

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.

State of Arkansas
85th General Assembly
Regular Session, 2005

A Bill

HOUSE BILL 2623

By: Representatives J. Martin, Wood

For An Act To Be Entitled

AN ACT CONCERNING THE REVIEW OF THE EFFICIENT
OPERATION OF STATE GOVERNMENT; AND FOR OTHER
PURPOSES.

Subtitle

THE GOVERNMENT EFFICIENCY AND
ACCOUNTABILITY ACT.

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

SECTION 1. Legislative intent.

(a) The General Assembly finds that current economic trends dictate that state government operate as efficiently as possible and that the purposes of state government are more easily achieved through the efficient operation of state government.

(b) The General Assembly further finds that every division of state government must be accountable for the performance of its designated purpose.

(c) The purpose of this act is to provide for a review of the efficient operation of state government.

SECTION 2. Arkansas Code Title 25 is amended to add an additional chapter to read as follows:

25-37-101. Short title.

This chapter shall be known as "The Government Efficiency and Accountability Act."

25-37-102. Definitions.



As used in this chapter:

(1) "Advisory committee" means a committee, council, commission, or other entity created under state law whose primary function is to advise a state agency;

(2) "Commission" means the Sunset Advisory Commission; and

(3) "State agency" means any agency, authority, board, bureau, commission, council, department, office, or officer of the State of Arkansas receiving an appropriation by the General Assembly.

25-37-103. Sunset Advisory Commission.

(a) There is created the Arkansas Sunset Advisory Commission.

(b)(1) The commission shall consist of:

(A) Four (4) members of the Senate appointed by the President Pro Tempore of the Senate;

(B) One (1) member of the Senate appointed by the majority leader of the Senate;

(C) One (1) member of the Senate appointed by the minority leader of the Senate;

(D) Four (4) members of the House of Representatives appointed by the Speaker of the House of Representatives;

(E) One (1) member of the House of Representatives appointed by the majority leader of the House of Representatives; and

(F) One (1) member of the House of Representatives appointed by the minority leader of the House of Representatives.

(2) Each appointing authority may designate himself or herself as one (1) of the legislative appointees.

(3)(A) Except as provided in subdivision (b)(4)(B) of this section, legislative members of the commission shall serve four-year terms, with terms staggered so that the terms of one-half (1/2) of the legislative members expire on September 1 of each odd-numbered year.

(B) If any appointing authority serves on the commission, he or she shall continue to serve until he or she:

(i) Resigns from the commission; or

(ii) Ceases to hold the office of President Pro Tempore of the Senate or Speaker of the House of Representatives.

(5) Members other than the appointing authorities shall be

1 subject to the following restrictions:

2 (A) After an individual serves six (6) years on the
 3 commission, the individual shall be ineligible for appointment to another
 4 full or partial term; and

5 (B) A legislative member who serves more than one-half
 6 (1/2) of a full term shall not be appointed to an immediately succeeding
 7 term.

8 (c)(1) The appointing authorities shall make their appointments before
 9 September 1 of each odd-numbered year.

10 (2) If a member ceases to be a member of the house from which he
 11 or she was appointed, the member shall vacate his or her membership on the
 12 commission.

13 (3) If a vacancy occurs on the commission, the person who
 14 appointed the person to the position that has become vacant shall appoint a
 15 person to serve for the remainder of the unexpired term.

16 (d)(1) The commission shall have a chair and vice chair as presiding
 17 officers.

18 (2) The chair and vice chair positions shall alternate every two
 19 (2) years between the membership groups appointed by the various appointing
 20 authorities.

21 (3) The chair and the vice chair shall not be from the same
 22 membership group.

23 (4) The appointing authority shall each designate a presiding
 24 officer from his or her appointed membership group.

25 (e)(1) Seven (7) members of the commission shall constitute a quorum.

26 (2) A final action or recommendation shall not be made unless
 27 approved by a majority vote of the commission's full membership.

28 (f)(1) Each member of the commission shall be entitled to
 29 reimbursement for actual and necessary expenses incurred in performing
 30 commission duties.

31 (2) Each member shall receive reimbursement from the appropriate
 32 fund of the member's respective house.

33
 34 25-37-104. Staff.

35 (a) The Arkansas Sunset Advisory Commission shall employ an executive
 36 director to act as the executive head of the commission.

1 **(b) The executive director shall employ persons necessary to carry out**
2 **the provisions of this chapter through funds appropriated by the General**
3 **Assembly.**

4 **(c) The chair and vice chair of the commission may each employ a staff**
5 **to assist them on matters related to commission activities.**

6
7 **25-37-105. Agency report to commission.**

8 **Before October 30 of the odd-numbered year before the year in which a**
9 **state agency is to be abolished, the agency shall report to the Arkansas**
10 **Sunset Advisory Commission:**

11 **(1) Information regarding the application to the agency of the**
12 **criteria in § 25-37-107; and**

13 **(2) Any other information that the agency considers appropriate**
14 **or that is requested by the commission.**

15
16 **25-37-106. Commission duties.**

17 **(a) Before September 1 of the even-numbered year before the year in**
18 **which a state agency subject to this chapter and the state agency's advisory**
19 **committees, if any, are abolished, the Arkansas Sunset Advisory Commission**
20 **shall:**

21 **(1) Review and take action necessary to verify the reports**
22 **submitted by the agency under § 25-37-104;**

23 **(2) Consult the Legislative Council, the Governor's Office, the**
24 **Auditor of State, and the Director of Department of Finance and**
25 **Administration on the application to the agency of the criteria provided in §**
26 **25-37-107;**

27 **(3) Conduct a performance evaluation of the agency based on the**
28 **criteria provided in § 25-37-107 and prepare a written report; and**

29 **(4) Review the implementation of commission recommendations**
30 **contained in the reports presented to the General Assembly during the**
31 **preceding legislative session.**

32 **(b) The written report prepared by the commission under subdivision**
33 **(a)(3) of this section shall be considered a public record.**

34 **(c) Work performed under this section by the Auditor of State is**
35 **subject to approval by the Legislative Joint Audit Committee for inclusion in**
36 **the audit plan under § 25-37-111.**

1
2 25-37-107. Commission report.

3 (a)(1) At each regular session of the General Assembly, the Arkansas
4 Sunset Advisory Commission shall present to the General Assembly a report on
5 the agencies and advisory committees scheduled to be abolished.

6 (2) The General Assembly shall forward a copy of the report to
7 the Governor, the Lieutenant Governor, and the Auditor of State for their
8 review.

9 (b) The commission shall include in the report:

10 (1) Its specific findings regarding each of the criteria
11 prescribed by § 25-37-107;

12 (2) Its recommendations based on the matters prescribed by § 25-
13 37-108; and

14 (3) Other information the commission considers necessary for a
15 complete evaluation of the agency.

16
17 25-37-108. Criteria for review.

18 The Arkansas Sunset Advisory Commission and its staff shall consider
19 the following criteria in determining whether a public need exists for the
20 continuation of a state agency or its advisory committees or for the
21 performance of the functions of the agency or its advisory committees:

22 (1) The efficiency with which the agency or advisory committee
23 operates;

24 (2) An identification of the objectives intended for the agency
25 or advisory committee and the problem or need that the agency or advisory
26 committee was intended to address, the extent to which the objectives have
27 been achieved, and any activities of the agency in addition to those granted
28 by statute and the authority for these activities;

29 (3) An assessment of less restrictive or alternate methods of
30 performing any regulation that the agency performs that could adequately
31 protect the public;

32 (4) The extent to which the advisory committee is needed and is
33 used;

34 (5) The extent to which the jurisdiction of the agency and the
35 programs administered by the agency overlap or duplicate those of other
36 agencies and the extent to which the programs administered by the agency can

1 be consolidated with the programs of other state agencies;

2 (6) Whether the agency has recommended to the legislature
3 statutory changes calculated to be of benefit to the public rather than to an
4 occupation, business, or institution that the agency regulates;

5 (7) The promptness and effectiveness with which the agency
6 disposes of complaints concerning persons affected by the agency;

7 (8) The extent to which the agency has encouraged participation
8 by the public in making its rules and decisions as opposed to participation
9 solely by those it regulates and the extent to which the public participation
10 has resulted in rules compatible with the objectives of the agency;

11 (9) The extent to which the agency has complied with the
12 applicable requirements of:

13 (A) An agency of the United States or of this state
14 regarding equality of employment opportunity and the rights and privacy of
15 individuals; and

16 (B) State law and applicable rules of any state agency
17 regarding purchasing goals and programs for historically underutilized
18 businesses;

19 (10) The extent to which changes are necessary in the enabling
20 statutes of the agency so that the agency can adequately comply with the
21 criteria listed in this section;

22 (11) The extent to which the agency issues and enforces rules
23 relating to potential conflicts of interest of its employees;

24 (12) The extent to which the agency follows record management
25 practices that enable the agency to respond efficiently to requests for
26 public information; and

27 (13) The effect of federal intervention or loss of federal funds
28 if the agency is abolished.

29
30 25-37-109. Recommendations.

31 (a) In its report on a state agency, the Arkansas Sunset Advisory
32 Commission shall:

33 (1) Make recommendations on the abolition, continuation, or
34 reorganization of each affected state agency and its advisory committees and
35 on the need for the performance of the functions of the agency and its
36 advisory committees;

1 (2) Make recommendations on the consolidation, transfer, or
2 reorganization of programs within state agencies not under review when the
3 programs duplicate functions performed in agencies under review;

4 (3) Recommend appropriation levels for each state agency and
5 advisory committee for which abolition or reorganization is recommended under
6 subdivision (a)(1) or subdivision (a)(2) of this section; and

7 (4) Include drafts of legislation necessary to carry out the
8 commission's recommendations under subdivisions (a)(1) and (2) of this
9 section.

10 (b)(1) The General Assembly shall forward a copy of the report to the
11 Auditor of State.

12 (2) Based on a risk assessment of and subject to the Legislative
13 Joint Audit Committee's approval of including the examination in the audit
14 plan under § 25-37-109, the Auditor of State may examine the recommendations
15 which do not require a statutory change and include as part of the next
16 approved audit of the agency a report on whether the agency has implemented
17 the recommendations and, if so, in what manner.

18
19 25-37-110. Review of certain agencies.

20 (a) In the two-month period preceding the date scheduled for the
21 abolition of a state agency under this chapter, the Arkansas Sunset Advisory
22 Commission may exempt certain agencies from the provisions of this chapter
23 relating to staff reports, hearings, and evaluations.

24 (b) The commission may only exempt agencies that have been inactive
25 for a period of two (2) years preceding the date the agency is scheduled for
26 abolition.

27 (c) The commission's action in exempting agencies under this section
28 shall be done by a majority vote of the commission.

29
30 25-37-111. Monitoring of recommendations.

31 During each regular legislative session, the staff of the Arkansas
32 Sunset Advisory Commission shall monitor legislation affecting agencies that
33 have undergone review under this chapter and shall periodically report to the
34 members of the commission on proposed changes that would modify
35 recommendations of the commission.

1 25-37-112. Abolition of advisory committees.

2 An advisory committee, the primary function of which is to advise a
3 particular state agency, shall be abolished on the date set for abolition of
4 the agency unless the advisory committee is expressly continued by law.

5
6 25-37-113. Continuation by law.

7 (a) During the regular session immediately before the abolition of a
8 state agency or an advisory committee that is subject to this chapter, the
9 General Assembly by law may continue the agency or advisory committee for a
10 period not to exceed twelve (12) years.

11 (b) This chapter does not prohibit the General Assembly from:

12 (1) Terminating a state agency or advisory committee subject to
13 this chapter at a date earlier than that provided in this chapter; or

14 (2) Considering any other legislation relative to a state agency
15 or advisory committee subject to this chapter.

16
17 25-37-114. Legislative consideration.

18 (a) Except as provided by subsection (b) of this section, the General
19 Assembly may not consider in one (1) bill the continuation, transfer, or
20 modification of more than one (1) state agency and the agency's functions and
21 advisory committees.

22 (b) If more than one (1) agency, advisory committee, or function is to
23 be consolidated, the General Assembly may consider in one (1) bill only the
24 agencies or advisory committees to be consolidated.

25 (c) A bill to continue a state agency, to transfer its functions, or
26 to consolidate it with another agency shall mention the affected agencies in
27 the title of the bill.

28
29 25-37-115. Procedure after termination.

30 (a)(1) A state agency that is abolished in an odd-numbered year may
31 continue in existence until September 1 of the following year to conclude its
32 business.

33 (2) Unless the law provides otherwise, abolishment shall not
34 reduce or otherwise limit the powers and authority of the state agency during
35 the concluding year.

36 (3) A state agency is terminated and shall cease all activities

1 at the end of the one-year period.

2 (4) Unless the law provides otherwise, all rules that have been
3 adopted by the state agency expire at the expiration of the one-year period.

4 (b) Any unobligated and unexpended appropriations of an abolished
5 agency or advisory committee lapse on September 1 of the even-numbered year
6 after abolishment.

7 (c)(1) Except as provided by subsection (f) of this section or as
8 otherwise provided by law, all money in a dedicated fund of an abolished
9 state agency or advisory committee on September 1 of the even-numbered year
10 after abolishment shall be transferred to the General Revenue Fund Account of
11 the State Apportionment Fund.

12 (2) The part of the law dedicating the money to a specific fund
13 of an abolished agency becomes void on September 1 of the even-numbered year
14 after abolishment.

15 (d) Unless the law or a line item appropriation in an appropriation
16 act of the General Assembly provides otherwise, an abolished state agency or
17 advisory committee funded in an appropriation act of the General Assembly for
18 both years of the biennium may not spend or obligate any of the money
19 appropriated to it for the second year of the biennium.

20 (e)(1) Unless the Governor designates an appropriate state agency as
21 prescribed by subsection (f) of this section, property and records in the
22 custody of an abolished state agency or advisory committee on September 1 of
23 the even-numbered year after abolishment shall be transferred to the Office
24 of State Procurement of the Department of Finance and Administration.

25 (2) If the Governor designates an appropriate state agency, the
26 property and records shall be transferred to the designated state agency.

27 (f)(1) The General Assembly recognizes the state's continuing
28 obligation to pay bonded indebtedness and all other obligations, including
29 lease, contract, and other written obligations, incurred by a state agency
30 abolished under this chapter, and this chapter does not impair or impede the
31 payment of bonded indebtedness and all other obligations, including lease,
32 contract, and other written obligations, in accordance with their terms.

33 (2) If an abolished state agency has outstanding bonded
34 indebtedness or other outstanding obligations, including, but not limited to,
35 lease, contract, and other written obligations, the bonds and all other
36 obligations shall remain valid and enforceable in accordance with their terms

1 and subject to all applicable terms and conditions of the laws and
2 proceedings authorizing the bonds and all other obligations, including lease,
3 contract, and other written obligations.

4 (3) The Governor shall designate an appropriate state agency
5 that shall continue to carry out all covenants contained in the bonds and in
6 all other obligations, including, lease, contract, and other written
7 obligations, and the proceedings authorizing them, including the issuance of
8 bonds, and the performance of all other obligations, including lease,
9 contract, and other written obligations, to complete the construction of
10 projects or the performance of other obligations, including lease, contract,
11 and other written obligations.

12 (4) The designated state agency shall provide payment from the
13 sources of payment of the bonds in accordance with the terms of the bonds and
14 shall provide payment from the sources of payment of all other obligations,
15 including lease, contract, and other written obligations, in accordance with
16 their terms, whether from taxes, revenues, or otherwise, until all bonds and
17 interest on the bonds are paid in full and all other obligations, including
18 lease, contract, and other written obligations, are performed and paid in
19 full.

20 (5) If the proceedings so provide, all funds established by laws
21 or proceedings authorizing the bonds or authorizing other obligations,
22 including lease, contract, and other written obligations, shall remain with
23 the Director of the Department of Finance and Administration or the
24 previously designated trustees.

25 (6) If the proceedings do not provide that the funds remain with
26 the Director of the Department of Finance and Administration or the
27 previously designated trustees, the funds shall be transferred to the
28 designated state agency.

29
30 25-37-116. Subpoena power.

31 (a)(1) The Arkansas Sunset Advisory Commission may issue process to
32 compel the attendance of witnesses and the production of books, records,
33 papers, and other objects necessary or proper for the purposes of the
34 commission proceedings.

35 (2) The process may be served on a witness at any place in this
36 state.

1 **(b) If a majority of the committee directs the issuance of a subpoena,**
2 **the chair of the commission shall issue the subpoena in the name of the**
3 **commission.**

4 **(c) If the chair is absent, the chair's designee may issue a subpoena**
5 **or other process in the same manner as the chair.**

6 **(d)(1) If necessary to obtain compliance with a subpoena or other**
7 **process, the commission may issue attachments.**

8 **(2) The attachments may be addressed to and served by any peace**
9 **officer in this state.**

10 **(e) Testimony taken under subpoena shall be reduced to writing and**
11 **given under oath subject to the penalty of perjury.**

12 **(f) A witness who attends a commission proceeding under process is**
13 **entitled to the same mileage and per diem as a witness who appears before a**
14 **grand jury in this state.**

15
16 **25-37-117. Assistance and access to state agencies.**

17 **(a)(1) The Arkansas Sunset Advisory Commission may request the**
18 **assistance of state agencies and officers.**

19 **(2) When assistance is requested, a state agency or officer may**
20 **assist the commission.**

21 **(b) In carrying out its functions under this chapter, the commission**
22 **or its designated staff member may inspect the records, documents, and files**
23 **of any state agency.**

24
25 **25-37-118. Records protected from disclosure.**

26 **(a) A working paper, including all documentary or other information,**
27 **prepared or maintained by the Arkansas Sunset Advisory Commission staff in**
28 **performing its duties under this chapter or other law to conduct an**
29 **evaluation and prepare a report is excepted from the Freedom of Information**
30 **Act of 1967, § 25-19-101 et seq.**

31 **(b) A record held by another entity that is confidential by law and**
32 **that the commission receives in connection with the performance of the**
33 **commission's functions under this chapter or another law remains confidential**
34 **and is excepted from the Freedom of Information Act of 1967, § 25-19-101 et**
35 **seq.**

1 25-37-119. Relocation of employees.

2 If an employee is displaced because a state agency or its advisory
3 committee is abolished, reorganized, or continued, the state agency and the
4 Arkansas Employment Security Department shall make a reasonable effort to
5 relocate the displaced employee.

6
7 25-37-120. Saving provision.

8 Except as otherwise provided, abolition of a state agency does not
9 affect rights and duties that matured, penalties that were incurred, civil or
10 criminal liabilities that arose, or proceedings that were begun before the
11 effective date of the abolition.

12
13 25-37-121. Review of proposed legislation creating regulatory agency.

14 (a) Each bill filed in the General Assembly that would create a new
15 state agency having regulatory authority or a new advisory committee to a
16 state agency having regulatory authority shall be forwarded to the Arkansas
17 Sunset Advisory Commission.

18 (b) The commission shall review the bill to determine if:

19 (1) The proposed regulatory or other functions of the agency or
20 committee could be administered by one (1) or more existing state agencies or
21 advisory committees;

22 (2) The form of regulation, if any, proposed by the bill is the
23 least restrictive form of regulation that will adequately protect the public;

24 (3) The bill provides for adequate public input regarding any
25 regulatory function proposed by the bill; and

26 (4) The bill provides for adequate protection against conflicts
27 of interest within the agency or committee.

28 (c) After reviewing the bill, the commission shall forward a written
29 comment on the legislation to the sponsor of the bill and to the presiding
30 officer of the committee to which the bill is referred.

31
32 25-37-122. Gifts and grants.

33 (a) The Arkansas Sunset Advisory Commission may accept gifts, grants,
34 and donations from any organization described in Section 501(c)(3) of the
35 Internal Revenue Code as it existed on January 1, 2005, for the purpose of
36 funding any activity under this chapter.

1 (b) All gifts, grants, and donations shall:

2 (1) Be accepted in an open meeting by a majority of the voting
3 members of the commission; and

4 (2) Reported in the public record of the commission with the
5 name of the donor and the purpose of the gift, grant, or donation.

6
7 25-37-123. Rules.

8 The Sunset Advisory Commission shall promulgate rules necessary to
9 carry out the provisions of this subchapter.