessary to avoid the
27 imminent loss of federal funds; or

28 (F) The rule is wholly ministerial and does not alter the
29 existing legal rights of any person.

30 (3) The finding and a brief statement of the reasons therefor
31 required by subdivision (b)(2) of this section shall be made a part of the
32 rule. In any action contesting the effective date of a rule made effective
33 under subdivision (b)(2) of this section, the burden is on the agency to
34 justify its finding.

35 (4) Each agency shall make a reasonable effort to make known to
36 persons who may be affected by it a rule made effective before publication and

1 indexing under this Act.

2 (c) This section does not relieve an agency from compliance with any
3 provision of law requiring that some or all of its rules be approved by other
4 designated officials or bodies before they become effective.

5
6 29-3-116. Special Provision for Certain Classes of Rules.

7 Except to the extent otherwise provided by any provision of law, 29-3-
8 102 through 29-3-115 are inapplicable to all of the following:

9 (1) A rule concerning only the internal management of an agency which
10 does not directly and substantially affect the procedural or substantive
11 rights or duties of any segment of the public, including without limitation,
12 rules governing agency personnel matters;

13 (2) A rule that establishes criteria or guidelines to be used by the
14 staff of an agency in performing audits, investigations, or inspections,
15 settling commercial disputes, negotiating commercial arrangements, or in the
16 defense, prosecution, or settlement of cases, if disclosure of the criteria or
17 guidelines would do any of the following:

18 (A) Enable law violators to avoid detection;

19 (B) Facilitate disregard of requirements imposed by law; or

20 (C) Give a clearly improper advantage to persons who are in an
21 adverse position to the state;

22 (3) A rule that only establishes prices to be charged for particular
23 goods or services sold by an agency;

24 (4) A rule concerning only the physical servicing, maintenance, or care
25 of agency owned or operated facilities or property;

26 (5) A rule relating only to the use of a particular facility or
27 property owned, operated, or maintained by the state or any of its
28 subdivisions, if the substance of the rule is adequately indicated by means of
29 signs or signals to persons who use the facility or property;

30 (6) A rule concerning only inmates of a correctional or detention
31 facility, students enrolled in an educational institution, or patients
32 admitted to a hospital, if adopted by that facility, institution, or hospital;

33 (7) A form whose specific contents or specific substantive requirements
34 are prescribed by rule or statute, and instructions for the execution or use
35 of the form;

36 (8) An agency budget;

- 1 (9) An opinion of the Arkansas Attorney General;
- 2 (10) The terms of a collective bargaining agreement;
- 3 (11) The determination of prevailing wage rates issued by the
4 Department of Labor pursuant to § 22-9-313; or
- 5 (12) Publications of manuals, tables, and schedules of rates prepared
6 by the Assessment Coordination Department which are furnished to the various
7 county assessors as aids in the assessment of real and personal property.

8

9 29-3-117. Petition For Adoption of Rule.

10 (a) Any person may petition an agency requesting the adoption of a
11 rule. Each agency shall prescribe by rule the form of the petition and the
12 procedure for its submission, consideration, and disposition. Within sixty
13 (60) days after submission of a petition, or, if the agency meets regularly
14 less often than monthly, at its next meeting at least ten (10) days and no
15 more than one hundred eighty (180) days after submission of a petition, the
16 agency shall either:

- 17 (1) Deny the petition in writing, stating its reasons therefor;
- 18 (2) Initiate rule-making proceedings in accordance with this Act;

19 or

- 20 (3) If otherwise lawful, adopt a rule.

21 (b) If a person petitions an agency requesting the adoption of a rule
22 superceding specified principles of law or policy lawfully declared by the
23 agency as the basis for its decisions in particular cases, the agency shall
24 initiate rule-making proceedings in accordance with this Act and adopt a rule
25 unless the agency finds, and incorporates in that finding the reasons
26 therefor, that the adoption of a rule at this time is infeasible or that a
27 rule is impracticable, and provides a copy of that finding to the petitioner.

28 (c) This section shall not apply to the Department of Correction, the
29 Department of Community Punishment, and the Board of Correction and Community
30 Punishment.

31

32 SUBCHAPTER 2 - REVIEW OF AGENCY RULES.

33

34 29-3-201. General Review by Agency.

35 Each agency shall adopt a rule providing for periodic review all of its
36 rules to determine whether any existing rule should be repealed or amended or

1 whether any new rule should be adopted. In conducting such review, each
2 agency shall prepare a written report summarizing its findings, its supporting
3 reasons and any proposed course of action. A copy of the report shall be sent
4 to the Administrative Rules Review Committee and be available for public
5 inspection.

6
7 29-3-202. Review of Specific Rule.

8 (a) The Administrative Rules Review Committee may request an agency to
9 conduct a formal review of a specified rule of that agency to determine
10 whether the rule should be repealed or amended or a new rule adopted instead.
11 The agency shall prepare within sixty (60) days a written report with respect
12 to the rule summarizing its findings, its supporting reasons and any proposed
13 course of action. The report shall include for the specified rule, a concise
14 statement of all of the following:

15 (1) The rule's effectiveness in achieving its objectives,
16 including a summary of any available data supporting the conclusions reached;

17 (2) Criticisms of the rule received during the previous biennium
18 and the current biennium, including a summary of any petitions for waiver of
19 the rule filed with the agency or granted by it; and

20 (3) Alternative solutions to the criticisms and the reasons they
21 were rejected or the changes made in the rule in response to those criticisms
22 and the reasons for the changes.

23 (b) A copy of the report shall be sent to the Administrative Rules
24 Review Committee and be available for public inspection.

25
26 29-3-203. Administrative Rules Review Committee.

27 (a) The Rules and Regulations Subcommittee of the Legislative Council
28 shall serve as the Administrative Rules Review Committee and shall meet at
29 least monthly in this capacity. In performing its duties, the administrative
30 rules review subcommittee may seek input and advice from appropriate
31 legislative subject matter committees.

32 (b) The Rules and Regulations Subcommittee of the Legislative
33 Council shall be selected within forty-five (45) calendar days after each
34 general election.

35 (c)(1) Each Senate caucus shall select one (1) Senate member of the
36 Legislative Council to serve on the Subcommittee.

1 (2) At the Senate caucuses in 2000, the First District Caucus
2 shall select the Senate Co-chair of the Subcommittee. In subsequent bienniums
3 and on a rotating basis, the Senate caucuses shall select the Senate Co-chair.

4 (d)(1) Each House caucus shall select two (2) House members of the
5 Legislative Council to serve on the Subcommittee. In subsequent bienniums and
6 on a rotating basis, the House caucuses shall select the House Co-chair.

7 (2) At the House caucuses in 2000, the First District Caucus
8 shall select the House Co-chair of the Subcommittee. In subsequent bienniums
9 and on a rotating basis, the House caucuses shall select the House Co-chair.

10
11 29-3-204. Review by Administrative Rules Review Committee.

12 (a) The Administrative Rules Review Committee shall selectively review
13 possible, proposed, or adopted rules and prescribe appropriate committee
14 procedures for that purpose. The committee may receive and investigate
15 complaints from members of the public with respect to possible, proposed, or
16 adopted rules and hold public proceedings on those complaints.

17 (b) Committee meetings shall be open to the public. Subject to
18 procedures established by the committee, persons may present oral argument,
19 data, or views at those meetings. The committee may require a representative
20 of an agency whose possible, proposed, or adopted rule is under examination to
21 attend a committee meeting and answer relevant questions. The committee may
22 also communicate to the agency its comments on any possible, proposed, or
23 adopted rule and require the agency to respond to them in writing. Unless
24 impracticable, in advance of each committee meeting notice of the time and
25 place of the meeting and the specific subject matter to be considered shall be
26 published in the Administrative Bulletin.

27 (c) The committee may recommend enactment of a statute to improve the
28 operation of an agency. The committee may also recommend that a particular
29 rule be superseded in whole or in part by statute and refer the recommendation
30 to the appropriate standing committee or committees of the General Assembly.
31 This subsection does not preclude any committee of the General Assembly from
32 reviewing a rule on its own motion or recommending that it be superseded in
33 whole or in part by statute.

34 (d)(1) If the committee objects to all or any portion of a rule because
35 the committee considers it to be beyond the procedural or substantive
36 authority delegated to the adopting agency, the committee may file that

1 objection with the Administrative Rules Coordinator and with the agency
2 issuing the rule in question. The filed objection shall contain a concise
3 statement detailing the precise reasons that the committee considers the rule,
4 or portion thereof, to be beyond the procedural or substantive authority
5 delegated to the agency.

6 (2) The agency shall maintain a permanent register open to public
7 inspection of all objections by the committee.

8 (3) The Administrative Rules Coordinator shall publish and index
9 an objection filed pursuant to this subsection in the Administrative Bulletin
10 and indicate its existence in connection with the rule in question when that
11 rule is published in the Administrative Code. In case of a filed objection by
12 the committee to a rule that is subject to the requirements of 29-2-101(h),
13 the agency shall indicate the existence of that objection adjacent to the rule
14 in the official compilation referred to in that subsection.

15 (4) Within fourteen (14) days after the filing of an objection by
16 the committee to a rule, the issuing agency shall respond in writing to the
17 committee. After receipt of the response, the committee may withdraw or
18 modify its objection.

19 (5) The failure of the Administrative Rules Review Committee to
20 object to a rule is not an implied legislative authorization of its procedural
21 or substantive validity.

22 (e) The committee may recommend to an agency that it adopt a rule.

23
24
25 CHAPTER 4 - ADJUDICATIVE PROCEEDINGS.

26
27 SUBCHAPTER 1 - AVAILABILITY OF ADJUDICATIVE PROCEEDINGS -
28 APPLICATIONS - LICENSES - WAIVER OF RULE.

29
30 29-4-101. Adjudicative Proceedings - When Required - Exceptions.

31 (a) An agency shall conduct an adjudicative proceeding as the process
32 for formulating and issuing an order. However, an agency need not conduct an
33 adjudicative proceeding if the order is a decision to do any of the following:

34 (1) To issue or not to issue, or to authorize or not authorize
35 the issuance of, a complaint, summons, or similar accusation;

36 (2) To initiate or not to initiate, or to authorize or not

1 authorize the initiation of, an investigation, prosecution, or other
2 proceeding before the agency, another agency, or a court; or

3 (3) Under 29-4-103, not to conduct an adjudicative proceeding.

4 (b) This subsection does not preclude an agency from establishing,
5 subject to 29-5-107 and 29-5-112, procedures that shall be followed prior to
6 the commencement of an adjudicative proceeding, or from issuing an order prior
7 to conducting an adjudicative proceeding, if any of the following apply:

8 (1) The person subject to the order may, within a time period
9 specified by rule or in the order, file an application for an adjudicative
10 proceeding, that application will automatically dissolve the order from the
11 time of its issuance, and the substantial rights of the person subject to that
12 order are not prejudiced by the order in the interim period prior to its
13 automatic dissolution resulting from the filing of an application for an
14 adjudicative proceeding; or

15 (2) The order was properly issued in accordance with 29-4-501; or

16 (3) The agency was expressly authorized by statute to issue that
17 order prior to conducting an adjudicative proceeding, in which case, the
18 agency shall proceed as quickly as feasible after its issuance to complete any
19 proceeding that would be required if the statute had not authorized the action
20 in advance of any adjudicative proceeding.

21 (c) This section applies to rule-making proceedings only to the extent
22 that another statute expressly so requires.

23 (d) Nothing in this chapter shall prohibit informal disposition by
24 stipulation, settlement, consent order, or default.

25
26 29-4-102. Adjudicative Proceedings - Commencement.

27 (a) Subject to the requirements of other laws, an agency may commence
28 an adjudicative proceeding at any time with respect to a matter within the
29 agency's jurisdiction.

30 (b) An agency shall commence an adjudicative proceeding upon the
31 application of any person, unless any of the following apply:

32 (1) The agency lacks jurisdiction of the subject matter;

33 (2) Resolution of the matter requires the agency to exercise
34 discretion within the scope of 29-4-101(a);

35 (3) A statute vests the agency with discretion to conduct or not
36 to conduct an adjudicative proceeding before issuing an order to resolve the

1 matter and, in the exercise of that discretion, the agency has determined not
2 to conduct an adjudicative proceeding;

3 (4) Resolution of the matter does not require the agency to issue
4 an order that determines the applicant's legal rights, duties, privileges,
5 immunities, or other legal interests;

6 (5) The matter was not timely submitted to the agency according
7 to any applicable provision of law and there is no dispute of fact as to the
8 time of its submission;

9 (6) The matter was not submitted in a form substantially
10 complying with any applicable provision of law; or

11 (7) The matter is a complaint filed by an offender with a state
12 licensing board or agency against a licensee of the board or agency unless the
13 complaint is accompanied by appropriately verified documentation that the
14 offender has exhausted all administrative remedies under the Department of
15 Correction grievance procedure. For purposes of the preceding sentence,
16 "offender" shall mean any person sentenced to the Department of Correction or
17 sentenced to the Department of Correction for judicial transfer to the
18 Department of Community Punishment or any person confined in a community
19 punishment center as a condition of probation, suspended imposition of
20 sentence or post prison transfer.

21 (c) Subject to other provisions of law, each agency may, by rule,
22 establish specified time limits for commencing various classes of adjudicative
23 proceedings that are within the agency's jurisdiction.

24 (d) An application for an agency to issue an order includes an
25 application for the agency to conduct appropriate adjudicative proceedings,
26 whether or not the applicant expressly requests those proceedings.

27 (e) An adjudicative proceeding commences when the agency or a presiding
28 officer does any of the following:

29 (1) Notifies a party that a pre-hearing conference, hearing, or
30 other stage of an adjudicative proceeding will be conducted; or

31 (2) Begins to take action on a matter that appropriately may be
32 determined by an adjudicative proceeding, unless this action is:

33 (A) An investigation for the purpose of determining whether
34 an adjudicative proceeding should be conducted; or

35 (B) A decision which, under 29-4-101(a), the agency may
36 make without conducting an adjudicative proceeding.

1
2 29-4-103. Decision Not to Conduct Adjudicative Proceeding.

3 An agency that decides, pursuant to 29-4-102(b), not to conduct an
4 adjudicative proceeding in response to an application, shall furnish the
5 applicant a copy of its decision in writing, with a brief statement of the
6 agency's reasons and of any administrative review available to the applicant.

7
8 29-4-104. Agency Action on Applications.

9 (a) Except to the extent that the time limits in this subsection are
10 inconsistent with limits established by (i) another statute for any stage of
11 the proceedings, or (ii) applicable federal law or regulation, an agency shall
12 process an application for an order, other than a declaratory order, as
13 follows:

14 (1) Within thirty (30) days after receipt of the application, the
15 agency shall examine the application, notify the applicant of any apparent
16 errors or omissions, request any additional information the agency wishes to
17 obtain and is permitted by law to require, and notify the applicant of the
18 name, official title, mailing address and telephone number of an agency member
19 or employee who may be contacted regarding the application.

20 (2) Except in situations governed by subdivision (3) of this
21 subsection, within ninety (90) days after receipt of the application or of the
22 response to a timely request made by the agency pursuant to subdivision (1) of
23 this subsection, the agency shall:

24 (A) Approve or deny the application, in whole or in part,
25 on the basis of emergency or summary adjudicative proceedings, if those
26 proceedings are available under this Act for disposition of the matter;

27 (B) Commence a formal adjudicative hearing or a conference
28 adjudicative hearing in accordance with this Act; or

29 (C) Dispose of the application in accordance with 29-4-103.

30 (3) If the application pertains to subject matter that is not
31 available when the application is filed but may be available in the future,
32 including an application for housing or employment at a time no vacancy
33 exists, the agency may proceed to make a determination of eligibility within
34 the time provided in subdivision (2) of this subsection. If the agency
35 determines that the applicant is eligible, the agency shall maintain the
36 application on the agency's list of eligible applicants as provided by law

1 and, upon request, shall notify the applicant of the status of the
2 application.

3 (b) If a timely application has been made for renewal of a license with
4 reference to any activity of a continuing nature, the existing license does
5 not expire until the agency has taken final action upon the application for
6 renewal or, if the agency's action is unfavorable, until the last day for
7 seeking judicial review of the agency's action or a later date fixed by the
8 reviewing court or agency. The foregoing sentence does not preclude an agency
9 from commencing or completing action against a licensee, either under 29-4-105
10 or 29-4-501.

11
12 29-4-105. Agency Action Against Licensees.

13 (a) An agency may not revoke, suspend, modify, annul, withdraw, or
14 amend a license unless the agency first gives notice and an opportunity for an
15 appropriate adjudicative proceeding in accordance with this Act or other
16 statute. This section does not preclude an agency from:

17 (1) Taking immediate action to protect the public interest in
18 accordance with 29-4-501;

19 (2) Adopting rules, otherwise within the scope of its authority,
20 pertaining to a class of licensees, including rules affecting the existing
21 licenses of a class of licensees; or

22 (3) Taking immediate action required by federal law or regulation.

23 (b) This section does not apply to:

24 (1) The revocation, suspension, modification, annulment,
25 withdrawal, or amendment of a driver's license issued by the Arkansas
26 Department of Finance and Administration; or

27 (2) The revocation, suspension, modification, annulment,
28 withdrawal, or amendment of a license, permit or registration by the
29 Department of Finance and Administration under § 26-10-601 of the Arkansas
30 Code.

31
32 29-4-106. Petition for Waiver of Rule.

33 (a) A person may file a petition with an agency requesting a waiver, in
34 whole or part, of a rule of that agency on the ground that the application of
35 the rule to the particular circumstances of that person would qualify for
36 waiver under subsection (e) of this section. A petition filed under this

1 subsection shall specify the rule in question, the precise scope of the waiver
2 requested, the specific facts that would justify a waiver for the petitioner,
3 and the reasons why the particular application of the rule to the petitioner
4 for which the waiver is requested would qualify for a waiver under subsection
5 (e) of this section.

6 (b) Each agency shall issue rules consistent with this section
7 concerning all the following:

8 (1) Governing the form, contents and filing of petitions for the
9 wai vers of rules;

10 (2) Specifying the procedural rights of persons in relation to
11 the petitions; and

12 (3) Providing for the disposition of those petitions.

13 (c) Within fifteen (15) days after receipt of a petition for waiver of
14 a rule, the agency shall cause to be published in the Administrative Bulletin
15 notice of the pendency of the petition, including a concise summary of its
16 contents, and shall give notice of the petition to all persons to whom notice
17 is required by any provision of law. In addition, the agency may give notice
18 to any other persons. Persons who qualify under 29-4-209(a)(2) and (3) as an
19 intervenor and file timely petitions for intervention according to agency
20 rules may intervene in proceedings for waiver of a rule. Other provisions of
21 this Chapter apply to agency proceedings for waiver of a rule only to the
22 extent that an agency so provides by rule or order.

23 (d) An order granting or denying a petition shall be in writing and
24 shall contain a statement of the relevant facts and reasons supporting that
25 action. An agency shall grant or deny a petition within ninety (90) days of
26 its receipt unless the agency, in writing, extends the time in which to grant
27 or deny a petition in order to obtain additional technical information.
28 Failure of an agency to grant or deny a petition within ninety (90) days of
29 its receipt shall be deemed a denial of that petition by the agency unless the
30 agency, in writing, has extended the time in which to grant or deny a petition
31 in order to obtain additional technical information.

32 (e) Unless otherwise prohibited by statute, an agency shall issue an
33 order granting a petition for a waiver of a rule, in whole or in part, if
34 application of the rule to the petitioner on the basis of the particular facts
35 specified in the petition would not serve any of the purposes of the rule.
36 Unless otherwise prohibited by statute, an agency may grant an order granting

1 a petition for waiver of a rule, in whole or in part, if application of the
2 rule to the petitioner would result in undue hardship, waiver of the rule on
3 the basis of the facts specified in the petition would be consistent with the
4 public interest, and waiver of the rule as to petitioner would not prejudice
5 the substantial rights of any other person. An order granting a petition
6 shall constitute a defense in any subsequent proceeding where the
7 applicability of that rule to petitioner is at issue if petitioner proves in
8 that subsequent proceeding all of the relevant facts pertaining to petitioner
9 upon which that waiver order was based and that the particular application of
10 the rule at issue was within the scope of the waiver order in question.

11 (f) In an agency proceeding to enforce a rule of that agency, a person
12 resisting the enforcement of the rule may defend successfully upon a
13 demonstration that application of the rule to the person would not serve any
14 of the purposes of the rule.

15 (g) An agency may, on its own motion, waive the application of one (1)
16 or more of its rules, in whole or in part, to a specified person on the ground
17 that the relevant facts pertaining to that person would qualify that person
18 for a waiver under the provisions of subsection (d) of this section, by
19 issuing an order containing the facts and reasons justifying that waiver. An
20 order granting a waiver on an agency's own motion shall constitute a defense
21 in any subsequent proceeding where the applicability of that rule to
22 petitioner is at issue if petitioner proves in that subsequent proceeding all
23 of the relevant facts pertaining to petitioner upon which that waiver order
24 was based and that the particular application of the rule at issue was within
25 the scope of the waiver order in question.

26 (h) Any order issued under this section shall be transmitted to the
27 petitioner or to the person to whom the waiver order pertains, to the
28 Administrative Rules Review Committee and to the Administrative Rules
29 Coordinator, within seven (7) days of its issuance. An agency shall maintain
30 a file for each of its rules for which a waiver order has been issued
31 containing all orders waiving the application to any person of that rule.

32 (i) This section shall not apply to a rule that only defines the
33 meaning of a statute or other provision of law or precedent if the agency does
34 not possess delegated authority to bind the courts to any extent with its
35 definition and does not authorize an agency to waive any requirement created
36 or duty imposed by statute.

1 (j) This section shall not apply to:

2 (1) tax, driver's license, and motor vehicle regulations
3 promulgated by the Arkansas Department of Finance and Administration;

4 (2) the Department of Correction, the Department of Community
5 Punishment and the Board of Correction and Community Punishment.

6
7 SUBCHAPTER 2 - FORMAL ADJUDICATIVE HEARING.

8
9 29-4-201. Applicability.

10 An adjudicative proceeding is governed by this subchapter, except when:

11 (1) A state or federal statute other than this Act sets out, or
12 provides for the agency to set out procedures for the adjudication;

13 (2) A rule adopts procedures for the conference adjudicative hearing or
14 summary adjudicative proceeding in accordance with the standards provided in
15 this Act for those proceedings;

16 (3) 29-4-501 applies pertaining to emergency adjudicative proceedings;

17 (4) 29-2-103 applies pertaining to declaratory proceedings; or

18 (5) 29-4-106 applies pertaining to petitions for waiver of rules.

19
20 29-4-202. Presiding Officer - Disqualification - Substitution.

21 (a) In the discretion of the agency head, the presiding officer may be
22 either the agency head, one (1) or more members of the agency head, one (1) or
23 more administrative law judges assigned by the Office of Administrative
24 Hearings in accordance with the provisions of 29-4-301, or unless prohibited
25 by law, any qualified person or persons employed by and officed in the agency
26 designated as a presiding officer by the agency head. Subject to 29-4-214,
27 the presiding officer may be assisted or advised by a person designated by the
28 agency head.

29 (b) Any person serving or designated to serve alone or with others as
30 presiding officer is subject to disqualification for bias, prejudice,
31 interest, or any other cause provided in this Act or for which a judge is or
32 may be disqualified.

33 (c) Any party may timely request the disqualification of a person
34 promptly after receipt of notice indicating that the person will preside, or
35 upon discovering facts establishing grounds for disqualification, whichever is
36 later.

1 (d) A person whose disqualification is requested shall determine
2 whether to grant the request, stating facts and reasons for the determination.

3 (e) If a substitute is required for a person who is disqualified or
4 becomes unavailable for any other reason, the substitute shall be appointed
5 by:

6 (1) The Governor, if the disqualified or unavailable person is an
7 elected official; or

8 (2) The appointing authority, if the disqualified or unavailable
9 person is an appointed official.

10 (f) Any action taken by a duly-appointed substitute for a disqualified
11 or unavailable person is as effective as if taken by the latter.

12
13 29-4-203. Representation.

14 (a) Any party may participate in the hearing in person or, if the party
15 is a corporation or other legal entity, by a duly authorized representative.

16 (b) Whether or not participating in person, any party may be advised
17 and represented at the party's own expense by an attorney licensed to practice
18 in this state, by legal service programs which currently receive funding
19 through the federal Legal Services Corporation and which provide services to
20 Arkansas clients, or by law students in an approved program as provided in
21 Rule XV of the Rules Governing Admission to the Bar effective on January 1,
22 1999.

23 (c) Any party may designate, in writing to an agency, an authorized
24 representative to act on behalf of that party in a particular proceeding. An
25 attorney licensed to practice in this state who files an appearance or a
26 pleading with an agency on behalf of a party shall be deemed to be the
27 designated authorized representative of that party in that proceeding. If an
28 authorized representative has been designated, notice to a party required
29 under this Act shall be satisfied by providing the notice to that
30 representative.

31
32 29-4-204. Pre-hearing Conference - Availability - Notice.

33 The presiding officer designated to conduct the hearing may determine,
34 subject to the agency's rules, whether a pre-hearing conference will be
35 conducted. If the conference is conducted the following shall apply:

36 (1) The presiding officer shall promptly notify the agency of the

1 determination that a pre-hearing conference will be conducted. If the
2 presiding officer decides that another presiding officer should conduct the
3 pre-hearing conference, the agency shall assign, or request the Office of
4 Administrative Hearings to assign, a presiding officer for the pre-hearing
5 conference, exercising the same discretion as is provided by 29-4-202
6 concerning the selection of a presiding officer for a hearing.

7 (2) The presiding officer for the pre-hearing conference shall set the
8 time and place of the conference and give reasonable written notice to all
9 parties and to all persons who have filed written petitions to intervene in
10 the matter. The agency shall give notice to other persons entitled to notice
11 under any provision of law.

12 (3) The notice shall include all of the following:

13 (A) The names, mailing addresses and telephone numbers of all
14 parties, the designated representatives of all parties, and all other persons
15 to whom notice is being given by the presiding officer;

16 (B) The name, official title, mailing address, and telephone
17 number of any counsel or employee who has been designated to appear for the
18 agency;

19 (C) The official file or other reference number, the name of the
20 proceeding, and a general description of the subject matter;

21 (D) A statement of the time, place, and nature of the pre-hearing
22 conference;

23 (E) A statement of the legal authority and jurisdiction under
24 which the pre-hearing conference and the hearing are to be held;

25 (F) The name, official title, mailing address and telephone
26 number of the presiding officer for the pre-hearing conference;

27 (G) A statement that at the pre-hearing conference the
28 proceeding, without further notice, may be converted into a conference
29 adjudicative hearing or a summary adjudicative proceeding for disposition of
30 the matter as provided by this Act; and

31 (H) A statement that a party who fails to attend or participate
32 in a pre-hearing conference, hearing, or other stage of an adjudicative
33 proceeding may be held in default under this Act.

34 (4) The notice may include a statement that each party shall bring to
35 the pre-hearing conference specified listed materials or information, as
36 determined by the presiding officer, and that a failure to do so, without good

1 cause, will preclude that party from subsequently introducing those materials
2 or that information in the proceeding. The notice may include any other
3 matters that the presiding officer considers desirable to expedite the
4 proceedings.

5
6 29-4-205. Pre-hearing Conference - Procedure and Pre-hearing Order.

7 (a) The presiding officer may conduct all or part of the pre-hearing
8 conference by telephone, video conference, or other electronic means if each
9 participant in the conference has an opportunity to participate in, to hear,
10 and, if technically feasible, to see the entire proceeding while it is taking
11 place.

12 (b) If a pre-hearing conference is held, the presiding officer shall
13 conduct the pre-hearing conference, as may be appropriate, to deal with
14 conversion of the proceeding to another type, exploration of settlement
15 possibilities, waivers of any rights conferred on a party by this Act that are
16 relevant to the proceeding, preparation of stipulations on any relevant
17 matter, clarification of issues, rulings on identity and limitation of the
18 number of witnesses, objections to proffers of evidence, determination of the
19 extent to which evidence will be presented in written form, and the extent to
20 which telephone, video conference, or other electronic means will be used as a
21 substitute for proceedings in person, order of presentation of evidence and
22 cross-examination, rulings regarding issuance of subpoenas, discovery orders
23 and protective orders, and other matters as will promote the orderly and
24 prompt conduct of the hearing. The presiding officer shall issue a pre-
25 hearing order incorporating the matters determined at the pre-hearing
26 conference and may deviate from that order at the hearing only with the
27 consent of all parties or for good cause.

28 (c) If a pre-hearing conference is not held, the presiding officer for
29 the hearing may issue a pre-hearing order, based on the pleadings, to regulate
30 the conduct of the proceedings.

31
32 29-4-206. Notice of Hearing.

33 (a) The presiding officer for the hearing, or another person authorized
34 to do so by rule of the agency, shall set the time and place of the hearing
35 and give reasonable and timely written notice to all parties and to all
36 persons who have filed written petitions to intervene in the matter.

1 (b) The notice shall include a copy of any pre-hearing order rendered
2 in the matter unless the parties and the persons who have filed written
3 petitions to intervene have already been furnished with a copy of the order.

4 (c) To the extent not included in a pre-hearing order accompanying it,
5 the notice shall include all of the following:

6 (1) The names of all parties, the mailing addresses and telephone
7 numbers of all parties or the names, mailing addresses and telephone numbers
8 of their designated representatives, and the names, mailing addresses and
9 telephone numbers of all other persons to whom notice is being given;

10 (2) The name, official title, mailing address, and telephone
11 number of any counsel or employee who has been designated to appear for the
12 agency;

13 (3) The official file or other reference number, the name of the
14 proceeding, and a general description of the subject matter;

15 (4) A statement of the time, place, and nature of the hearing;

16 (5) A statement of the legal authority and jurisdiction under
17 which the hearing is to be held;

18 (6) The name, official title, mailing address and telephone
19 number of the presiding officer;

20 (7) To the extent known to the person giving notice, a short and
21 plain statement of the issues involved and of the matters asserted by the
22 parties; and

23 (8) A statement that a party who fails to attend or participate
24 in a pre-hearing conference, hearing, or other stage of an adjudicative
25 proceeding may be held in default under this Act.

26 (d) The notice may include any other matters the presiding officer
27 considers desirable to expedite the proceedings.

28 (e) The agency shall give notice to persons entitled to notice under
29 any provision of law who have not been given notice by the presiding officer.
30 Notice under this subsection may include all types of information provided in
31 subsections (a) through (d) of this section or may consist of a brief
32 statement indicating the subject matter, parties, time, place, and nature of
33 the hearing, manner in which copies of the notice to the parties may be
34 inspected and copied, and name and telephone number of the presiding officer.

35
36 29-4-207. Pleadings - Briefs - Motions - Service.

1 (a) The presiding officer, at appropriate stages of the proceedings,
2 shall give all parties full opportunity to file pleadings, motions, and
3 objections.

4 (b) The presiding officer, at appropriate stages of the proceedings,
5 may give all parties full opportunity to file briefs, proposed findings of
6 fact and conclusions of law, and proposed initial or final orders.

7 (c) A party shall serve copies of any filed item on all parties, by
8 mail or any other means prescribed by agency rule.

9
10 29-4-208. Default.

11 (a) If a party fails to attend or participate in a pre-hearing
12 conference, hearing, or other stage of an adjudicative proceeding, the
13 presiding officer shall serve upon all parties by certified mail, return
14 receipt requested, written notice of a proposed default order, including a
15 statement of the grounds.

16 (b) Within fifteen (15) days after the mailing by certified mail of a
17 proposed default order, the party against whom it was issued may file a
18 written motion requesting that the proposed default order be vacated and
19 stating the grounds relied upon. A proposed default order may be vacated for
20 any reason specified in the Arkansas Rules of Civil Procedure or for any other
21 reason specified by agency rule. During the time within which a party may
22 file a written motion under this subsection, the presiding officer may adjourn
23 the proceedings or conduct them without the participation of the party against
24 whom a proposed default order was issued, having due regard for the interests
25 of justice and the orderly and prompt conduct of the proceedings.

26 (c) The presiding officer shall either issue or vacate the default
27 order promptly after expiration of the time within which the party may file a
28 written motion under subsection (b) of this section.

29 (d) After issuing a default order, the presiding officer shall conduct
30 any further proceedings necessary to complete the adjudication without the
31 participation of the party in default and shall determine all issues in the
32 adjudication, including those affecting the defaulting party.

33
34 29-4-209. Intervention.

35 (a) Except as provided in section (b) below, the presiding officer shall
36 grant a petition for intervention if all of the following apply:

1 (1) The petition is submitted in writing to the presiding
2 officer, with copies mailed to all parties named in the presiding officer's
3 notice of the hearing, at least twenty (20) days before the hearing;

4 (2) The petition states facts demonstrating that the petitioner's
5 legal rights, duties, privileges, immunities, or other legal interests may be
6 substantially affected by the proceeding or that the petitioner qualifies as
7 an intervenor under any provision of law; and

8 (3) The presiding officer determines that the interests of
9 justice and the orderly and prompt conduct of the proceedings will not be
10 impaired by allowing the intervention.

11 (b) The presiding officer may deny a petition for intervention when all
12 the following apply:

13 (1) There are multiple petitions for intervention asserting the
14 same or similar legal rights, duties, privileges, immunities or other legal
15 interests;

16 (2) Granting the petition to intervene would create an undue
17 burden on the parties or the agency;

18 (3) The presiding officer determines that the interests of the
19 petitioner are adequately represented by the parties and other intervenors;
20 and

21 (4) The presiding officer appoints a party or intervenor to
22 communicate with and otherwise represent the interests of the petitioner or
23 class of petitioners.

24 (c) The presiding officer may grant a petition for intervention at any
25 time, upon determining that the intervention sought is in the interests of
26 justice and will not impair the orderly and prompt conduct of the proceedings.

27 (d) If a petitioner qualifies for intervention, the presiding officer
28 may impose conditions upon the intervenor's participation in the proceedings,
29 either at the time that intervention is granted or at any subsequent time.
30 Conditions may include any or all of the following:

31 (1) Limiting the intervenor's participation to designated issues
32 in which the intervenor has a particular interest demonstrated by the
33 petition;

34 (2) Limiting the intervenor's use of discovery, cross-
35 examination, and other procedures so as to promote the orderly and prompt
36 conduct of the proceedings; and

1 (3) Requiring two (2) or more intervenors to combine their
2 presentations of evidence and argument, cross-examination, discovery, and
3 other participation in the proceedings.

4 (e) The presiding officer shall timely issue an order granting or
5 denying each pending petition for intervention, specifying any conditions, and
6 briefly stating the reasons for the order. The presiding officer may modify
7 the order at any time, stating the reasons for the modification. The
8 presiding officer shall promptly give notice of an order granting, denying, or
9 modifying intervention to the petitioner for intervention and to all parties.

10 (f) (1) The provisions of this section shall not apply to hearings or
11 other proceedings conducted under the Arkansas Tax Procedure Act § 26-18-101
12 et seq.

13 (2) The provisions of this section shall not apply to driver's
14 license hearings conducted under § 27-16-907.

15
16 29-4-210. Subpoenas - Discovery and Protective Orders.

17 (a) Discovery procedures applicable to civil actions in state court are
18 available to all parties in accordance with the Arkansas Rules of Civil
19 Procedure. Upon notice to all parties, the presiding officer, at the request
20 of any party shall, and upon the presiding officer's own motion may,
21 administer oaths, issue protective orders and, to the extent authorized by
22 statute, issue subpoenas and discovery orders, in accordance with the Arkansas
23 Rules of Civil Procedure.

24 (b) Any party or person to whom the subpoena or similar process is
25 directed may object to the issuance of the subpoena or process. The presiding
26 officer and any reviewing circuit court shall sustain the subpoena or similar
27 process only to the extent that it is found to be authorized by statute and in
28 accordance with the law applicable to the issuance of subpoenas or discovery
29 in civil actions.

30 (c) Subpoenas and orders issued under this section may be enforced
31 under Chapter 5, Subchapter 2 of this Act by civil enforcement of agency
32 action.

33 (d) An agency party that relies on a witness in an adjudicative
34 proceeding, whether or not an agency employee, who has made prior statements
35 or reports to the agency with respect to the subject matter of the witness'
36 testimony, shall, on request make the statements available prior to hearing to

1 parties for use on cross-examination, unless those statements or reports are
2 expressly exempt from disclosure by constitution or statute. Identifiable
3 agency records that are relevant to disputed material facts involved in an
4 adjudicative proceeding shall, upon request, promptly be made available to a
5 party unless the requested records are expressly exempt from disclosure by
6 constitution or statute.

7
8 29-4-211. Procedure at Hearing.

9 At a hearing, all of the following apply:

10 (1) The presiding officer shall regulate the course of the proceedings
11 in conformity with any pre-hearing order;

12 (2) To the extent necessary for full disclosure of all relevant facts
13 and issues, the presiding officer shall afford to all parties the opportunity
14 to respond, present evidence and argument, conduct cross-examination, and
15 submit rebuttal evidence, except as restricted by a limited grant of
16 intervention or by the pre-hearing order;

17 (3) The presiding officer may give nonparties an opportunity to present
18 oral or written statements. If the presiding officer proposes to consider a
19 statement by a nonparty, the presiding officer shall give all parties an
20 opportunity to challenge or rebut it, and on motion of any party, the
21 presiding officer shall require the statement to be given under oath or
22 affirmation;

23 (4) The presiding officer may conduct all or part of the hearing by
24 telephone, video conference, or other electronic means, if each participant in
25 the hearing has an opportunity to participate in, to hear, and, if technically
26 feasible, to see the entire proceeding while it is taking place;

27 (5) The presiding officer shall cause the hearing to be recorded by a
28 certified court reporter at the agency's expense. The agency is not required,
29 at its expense, to prepare a transcript, unless required to do so by a
30 provision of law. Any party, at the party's expense, may cause the certified
31 court reporter selected by the agency to prepare a transcript from the
32 agency's record and, upon completion thereof, provide a copy of the transcript
33 to the agency at no cost to the agency. The transcript if made, or the
34 recording or stenographic notes of the oral proceedings, shall be filed with
35 and maintained by the agency for at least three (3) years from the later of
36 the date of the final agency order in that case, or the date any proceedings

1 for judicial review of that case become final; and

2 (6) The hearing is open to public observation, except for the parts
3 that the presiding officer states to be closed pursuant to a provision of law
4 expressly authorizing closure. To the extent that a hearing is conducted by
5 telephone, video-conference, or other electronic means, and is not closed, the
6 availability of public observation is satisfied by giving members of the
7 public an opportunity to observe and hear that communication at the location
8 of any one (1) of the participants, as designated by the hearing officer or if
9 that is not feasible, at reasonable times, to hear or inspect the agency's
10 record, and to inspect any transcript obtained by the agency.

11
12 29-4-212. Evidence - Official Notice.

13 (a) Upon proper objection, the presiding officer shall exclude evidence
14 that is irrelevant, unduly repetitious, excludable on constitutional or
15 statutory grounds, excludable on the basis of evidentiary privilege recognized
16 in the courts of this state, or excludable because the probative value of the
17 evidence is outweighed by the danger of unfair prejudice or confusion of the
18 issues. In the absence of proper objection, the presiding officer may exclude
19 objectionable evidence after notifying the parties of an intention to do so
20 and providing the parties with an opportunity to object to that exclusion.
21 Evidence shall not be excluded solely because it is hearsay.

22 (b) All testimony of parties and witnesses shall be made under oath or
23 affirmation.

24 (c) Statements presented by nonparties may be received as evidence.

25 (d) Any part of the evidence may be received in written form if doing
26 so will expedite the hearing without substantial prejudice to the interests of
27 any party.

28 (e) Documentary evidence may be received in the form of a copy or
29 excerpt. Upon request, parties shall be given an opportunity to compare the
30 copy with the original if available.

31 (f) Official notice may be taken of any fact that could be judicially
32 noticed in the courts of this state, the record of other proceedings before
33 the agency, technical or scientific matters within the agency's specialized
34 knowledge, and codes or standards that have been adopted by an agency of the
35 United States, of this state or of another state, or by a nationally
36 recognized organization or association. Parties shall be notified before or

1 during the hearing, or before the issuance of any initial or final order that
2 is based in whole or in part on facts or material noticed, of the specific
3 facts or material noticed and the source thereof, including any staff
4 memoranda and data, and be afforded an opportunity to contest and rebut the
5 facts or material so noticed. However, if the required notification of the
6 parties is infeasible or impracticable prior to the issuance of an initial or
7 final order, the notification may first occur in that order itself, as long as
8 the parties are afforded, through the granting of a motion for reconsideration
9 timely filed with the presiding officer, an opportunity, after the order is
10 issued, to contest and rebut the facts or material so noticed before that
11 order becomes final.

12
13 29-4-213. Ex parte Communications.

14 (a) Except as provided in subsection (b) of this section or unless
15 required for the disposition of ex parte matters specifically authorized by
16 statute, a presiding officer serving in an adjudicative proceeding may not
17 communicate, directly or indirectly, regarding any issue in the proceeding
18 other than inquiries about scheduling, while the proceeding is pending, with
19 any party, with any person who has a direct or indirect interest in the
20 outcome of the proceeding, or with any person who presided at a previous stage
21 of the proceeding, without notice and opportunity for all parties to
22 participate in the communication.

23 (b) A member of a multi-member panel of presiding officers may
24 communicate with other members of the panel regarding a matter pending before
25 the panel, and any presiding officer may receive aid from staff assistants if
26 the assistants do not receive ex parte communications of a type that the
27 presiding officer would be prohibited from receiving or furnish, augment,
28 diminish, or modify the evidence in the record.

29 (c) Unless required for the disposition of ex parte matters
30 specifically authorized by statute, no party to an adjudicative proceeding,
31 and no person who has a direct or indirect interest in the outcome of the
32 proceeding or who presided at a previous stage of the proceeding, may
33 communicate, directly or indirectly, in connection with any issue in that
34 proceeding other than inquiries about scheduling, while the proceeding is
35 pending, with any person serving as presiding officer, without notice and
36 opportunity for all parties to participate in the communication.

1 (d) If, before serving as presiding officer in an adjudicative
2 proceeding, a person receives an ex parte communication of a type that could
3 not properly be received while serving, the person, promptly after starting to
4 serve, shall disclose the communication in the manner prescribed in subsection
5 (e) of this section.

6 (e) A presiding officer who receives an ex parte communication in
7 violation of this section shall place on the record of the pending matter all
8 written communications received, all written responses to the communications,
9 and a memorandum stating the substance of all oral communications received,
10 all responses made, and the identity of each person from whom the presiding
11 officer received an ex parte communication, and shall advise all parties that
12 these matters have been placed on the record. Any party desiring to rebut the
13 ex parte communication shall be allowed to do so, upon requesting the
14 opportunity for rebuttal within ten (10) days after notice of the
15 communication.

16 (f) When necessary to eliminate the effect of an ex parte communication
17 received in violation of this section, a presiding officer who receives the
18 communication may be disqualified and the portions of the record pertaining to
19 the communication may be sealed by protective order.

20 (g) The agency and any party may report any violation of this section
21 to appropriate authorities for any disciplinary proceedings provided by law.
22 In addition, each agency by rule may provide for appropriate sanctions,
23 including default, suspending or revoking a privilege to practice before the
24 agency, and for censuring, suspending, or dismissing agency personnel, for any
25 violations of this section.

26 (h) In a proceeding for judicial review, the burden shall be on the
27 party seeking to uphold the validity of an order to demonstrate that any
28 violation of this section relating to issuance of that order did not prejudice
29 the substantial rights of the party seeking its invalidation.

30
31 29-4-214. Separation of Functions.

32 All of the following apply to adjudicative proceedings, or portions of
33 adjudicative proceedings, in which the presiding officer is either an
34 administrative law judge assigned by the Office of Administrative Hearings or
35 an agency employee who is neither the agency head nor a member of the agency
36 head:

1 (1) A person who has served personally in an enforcement capacity or as
2 an investigator, prosecutor or advocate in an adjudicative proceeding or in
3 its pre-adjudicative stage shall not serve as presiding officer or assist or
4 advise a presiding officer in the same proceeding.

5 (2) A person who is subject to the authority, direction, or discretion
6 of one who has served personally as an investigator, prosecutor, or advocate
7 in an adjudicative proceeding or in its pre-adjudicative stage shall not serve
8 as presiding officer or assist or advise a presiding officer in the same
9 proceeding.

10 (3) A person who has participated in a determination of probable cause
11 or other equivalent preliminary determination as to the sufficiency of the
12 evidence to support the facts alleged by any party in an adjudicative
13 proceeding shall not serve as presiding officer or assist or advise a
14 presiding officer in the same proceeding.

15 (4) A person may serve as presiding officer at successive stages of the
16 same adjudicative proceeding, unless a party demonstrates grounds for
17 disqualification.

18 (5) In a proceeding for judicial review, the burden shall be on the
19 party seeking to uphold the validity of an order to demonstrate that any
20 violation of this section did not prejudice the substantial rights of the
21 party seeking its invalidation.

22
23 29-4-215. Final Order - Initial Order.

24 (a) If the presiding officer is the agency head, the presiding officer
25 shall render a final order.

26 (b) If the presiding officer is not the agency head, the presiding
27 officer shall render an initial order, which becomes a final order unless
28 reviewed in accordance with the provisions of this Act.

29 (c) A final order or initial order shall include, separately stated,
30 findings of fact, conclusions of law, and policy reasons for the decision if
31 it is an exercise of the agency's discretion, for all aspects of the order,
32 including the remedy prescribed and, if applicable, the action taken on a
33 petition for stay of effectiveness. The order shall include an explanation of
34 why the evidence in the record supports each finding of fact and why the
35 evidence that is in the record that is contrary to a finding does not preclude
36 it. Findings of fact, if set forth in language that is no more than mere

1 repetition or paraphrase of the relevant provision of law, shall be
2 accompanied by a concise and explicit statement of the underlying facts of
3 record to support the findings. Each conclusion of law shall be supported by
4 cited authority or by reasoned explanation. If a party has submitted proposed
5 findings of fact, conclusions of law, or policy reasons, the order shall
6 include a ruling on the proposed findings. The order shall also include a
7 statement of the available procedures and time limits for seeking
8 reconsideration or other administrative relief from that final or initial
9 order. An initial order shall include a statement of any circumstances under
10 which the initial order, without further notice, may become a final order.

11 (d) Findings of fact shall be based exclusively upon the evidence of
12 record in the adjudicative proceeding and on matters officially noticed in
13 that proceeding. Findings shall be based upon the kind of evidence on which
14 reasonably prudent persons are accustomed to rely in the conduct of their
15 serious affairs and may be based upon the evidence even if it would be
16 inadmissible in a civil trial. The presiding officer's experience, technical
17 competence, and specialized knowledge may be utilized in evaluating evidence,
18 but only in accordance with 29-4-212(e). Unless provided otherwise by another
19 provision of law, findings of fact shall be based on a preponderance of the
20 evidence and the burden of proof shall be on the proponent of the agency
21 action requested.

22 (e) If a person serving or designated to serve as presiding officer
23 becomes unavailable, for any reason, before rendition of the final order or
24 initial order, a substitute presiding officer shall be appointed as provided
25 in 29-4-202. The substitute presiding officer shall use any existing record
26 and may conduct any further proceedings appropriate in the interests of
27 justice; but if demeanor of witnesses is a substantial factor and the original
28 presiding officer is unavailable, the portions of the hearing involving the
29 demeanor heard by the presiding officer shall be heard again by the new
30 presiding officer.

31 (f) The presiding officer may allow the parties a designated amount of
32 time after conclusion of the hearing for the submission of proposed findings.

33 (g) A final order or initial order pursuant to this section shall be
34 rendered in writing within ninety (90) days after conclusion of the hearing or
35 after submission of proposed findings in accordance with subsection (f) unless
36 this period is waived or extended with the written consent of all parties or

1 for good cause shown. Violation of this subsection may not be relied on as a
2 basis for the invalidation of an order in any circumstances where that result
3 would prejudice any party other than the agency.

4 (h) The presiding officer shall cause copies of the final order or
5 initial order to be mailed or otherwise delivered to each party within two (2)
6 working days from the time the order is issued.

7
8 29-4-216. Review of Initial Order - Exceptions to Reviewability.

9 (a) The agency head, upon its own motion may, and upon appeal by any
10 party shall, review an initial order, except to the extent that any of the
11 following apply:

12 (1) A provision of law precludes or limits agency review of the
13 initial order; or

14 (2) The agency head, in the exercise of discretion conferred by a
15 provision of law, does any of the following:

16 (A) Determines to review some but not all issues, or not to
17 exercise any review;

18 (B) Delegates its authority to review the initial order to
19 one (1) or more persons; or

20 (C) Authorizes one (1) or more persons to review the
21 initial order, subject to further review by the agency head.

22 (b) Unless otherwise provided by statute, a petition for appeal from an
23 initial order shall be filed with the agency head, or with any person
24 designated for this purpose by rule of the agency, within twenty (20) days
25 after issuance of the initial order or within the lesser time period, that
26 exceeds ten (10) days, as established by rule of the agency. If the agency
27 head on its own motion decides to review an initial order, the agency head
28 shall give written notice of its intention to review the initial order within
29 a time period established by rule of the agency that is no longer than twenty
30 (20) days after its issuance. The time period for a party to file a petition
31 for appeal or for the agency head to give notice of its intention to review an
32 initial order on the agency head's own motion is tolled by the submission of a
33 timely petition for reconsideration of the initial order pursuant to 29-4-218,
34 and a new time period starts to run upon disposition of the petition for
35 reconsideration. If an initial order is subject both to a timely petition for
36 reconsideration and to a petition for appeal or to review by the agency head

1 on its own motion, the petition for reconsideration shall be disposed of
2 first, unless the agency head determines that action on the petition for
3 reconsideration has been unreasonably delayed.

4 (c) The petition for appeal shall state its basis. If the agency head
5 on its own motion gives notice of its intent to review an initial order, the
6 agency head shall identify the issues that it intends to review.

7 (d) The presiding officer for the review of an initial order shall
8 exercise all the decision-making power that the presiding officer would have
9 had to render a final order had the presiding officer presided over the
10 hearing, except to the extent that the issues subject to review are limited by
11 a provision of law or by the presiding officer upon notice to all parties.

12 (e) The presiding officer shall afford each party an opportunity to
13 present briefs and may afford each party an opportunity to present oral
14 argument.

15 (f) Before rendering a final order, the presiding officer may cause a
16 transcript to be prepared, at the agency's expense, of the portions of the
17 proceeding under review as the presiding officer considers necessary.

18 (g) The presiding officer may render a final order disposing of the
19 proceeding or may remand the matter for further proceedings with instructions
20 to the person who rendered the initial order. Upon remanding a matter, the
21 presiding officer may order temporary relief as is authorized and appropriate.

22 (h) A final order or an order remanding the matter for further
23 proceedings shall be rendered in writing within sixty (60) days after receipt
24 of briefs and oral argument unless that period is waived or extended with the
25 written consent of all parties, extended for good cause shown, or extended by
26 rule for that class of cases for an additional period of not longer than
27 thirty (30) days.

28 (i) A final order or an order remanding the matter for further
29 proceedings under this section shall identify any difference between this
30 order and the initial order and shall include, or incorporate by express
31 reference to the initial order, all the matters required by 29-4-215(c).

32 (j) The presiding officer shall cause copies of the final order or
33 order remanding the matter for further proceedings to be mailed or otherwise
34 delivered to each party and to the agency head within two (2) working days
35 after the order is issued.

36

1 29-4-217. Stay.

2 A party may submit to the presiding officer a petition for stay of
3 effectiveness of an initial or final order within twenty (20) days after its
4 rendition unless otherwise provided by statute or stated in the initial or
5 final order. The presiding officer may take action on the petition for stay,
6 either before or after the effective date of the initial or final order. A
7 petition for stay is deemed to have been denied if the presiding officer does
8 not dispose of it within ten (10) days after the filing of the petition.

9
10 29-4-218. Reconsideration.

11 Unless otherwise provided by statute or rule the following apply:

12 (1) Any party, within twenty (20) days after rendition of an initial or
13 final order, may file a petition for reconsideration, stating the specific
14 grounds upon which relief is requested. The filing of the petition is not a
15 prerequisite for seeking administrative or judicial review. A copy of the
16 application for reconsideration shall be timely mailed by the presiding
17 officer to all parties of record not joining in the application;

18 (2) The petition shall be disposed of by the same person or persons who
19 rendered the initial or final order, if available; or

20 (3) The presiding officer shall render a written order denying the
21 petition, granting the petition and dissolving or modifying the initial or
22 final order, or granting the petition and setting the matter for further
23 proceedings. The petition may be granted, in whole or in part, only if the
24 presiding officer states, in the written order, findings of fact, conclusions
25 of law, and policy reasons for the decision if it is an exercise of the
26 agency's discretion, to justify the order. The petition is deemed to have
27 been denied if the presiding officer does not dispose of it within twenty (20)
28 days after the filing of the petition.

29
30 29-4-219. Review by Superior Agency.

31 If, pursuant to statute, an agency may review the final order of another
32 agency, the review is deemed to be a continuous proceeding as if before a
33 single agency. Except to the extent that another statute provides otherwise,
34 the final order of the first agency is treated as an initial order and the
35 second agency functions as though it were reviewing an initial order in
36 accordance with 29-4-216.

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29-4-220. Effectiveness of Orders.

(a) Unless a later date is stated in a final order or a stay is granted, a final order shall be effective twenty (20) days after rendition, except for any of the following:

(1) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the final order;

(2) A final order shall not be invoked for any purpose against any person unless the agency has made the final order available for public inspection and copying or the person has actual knowledge of the final order; and

(3) A final order may become effective on a specified date stated in the order that is earlier than twenty (20) days after its issuance if any of the following exist:

(A) Another statute authorizes the agency to set an earlier effective date for that order;

(B) The order only confers a benefit or relieves a restriction on the parties other than the agency issuing the order; or

(C) The earlier effective date is necessary to avoid an immediate danger to the public health, safety or welfare.

(b) Unless a later date is stated in an initial order or a stay is granted, the time when an initial order becomes a final order in accordance with 29-4-215 is determined as follows:

(1) When the initial order is rendered, if administrative review is unavailable;

(2) When the agency head renders an order stating, after a petition for appeal has been filed, that review will not be exercised, if discretion is available to make a determination to this effect; or

(3) Twenty (20) days after rendition of the initial order, if no party has filed a petition for appeal and the agency head has not given written notice of its intention to exercise review.

(c) Unless a later date is stated in an initial order or a stay is granted, an initial order that becomes a final order in accordance with subsection (b) of 29-4-215 is effective twenty (20) days after becoming a final order, except for any of the following:

1 (1) A party shall not be required to comply with the final order
2 unless the party has been served with or has actual knowledge of the initial
3 order or of an order stating that review will not be exercised; and

4 (2) A initial order shall not be invoked for any purpose against
5 any person unless the agency has made the initial order available for public
6 inspection and copying or the person has actual knowledge of the initial order
7 or of an order stating that review will not be exercised;

8 (3) An initial order that becomes a final order may become
9 effective on a specified date stated in the order that is earlier than twenty
10 (20) days after it becomes a final order if it satisfies the requirements of
11 subdivision (a)(3).

12 (d) For purposes of this section, a party is deemed to have been served
13 when the agency mails the final order to the last known address of the party
14 and the party's attorney, if any.

15 (e) This section does not preclude an agency from taking immediate
16 action to protect the public interest in accordance with 29-4-501.

17
18 29-4-221. Agency Record.

19 (a) An agency shall maintain an official record of each adjudicative
20 proceeding under this Act for a period of at least three (3) years after the
21 later of the date of the final agency decision in that case or the date any
22 proceedings for judicial review of that case became final.

23 (b) The agency record consists only of all of the following:

- 24 (1) Notices of all proceedings;
25 (2) Any pre-hearing order;
26 (3) Any motions, pleadings, briefs, petitions, requests, and
27 intermediate rulings;
28 (4) Evidence received or considered;
29 (5) A statement of matters officially noticed;
30 (6) Proffers of proof and objections and rulings thereon;
31 (7) Proposed findings, requested orders, and exceptions;
32 (8) The record prepared for the presiding officer at the hearing,
33 together with any transcript of all or part of the hearing considered before
34 final disposition of the proceeding;
35 (9) Any final order, initial order, or order on reconsideration;
36 (10) Staff memoranda or data submitted to the presiding officer,

1 unless prepared and submitted by personal assistants and not inconsistent with
2 29-4-213(b); and

3 (11) Matters placed on the record after an ex parte
4 communication.

5 (c) Except to the extent that this Act or another statute provides
6 otherwise, the agency record constitutes the exclusive basis for agency action
7 in adjudicative proceedings under this Chapter and for judicial review
8 thereof.

9
10 SUBCHAPTER 3 - OFFICE OF ADMINISTRATIVE HEARINGS.

11
12 29-4-301. Office of Administrative Hearings - Creation - Powers -
13 Duties.

14 (a) There is created the Office of Administrative Hearings within the
15 Department of Finance and Administration.

16 (b) The office shall employ or contract with administrative law judges
17 as necessary to conduct proceedings required by this Act or other provision of
18 law. Only a person admitted to practice law in this state may be employed as
19 an administrative law judge. Administrative law judges shall not perform
20 duties inconsistent with their duties and responsibilities as administrative
21 law judges and shall not be located in offices within the agencies for which
22 they act as presiding officers. The office shall facilitate, insofar as
23 practicable, specialization by its administrative law judges so that
24 particular judges may become expert in presiding over cases in particular
25 agencies. No administrative law judge who has served as a presiding officer
26 for an agency may appear as a representative of a party before the agency for
27 a period of one (1) year following his last service to the agency as a
28 presiding officer.

29 (c) If the office cannot furnish one (1) of its administrative law
30 judges in response to an agency request, the Director of the Department of
31 Finance and Administration shall designate in writing a full-time employee of
32 an agency other than the requesting agency to serve as administrative law
33 judge for the proceeding, but only with the consent of the employing agency.
34 The designee shall possess the same qualifications required of administrative
35 law judges employed or contracted with by the office.

36 (d) The Director of the Department of Finance and Administration may

1 furnish administrative law judges on a contract basis to any governmental
2 entity to conduct any proceeding not subject to this Act.

3 (e) The office may adopt rules:

4 (1) To establish further qualifications for administrative law
5 judges, procedures by which candidates will be considered for employment or
6 contract, procedures by which candidates for a position as administrative law
7 judge will be considered for employment or contract, and the manner in which
8 public notice of vacancies in the staff of the office will be given;

9 (2) To establish procedures for agencies to request and for the
10 Director of the Department of Finance and Administration to assign
11 administrative law judges; however, an agency may neither select nor reject
12 any individual administrative law judge for any proceeding except in
13 accordance with this Act;

14 (3) To establish procedures and adopt forms, consistent with this
15 Act and other provisions of law, to govern administrative law judges, but any
16 rules adopted under this subsection shall be applicable to a particular
17 adjudicative proceeding only to the extent that they are not inconsistent with
18 the rules of the agency under whose authority that proceeding is conducted;

19 (4) To establish standards and procedures for the evaluation,
20 training, promotion, and discipline of administrative law judges;

21 (5) To establish, consistent with the provisions of this Act, a
22 code of administrative judicial conduct that is similar in function and
23 substantially equivalent to the Arkansas Code of Judicial Conduct, to govern
24 the actions of all persons who act as presiding officers under the authority
25 of 29-4-202(a); and

26 (6) To facilitate the performance of the responsibilities
27 conferred upon the office by this Act.

28 (f) The Director of the Department of Finance and Administration may:

29 (1) Maintain a staff of reporters and other personnel; and

30 (2) Implement the provisions of this section and rules adopted
31 under its authority.

32 (g) The office may charge agencies for services.

33
34 SUBCHAPTER 4 - CONFERENCE ADJUDICATIVE HEARING.

35
36 29-4-401. Conference Adjudicative Hearing - Applicability.

1 An agency may use conference adjudicative proceedings if all of the
2 following apply:

3 (1) The use of those proceedings in the circumstances does not violate
4 any provision of law; and

5 (2) The matter is entirely within one (1) or more categories for which
6 the agency by rule has determined that this section and 29-4-402, 29-4-403 and
7 29-4-601 applies; however, those categories may include only the following:

8 (A) A matter in which there is no disputed issue of material
9 fact; or

10 (B) A matter in which there is a disputed issue of material fact,
11 if the matter involves one (1) or more of the following:

12 (i) A monetary amount of not more than one thousand dollars
13 (\$1,000). In determining whether a matter involves only a monetary amount of
14 one thousand dollars (\$1,000) or less, a presumption arises that, if a
15 claimant prevails on the merits, the claimant will subsequently be qualified
16 for, and entitled to the amount of any periodic payments claimed for the
17 maximum period allowed by law and that claimant may aggregate the amount of
18 those subsequent payments for purposes of determining the monetary amount
19 involved in the matter at issue;

20 (ii) A disciplinary sanction against a licensee which does
21 not involve revocation, suspension, annulment, withdrawal, or amendment of a
22 license, or a reprimand or warning against an occupational or professional
23 licensee which may reasonably be deemed to affect the economic or professional
24 status or reputation of that licensee; or

25 (iii) A matter as to which there is no constitutional or
26 statutory right, prior to the issuance of an order, to an opportunity for an
27 evidentiary hearing that is required to be determined on the record of that
28 proceeding.

29
30 29-4-402. Conference Adjudicative Hearing - Procedures.

31 The procedures of this Act pertaining to formal adjudicative hearings
32 shall apply to a conference adjudicative hearing, except to the following
33 extent:

34 (1) If a matter is initiated as a conference adjudicative hearing, a
35 pre-hearing conference shall not be held.

36 (2) The provisions of 29-4-210 shall not apply to conference

1 adjudicative hearings insofar as those provisions authorize the issuance and
2 enforcement of subpoenas and discovery orders, but shall apply to conference
3 adjudicative hearings insofar as those provisions authorize the presiding
4 officer to issue protective orders at the request of any party or upon the
5 presiding officer's motion.

6 (3) Subdivisions (1), (2), (3) and (5) of 29-4-211 shall not apply
7 except for the following:

8 (A) The presiding officer shall regulate the course of the
9 proceedings;

10 (B) Unless the presiding officer determines otherwise, only the
11 parties may testify and present written exhibits;

12 (C) The parties may offer comments on the issues and cross
13 examine each other with respect to any factual disputes; and

14 (D) Any party, at the party's expense, may cause the hearing to
15 be recorded and transcribed by a certified court reporter.

16 (4) The provisions of 29-4-214 regarding separation of functions shall
17 not apply unless the agency is a party to the conference adjudicative hearing.

18 (5) The provisions of 29-4-215(d), requiring findings of facts to be
19 based exclusively on the evidence or record and other matters officially
20 noticed, and 29-4-221 shall not apply; instead, the provisions of 29-4-601
21 shall apply.

22
23 29-4-403. Conference Adjudicative Hearing - Proposed Proof.

24 (a) If the presiding officer has reason to believe that material facts
25 are in dispute, the presiding officer may require any party to state the
26 identity of the witnesses or other sources through whom the party would
27 propose to present proof if the proceeding were converted to a formal
28 adjudicative hearing, but if disclosure of any fact, allegation, or source is
29 privileged or expressly prohibited by any provision of law, the presiding
30 officer may require the party to indicate that confidential facts,
31 allegations, or sources are involved, but not to disclose the confidential
32 facts, allegations, or sources.

33 (b) If a party has reason to believe that essential facts shall be
34 obtained in order to permit an adequate presentation of the case, the party
35 may inform the presiding officer regarding the general nature of the facts and
36 the sources from which the party would propose to obtain those facts if the

1 proceeding were converted to a formal adjudicative hearing.

2
3 SUBCHAPTER 5 - EMERGENCY AND SUMMARY ADJUDICATIVE PROCEEDINGS.

4
5 29-4-501. Emergency Adjudicative Proceedings.

6 (a) An agency may use emergency adjudicative proceedings in a situation
7 involving an immediate danger to the public health, safety, or welfare
8 requiring immediate agency action.

9 (b) The agency may take only action as is necessary to prevent or avoid
10 the immediate danger to the public health, safety, or welfare that justifies
11 use of emergency adjudication.

12 (c) The agency shall render an order, including a brief statement of
13 findings of fact, conclusions of law, and policy reasons for the decision if
14 it is an exercise of the agency's discretion, to justify the determination of
15 an immediate danger and the agency's decision to take the specific action.

16 (d) The agency shall give notice as is practicable to persons who are
17 required to comply with the order. The order is effective when issued.

18 (e) After issuing an order pursuant to this section, the agency shall
19 proceed as quickly as feasible to complete any proceedings that would be
20 required if the matter did not involve an immediate danger.

21 (f) The agency record consists of any documents regarding the matter
22 that were considered or prepared by the agency. The agency shall maintain
23 these documents as its official record.

24 (g) Unless otherwise required by a provision of law, the agency record
25 need not constitute the exclusive basis for agency action in emergency
26 adjudicative proceedings or for judicial review thereof.

27
28 29-4-502. Summary Adjudicative Proceedings - Applicability.

29 An agency may use summary adjudicative proceedings if all of the
30 following apply:

31 (1) The use of those proceedings in the circumstances does not violate
32 any provision of law;

33 (2) The protection of the public interest does not require the agency
34 to give notice and an opportunity to participate to persons other than the
35 parties; and

36 (3) The matter is entirely within one (1) or more categories for which

1 the agency by rule has determined that this section and 29-4-503 to 29-4-601
2 applies; however, those categories may include only the following:

3 (A) A monetary amount of not more than five hundred dollars
4 (\$500);

5 (B) A reprimand, warning, disciplinary report or other similar
6 sanction without continuing impact against a licensee;

7 (C) The denial of an application after the applicant has
8 abandoned the application;

9 (D) The denial, in whole or in part, of an application if the
10 applicant has an opportunity for administrative review in accordance with 29-
11 4-504;

12 (E) A matter that is resolved on the sole basis of inspections,
13 examinations, or tests;

14 (F) A matter as to which there is no disputed issue of material
15 fact and as to which, even if there were disputed issue of fact, there would
16 be no constitutional or statutory right prior to the issuance of an order, to
17 an opportunity for an evidentiary hearing, required to be determined on the
18 record of that proceeding; or

19 (G) A matter that does not qualify as a conference adjudicative
20 proceeding under 29-4-401(2)(a)-(e) and as to which there is no constitutional
21 or statutory right, prior to the issuance of an order, to an opportunity for
22 an evidentiary hearing that is required to be determined on the record of that
23 proceeding.

24
25 29-4-503. Summary Adjudicative Proceedings - Procedures.

26 (a) The agency head, one (1) or more members of the agency head, one
27 (1) or more administrative law judges assigned by the Office of Administrative
28 Hearings in accordance with 29-4-301, or, unless prohibited by law, one (1) or
29 more other persons designated by the agency head, in the discretion of the
30 agency head, may be the presiding officer. Unless prohibited by law, a person
31 exercising authority over the matter is the presiding officer.

32 (b) If the proceeding involves a monetary matter or a reprimand,
33 warning, disciplinary report, or other sanction:

34 (1) The presiding officer, before taking action, shall give each
35 party an opportunity to be informed of the agency's view of the matter and to
36 explain the party's view of the matter; and

1 (2) The presiding officer, at the time any unfavorable action is
2 taken, shall give each party a brief statement of findings of fact,
3 conclusions of law, and policy reasons for the decision if it is an exercise
4 of the agency's discretion, to justify the action, and a notice of any
5 available administrative review.

6 (c) An order rendered in a proceeding that involves a monetary matter
7 shall be in writing. An order in any other summary adjudicative proceeding
8 may be oral or written.

9 (d) The agency, by reasonable means, shall furnish to each party
10 notification of the order in a summary adjudicative proceeding. Notification
11 shall include at least a statement of the agency's action and a notice of any
12 available administrative review.

13
14 29-4-504. Administrative Review of Summary Adjudicative Proceedings -
15 Applicability.

16 Except to the extent prohibited by any provision of law, an agency, on
17 its own motion, may conduct administrative review of an order resulting from
18 summary adjudicative proceedings, and shall conduct this review upon the
19 written or oral request of a party if the agency receives the request within
20 ten (10) days after furnishing notification under 29-4-503(d).

21
22 29-4-505. Administrative Review of Summary Adjudicative Proceedings -
23 Procedures.

24 Unless otherwise provided by statute:

25 (1) An agency need not furnish notification of the pendency of
26 administrative review to any person who did not request the review, but the
27 agency may not take any action on review less favorable to any party than the
28 original order without giving that party notice and an opportunity to explain
29 that party's view of the matter.

30 (2) The reviewing officer, in the discretion of the agency head, may be
31 any person who could have presided at the summary adjudicative proceeding, but
32 the reviewing officer shall be one who is authorized to grant appropriate
33 relief upon review.

34 (3) The reviewing officer shall give each party an opportunity to
35 explain the party's view of the matter unless the party's view is apparent
36 from the written materials in the file submitted to the reviewing officer.

1 The reviewing officer shall make any inquiries necessary to ascertain whether
2 the proceeding shall be converted to a conference adjudicative hearing or a
3 formal adjudicative hearing.

4 (4) The reviewing officer may render an order disposing of the
5 proceeding in any manner that was available to the presiding officer at the
6 summary adjudicative proceeding or the reviewing officer may remand the matter
7 for further proceedings, with or without conversion to a conference
8 adjudicative hearing or a formal adjudicative hearing.

9 (5) If the order under review is or should have been in writing, the
10 order on review shall be in writing, including a brief statement of findings
11 of fact, conclusions of law, and policy reasons for the decision if it is an
12 exercise of the agency's discretion, to justify the order, and a notice of any
13 further available administrative review.

14 (6) A request for administrative review is deemed to have been denied
15 if the reviewing officer does not dispose of the matter or remand it for
16 further proceedings within twenty (20) days after the request is submitted.

17
18 SUBCHAPTER 6. CONFERENCE AND SUMMARY ADJUDICATIVE PROCEEDING RECORDS.

19
20 29-4-601. Agency Record of Conference and Summary Adjudicative
21 Proceedings and Administrative Review.

22 (a) The agency record consists of any documents regarding the matter
23 that were submitted by a party to, or were considered or prepared by the
24 presiding officer for, that conference or summary adjudicative proceeding or
25 by the presiding or reviewing officer for any subsequent agency review. The
26 agency shall maintain these documents as its official record.

27 (b) Unless otherwise required by a provision of law, the agency record
28 may not constitute the exclusive basis for agency action in summary
29 adjudicative proceedings or for judicial review thereof.

30
31
32 CHAPTER 5. JUDICIAL REVIEW AND CIVIL ENFORCEMENT.

33
34 SUBCHAPTER 1. JUDICIAL REVIEW.

35
36 29-5-101. Exclusivity of Judicial Review Provisions - Relationship

1 Between this Act and Other Law on Judicial Review and Other Judicial Remedies.

2 This Act establishes the exclusive means of judicial review of agency
3 action, except for any of the following:

4 (1) The provisions of this Act for judicial review shall not apply to
5 litigation in which the sole issue is a claim for money damages or
6 compensation and the agency whose action is at issue does not have statutory
7 authority to determine the claim.

8 (2) The provisions of this Act for judicial review shall not apply to
9 decisions of the Arkansas Department of Finance and Administration relating to
10 tax matters under § 26-18-406 and driver's license matters under § 27-16-907.

11 (3) Ancillary procedural matters, including intervention, class
12 actions, consolidation, joinder, severance, transfer, protective orders, and
13 other relief from disclosure of privileged or confidential material, are
14 governed, to the extent not inconsistent with this Act, by other applicable
15 law.

16 (4) If the relief available under other sections of this Act is not
17 equal or substantially equivalent to the relief otherwise available under law,
18 the relief otherwise available and the related procedures supersede and
19 supplement this Act to the extent necessary for their effectuation. The
20 applicable provisions of this Act and other law shall be combined to govern a
21 single proceeding or, if the court orders, two (2) or more separate
22 proceedings, with or without transfer to other courts, but no type of relief
23 may be sought in a combined proceeding after expiration of the time limit for
24 doing so.

25
26 29-5-102. Final Agency Action Reviewable.

27 (a) A person who qualifies under this Act regarding standing in 29-5-
28 106, exhaustion of administrative remedies in 29-5-107, and time for filing
29 the petition for review in 29-5-108, and other applicable provisions of law
30 regarding bond, compliance, and other pre-conditions is entitled to judicial
31 review of final agency action, whether or not the person has sought judicial
32 review of any related non-final agency action.

33 (b) For purposes of this subchapter:

34 (1) 'Final agency action' means the whole or a part of any agency
35 action other than non-final agency action;

36 (2) 'Non-final agency action' means the whole or a part of an

1 agency determination, investigation, proceeding, hearing, conference, or other
2 process that the agency intends or is reasonably believed to intend to be
3 preliminary, preparatory, procedural, or intermediate with regard to
4 subsequent agency action of that agency or another agency.

5
6 29-5-103. Non-final Agency Action Reviewable.

7 A person is entitled to judicial review of non-final agency action only
8 if all of the following apply:

9 (1) It appears likely that the person will qualify under 29-5-102 for
10 judicial review of the related final agency action; and

11 (2) Postponement of judicial review would result in an inadequate
12 remedy or irreparable harm disproportionate to the public benefit derived from
13 postponement.

14
15 29-5-104. Jurisdiction - Venue.

16 (a) The circuit court shall conduct judicial review.

17 (b) Venue is in Pulaski County or the county where the petitioner
18 resides or maintains a principal place of business, unless otherwise provided
19 by law. When a proceeding for judicial review has been commenced, a court
20 may, in the interest of justice, transfer the proceeding to the circuit court
21 for another county.

22
23 29-5-105. Form of Action - Service - Contents of Petition.

24 Judicial review is initiated by filing a petition for review in the
25 appropriate circuit court. A petition may seek any type of relief available
26 under 29-5-101(3) and 29-5-117.

27
28 29-5-106. Standing.

29 (a) The following persons have standing to obtain judicial review of
30 final or non-final agency action:

31 (1) A person to whom the agency action is specifically directed;

32 (2) A person who was a party, or in privity to a party, to the
33 agency proceedings that led to the agency action;

34 (3) If the challenged agency action is a rule, a person subject
35 to that rule or an association whose members are subject to that rule;

36 (4) A person eligible for standing under another provision of

1 law; or

2 (5) A person otherwise aggrieved or adversely affected by the
3 agency action. For purposes of this subsection, a person shall not have
4 standing as one otherwise aggrieved or adversely affected unless all of the
5 following apply:

6 (A) The agency action has prejudiced or is likely to
7 prejudice that person;

8 (B) That person's asserted interests are arguably among
9 those that the agency was required by law to consider when it engaged in the
10 agency action challenged; and

11 (C) A judgment in favor of that person would substantially
12 eliminate or redress the prejudice to that person caused or likely to be
13 caused by the agency action.

14 (b) The Administrative Rules Review Committee of the General Assembly,
15 which is required to exercise general and continuing oversight over
16 administrative rules, may petition for judicial review of any rule.

17
18 29-5-107. Exhaustion of Administrative Remedies.

19 A person may file a petition for judicial review under this Act only
20 after exhausting all administrative remedies available within the agency whose
21 action is being challenged and within any other agency authorized to exercise
22 administrative review, except for any of the following:

23 (1) A petitioner for judicial review of a rule need not have
24 participated in the rule-making proceeding upon which that rule is based, or
25 have petitioned for its amendment or repeal;

26 (2) A petitioner for judicial review need not exhaust administrative
27 remedies to the extent that this Act or any other statute states that
28 exhaustion is not required; or

29 (3) The court may relieve a petitioner of the requirement to exhaust
30 any or all administrative remedies, to the extent that the administrative
31 remedies are inadequate, or requiring their exhaustion would result in
32 irreparable harm disproportionate to the public benefit derived from requiring
33 exhaustion.

34
35 29-5-108. Time for Filing Petition for Review.

36 Subject to other requirements of this Act or of another statute:

1 (1) A petition for judicial review of a rule may be filed at any time,
2 except as limited by 29-3-113(b).

3 (2) A petition for judicial review of an order is not timely unless
4 filed within thirty (30) days after rendition of the order, but the time is
5 extended during the pendency of the petitioner's timely attempts to exhaust
6 administrative remedies, if the attempts are not clearly frivolous or
7 repetitious.

8 (3) A petition for judicial review of agency action other than a rule
9 or order is not timely unless filed within thirty (30) days after the agency
10 action, but the time is extended if any of the following apply:

11 (A) During the pendency of the petitioner's timely attempts to
12 exhaust administrative remedies, if the attempts are not clearly frivolous or
13 repetitious; and

14 (B) During any period that the petitioner did not know and was
15 under no duty to discover, or did not know and was under a duty to discover
16 but could not reasonably have discovered, that the agency had taken the action
17 or that the agency action had a sufficient effect to confer standing upon the
18 petitioner to obtain judicial review under this Act.

19
20 29-5-109. Petition for Review - Filing and Contents.

21 (a) A petition for review shall be filed with the clerk of the circuit
22 court and shall name the agency as respondent.

23 (b) A petition for review shall set forth all of the following:

24 (1) The name and mailing address of the petitioner;

25 (2) The name and mailing address of the agency whose action is at
26 issue;

27 (3) Identification of the specific agency action at issue,
28 together with a duplicate copy, summary, or brief description of the agency
29 action;

30 (4) Identification of persons who were parties in any
31 adjudicative proceedings that led to the agency action;

32 (5) Facts to demonstrate that the petitioner is entitled to
33 obtain judicial review;

34 (6) Facts on which venue is based;

35 (7) The specific grounds on which relief is sought and the
36 petitioner's reasons for believing that relief should be granted; and

1 (8) A request for relief, specifying the type and extent of
2 relief requested.

3 (c) A petition for review that is in substantial compliance with the
4 requirements of this Section shall not be dismissed solely for failure to
5 satisfy its requirements.

6
7 29-5-110. Petition for Review - Service and Notification.

8 (a) Within ten (10) days after the filing of a petition for judicial
9 review of agency action, the petitioner shall serve a file stamped copy of the
10 petition upon the agency in the manner provided by the Arkansas Rules of Civil
11 Procedure for the personal service of an original notice or shall mail a file
12 stamped copy of the petition to the agency by restricted certified mail.

13 (b) Within ten (10) days after the filing of a petition for judicial
14 review of agency action in an adjudicative proceeding, the petitioner shall
15 also give notice of the petition for review to each other party of record in
16 that adjudicative proceeding either by serving a file stamped copy of the
17 petition upon that party in the manner provided by the Arkansas Rules of Civil
18 Procedure for the personal service of an original notice or by restricted
19 certified mail.

20 (c) The personal service or mailing requirements of this section shall
21 be jurisdictional and may be made on the party or the party's attorney of
22 record in the proceeding before the agency. A mailing shall be addressed to
23 the parties or their attorneys of record at their last known mailing address.
24 Proof of mailing shall be by the return receipt from the restricted certified
25 mail.

26 (d) Any party of record in an adjudicative proceeding before an agency
27 who wishes to intervene and participate in the judicial review proceedings
28 shall file an appearance in the court indicating that intention within forty-
29 five (45) days from the date the petition is filed.

30
31 29-5-111. Stay and Other Temporary Remedies Pending Final Disposition.

32 (a) Unless precluded by law, the agency may grant a stay on appropriate
33 terms or other temporary remedies during the pendency of judicial review.

34 (b) A party may file a motion in the reviewing court, during the
35 pendency of judicial review, seeking interlocutory review of the agency's
36 action on an application for stay or other temporary remedies.

1 (c) If the agency has found that its action on an application for stay
2 or other temporary remedies is justified to protect against a substantial
3 threat to the public health, safety, or welfare, the court may grant relief
4 only upon a finding that all of the following apply:

5 (1) The applicant is likely to prevail when the court finally
6 disposes of the matter;

7 (2) Without relief the applicant will suffer irreparable injury;

8 (3) The grant of relief to the applicant will not substantially
9 harm other parties to the proceedings; and

10 (4) The type of threat to the public health, safety, or welfare
11 relied on by the agency is not sufficiently serious to justify the agency's
12 action in the circumstances.

13 (d) If subsection (c) does not apply, the court shall grant relief if
14 it finds, in its independent judgment, that the agency's action on the
15 application for stay or other temporary remedies was unreasonable in the
16 circumstances.

17 (e) If the court determines that relief should be granted from the
18 agency's action on an application for stay or other temporary remedies, the
19 court may remand the matter to the agency with directions to deny a stay, to
20 grant a stay on appropriate terms, or to grant other temporary remedies, or
21 the court may issue an order denying a stay, granting a stay on appropriate
22 terms, or granting other temporary remedies.

23
24 29-5-112. Limitation on New Issues.

25 A person may obtain judicial review of an issue that was not raised
26 before the agency, only to the extent of any of the following:

27 (1) The agency did not have authority to grant an adequate remedy based
28 on a determination of the issue involved because the issue or remedy was not
29 within the jurisdiction of the agency;

30 (2) The person did not know and was under no duty to discover, or did
31 not know and was under a duty to discover but could not reasonably have
32 discovered, facts giving rise to the issue;

33 (3) The agency action subject to judicial review is a rule and the
34 person is challenging only the validity of that rule and has not been a party
35 in adjudicative proceedings which provided an adequate opportunity to raise
36 the issue;

1 (4) The agency action subject to judicial review is an order and the
2 person was not notified of the adjudicative proceeding in compliance with any
3 provision of law or was notified but was not permitted to participate in that
4 adjudicative proceeding; or

5 (5) The interests of justice would be served by judicial resolution of
6 an issue arising from any of the following:

7 (A) A change in controlling law occurring after the agency
8 action; or

9 (B) Agency action occurring after the person exhausted the last
10 feasible opportunity for seeking relief from the agency.

11
12 29-5-113. Judicial Review of Facts Confined to Record for Judicial
13 Review and Additional Evidence Taken Pursuant to Act.

14 Judicial review of disputed issues of fact shall be confined to the
15 agency record for judicial review as defined in this Act, supplemented by
16 additional evidence taken pursuant to this Act.

17
18 29-5-114. New Evidence Taken by Court or Agency Before Final
19 Disposition.

20 (a) The court may receive evidence, in addition to that contained in
21 the agency record for judicial review, only if it relates to the validity of
22 the agency action at the time it was taken and is needed to decide disputed
23 issues regarding any of the following:

24 (1) Improper constitution as a decision-making body, or improper
25 motive or grounds for disqualification, of those taking the agency action;

26 (2) Unlawfulness of procedure or of decision-making process; or

27 (3) Any material fact that was not required by any provision of
28 law to be determined exclusively on an agency record of a type reasonably
29 suitable for judicial review.

30 (b) The court may remand a matter to the agency, before final
31 disposition of a petition for review, with directions that the agency conduct
32 fact-finding and other proceedings the court considers necessary and that the
33 agency take further action on the basis thereof as the court directs, if any
34 of the following apply:

35 (1) The agency was required by this Act or any other provision of
36 law to base its action exclusively on a record of a type reasonably suitable

1 for judicial review, but the agency failed to prepare or preserve an adequate
2 record;

3 (2) The court finds that all of the following apply:

4 (A) New evidence has become available that relates to the
5 validity of the agency action at the time it was taken, that one (1) or more
6 of the parties did not know and was under no duty to discover, or did not know
7 and was under a duty to discover but could not reasonably have discovered,
8 until after the agency action; and

9 (B) The interests of justice would be served by remand to
10 the agency;

11 (3) The agency improperly excluded or omitted evidence from the
12 record; or

13 (4) A relevant provision of law changed after the agency action
14 and the court determines that the new provision may control the outcome.

15
16 29-5-115. Agency Record for Judicial Review-Contents - Preparation -
17 Transmittal - Cost.

18 (a) Within ninety (90) days after service of the petition, or within
19 further time allowed by the court or by other provision of law, the agency
20 shall transmit to the court the original or a certified copy of the agency
21 record for judicial review of the agency action, consisting of any agency
22 documents expressing the agency action, other documents identified by the
23 agency as having been considered by it before its action and used as a basis
24 for its action, and any other material described in this Act as the agency
25 record for the type of agency action at issue, subject to the provisions of
26 this section.

27 (b) If part of the record has been preserved without a transcript, the
28 agency shall prepare a transcript for inclusion in the record transmitted to
29 the court, except for portions that the parties stipulate to omit in
30 accordance with subsection (d).

31 (c) The agency may charge the petitioner with the reasonable cost of
32 preparing any necessary copies and transcripts for transmittal to the court. A
33 failure by the petitioner to pay any of this cost to the agency does not
34 relieve the agency from the responsibility for timely preparation of the
35 record and transmittal to the court.

36 (d) By stipulation of all parties to the review proceedings, the record

1 may be shortened, summarized, or organized.

2 (e) The court may tax the cost of preparing transcripts and copies for
3 the record in accordance with any of the following:

4 (1) Against a party who unreasonably refuses to stipulate to
5 shorten, summarize, or organize the record;

6 (2) As provided by 29-5-117; or

7 (3) In accordance with any other provision of law.

8 (f) Additions to the record pursuant to 29-5-114 shall be made as
9 ordered by the court.

10 (g) The court may require or permit subsequent corrections or additions
11 to the record.

12
13 29-5-116. Scope of Review - Grounds for Invalidity.

14 (a) Except to the extent that this Act or another statute provides
15 otherwise, in suits for judicial review of agency action, all of the following
16 apply:

17 (1) The burden of demonstrating the invalidity of agency action
18 is on the party asserting invalidity; and

19 (2) The validity of agency action shall be determined in
20 accordance with the standards of review provided in this section, as applied
21 to the agency action at the time it was taken.

22 (b) The court shall make a separate and distinct ruling on each
23 material issue on which the court's decision is based.

24 (c) The court shall grant relief from agency action if it determines
25 that substantial rights of the person seeking judicial relief have been
26 prejudiced because the agency action is any of the following:

27 (1) Unconstitutional on its face or as applied or is based upon a
28 provision of law that is unconstitutional on its face or as applied;

29 (2) Beyond the authority delegated to the agency by any provision
30 of law or in violation of any provision of law;

31 (3) Based upon an erroneous interpretation of a provision of law
32 whose interpretation has not clearly been vested in the discretion of the
33 agency by a provision of law;

34 (4) Based upon an erroneous application of law to fact that has
35 not clearly been vested in the discretion of the agency by a provision of law;

36 (5) Based upon a procedure or decision-making process prohibited

1 by law;

2 (6) Was taken without following the prescribed procedure or
3 decision-making process;

4 (7) The product of decision-making undertaken by persons who were
5 improperly constituted as a decision-making body, or motivated by an improper
6 purpose, or were subject to disqualification;

7 (8) Based upon a determination of fact clearly vested in the
8 discretion of the agency by a provision of law that is not supported by
9 substantial evidence in the record before the court when that record is viewed
10 as a whole. For purposes of this subsection the following terms have the
11 following meanings:

12 (A) 'Substantial evidence' means the quantity and quality
13 of evidence that would be deemed sufficient by a neutral, detached, and
14 reasonable person to establish the fact at issue when the consequences
15 resulting from the establishment of that fact are understood to be serious and
16 of great importance;

17 (B) 'Record before the court' means the agency record for
18 judicial review, as defined by this Act, supplemented by any additional
19 evidence received by the court under the provisions of this Act;

20 (C) 'When that record is viewed as a whole' means that the
21 adequacy of the evidence in the record before the court to support a
22 particular finding of fact shall be judged in light of all of the relevant
23 evidence in the record that detracts from that finding as well as all of the
24 relevant evidence that supports it, including any determinations of veracity
25 by the presiding officer who personally observed the demeanor of the witnesses
26 and the agency's explanation of why the evidence in the record supports its
27 finding of fact and why the evidence in the record that is contrary to its
28 finding does not preclude that finding;

29 (8) Action other than a rule that is inconsistent with a rule of
30 the agency;

31 (9) Action other than a rule that is inconsistent with the
32 agency's prior practice or precedents, unless the agency has justified the
33 inconsistency by stating credible reasons sufficient to indicate a fair and
34 rational basis for the inconsistency;

35 (10) The product of reasoning that is so illogical as to render
36 it wholly irrational;

1 (11) The product of a decision-making process in which the agency
2 did not consider a relevant and important matter relating to the propriety or
3 desirability of the action in question that a rational decision maker in
4 similar circumstances would have considered prior to taking that action;

5 (12) Not required by law and its negative impact on the private
6 rights affected is so grossly disproportionate to the benefits accruing to the
7 public interest from that action that it lacks any foundation in rational
8 agency policy;

9 (13) Based on an irrational, illogical, or wholly unjustifiable
10 interpretation of a provision of law whose interpretation has clearly been
11 vested in the discretion of the agency by a provision of law;

12 (14) Based on an irrational, illogical, or wholly unjustifiable
13 application of law to fact that has clearly been vested in the discretion of
14 the agency by a provision of law; or

15 (15) Otherwise unreasonable, arbitrary, capricious, or an abuse
16 of discretion.

17 (d) In making the determinations required by subsection (c), the court:

18 (1) Shall not give any deference to the view of the agency that
19 the whole or portion of a rule is within the procedural or substantive
20 authority delegated to the agency;

21 (2) Shall not give any deference to the view of the agency with
22 respect to whether particular matters have been vested in the discretion of
23 the agency by a provision of law;

24 (3) Shall not give any deference to the view of the agency with
25 respect to particular matters that have not been vested in the discretion of
26 the agency by a provision of law; and

27 (4) Shall give appropriate deference to the view of the agency
28 with respect to particular matters that have been vested in the discretion of
29 the agency by a provision of law.

30
31 §29-5-117. Type of Relief.

32 (a) The court may award damages or compensation only to the extent
33 expressly authorized by another provision of law.

34 (b) The court may grant other appropriate relief, whether mandatory,
35 injunctive, or declaratory; preliminary or final; temporary or permanent;
36 equitable or legal. In granting relief, the court may order agency action

1 required by law, order agency exercise of discretion required by law, set
2 aside or modify agency action, enjoin or stay the effectiveness of agency
3 action, remand the matter for further proceedings, render a declaratory
4 judgment, or take any other action that is authorized and appropriate.

5 (c) The court may also grant necessary ancillary relief to redress the
6 effects of official action wrongfully taken or withheld, but the court may
7 award attorneys' fees or witness fees only to the extent expressly authorized
8 by other law.

9 (d) If the court sets aside or modifies agency action or remands the
10 matter to the agency for further proceedings, the court may make any
11 interlocutory order it finds necessary to preserve the interests of the
12 parties and the public pending further proceedings or agency action.

13
14 29-5-118. Review by Higher Court.

15 Decisions on petitions for review of agency action are reviewable by the
16 Supreme Court or Court of Appeals as in other civil cases.

17
18 SUBCHAPTER 2. CIVIL ENFORCEMENT.

19
20 29-5-201. Petition by Agency for Civil Enforcement of Rule or Order.

21 (a) In addition to other remedies provided by law, an agency may seek
22 enforcement of its rule or order by filing a petition for civil enforcement in
23 the circuit court.

24 (b) The petition shall name, as defendants, each alleged violator
25 against whom the agency seeks to obtain civil enforcement.

26 (c) Venue shall be in the circuit court for the county in which the
27 defendant resides or has its principal place of business, or with the consent
28 of the defendant, in Pulaski County Circuit Court. When a proceeding for
29 enforcement has been commenced, the court may, in the interest of justice,
30 transfer the proceeding to a circuit court in another county.

31 (d) A petition for civil enforcement filed by an agency may request,
32 and the court may grant, declaratory relief, temporary or permanent injunctive
33 relief, any other civil remedy provided by law, or any combination of the
34 foregoing.

35
36 29-5-202. Petition by Qualified Person for Civil Enforcement of

1 Agency's Order.

2 (a) Any person authorized by constitution or statute to seek judicial
3 enforcement of an order of a specified agency, and any person who would
4 qualify under this Act as having standing to obtain judicial review of an
5 agency's failure to enforce its order, may file a petition for civil
6 enforcement of that order, but the action shall not be commenced until any of
7 the following circumstances:

8 (1) Until at least sixty (60) days after the petitioner has given
9 notice of the alleged violation and of the petitioner's intent to seek civil
10 enforcement to the agency head concerned, to the Arkansas Attorney General,
11 and to each alleged violator against whom the petitioner seeks civil
12 enforcement;

13 (2) If the agency has filed and is diligently prosecuting a
14 petition for civil enforcement of the same order against the same defendant;
15 or

16 (3) If a petition for review of the same order has been filed and
17 is pending in court.

18 (b) The petition shall name, as defendants, the agency whose order is
19 sought to be enforced and each alleged violator against whom the petitioner
20 seeks civil enforcement.

21 (c) The agency whose order is sought to be enforced may move to dismiss
22 on the grounds that the petition fails to qualify under this section or that
23 enforcement would be contrary to the policy of the agency. The court shall
24 grant the motion to dismiss unless the petitioner demonstrates that:

25 (1) The petition qualifies under this section; and

26 (2) The agency's failure to enforce its order is based on an
27 exercise of discretion that is improper on one (1) or more of the grounds
28 provided in 29-5-116(c)(9).

29 (d) Except to the extent expressly authorized by any provision of law,
30 a petition for civil enforcement filed under this section shall not request,
31 and the court shall not grant any monetary payment apart from taxable costs.

32

33 29-5-203. Defenses - Limitation on New Issues and New Evidence.

34 Other than as provided in subsection (4) below, a defendant, who would
35 be qualified under 29-5-106(a), 29-5-107, and 29-5-108 to do so in a
36 proceeding for judicial review, may assert, in a proceeding for civil

1 enforcement any of the following:

2 (1) That the rule or order sought to be enforced is invalid on any of
3 the grounds stated in 29-5-116. If that defense is raised, the court may
4 consider issues and receive evidence only within the limitations provided by
5 29-5-112, 29-5-113, and 29-5-114; and

6 (2) Any of the following defenses on which the court, to the extent
7 necessary for the determination of the matter, may consider new issues or take
8 new evidence:

9 (A) The rule or order does not apply to the party;

10 (B) The party has not violated the rule or order;

11 (C) The party has violated the rule or order but has subsequently
12 complied; or

13 (D) Any other defense allowed by law.

14 (3) A party who establishes this defense is not necessarily relieved
15 from any sanction provided by law for past violations.

16 (4) A defendant may not assert in a proceeding for civil enforcement,
17 any issue or defense that:

18 (A) was raised in a prior proceeding for judicial review and
19 decided adversely to him;

20 (B) the defendant failed to raise in a prior proceeding for
21 judicial review unless the standards of 29-5-112 are met; or

22 (C) If there has been no prior proceeding for judicial review,
23 could have been raised by the defendant in a proceeding for judicial review
24 unless the standards of 29-5-112 are met.

25
26 29-5-204. Incorporation of Certain Provisions on Judicial Review.

27 Proceedings for civil enforcement are governed by the following
28 provisions of this Act on judicial review, as modified where necessary to
29 adapt them to those proceedings:

30 (1) 29-5-101(2); and

31 (2) 29-5-115.

32
33 29-5-205. Review by Higher Court.

34 Decisions on petitions for civil enforcement are reviewable by the
35 Supreme Court or Court of Appeals as in other civil cases."

36

1 SECTION 3. Section 26-18-405(a)(3) of the Arkansas Code, which relates
2 to an exemption from the Administrative Procedure Act for tax hearings, is
3 hereby amended to read as follows:

4 "(3) The hearings on written and oral protests and determinations made
5 by the hearing officer shall not be subject to the provisions of the Arkansas
6 Administrative Procedure Act, ~~§ 25-15-201 et seq.~~ beginning at 29-1-101."
7

8 SECTION 4. Section 26-18-406 of the Arkansas Code, which relates to
9 judicial relief from tax assessments and denials of claims for tax refunds, is
10 hereby amended to add a new subsection to read as follows:

11 "(f) The right to judicial relief under this section shall not be
12 subject to the provisions of the Arkansas Administrative Procedure Act,
13 beginning at 29-1-101."
14

15 SECTION 5. Section 26-18-601(e)(3) of the Arkansas Code, which relates
16 to licenses, permits, or registrations issued by the Arkansas Department of
17 Finance and Administration, is hereby amended to read as follows:

18 "(3) The hearings and determinations of the hearing officer concerning
19 the issuance, extension, cancellation or reinstatement of any license, permit
20 or registration under this section shall not be subject to the provisions of
21 the Arkansas Administrative Procedure Act, ~~§ 25-15-201 et seq.~~ beginning at
22 29-1-101."
23

24 SECTION 6. Section 26-18-602 of the Arkansas Code, which relates to
25 judicial relief from decisions of the Arkansas Department of Finance and
26 Administration concerning the issuance, extension, cancellation or
27 reinstatement of any license, permit or registration, is hereby amended to add
28 a new subsection, to be subsection (d), to read as follows:

29 "(d) The right to judicial relief under this section shall not be
30 subject to the provisions of the Arkansas Administrative Procedure Act, ~~§ 25-~~
31 ~~15-201 et seq.~~ beginning at 29-1-101."
32

33 SECTION 7. Section 27-16-907(d) of the Arkansas Code, which relates to
34 an exemption from the Administrative Procedure Act for driver's license
35 hearings, is hereby amended to read as follows:

36 "(d) Hearings conducted by the Office of Driver Services under this

1 section shall not be subject to the Arkansas Administrative Procedure Act, §
2 ~~25-15-201 et seq.~~ beginning at 29-1-101."

3
4 SECTION 8. Section 27-16-913 of the Arkansas Code, which relates to
5 judicial relief from a decision of the Office of Driver Services, is hereby
6 amended to add a new subsection, to be subsection (e), to read as follows:

7 "(e) The right to judicial relief under this section shall not be
8 subject to the provisions of the Arkansas Administrative Procedure Act, ~~§ 25-~~
9 ~~15-201 et seq.~~ beginning at 29-1-101."

10
11 SECTION 9. All references to the Arkansas Administrative Procedure Act
12 currently in the Arkansas Code shall reference a provision in the Revised
13 Administrative Procedure Act, beginning at 29-1-101.

14
15 SECTION 10. The Arkansas Code Revision Commission is hereby instructed
16 to correct all references to the Arkansas Administrative Procedure Act, § 25-
17 15-201 et seq. in the Arkansas Code.

18
19 SECTION 11. The Department of Finance and Administration shall provide
20 a mechanism for agencies to access a copy of this Act by January 1, 2000.

21
22 SECTION 12. This Act shall be effective as follows:

23 (a) In order to provide for publication of the Administrative Bulletin
24 and the Administrative Code and to provide assistance to agencies in meeting
25 the requirements of this Act as soon as possible after January 1, 2000,
26 Arkansas Code Annotated §§ 29-2-101 and 29-2-105 shall become effective
27 ninety-one (91) days after adjournment of the Regular Session of the 82nd
28 General Assembly. The remainder of the Act shall become effective January 1,
29 2000, except to the extent specified in subsections (b), (c), and (d) of this
30 Section.

31 (b) The former Arkansas Code Annotated § 25-15-101 et seq. shall
32 continue to govern all agency proceedings and all proceedings for judicial
33 review or civil enforcement of agency action commenced before January 1, 2000.

34 (c) Proceedings for judicial review or civil enforcement of agency
35 action commenced after January 1, 2000 that relate to agency proceedings
36 commenced prior to January 1, 2000, shall be governed by Chapter 5 of this Act

1 and by the former Arkansas Code Annotated §§ 25-15-101 through 25-15-204, 25-
2 15-206 through 25-15-211, and 25-15-213 through 25-15-214.

3 (d) Subsections (b) and (c) to the contrary notwithstanding, this Act
4 shall govern agency proceedings conducted on a remand from a court or another
5 agency after January 1, 2000.

6 (e) This Act shall govern all agency proceedings, and all proceedings
7 for judicial review or civil enforcement of agency action, commenced after
8 January 1, 2000.

9
10 SECTION 13. All references to the Arkansas Administrative Procedure Act
11 currently in the Arkansas Code shall reference a provision in the Revised
12 Administrative Procedure Act, beginning at 29-1-101.

13
14 SECTION 14. The Arkansas Code Revision Commission is hereby instructed
15 to correct all references to the Arkansas Administrative Procedure Act, § 25-
16 15-201 et seq. in the Arkansas Code.

17
18 SECTION 15. The Department of Finance and Administration shall provide
19 a mechanism for agencies to access a copy of this Act by January 1, 2000.

20
21 SECTION 16. This Act shall become effective on January 1, 2000, and
22 shall not govern proceedings pending on that date, except for A.C.A. §§ 29-2-
23 101 and 29-2-105. Arkansas Code Annotated §§ 29-2-101 and 29-2-105 shall
24 become effective ninety-one (91) days after adjournment of the General
25 Assembly. This Act governs all agency proceedings, and all proceedings for
26 judicial review or civil enforcement of agency action, commenced after that
27 date. This Act also governs agency proceedings conducted on a remand from a
28 court or another agency after the effective date of this Act.

29
30 SECTION 17. Arkansas Code Title 25, Chapter 15, Subchapter 2 is hereby
31 repealed.

32 ~~§ 25-15-201. Title.~~

33 ~~This subchapter shall be known and cited as the "Arkansas Administrative~~
34 ~~Procedure Act".~~

35 ~~§ 25-15-202. Definitions.~~

36 ~~As used in this subchapter, unless the context otherwise requires:~~

1 ~~(1) "Agency" means each board, commission, department, officer, or~~
2 ~~other authority of the government of the State of Arkansas, whether or not~~
3 ~~within, or subject to review by, another agency, except the General Assembly,~~
4 ~~the courts, and Governor;~~

5 ~~(A) The word "agency" shall include the Child Care Facility~~
6 ~~Review Board;~~

7 ~~(B) The word "agency" shall not include the Arkansas Public~~
8 ~~Service Commission, the Commission on Pollution Control and Ecology, and the~~
9 ~~Workers' Compensation Commission, the Employment Security Department, it being~~
10 ~~determined by the General Assembly that the existing laws governing those~~
11 ~~agencies provide adequate administrative procedures for those agencies;~~

12 ~~(C) Nothing in this subchapter shall be construed to repeal~~
13 ~~delegations of authority as provided by law;~~

14 ~~(2) "Person" means any individual, partnership, corporation,~~
15 ~~association, or public or private organization of any character;~~

16 ~~(3) "Party" means any person or agency named or admitted as a party, or~~
17 ~~properly seeking and entitled as of right to be admitted as a party, in any~~
18 ~~agency proceeding;~~

19 ~~(4) "Rule" means any agency statement of general applicability and~~
20 ~~future effect that implements, interprets, or proscribes law or policy, or~~
21 ~~describes the organization, procedure, or practice of any agency;~~

22 ~~(5) "Rule making" means agency process for the formulation, amendment,~~
23 ~~or repeal of a rule;~~

24 ~~(6) "Order" means the final disposition of an agency in any matter~~
25 ~~other than rule making, including licensing and rate making, in which the~~
26 ~~agency is required by law to make its determination after notice and hearing;~~

27 ~~(7) "Adjudication" means agency process for the formulation of an~~
28 ~~order;~~

29 ~~(8) "License" includes any agency permit, certificate, approval,~~
30 ~~registration, charter, or similar form of permission required by law;~~

31 ~~(9) "Licensing" means any agency process respecting the grant, denial,~~
32 ~~renewal, revocation, suspension, annulment, withdrawal, limitation, or~~
33 ~~amendment of a license.~~

34
35 ~~§ 25-15-203. Rules - Required rules - Public inspection.~~

36 ~~(a) In addition to other rule making requirements imposed by law, each~~

1 ~~agency shall:~~

2 ~~(1) Adopt as a rule a description of its organization, stating~~
3 ~~the general course and method of its operations, including the methods whereby~~
4 ~~the public may obtain information or make submissions or requests;~~

5 ~~(2) Adopt rules of practice setting forth the nature and~~
6 ~~requirements of all formal and informal procedures available, including a~~
7 ~~description of all forms and instructions used by the agency;~~

8 ~~(3) Make available for public inspection all rules and all other~~
9 ~~written statements of policy or interpretations formulated, adopted, or used~~
10 ~~by the agency in the discharge of its functions;~~

11 ~~(4) Make available for public inspection all orders, decisions,~~
12 ~~and opinions.~~

13 ~~(b) No agency rule, order, or decision shall be valid or effective~~
14 ~~against any person or party, nor may it be invoked by the agency for any~~
15 ~~purpose, until it has been filed and made available for public inspection as~~
16 ~~required in this subchapter. This provision shall not apply in favor of any~~
17 ~~person or party with actual knowledge of an agency order or decision.~~

18

19 ~~§ 25-15-204. Rules - Procedure for adoption.~~

20 ~~(a) Prior to the adoption, amendment, or repeal of any rule, the agency~~
21 ~~shall:~~

22 ~~(1) Give at least thirty (30) days' notice of its intended~~
23 ~~action. The thirty-day period shall begin on the first day of the publication~~
24 ~~of notice.~~

25 ~~(A) The notice shall include a statement of the terms or~~
26 ~~substance of the intended action, or a description of the subjects and issues~~
27 ~~involved, and the time, the place where, and the manner in which interested~~
28 ~~persons may present their views thereon.~~

29 ~~(B) The notice shall be mailed to any person specified by~~
30 ~~law and to all persons who shall have requested advance notice of rulemaking~~
31 ~~proceedings.~~

32 ~~(C) The notice shall be published as specified by law or,~~
33 ~~if no manner of publication is so specified, then in those newspapers of~~
34 ~~general daily circulation and, where appropriate, in those trade, industry, or~~
35 ~~professional publications which the agency may select;~~

36 ~~(2) Afford all interested persons reasonable opportunity to~~

1 ~~submit written data, views, or arguments, orally or in writing. Opportunity~~
2 ~~for oral hearing must be granted if requested by twenty-five (25) persons, by~~
3 ~~a governmental subdivision or agency, or by an association having not less~~
4 ~~than twenty-five (25) members. The agency shall fully consider all written and~~
5 ~~oral submissions respecting the proposed rule before finalizing the language~~
6 ~~of the proposed rule and filing the proposed rule as required by § 25-15-~~
7 ~~204(d). Upon adoption of a rule, the agency, if requested to do so by an~~
8 ~~interested person either prior to adoption or within thirty (30) days~~
9 ~~thereafter, shall issue a concise statement of the principal reasons for and~~
10 ~~against its adoption, incorporating therein its reasons for overruling the~~
11 ~~considerations urged against its adoption. Where rules are required by law to~~
12 ~~be made on the record after opportunity for an agency hearing, the provisions~~
13 ~~of that law shall apply in place of this subdivision.~~

14 ~~(b) If an agency finds that imminent peril to the public health,~~
15 ~~safety, or welfare requires adoption of a rule upon fewer than twenty (20)~~
16 ~~days' notice and states in writing its reasons for that finding, it may~~
17 ~~proceed without prior notice or hearing, or upon any abbreviated notice and~~
18 ~~hearing that it may choose, to adopt an emergency rule. The rule may be~~
19 ~~effective for no longer than one hundred twenty (120) days.~~

20 ~~(c) Every agency shall accord any person the right to petition for the~~
21 ~~issuance, amendment, or repeal of any rule. Within thirty (30) days after~~
22 ~~submission of a petition, the agency shall either deny the petition, stating~~
23 ~~in writing its reasons for the denial, or shall initiate rule-making~~
24 ~~proceedings.~~

25 ~~(d)(1) Every agency, including those exempted under § 25-15-202, shall~~
26 ~~file with the Secretary of State, the Arkansas State Library, and the Bureau~~
27 ~~of Legislative Research a copy of each rule and regulation adopted by it and a~~
28 ~~statement of financial impact for the rule or regulation.~~

29 ~~(2) The Secretary of State shall keep a register of the rules~~
30 ~~open to public inspection, and it shall be a permanent register.~~

31 ~~(3) Each agency shall provide its regulations to the Bureau of~~
32 ~~Legislative Research in an electronic format acceptable to the bureau. The~~
33 ~~bureau shall place the agency regulations in the General Assembly's internet~~
34 ~~web site.~~

35 ~~(4)(A) The scope of the financial impact statement shall be~~
36 ~~determined by the agency, but shall include, at a minimum, the estimated cost~~

1 ~~of complying with the rule and the estimated cost for the agency to implement~~
2 ~~the rule.~~

3 ~~(B) If the agency has reason to believe that the~~
4 ~~development of a financial impact statement will be so speculative as to be~~
5 ~~cost prohibitive, the agency shall submit a statement and explanation to that~~
6 ~~effect.~~

7 ~~(C) If the purpose of a state agency rule or regulation is~~
8 ~~to implement a federal rule or regulation, the financial impact statement~~
9 ~~shall be limited to any incremental additional cost of the state rule or~~
10 ~~regulation as opposed to the federal rule or regulation.~~

11 ~~(e) Each rule adopted by an agency shall be effective ten (10) days~~
12 ~~after filing unless a later date is specified by law or in the rule itself.~~
13 ~~However, an emergency rule may become effective immediately upon filing, or at~~
14 ~~a stated time less than ten (10) days thereafter, if the agency finds that~~
15 ~~this effective date is necessary because of imminent peril to the public~~
16 ~~health, safety, or welfare. The agency's finding and a brief statement of the~~
17 ~~reasons therefor shall be filed with the rule. The agency shall take~~
18 ~~appropriate measures to make emergency rules known to the persons who may be~~
19 ~~affected by them.~~

20 ~~(f) No rule adopted after June 30, 1967, shall be valid unless adopted~~
21 ~~and filed in substantial compliance with this section.~~

22 ~~(g) [Repealed.]~~

23 ~~(h) In any proceeding brought which questions the existence of _____~~
24 ~~imminent peril to the public health, safety, or welfare, a written finding by~~
25 ~~the agency that adoption of any emergency rule was necessary to avoid the loss~~
26 ~~of federal funding or certification shall establish a prima facie case of the~~
27 ~~existence of imminent peril to the public health, safety, or welfare and the~~
28 ~~burden of proof shall shift to the challenger to rebut the existence of the~~
29 ~~condition by a preponderance of the evidence.~~

30
31 ~~§ 25-15-205. Rules - "The Arkansas Register".~~

32 ~~(a) The Secretary of State shall compile, index, and publish a~~
33 ~~publication to be known as "The Arkansas Register". This publication shall~~
34 ~~contain all adopted rules of any agency.~~

35 ~~(b) The Secretary of State shall publish "The Arkansas Register" at~~
36 ~~least monthly, setting forth a synopsis of rules filed by agencies. A~~

1 ~~cumulative index shall be published annually.~~

2 ~~(c)(1) "The Arkansas Register" shall be furnished to all state agencies~~
3 ~~and other persons at prices fixed by the Secretary of State to cover~~
4 ~~publication and mailing costs.~~

5 ~~(2) Proceeds from the sale of "The Arkansas Register" shall be~~
6 ~~deposited in the Constitutional Officers Fund and the State Central Services~~
7 ~~Fund in the State Treasury.~~

8 ~~(d) A progress report on publication and distribution shall be provided~~
9 ~~to the Legislative Council annually.~~

10
11 ~~§ 25-15-206. Rules - Declaratory orders.~~

12 ~~Each agency shall provide by rule for the filing and prompt disposition~~
13 ~~of petitions for declaratory orders as to the applicability of any rule,~~
14 ~~statute, or order enforced by it. These declaratory orders shall have the same~~
15 ~~status as agency orders in cases of adjudication.~~

16
17 ~~§ 25-15-207. Rules - Actions for declaratory judgments.~~

18 ~~(a) The validity or applicability of a rule may be determined in an~~
19 ~~action for declaratory judgment if it is alleged that the rule, or its~~
20 ~~threatened application, injures or threatens to injure the plaintiff in his~~
21 ~~person, business, or property.~~

22 ~~(b) The action may be brought in the circuit court of any county in~~
23 ~~which the plaintiff resides or does business or in the Circuit court of~~
24 ~~Pulaski County.~~

25 ~~(c) The agency shall be made defendant in that action.~~

26 ~~(d) A declaratory judgment may be rendered whether or not the plaintiff~~
27 ~~has requested the agency to pass upon the validity or applicability of the~~
28 ~~rule in question.~~

29
30 ~~§ 25-15-208. Administrative adjudication - Procedures generally.~~

31 ~~(a) In every case of adjudication:~~

32 ~~(1) All parties shall be afforded an opportunity for hearing~~
33 ~~after reasonable notice.~~

34 ~~(2) The notice shall include:~~

35 ~~(A) A statement of the time, place, and nature of the~~
36 ~~hearing;~~

1 ~~(B) A statement of the legal authority and jurisdiction~~
2 ~~under which the hearing is to be held;~~

3 ~~(C) A short and plain statement of the matters of fact and~~
4 ~~law asserted.~~

5 ~~(3) In every case of adjudication wherein an agency seeks to~~
6 ~~revoke, suspend, or otherwise sanction a license or permit holder, the agency~~
7 ~~or its attorney, upon the request of the license or permit holder, must~~
8 ~~provide the following information prior to conducting a hearing of~~
9 ~~adjudication:~~

10 ~~(A) The names and addresses of persons whom the agency~~
11 ~~intends to call as witnesses at any hearing;~~

12 ~~(B) Any written or recorded statements and the substance of~~
13 ~~any oral statements made by the license or permit holder, or a copy of the~~
14 ~~same;~~

15 ~~(C) Any reports or statements of experts, made in~~
16 ~~connection with the particular case, including results of physical or mental~~
17 ~~examinations, scientific tests, experiments, or comparisons, or copies of the~~
18 ~~same;~~

19 ~~(D) Any books, papers, documents, photographs, or tangible~~
20 ~~objects which the agency intends to use in any hearing or which were obtained~~
21 ~~from or belong to the license or permit holder, or copies of the same;~~

22 ~~(E) Disclosure shall not be required of research or~~
23 ~~records, correspondence, reports, or memoranda to the extent that they contain~~
24 ~~the opinions, theories, or conclusions of the attorney for the agency or~~
25 ~~members of his staff or other state agents.~~

26 ~~(4) Opportunity shall be afforded all parties to respond and~~
27 ~~present evidence and argument on all issues involved.~~

28 ~~(5) The record shall include:~~

29 ~~(A) All pleadings, motions, and intermediate rulings;~~

30 ~~(B) Evidence received or considered, including, on request~~
31 ~~of any party, a transcript of oral proceedings or any part thereof;~~

32 ~~(C) A statement of matters officially noticed;~~

33 ~~(D) Offers of proof, objections, and rulings thereon;~~

34 ~~(E) Proposed findings and exceptions thereto; and~~

35 ~~(F) All staff memoranda or data submitted to the hearing~~
36 ~~officer or members of an agency in connection with their consideration of the~~

1 case.

2 ~~(6) Findings of fact shall be based exclusively on the evidence~~
3 ~~and on matters officially noticed.~~

4 ~~(7) If the agency is authorized by law to issue subpoenas for the~~
5 ~~attendance and testimony of witnesses and the production of documents or~~
6 ~~things, then any party shall to the same extent be so authorized, and the~~
7 ~~agency shall issue a subpoena forthwith on written application thereof.~~

8 ~~(b) Nothing in this subchapter shall prohibit informal disposition by~~
9 ~~stipulation, settlement, consent order, or default.~~

10
11 ~~§ 25-15-209. Administrative adjudication - Communication by decision~~
12 ~~maker.~~

13 ~~(a) Unless required for the disposition of ex parte matters authorized~~
14 ~~by law, members or employees of an agency assigned to render a decision or to~~
15 ~~make final or proposed findings of fact or conclusions of law in any case of~~
16 ~~adjudication shall not communicate, directly or indirectly, in connection with~~
17 ~~any issue of fact with any person or party nor, in connection with any issue~~
18 ~~of law, with any party or his representative, except upon notice and~~
19 ~~opportunity for all parties to participate.~~

20 ~~(b) An agency member may:~~

21 ~~(1) Communicate with other members of the agency; and~~

22 ~~(2) Have the aid and advice of one (1) or more personal~~
23 ~~assistants.~~

24
25 ~~§ 25-15-210. Administrative adjudication - Decisions.~~

26 ~~(a) When, in a case of adjudication, a majority of the officials of the~~
27 ~~agency who are to render the decision have not heard the case or read the~~
28 ~~record, the decision, if adverse to a party other than the agency, shall not~~
29 ~~be made until a proposal for decision is served upon the parties and an~~
30 ~~opportunity is afforded to each party adversely affected to file exceptions~~
31 ~~and present briefs and oral argument to the officials who are to render the~~
32 ~~decision. The proposal for decision shall contain a statement of the reasons~~
33 ~~therefor and of each issue of fact or law necessary thereto, prepared by the~~
34 ~~person who conducted the hearing.~~

35 ~~(b)(1) In every case of adjudication, a final decision or order shall~~
36 ~~be in writing or stated in the record.~~

1 ~~(2) A final decision shall include findings of fact and~~
2 ~~conclusions of law, separately stated. Findings of fact, if set forth in~~
3 ~~statutory language, shall be accompanied by a concise and explicit statement~~
4 ~~of the underlying facts supporting the findings. If, in accordance with agency~~
5 ~~rules, a party submitted proposed findings of fact, the decision shall include~~
6 ~~a ruling upon each proposed finding.~~

7 ~~(c) Parties shall be served either personally or by mail with a copy of~~
8 ~~any decision or order.~~

9
10 ~~§ 25-15-211. Administrative adjudication - Licenses.~~

11 ~~(a) When the grant, denial, or renewal of a license is required by law~~
12 ~~to be preceded by notice and an opportunity for hearing, the provisions of~~
13 ~~this subchapter concerning cases of adjudication apply.~~

14 ~~(b) When a licensee has made timely and sufficient application for the~~
15 ~~renewal of a license or a new license with reference to any activity of a~~
16 ~~continuing nature, the existing license shall not expire until the application~~
17 ~~has been finally determined by the agency and, in case the application is~~
18 ~~denied or the terms of the new license limited, until the last day for seeking~~
19 ~~review of the agency order, or a later date fixed by order of the reviewing~~
20 ~~court.~~

21 ~~(c) No revocation, suspension, annulment, or withdrawal of any license~~
22 ~~is lawful unless the agency gives notice by mail to the licensee of facts or~~
23 ~~conduct warranting the intended action and unless the licensee is given an~~
24 ~~opportunity to show compliance with all lawful requirements for the retention~~
25 ~~of the license. If the agency finds that public health, safety, or welfare~~
26 ~~imperatively requires emergency action and incorporates a finding to that~~
27 ~~effect in its order, summary suspension of a license may be ordered pending~~
28 ~~proceedings for revocation or other action, which proceedings shall be~~
29 ~~promptly instituted and determined.~~

30 ~~(d)(1) A complaint filed by an offender with a state licensing board or~~
31 ~~state licensing agency against a licensee of the board or agency shall not be~~
32 ~~heard by the board or agency unless the complaint is accompanied by~~
33 ~~appropriately verified documentation showing that the offender has exhausted~~
34 ~~all administrative remedies under the Department of Correction grievance~~
35 ~~procedure.~~

36 ~~(2) For purposes of this section, "offender" means any person~~

1 ~~sentenced to the Department of Correction or sentenced to the Department of~~
2 ~~Correction for judicial transfer to the Department of Community Punishment or~~
3 ~~any person confined in a community punishment center as a condition of~~
4 ~~probation, suspended imposition of sentence or post prison transfer.~~

5
6 ~~§ 25-15-212. Administrative adjudication - Judicial review.~~

7 ~~(a) In cases of adjudication, any person, except an inmate under~~
8 ~~sentence to the custody of the Department of Correction, who considers himself~~
9 ~~injured in his person, business, or property by final agency action shall be~~
10 ~~entitled to judicial review of the action under this subchapter. Nothing in~~
11 ~~this section shall be construed to limit other means of review provided by~~
12 ~~law.~~

13 ~~(b)(1) Proceedings for review shall be instituted by filing a petition,~~
14 ~~within thirty (30) days after service upon petitioner of the agency's final~~
15 ~~decision, in:~~

16 ~~(A) The circuit court of any county in which the petitioner~~
17 ~~resides or does business; or~~

18 ~~(B) The Circuit court of Pulaski County.~~

19 ~~(2) Copies of the petition shall be served upon the agency and~~
20 ~~all other parties of record by personal delivery or by mail.~~

21 ~~(3) The court, in its discretion, may permit other interested~~
22 ~~persons to intervene.~~

23 ~~(c) The filing of the petition does not automatically stay enforcement~~
24 ~~of the agency decision, but the agency or reviewing court may do so upon such~~
25 ~~terms as may be just. However, on review of disciplinary orders issued by~~
26 ~~professional licensing boards governing professions of the healing arts, the~~
27 ~~reviewing court, only after notice and hearing, may issue all necessary and~~
28 ~~appropriate process to postpone the effective date of an agency action or to~~
29 ~~preserve status or rights pending conclusion of review proceedings.~~

30 ~~(d)(1) Within thirty (30) days after service of the petition or within~~
31 ~~such further time as the court may allow, but not exceeding an aggregate of~~
32 ~~ninety (90) days, the agency shall transmit to the reviewing court the~~
33 ~~original or a certified copy of the entire record of the proceeding under~~
34 ~~review.~~

35 ~~(2) The cost of the preparation of the record shall be borne by~~
36 ~~the agency. However, the cost of the record shall be recovered from the~~

1 ~~appealing party if the agency is the prevailing party.~~

2 ~~(3) By stipulation of all parties to the review proceeding, the~~
3 ~~record may be shortened. Any party unreasonably refusing to stipulate to limit~~
4 ~~the record may be taxed by the court for the additional costs.~~

5 ~~(4) The court may require or permit subsequent corrections or~~
6 ~~additions to the record.~~

7 ~~(e) If review proceedings have been instituted in two (2) or more~~
8 ~~circuit courts with respect to the same order, the agency concerned shall file~~
9 ~~the record in the court in which a proceeding was first instituted. The other~~
10 ~~courts in which the proceedings are pending shall thereupon transfer them to~~
11 ~~the court in which the record has been filed.~~

12 ~~(f) If, before the date set for hearing, application is made to the~~
13 ~~court for leave to present additional evidence and the court finds that the~~
14 ~~evidence is material and that there were good reasons for failure to present~~
15 ~~it in the proceeding before the agency, the court may order that the~~
16 ~~additional evidence be taken before the agency upon any conditions which may~~
17 ~~be just. The agency may modify its findings and decision by reason of the~~
18 ~~additional evidence and shall file that evidence and any modifications, new~~
19 ~~findings, or decisions with the reviewing court.~~

20 ~~(g) The review shall be conducted by the court without a jury and shall~~
21 ~~be confined to the record, except that in cases of alleged irregularities in~~
22 ~~procedure before the agency, not shown in the record, testimony may be taken~~
23 ~~before the court. The court shall, upon request, hear oral argument and~~
24 ~~receive written briefs.~~

25 ~~(h) The court may affirm the decision of the agency or remand the case~~
26 ~~for further proceedings. It may reverse or modify the decision if the~~
27 ~~substantial rights of the petitioner have been prejudiced because the~~
28 ~~administrative findings, inferences, conclusions, or decisions are:~~

29 ~~(1) In violation of constitutional or statutory provisions;~~

30 ~~(2) In excess of the agency's statutory authority;~~

31 ~~(3) Made upon unlawful procedure;~~

32 ~~(4) Affected by other error or law;~~

33 ~~(5) Not supported by substantial evidence of record; or~~

34 ~~(6) Arbitrary, capricious, or characterized by abuse of~~
35 ~~discretion.~~

36

1 ~~§ 25-15-213. Hearings generally.~~

2 ~~In every case of adjudication, and in cases of rule making in which~~
3 ~~rules are required by law to be made on the record after opportunity for an~~
4 ~~agency hearing, and in cases of rule making in which, pursuant to § 25-15-~~
5 ~~204(a)(2), the agency shall direct that oral testimony be taken or a hearing~~
6 ~~held:-~~

7 ~~(1) Any person compelled to appear before any agency or representative~~
8 ~~thereof shall have the right to be accompanied and advised by counsel. Every~~
9 ~~party shall have the right to appear in person or by counsel.~~

10 ~~(2)(A) There shall preside at the hearing:-~~

11 ~~(i) The agency;~~

12 ~~(ii) One (1) or more members of the agency; or~~

13 ~~(iii) One (1) or more examiners or referees designated by~~
14 ~~the agency.~~

15 ~~(B) All presiding officers and all officers participating in~~
16 ~~decisions shall conduct themselves in an impartial manner and may at any time~~
17 ~~withdraw if they deem themselves disqualified.~~

18 ~~(C) Any party may file an affidavit of personal bias or~~
19 ~~disqualification, which affidavit shall be ruled on by the agency and granted~~
20 ~~if timely, sufficient, and filed in good faith.~~

21 ~~(3)(A) Presiding officers shall have power, pursuant to published~~
22 ~~procedural rules of the agency:-~~

23 ~~(i) To issue subpoenas if the agency is authorized by law~~
24 ~~to issue them;~~

25 ~~(ii) To administer oaths and affirmations;~~

26 ~~(iii) To maintain order;~~

27 ~~(iv) To rule upon all questions arising during the course~~
28 ~~of a hearing or proceeding;~~

29 ~~(v) To permit discovery by deposition or otherwise;~~

30 ~~(vi) To hold conferences for the settlement or~~
31 ~~simplification of issues;~~

32 ~~(vii) To make or recommend decisions; and~~

33 ~~(viii) Generally to regulate and guide the course of the~~
34 ~~pending proceeding.~~

35 ~~(B) In any proceeding before any agency, if any person refuses to~~
36 ~~respond to a subpoena, or refuses to take the oath or affirmation as a witness~~

1 ~~or thereafter refuses to be examined, or refuses to obey any lawful order of~~
2 ~~an agency contained in its decision rendered after hearing, the agency or the~~
3 ~~presiding officer of the agency hearing may apply to the circuit court of the~~
4 ~~county where the proceedings were held or are being held for an order~~
5 ~~directing that person to take the requisite action or to otherwise comply with~~
6 ~~the order of the agency. The court shall issue the order in its discretion.~~
7 ~~Should any person willfully fail to comply with an order so issued, the court~~
8 ~~shall punish him as for contempt.~~

9 ~~(4) Except as otherwise provided by law, the proponent of a rule or~~
10 ~~order shall have the burden of proof. Irrelevant, immaterial, and unduly~~
11 ~~repetitious evidence shall be excluded. Any other oral or documentary~~
12 ~~evidence, not privileged, may be received if it is of a type commonly relied~~
13 ~~upon by reasonably prudent men in the conduct of their affairs. Objections to~~
14 ~~evidentiary offers may be made and shall be noted of record. When a hearing~~
15 ~~will be expedited and the interests of the parties will not be substantially~~
16 ~~prejudiced, any part of the evidence may be received in written form.~~

17 ~~(5) Parties shall have the right to conduct such cross examination as~~
18 ~~may be required for a full and true disclosure of the facts.~~

19 ~~(6) Official notice may be taken of judicially cognizable facts and of~~
20 ~~generally recognized technical or scientific facts within the agency's~~
21 ~~specialized knowledge. Parties shall be notified of material so noticed,~~
22 ~~including any staff memoranda or data, and shall be afforded a reasonable~~
23 ~~opportunity to show the contrary.~~

24
25 ~~§ 25-15-214. Failure of agency to act - Action by injured party.~~

26 ~~In any case of rule making or adjudication, if an agency shall~~
27 ~~unlawfully, unreasonably, or capriciously fail, refuse, or delay to act, any~~
28 ~~person who considers himself injured in his person, business, or property by~~
29 ~~the failure, refusal, or delay may bring suit in the chancery court of any~~
30 ~~county in which he resides or does business, or in the Chancery Court of~~
31 ~~Pulaski County, for an order commanding the agency to act.~~

32
33 SECTION 18. This provision shall be repealed upon passage and approval
34 of the Act.

35
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SECTION 19. Savings Clause.

(a) The repeal of a statute by this Act does not affect:

(1) The operation of the statute or any action taken under it

1 before its repeal; or

2 (2) Any ratification, right, remedy, privilege, obligation, or
3 liability acquired, accrued, or incurred under the statute before its repeal.

4 (b) Any rules and orders adopted pursuant to the provisions of any
5 section repealed by this Act shall remain in force and effect until replaced
6 by rules and orders adopted under the provisions of this Act.

7
8 SECTION 20. All provisions of this Act of a general and permanent
9 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
10 Code Revision Commission shall incorporate the same in the Code.

11
12 SECTION 21. If any provision of this Act or the application thereof to
13 any person or circumstance is held invalid, invalidity shall not affect other
14 provisions or applications of the Act which can be given effect without the
15 invalid provision or application, and to this end the provisions of this Act
16 are declared to be severable.

17
18 SECTION 22. This Act shall be supplemental to all other laws pertaining
19 to the promulgation of rules and to agency adjudications, and shall not repeal
20 any other laws except for laws specifically repealed by this Act.

21
22 /s/ Mahony
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