

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
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: S1/18/07

A Bill

SENATE BILL 55

5 By: Senator Altes
6 *By: Representatives Norton, Medley, E. Brown, Glidewell, Key, M. Martin, Schulte, Walters, Wells,*
7 *Reynolds, Hoyt, Maxwell, Rosenbaum, Garner*
8
9

For An Act To Be Entitled

11 AN ACT CONCERNING ADMINISTRATIVE RULES THAT
12 IMPACT SMALL BUSINESS; AND FOR OTHER PURPOSES.
13

Subtitle

15 AN ACT CONCERNING ADMINISTRATIVE RULES
16 THAT IMPACT SMALL BUSINESS.
17
18

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

21 SECTION 1. Arkansas Code Title 25, Chapter 15 is amended to add an
22 additional subchapter to read as follows:

23 25-15-301. Definitions.

24 As used in this act:

25 (1)(A) "Agency" means each board, commission, department, office,
26 or other authority of the government of the State of Arkansas whether or not
27 within or subject to review by another agency.

28 (B) "Agency" does not include the General Assembly and the
29 judiciary;

30 (2)(A) "Rule" means any agency statement of general
31 applicability and future effect that implements, interprets, or prescribes
32 law or policy or describes the organization, procedure, or practice of any
33 agency and includes, but is not limited to, the amendment or repeal of a
34 prior rule.

35 (B) "Rule" does not mean:

36 (i) Statements concerning the internal management of



1 an agency and statements that do not affect the private rights or procedures
2 available to the public;

3 (ii) Declaratory rulings issued pursuant to § 25-15-
4 206; or

5 (iii) Intra-agency memoranda; and

6 (3) "Small business" means a for-profit enterprise consisting of
7 no more than one hundred (100) employees regardless of whether the employees
8 are full-time or part-time employees.

9
10 25-15-302. Determination of effect of proposed rule on small
11 businesses.

12 (a)(1) Before submitting a proposed rule for adoption, amendment, or
13 repeal, an agency first shall determine whether the proposed rule affects
14 small businesses.

15 (2) However, this section does not apply to a rule:

16 (A) Adopted on an emergency basis;

17 (B) That is federally mandated; or

18 (C) That substantially codifies existing state or federal
19 law.

20 (b) As part of its analysis, the agency shall examine whether a means
21 exists to make the rule less costly for small businesses without compromising
22 the objective of the rule.

23 (c) If the proposed rule affects small businesses, the agency shall
24 prepare an economic impact statement before undertaking the promulgation
25 process.

26
27 25-15-303. Economic impact statement.

28 (a) An agency required to prepare an economic impact statement under §
29 25-15-302(c) shall comply with this section.

30 (b) The agency shall prepare an economic impact statement that sets
31 forth the following:

32 (1) The type or types of small businesses that will be directly
33 affected by the proposed rule, bear the cost of the proposed rule, or
34 directly benefit from the proposed rule;

35 (2) A description of how small businesses will be adversely
36 affected;

1 (3) A reasonable determination of the dollar amounts the
2 proposed rule will cost small businesses in terms of fees, administrative
3 penalties, reporting, recordkeeping, equipment, construction, labor,
4 professional services, revenue loss, or other costs associated with
5 compliance;

6 (4) A reasonable determination of the dollar amounts of the
7 costs to the agency of implementing the proposed rule, as well as the
8 financial benefit to the agency of implementing the rule;

9 (5) Whether and to what extent alternative means exist for
10 accomplishing the objectives of the proposed rule that might be less
11 burdensome to small businesses and why such alternatives are not being
12 proposed; and

13 (6) A comparison of the proposed rule with federal and state
14 counterparts.

15 (c) The agency shall submit the economic impact statement and the
16 proposed rule to the Director of the Department of Economic Development.

17 (d)(1) The director shall provide detailed information in writing to
18 the agency regarding whether, in the reasoned opinion of the director, the
19 agency has satisfactorily completed the economic impact statement and whether
20 the agency has taken sufficient measures to balance the objectives of the
21 proposed rule with the interests of the affected small businesses.

22 (2)(A) In performing these duties, the director may elicit views
23 and information from, and shall serve as the point of contact for, small
24 business organizations and associations, state and federal agencies, and
25 other parties who have comments, objections, or opinions concerning the
26 proposed rule.

27 (B) If appropriate, the director shall convey these
28 communications to the agency.

29 (3) In addition to commenting upon a proposed rule, the director
30 may review existing rules and make recommendations to agencies to amend rules
31 that may have an unduly negative impact on small businesses.

32 (e)(1) Upon receiving from the director the information described in
33 this section, the agency shall promptly consider the information.

34 (2)(A) If the agency determines that no action shall be taken in
35 response to the information received from the director, the agency may
36 respond in writing to the director and explain its reasons for this

1 determination.

2 (B) If the agency determines that amendment of a proposed
3 rule or adoption, amendment, or repeal of an existing rule is warranted, the
4 agency shall indicate this in its response.

5 (3) Upon completing the requirements of subdivision (e)(2) of
6 this section, the agency may initiate the process for the adoption of a rule.

7
8 SECTION 2. Arkansas Code § 25-15-204(a), concerning the adoption,
9 amendment, or repeal of administrative rules, is amended to read as follows:

10 (a) Prior to the adoption, amendment, or repeal of any rule, the
11 agency shall:

12 (1)(A) Give at least thirty (30) days' notice of its intended
13 action. The thirty-day period shall begin on the first day of the
14 publication of notice.

15 (B) The notice shall include a statement of the terms or
16 substance of the intended action or a description of the subjects and issues
17 involved and the time, the place where, and the manner in which interested
18 persons may present their views ~~thereon~~ on the intended action or the
19 subjects and issues involved.

20 (C) The notice shall be mailed to any person specified by
21 law and to all persons who have requested advance notice of rule-making
22 proceedings.

23 (D)(i) Unless otherwise provided by law, the notice shall
24 be published in a newspaper of general daily circulation for three (3)
25 consecutive days and, when appropriate, in those trade, industry, or
26 professional publications that the agency may select.

27 (ii) The notice shall be published by the Secretary
28 of State on the Internet for thirty (30) days in accordance with § 25-15-218;
29 ~~and~~

30 (2)(A) Afford all interested persons reasonable opportunity to
31 submit written data, views, or arguments, orally or in writing.

32 (B) Opportunity for oral hearing must be granted if
33 requested by twenty-five (25) persons, by a governmental subdivision or
34 agency, or by an association having no fewer than twenty-five (25) members.

35 (C) The agency shall fully consider all written and oral
36 submissions respecting the proposed rule before finalizing the language of

1 the proposed rule and filing the proposed rule as required by subsection (d)
2 of this section.

3 (D) Upon adoption of a rule, the agency, if requested to
4 do so by an interested person either prior to adoption or within thirty (30)
5 days thereafter, shall issue a concise statement of the principal reasons for
6 and against its adoption, incorporating therein its reasons for overruling
7 the considerations urged against its adoption.

8 (E) When rules are required by law to be made on the
9 record after opportunity for an agency hearing, the provisions of that law
10 shall apply in place of this subdivision (a)(2); and

11 (3) Comply with § 25-15-301 et seq.
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13 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
14 General Assembly of the State of Arkansas that small businesses represent a
15 vital part of the economy of the State of Arkansas; that this act will
16 protect small businesses from inadvertent financial harm caused by
17 administrative rules; and that this act should become effective as soon as
18 possible to shield small businesses from potential harm. Therefore, an
19 emergency is declared to exist and this act being immediately necessary for
20 the preservation of the public peace, health, and safety shall become
21 effective on:

22 (1) The date of its approval by the Governor;

23 (2) If the bill is neither approved nor vetoed by the Governor,
24 the expiration of the period of time during which the Governor may veto the
25 bill; or

26 (3) If the bill is vetoed by the Governor and the veto is
27 overridden, the date the last house overrides the veto.
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29 /s/ Altes
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