

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas *As Engrossed: H1/18/01 H1/24/01 S2/26/01*

2 83rd General Assembly

A Bill

3 Regular Session, 2001

HOUSE BILL 1018

4

5 By: Representatives Milum, Cleveland, Files, Agee, Hausam, Gillespie, Rackley, Minton

6 By: Senators Hunter, Wilkinson

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For An Act To Be Entitled

10 AN ACT TO AMEND ARKANSAS CODE 10-3-309 RELATING TO THE
11 REVIEW OF AGENCY REGULATION BY THE LEGISLATIVE
12 COUNCIL; AND FOR OTHER PURPOSES.

13

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Subtitle

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TO AMEND ARKANSAS CODE 10-3-309 RELATING

16

TO THE REVIEW OF AGENCY REGULATION BY

17

THE LEGISLATIVE COUNCIL.

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

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22 SECTION 1. Arkansas Code 10-3-309 is amended to read as follows:

23 10-3-309. Review of state agency rules, regulations, amendments,
24 revisions, etc.

25 (a)(1) In the passage of this section, the General Assembly is aware of
26 the significant number of laws which have been enacted granting to boards,
27 commissions, departments, and administrative agencies of state government the
28 authority to promulgate and enforce rules and regulations. The General
29 Assembly is further aware that ample safeguards have not been established
30 whereby the General Assembly may be informed of circumstances in which
31 administrative rules and regulations do not conform to legislative intent.

32 (2) It is the purpose of this section to establish a method for
33 continuing legislative review of such rules and regulations whereby the
34 General Assembly may, at each legislative session, take remedial steps to
35 correct abuses of rule-making authority or clarify legislative intent with
36 respect to the rule-making authority granted the administrative boards,

1 commissions, departments, or agencies.

2 (b) Whenever a state agency shall finalize the promulgation of a rule
3 or regulation or a revision, amendment, or change in such regulation, a copy
4 shall be filed with the Bureau of Legislative Research if the rule or
5 regulation contains any changes from the initial filing of the rule or
6 regulation.

7 (c) A state agency shall notify the Legislative Council of its
8 intention to repeal any rule or regulation which is on file with the
9 ~~Legislative Council~~ Bureau of Legislative Research.

10 (d)(1) The research staff of the Bureau of Legislative Research of the
11 Legislative Council shall study and review all current rules, or proposed
12 rules, and all adopted amendments and revisions of rules by state agencies and
13 shall report to the Legislative Council in regard thereto.

14 (2) *The Legislative Council shall act in an advisory capacity to*
15 *the General Assembly with respect to administrative rules and procedures and*
16 *shall report to the General Assembly at each regular session of all*
17 *administrative rules and regulations which the Legislative Council believes to*
18 *be contrary to legislative intent or promulgated without legislative*
19 *authority.* ~~In addition, the Legislative Council shall submit appropriate~~
20 ~~legislation to the General Assembly to correct any such finding.~~

21 (e) The Legislative Council may selectively review possible, proposed,
22 or adopted rules and regulations and prescribe appropriate council procedures
23 for that purpose. The council may receive and investigate complaints from
24 members of the public with respect to possible, proposed, or adopted rules and
25 regulations and hold public proceedings on those complaints.

26 (1) The council may request a representative of an agency whose
27 possible, proposed, or adopted rule or regulation is under examination to
28 attend a council meeting and answer relevant questions. The council may also
29 communicate to the agency its nonbinding comments on any possible, proposed,
30 or adopted rule or regulation and request the agency to respond to them in
31 writing.

32 (2) The council may recommend enactment of a statute to improve
33 the operation of an agency. The council may also recommend that a particular
34 rule or regulation be superseded in whole or in part by statute and refer the
35 recommendation to the appropriate committee or committees of the General
36 Assembly. This subsection does not preclude any committee of the General

1 Assembly from reviewing a rule or regulation on its own motion or recommending
 2 that it be superseded in whole or in part by statute.

3 (3)(A) If the council considers all or any portion of a rule or
 4 regulation to be beyond the procedural or substantive authority delegated to
 5 the adopting agency, the council may file notice of such with the agency
 6 issuing the rule or regulation in question. The notice shall contain a
 7 concise statement detailing the precise reasons that the council considers the
 8 rule or regulation, or portion thereof, to be beyond the procedural or
 9 substantive authority delegated to the agency.

10 (B) The Legislative Council shall maintain a permanent
 11 register open to public inspection of all such notices.

12 (C) Within thirty (30) calendar days after the filing of an
 13 objection by the council to a rule or regulation, the issuing agency shall
 14 respond in writing to the council. After receipt of the response, the council
 15 may withdraw or modify its findings.

16 (D) The failure of the council to file a notice regarding a
 17 rule or regulation is not an implied legislative authorization of its
 18 procedural or substantive validity.

19 (4) The council may make nonbinding recommendations to an agency
 20 that it adopt a rule or regulation.

21 ~~(e)(f)~~(1)(A) Before any rule or regulation of any agency of the state
 22 may be revised, promulgated, amended, or changed, a copy of the rule or
 23 amendment to existing rules and a financial impact statement shall be filed
 24 with the ~~Arkansas Legislative Council~~ Bureau of Legislative Research, at least
 25 thirty (30) days before the expiration of the period for public comment on the
 26 rule, pursuant to the Arkansas Administrative Procedure Act, as amended, ~~§ 25-~~
 27 ~~15-201 et seq.~~, or other acts pertaining to the rule-making authority of that
 28 agency.

29 (B) The scope of the financial impact statement shall be
 30 determined by the agency, but shall include, at a minimum, the estimated cost
 31 of complying with the rule or regulation and the estimated cost for the agency
 32 to implement the rule or regulation.

33 (C) If the agency has reason to believe that the
 34 development of a financial impact statement will be so speculative as to be
 35 cost prohibitive, the agency shall submit a statement and explanation to that
 36 effect.

1 (D) If the purpose of a state agency rule or regulation is
 2 to implement a federal rule or regulation, the financial impact statement
 3 shall be limited to any incremental additional cost of the state rule or
 4 regulation as opposed to the federal rule or regulation.

5 (2) The Bureau of Legislative Research ~~of the Legislative Council~~
 6 shall review the proposed revised or amended rule or regulation and shall, if
 7 it is believed that the rule or regulation is contrary to legislative intent,
 8 file a statement thereof with the Legislative Council.

9 (3) In either event, the proposed rule or regulation and any
 10 comment thereon prepared by the Bureau of Legislative Research shall be
 11 submitted to the Legislative Council at the next regular meeting following its
 12 filing with the Legislative Council.

13 ~~(4) If, at such meeting, the Legislative Council, after having~~
 14 ~~considered the proposed rule or regulation, or the proposed change of an~~
 15 ~~existing rule or regulation of the agency, determines that the proposed rule,~~
 16 ~~regulation, or change is, in the opinion of the Legislative Council, contrary~~
 17 ~~to legislative intent, the Chairman of the Legislative Council shall file a~~
 18 ~~statement in writing with the state agency proposing to promulgate said rule~~
 19 ~~or regulation, setting forth the Legislative Council's conclusions in regard~~
 20 ~~to the proposed rule or regulation. The statement shall be filed with the~~
 21 ~~state agency on or before the date the hearings are to be held on the rule~~
 22 ~~pursuant to the Administrative Procedure Act, as noted above.~~

23 ~~(f)(g)~~(1) In addition, before any rule or regulation of any agency of
 24 the state may be revised, promulgated, amended, or changed, a copy of the rule
 25 or amendment to existing rules shall be filed with the interim ~~committee~~
 26 committees of the Arkansas General Assembly having responsibility for review
 27 of that agency under Acts 1977, No. 100 ~~[expired]~~.

28 (2) The filing shall be made at least thirty (30) days before the
 29 expiration of the period for public comment on the rule pursuant to the
 30 Arkansas Administrative Procedure Act, as amended, ~~§ 25-15-201 et seq.~~, or
 31 other acts pertaining to the rulemaking authority of the agency.

32 ~~(g)(h)~~ As used in this section, "state agency" means any office, board,
 33 commission, department, council, bureau, or other agency of state government
 34 having authority by statute enacted by the General Assembly to promulgate or
 35 enforce the administrative rules and regulations.

36 /s/ Milum