

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
4

A Bill

SENATE BILL 758

5 By: Senator Mahony
6 By: Representative T. Thomas
7

For An Act To Be Entitled

10 "AN ACT AMENDING THE ARKANSAS ADMINISTRATIVE PROCEDURE
11 ACT TO PROVIDE FOR PUBLIC ACCESS TO AGENCY POLICY,
12 ADOPTION AND EFFECTIVENESS OF AGENCY RULES, AND REVIEW
13 OF AGENCY RULES; AND FOR OTHER PURPOSES."

Subtitle

15 "AMENDING THE ARKANSAS ADMINISTRATIVE
16 PROCEDURE ACT TO PROVIDE FOR PUBLIC
17 ACCESS TO AGENCY POLICY, ADOPTION AND
18 EFFECTIVENESS OF AGENCY RULES, AND
19 REVIEW OF AGENCY RULES."
20

21
22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code Title 25, Chapter 15, Subchapter 2 is amended
26 to add the following new language:

27 "25-15-215. Administrative Rules Coordinator - Publication,
28 Compilation, Indexing, and Public Inspection of Rules.

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

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

34 (c) The Administrative Rules Coordinator shall cause the Administrative
35 Bulletin to be published on an Internet web site it maintains for that purpose
36 and shall be updated at least once per week. For purposes of calculating

1 adherence to time requirements imposed by this Act, contents of the
2 Administrative Bulletin are deemed published on the date the contents are
3 available on the Internet web site. The Administrative Rules Coordinator may
4 also cause a printed version of the Administrative Bulletin to be published.

5 The Administrative Bulletin shall contain:

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

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

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

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

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

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

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

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

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

36 (3) The Administrative Bulletin, Archive or Code contains a

1 notice stating in detail the specific subject matter of the omitted proposed
2 or adopted rule, and how a copy of the omitted material may be obtained.

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

7 (h) Except as otherwise required by a provision of law, subsections (c)
8 through (g) of this section do not apply to rules governed by 25-15-233, and
9 the following provisions shall apply instead:

10 (1) Each agency shall maintain an official, current, and dated
11 compilation that is indexed by subject, containing all of its rules within the
12 scope of 25-15-233. Each addition to, change in, or deletion from the
13 official compilation shall also be dated, indexed, and a record thereof kept.
14 Except for those portions containing rules governed by 25-15-233(2), the
15 compilation shall be made available for public inspection and copying.
16 Certified copies of the full compilation shall also be furnished to the
17 Administrative Rules Coordinator, and members of the Administrative Rules
18 Review Committee, and be updated by the agency at least every thirty (30)
19 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 25-15-216. 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.

32 (b) A written final order may not be relied on as precedent by an
33 agency to the detriment of any person until it has been made available for
34 public inspection and indexed in the manner described in subsection (a) of
35 this section. This provision is inapplicable to any person who has actual
36 timely knowledge of the order. The burden of proving that knowledge is on the

1 agency.

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

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

5 (2) Orders of the Department of Finance and Administration
6 containing information confidential under the provisions of the Federal
7 Driver's License Protection Act, 18 U.S.C. § 2721, as in effect on January 1,
8 1999;

9 (3) Orders of the Department of Finance and Administration
10 containing information under § 27-50-901;

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

14
15 25-15-217. Required Rule Making.

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

18 (1) Adopt as a rule, a description of the organization of the agency
19 which states the course and method of its operations, the administrative
20 subdivisions of the agency and the programs implemented by each of them; a
21 statement of the mission of the agency and the methods by which and location
22 where the public may obtain information or make submissions or requests;

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

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

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

34
35 25-15-218. Model Rules of Procedure.

36 In accordance with the rule-making requirements of this Act, the

1 Arkansas Attorney General shall adopt model rules of procedure appropriate for
 2 use by all agencies. The model rules shall deal with all general functions
 3 and duties performed in common by several agencies. To the extent an agency
 4 adopts the model rules, it shall do so in accordance with the rule-making
 5 requirements of this Act.

6
 7 25-15-219. Public Rule-making Docket.

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

9 (b) The rule-making docket shall contain a listing of the subject
 10 matter of each possible rule currently under active consideration within the
 11 agency for proposal under 25-15-220 of this Act, the name and address of
 12 agency personnel with whom persons may communicate with respect to the matter,
 13 and an indication of the present status within the agency of that possible
 14 rule.

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

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

22 (2) A citation to all published notices relating to the
 23 proceeding;

24 (3) Where written submissions on the proposed rule may be
 25 inspected;

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

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

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

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

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

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

2 (10) The date or dates the rule is to be or was considered by the
 3 Administrative Rules Review Committee and an indication of any action taken by
 4 that committee on the rule;

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

7 (12) When the rule will become effective.

8
 9 25-15-220. Notice of Proposed Rule Adoption.

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

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

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

17 (3) Subject to 25-15-215(f), the text of the proposed rule
 18 showing the text of any existing rule being changed;

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

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

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

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

35 (d) An agency may publish a notice of proposed rule adoption and hold a
 36 rule making proceeding on the notice after the enactment of a statute

1 authorizing it to adopt the proposed rule and before the effective date of
2 such statute as long as any rule adopted on the basis of that proceeding
3 states that it will not become effective until a specified date on or after
4 the effective date of the authorizing statute.

5
6 25-15-221. Public Participation.

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

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

20 (2) An oral proceeding on a proposed rule, if required, may not
21 be held earlier than fifteen (15) days after notice of its location and time
22 is published in the Administrative Bulletin.

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

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

34
35 25-15-222. Regulatory Analysis.

36 (a) An agency shall issue a regulatory analysis of a proposed rule if,

1 within twenty (20) days after the published notice of proposed rule adoption
2 in the Administrative Bulletin, a written request for the analysis is made by
3 the Administrative Rules Review Committee, a political subdivision, an agency,
4 an association having not less than twenty-five (25) members, or twenty-five
5 (25) persons signing the request.

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

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

12 (2) A description of the probable impact of the proposed rule,
13 economic or otherwise, upon affected classes of persons, including a
14 description of the nature and amount of all the different kinds of costs that
15 are reasonably expected to be incurred in complying with the proposed rule;

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

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

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

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

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

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

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

35 (3) The date of any required oral proceeding on the proposed
36 rule.

1 (e) In the case of a rule adopted without prior notice and an
 2 opportunity for public participation in reliance upon 25-15-225, the summary
 3 shall be published within seventy (70) days of the request.

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

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

13
 14 25-15-223. Time and Manner of Rule Adoption.

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

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

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

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

29
 30 25-15-224. Variance between Adopted Rule and Published Notice of
 31 Proposed Rule Adoption.

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

35 (1) The differences are within the scope of the matter announced
 36 in the notice of proposed rule adoption and are in character with the issues

1 raised in that notice;

2 (2) The differences are a logical outgrowth of the contents of
 3 that notice of proposed rule adoption and the comments submitted in response
 4 thereto; and

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

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

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

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

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

20
 21 25-15-225. General Exemption from Public Rule-making Procedures.

22 (a) To the extent an agency for good cause finds that any requirements
 23 of 25-15-220 through 25-15-224 are unnecessary, impossible, impracticable, or
 24 contrary to the public interest in the process of adopting a particular rule,
 25 those requirements shall not apply. The agency shall incorporate the required
 26 finding and a brief statement of its supporting reasons in each rule adopted
 27 in reliance upon this subsection.

28 (b) In an action contesting a rule adopted under subsection (a) of this
 29 section, the burden is upon the agency to demonstrate that any omitted
 30 requirements of 25-15-220 through 25-15-224 were impracticable, unnecessary,
 31 or contrary to the public interest in the particular circumstances involved.

32 (c) Within two (2) years after the effective date of a rule adopted
 33 under subsection (a) of this section, the Administrative Rules Review
 34 Committee, an agency, an association having not less than twenty-five (25)
 35 members, or twenty-five (25) persons by signing the request, may request the
 36 agency to hold a rule-making proceeding thereon according to the requirements

1 of 25-15-220 through 25-15-224. The request shall be in writing and filed
2 with the agency and the Administrative Rules Coordinator. Notice of the
3 filing of the request shall be published in the next issue of the
4 Administrative Bulletin. The rule in question ceases to be effective one
5 hundred eighty (180) days after the request is filed. However, an agency,
6 after the filing of the request, may subsequently adopt an identical rule in a
7 rule-making proceeding conducted pursuant to the requirements of 25-15-220
8 through 25-15-224.

9
10 25-15-226. Exemption for Certain Rules.

11 (a) An agency need not follow the provisions of 25-15-220 through 25-
12 15-225 in the adoption of a rule that only defines the meaning of a statute or
13 other provision of law or precedent if the agency does not possess delegated
14 authority to bind the courts to any extent with its definition. A rule
15 adopted under this section shall include a statement that it was adopted under
16 this section when it is published in the Administrative Bulletin, and there
17 shall be an indication to that effect adjacent to the rule when it is
18 published in the Administrative Code.

19 (b) A reviewing court shall determine wholly de novo the validity of a
20 rule within the scope of subsection (a) of this section that is adopted
21 without complying with the provisions of 25-15-220 through 25-15-225.

22
23 25-15-227. Concise Explanatory Statement.

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

26 (1) A summary of the principal reasons urged for and against the
27 rule;

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

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

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

1
2 25-15-228. Contents, Style and Form of Rule.

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

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

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

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

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

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

13 (6) The effective date of the rule if other than that specified
14 in 25-15-232(a).

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

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

1 In those cases where the purchase of an additional copy would be an
2 unreasonable expense, the State Library may waive this requirement if the
3 publication can be temporarily and promptly obtained for review by the State
4 Library upon request.

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

8
9 25-15-229. Agency Rule-making Record.

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

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

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

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

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

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

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

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

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

1 (8) A copy of any request filed pursuant to 25-15-225(c);

2 (9) A copy of any objection to the rule filed by the

3 Administrative Rules Review Committee pursuant to 25-15-237(d) and the
4 agency's response; and

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

7 (c) Upon judicial review, the record required by this section
8 constitutes the official agency rule-making record with respect to a rule.
9 Except as provided in 25-15-227(b) or otherwise required by a provision of
10 law, the agency rule-making record need not constitute the exclusive basis for
11 agency action on that rule or for judicial review thereof.

12
13 25-15-230. Invalidity of Rules Not Adopted According to Act - Time
14 Limitation.

15 (a) A rule adopted after December 31, 1999 is invalid unless adopted in
16 substantial compliance with the provisions of 25-15-219 through 25-15-225 and
17 25-15-227 through 25-15-229.

18 (b) A rule adopted on or before December 31, 1999 is invalid unless
19 adopted in substantial compliance with the provisions of 25-15-203 through 25-
20 15-204.

21 (c) An action to contest the validity of a rule on the grounds of its
22 noncompliance with any provision of 25-15-219 through 25-15-225 or 25-15-227
23 through 25-15-229 shall be commenced within two (2) years after the effective
24 date of the rule.

25
26 25-15-231. Filing of Rules.

27 (a) An agency shall file with the Administrative Rules Coordinator each
28 rule it adopts and all rules existing on the effective date of this Act that
29 have not previously been filed with the Administrative Rules Coordinator
30 pursuant to the requirements of this Act. The filing with the Administrative
31 Rules Coordinator shall be accomplished as soon after adoption of the rule as
32 is practicable and in no event later than ten (10) days following the
33 adoption. At the time of filing, each rule adopted after the effective date
34 of this Act shall have attached to it the explanatory statement required by
35 25-15-227. The Administrative Rules Coordinator shall affix to each rule and
36 statement a certification of the time and date of filing and keep a permanent

1 register open to public inspection of all filed rules and attached explanatory
 2 statements. In filing a rule, each agency shall use a standard form
 3 prescribed by the Administrative Rules Coordinator. Each agency shall also
 4 provide the Secretary of State a copy of all rules existing on the effective
 5 date of this Act.

6 (b) The Administrative Rules Coordinator shall transmit to the
 7 Secretary of State and the Administrative Rules Review Committee a copy of
 8 each filed rule, explanatory statement and certification of the time and date
 9 of filing, as soon after filing as is practicable.

10
 11 25-15-232. Effective Date of Rules.

12 (a) Except to the extent subsection (b) or (c) of this section provides
 13 otherwise, each rule adopted after the effective date of this Act becomes
 14 effective thirty (30) days after its filing with the Administrative Rules
 15 Coordinator.

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

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

23 (A) The earlier effective date is required by constitution,
 24 state or federal statute, court order, federal regulation or federal
 25 administrative order;

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

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

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

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

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

36 (3) The finding and a brief statement of the reasons therefor

1 required by subdivision (b)(2) of this section shall be made a part of the
 2 rule. In any action contesting the effective date of a rule made effective
 3 under subdivision (b)(2) of this section, the burden is on the agency to
 4 justify its finding.

5 (4) Each agency shall make a reasonable effort to make known to
 6 persons who may be affected by it a rule made effective before publication and
 7 indexing under this Act.

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

11
 12 25-15-233. Special Provision for Certain Classes of Rules.

13 Except to the extent otherwise provided by any provision of law, 25-15-
 14 219 through 25-15-232 are inapplicable to all of the following:

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

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

24 (A) Enable law violators to avoid detection;

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

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

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

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

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

36 (6) A rule concerning only inmates of a correctional or detention

1 facility, students enrolled in an educational institution, or patients
 2 admitted to a hospital, if adopted by that facility, institution, or hospital;

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

6 (8) An agency budget;

7 (9) An opinion of the Arkansas Attorney General;

8 (10) The terms of a collective bargaining agreement;

9 (11) The determination of prevailing wage rates issued by the
 10 Department of Labor pursuant to § 22-9-313; or

11 (12) Publications of manuals, tables, and schedules of rates prepared
 12 by the Assessment Coordination Department which are furnished to the various
 13 county assessors as aids in the assessment of real and personal property.

14
 15 25-15-234. General Review by Agency.

16 Each agency shall adopt a rule providing for periodic review of all of
 17 its rules to determine whether any existing rule should be repealed or amended
 18 or whether any new rule should be adopted. In conducting such review, each
 19 agency shall prepare a written report summarizing its findings, its supporting
 20 reasons, and any proposed course of action. A copy of the report shall be sent
 21 to the Administrative Rules Review Committee and be available for public
 22 inspection.

23
 24 25-15-235. Review of Specific Rule.

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

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

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

1 (3) Alternative solutions to the criticisms and the reasons they
 2 were rejected, or the changes made in the rule in response to those
 3 criticisms, and the reasons for the changes.

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

6
 7 25-15-236. Administrative Rules Review Committee.

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

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

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

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

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

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

27
 28 25-15-237. Review by Administrative Rules Review Committee.

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

34 (b) Committee meetings shall be open to the public. Subject to
 35 procedures established by the committee, persons may present oral argument,
 36 data, or views at those meetings. The committee may require a representative

1 of an agency whose possible, proposed, or adopted rule is under examination to
2 attend a committee meeting and answer relevant questions. The committee may
3 also communicate to the agency its comments on any possible, proposed, or
4 adopted rule and require the agency to respond to them in writing. Unless
5 impracticable, in advance of each committee meeting notice of the time and
6 place of the meeting and the specific subject matter to be considered shall be
7 published in the Administrative Bulletin.

8 (c) The committee may recommend enactment of a statute to improve the
9 operation of an agency. The committee may also recommend that a particular
10 rule be superseded in whole or in part by statute and refer the recommendation
11 to the appropriate standing committee or committees of the General Assembly.
12 This subsection does not preclude any committee of the General Assembly from
13 reviewing a rule on its own motion or recommending that it be superseded in
14 whole or in part by statute.

15 (d)(1) If the committee objects to all or any portion of a rule because
16 the committee considers it to be beyond the procedural or substantive
17 authority delegated to the adopting agency, the committee may file that
18 objection with the Administrative Rules Coordinator and with the agency
19 issuing the rule in question. The filed objection shall contain a concise
20 statement detailing the precise reasons that the committee considers the rule,
21 or portion thereof, to be beyond the procedural or substantive authority
22 delegated to the agency.

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

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

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

36 (5) After the filing of an objection by the committee that is not

1 subsequently withdrawn, the burden is upon the agency in any proceeding for
 2 judicial review or for enforcement of the rule to establish that the whole or
 3 portion of the rule objected to is within the procedural or substantive
 4 authority delegated to the agency, and not prohibited by law. A court holding
 5 a rule in a proceeding to be invalid because it is outside the authority
 6 delegated to the agency, or prohibited by law, shall render judgment against
 7 the agency for court costs. Court costs include reasonable attorney's fee and
 8 are payable by the Treasurer of State from the support appropriations of the
 9 agency that adopted the rule.

10 (6) The failure of the Administrative Rules Review Committee to
 11 object to a rule is not an implied legislative authorization of its procedural
 12 or substantive validity.

13 (e) The committee may recommend to an agency that it adopt a rule."
 14

15 SECTION 2. Arkansas Code 25-15-213 is amended to read as follows:

16 "25-15-213. Hearings generally.

17 In every case of adjudication, and in cases of rule making in which
 18 rules are required by law to be made on the record after opportunity for an
 19 agency hearing, and in cases of rule making in which, pursuant to ~~§ 25-15-~~
 20 ~~204(a)(2)~~ 25-15-221, the agency shall direct that oral testimony be taken or a
 21 hearing held:

22 (1) Any person compelled to appear before any agency or
 23 representative thereof shall have the right to be accompanied and advised by
 24 counsel. Every party shall have the right to appear in person or by counsel.

25 (2)(A) There shall preside at the hearing:

26 (i) The agency;

27 (ii) One (1) or more members of the agency; or

28 (iii) One (1) or more examiners or referees

29 designated by the agency.

30 (B) All presiding officers and all officers participating
 31 in decisions shall conduct themselves in an impartial manner and may at any
 32 time withdraw if they deem themselves disqualified.

33 (C) Any party may file an affidavit of personal bias or
 34 disqualification, which affidavit shall be ruled on by the agency and granted
 35 if timely, sufficient, and filed in good faith.

36 (3)(A) Presiding officers shall have power, pursuant to published

1 procedural rules of the agency:

2 (i) To issue subpoenas if the agency is authorized by
3 law to issue them;

4 (ii) To administer oaths and affirmations;

5 (iii) To maintain order;

6 (iv) To rule upon all questions arising during the
7 course of a hearing or proceeding;

8 (v) To permit discovery by deposition or otherwise;

9 (vi) To hold conferences for the settlement or
10 simplification of issues;

11 (vii) To make or recommend decisions; and

12 (viii) Generally to regulate and guide the course of
13 the pending proceeding.

14 (B) In any proceeding before any agency, if any person
15 refuses to respond to a subpoena, or refuses to take the oath or affirmation
16 as a witness or thereafter refuses to be examined, or refuses to obey any
17 lawful order of an agency contained in its decision rendered after hearing,
18 the agency or the presiding officer of the agency hearing may apply to the
19 circuit court of the county where the proceedings were held or are being held
20 for an order directing that person to take the requisite action or to
21 otherwise comply with the order of the agency. The court shall issue the order
22 in its discretion. Should any person willfully fail to comply with an order so
23 issued, the court shall punish him as for contempt.

24 (4) Except as otherwise provided by law, the proponent of a rule
25 or order shall have the burden of proof. Irrelevant, immaterial, and unduly
26 repetitious evidence shall be excluded. Any other oral or documentary
27 evidence, not privileged, may be received if it is of a type commonly relied
28 upon by reasonably prudent men in the conduct of their affairs. Objections to
29 evidentiary offers may be made and shall be noted of record. When a hearing
30 will be expedited and the interests of the parties will not be substantially
31 prejudiced, any part of the evidence may be received in written form.

32 (5) Parties shall have the right to conduct such cross
33 examination as may be required for a full and true disclosure of the facts.

34 (6) Official notice may be taken of judicially cognizable facts
35 and of generally recognized technical or scientific facts within the agency's
36 specialized knowledge. Parties shall be notified of material so noticed,

1 including any staff memoranda or data, and shall be afforded a reasonable
2 opportunity to show the contrary."

3
4 SECTION 3. Arkansas Code 25-15-203 is hereby repealed.

5 ~~§ 25-15-203. Rules - Required rules - Public inspection.~~

6 ~~(a) In addition to other rule making requirements imposed by law, each~~
7 ~~agency shall:~~

8 ~~(1) Adopt as a rule a description of its organization, stating~~
9 ~~the general course and method of its operations, including the methods whereby~~
10 ~~the public may obtain information or make submissions or requests;~~

11 ~~(2) Adopt rules of practice setting forth the nature and~~
12 ~~requirements of all formal and informal procedures available, including a~~
13 ~~description of all forms and instructions used by the agency;~~

14 ~~(3) Make available for public inspection all rules and all other~~
15 ~~written statements of policy or interpretations formulated, adopted, or used~~
16 ~~by the agency in the discharge of its functions;~~

17 ~~(4) Make available for public inspection all orders, decisions,~~
18 ~~and opinions.~~

19 ~~(b) No agency rule, order, or decision shall be valid or effective~~
20 ~~against any person or party, nor may it be invoked by the agency for any~~
21 ~~purpose, until it has been filed and made available for public inspection as~~
22 ~~required in this subchapter. This provision shall not apply in favor of any~~
23 ~~person or party with actual knowledge of an agency order or decision.~~

24
25 SECTION 4. Arkansas Code 25-15-204 is hereby repealed.

26 ~~§ 25-15-204. Rules - Procedure for adoption.~~

27 ~~(a) Prior to the adoption, amendment, or repeal of any rule, the agency~~
28 ~~shall:~~

29 ~~(1) Give at least thirty (30) days' notice of its intended~~
30 ~~action. The thirty-day period shall begin on the first day of the publication~~
31 ~~of notice.~~

32 ~~(A) The notice shall include a statement of the terms or~~
33 ~~substance of the intended action, or a description of the subjects and issues~~
34 ~~involved, and the time, the place where, and the manner in which interested~~
35 ~~persons may present their views thereon.~~

36 ~~(B) The notice shall be mailed to any person specified by~~

1 ~~law and to all persons who shall have requested advance notice of rulemaking~~
2 ~~proceedings.~~

3 ~~(C) The notice shall be published as specified by law or,~~
4 ~~if no manner of publication is so specified, then in those newspapers of~~
5 ~~general daily circulation and, where appropriate, in those trade, industry, or~~
6 ~~professional publications which the agency may select;~~

7 ~~(2) Afford all interested persons reasonable opportunity to~~
8 ~~submit written data, views, or arguments, orally or in writing. Opportunity~~
9 ~~for oral hearing must be granted if requested by twenty-five (25) persons, by~~
10 ~~a governmental subdivision or agency, or by an association having not less~~
11 ~~than twenty-five (25) members. The agency shall fully consider all written and~~
12 ~~oral submissions respecting the proposed rule before finalizing the language~~
13 ~~of the proposed rule and filing the proposed rule as required by § 25-15-~~
14 ~~204(d). Upon adoption of a rule, the agency, if requested to do so by an~~
15 ~~interested person either prior to adoption or within thirty (30) days~~
16 ~~thereafter, shall issue a concise statement of the principal reasons for and~~
17 ~~against its adoption, incorporating therein its reasons for overruling the~~
18 ~~considerations urged against its adoption. Where rules are required by law to~~
19 ~~be made on the record after opportunity for an agency hearing, the provisions~~
20 ~~of that law shall apply in place of this subdivision.~~

21 ~~(b) If an agency finds that imminent peril to the public health,~~
22 ~~safety, or welfare requires adoption of a rule upon fewer than twenty (20)~~
23 ~~days' notice and states in writing its reasons for that finding, it may~~
24 ~~proceed without prior notice or hearing, or upon any abbreviated notice and~~
25 ~~hearing that it may choose, to adopt an emergency rule. The rule may be~~
26 ~~effective for no longer than one hundred twenty (120) days.~~

27 ~~(c) Every agency shall accord any person the right to petition for the~~
28 ~~issuance, amendment, or repeal of any rule. Within thirty (30) days after~~
29 ~~submission of a petition, the agency shall either deny the petition, stating~~
30 ~~in writing its reasons for the denial, or shall initiate rule-making~~
31 ~~proceedings.~~

32 ~~(d)(1) Every agency, including those exempted under § 25-15-202, shall~~
33 ~~file with the Secretary of State, the Arkansas State Library, and the Bureau~~
34 ~~of Legislative Research a copy of each rule and regulation adopted by it and a~~
35 ~~statement of financial impact for the rule or regulation.~~

36 ~~(2) The Secretary of State shall keep a register of the rules~~

1 ~~open to public inspection, and it shall be a permanent register.~~

2 ~~(3) Each agency shall provide its regulations to the Bureau of~~
3 ~~Legislative Research in an electronic format acceptable to the bureau. The~~
4 ~~bureau shall place the agency regulations in the General Assembly's internet~~
5 ~~web site.~~

6 ~~(4)(A) The scope of the financial impact statement shall be~~
7 ~~determined by the agency, but shall include, at a minimum, the estimated cost~~
8 ~~of complying with the rule and the estimated cost for the agency to implement~~
9 ~~the rule.~~

10 ~~(B) If the agency has reason to believe that the~~
11 ~~development of a financial impact statement will be so speculative as to be~~
12 ~~cost prohibitive, the agency shall submit a statement and explanation to that~~
13 ~~effect.~~

14 ~~(C) If the purpose of a state agency rule or regulation is~~
15 ~~to implement a federal rule or regulation, the financial impact statement~~
16 ~~shall be limited to any incremental additional cost of the state rule or~~
17 ~~regulation as opposed to the federal rule or regulation.~~

18 ~~(e) Each rule adopted by an agency shall be effective ten (10) days~~
19 ~~after filing unless a later date is specified by law or in the rule itself.~~
20 ~~However, an emergency rule may become effective immediately upon filing, or at~~
21 ~~a stated time less than ten (10) days thereafter, if the agency finds that~~
22 ~~this effective date is necessary because of imminent peril to the public~~
23 ~~health, safety, or welfare. The agency's finding and a brief statement of the~~
24 ~~reasons therefor shall be filed with the rule. The agency shall take~~
25 ~~appropriate measures to make emergency rules known to the persons who may be~~
26 ~~affected by them.~~

27 ~~(f) No rule adopted after June 30, 1967, shall be valid unless adopted~~
28 ~~and filed in substantial compliance with this section.~~

29 ~~(g) [Repealed.]~~

30 ~~(h) In any proceeding brought which questions the existence of~~
31 ~~imminent peril to the public health, safety, or welfare, a written finding by~~
32 ~~the agency that adoption of any emergency rule was necessary to avoid the loss~~
33 ~~of federal funding or certification shall establish a prima facie case of the~~
34 ~~existence of imminent peril to the public health, safety, or welfare and the~~
35 ~~burden of proof shall shift to the challenger to rebut the existence of the~~
36 ~~condition by a preponderance of the evidence.~~

1
2 SECTION 5. Arkansas Code 25-15-205 is hereby repealed.

3 ~~§ 25-15-205. Rules - "The Arkansas Register".~~

4 ~~(a) The Secretary of State shall compile, index, and publish a~~
5 ~~publication to be known as "The Arkansas Register". This publication shall~~
6 ~~contain all adopted rules of any agency.~~

7 ~~(b) The Secretary of State shall publish "The Arkansas Register" at~~
8 ~~least monthly, setting forth a synopsis of rules filed by agencies. A~~
9 ~~cumulative index shall be published annually.~~

10 ~~(c)(1) "The Arkansas Register" shall be furnished to all state agencies~~
11 ~~and other persons at prices fixed by the Secretary of State to cover~~
12 ~~publication and mailing costs.~~

13 ~~(2) Proceeds from the sale of "The Arkansas Register" shall be~~
14 ~~deposited in the Constitutional Officers Fund and the State Central Services~~
15 ~~Fund in the State Treasury.~~

16 ~~(d) A progress report on publication and distribution shall be provided~~
17 ~~to the Legislative Council annually.~~

18
19 SECTION 6. This Act shall be effective as follows:

20 In order to provide for publication of the Administrative Bulletin and
21 the Administrative Code, and to provide assistance to agencies in meeting the
22 requirements of this Act as soon as possible after January 1, 2000, Arkansas
23 Code Annotated §§ 25-15-215 and 25-15-218 shall become effective ninety-one
24 (91) days after adjournment of the Regular Session of the 82nd General
25 Assembly. The remainder of the Act shall become effective January 1, 2000.

26
27 SECTION 7. All provisions of this act of a general and permanent nature
28 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
29 Revision Commission shall incorporate the same in the Code.

30
31 SECTION 8. If any provision of this act or the application thereof to
32 any person or circumstance is held invalid, such invalidity shall not affect
33 other provisions or applications of the act which can be given effect without
34 the invalid provision or application, and to this end the provisions of this
35 act are declared to be severable.

1 SECTION 9. This Act shall be supplemental to all other laws pertaining
2 to the promulgation of rules and to agency adjudications, and shall not repeal
3 any other laws except for laws specifically repealed by this Act.

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