

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 87th General Assembly  
3 Regular Session, 2009

# A Bill

SENATE BILL 339

4  
5 By: Senator Luker  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO PROVIDE FOR CERTAIN APPEALS OF THE  
10 ARKANSAS PUBLIC SERVICE COMMISSION ORDERS BE MADE  
11 DIRECTLY TO THE COURT OF APPEALS; AND FOR OTHER  
12 PURPOSES..

## Subtitle

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14  
15 TO PROVIDE FOR CERTAIN APPEALS OF THE  
16 ARKANSAS PUBLIC SERVICE COMMISSION  
17 ORDERS BE MADE DIRECTLY TO THE COURT OF  
18 APPEALS.  
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20

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

23 SECTION 1. Arkansas Code § 26-24-101 is amended to read as follows:  
24 26-24-101. Divisions created.

25 For the purpose of assisting it in the carrying out of its functions,  
26 powers, and duties, there is created within the Arkansas Public Service  
27 Commission the following divisions:

28 (1)(A) A Tax Division which shall have the responsibility of  
29 performing all functions and duties regarding assessment and equalization of  
30 properties of public utilities and public carriers;

31 (B)(i)(a) All rules, regulations, and procedures to be  
32 followed by the division in assessing public utilities shall be promulgated  
33 by the commission, and all assessments of public utilities made by the  
34 division shall be upon the approval of the commission;

35 (b) Any person aggrieved by any assessment of  
36 any public utility made by the division and approved by the commission shall,



1 upon petition, be entitled to a hearing before the commission, and appeals  
2 from the rulings of the commission shall be to the ~~circuit court~~ Court of  
3 Appeals upon the record made before the commission in the manner provided by  
4 ~~law §§ 23-2-422 - 23-2-424;~~

5 (ii)(a) All rules, regulations, and procedures to be  
6 followed by the division in assessing public carriers shall be promulgated by  
7 the Arkansas Transportation Commission, and all assessments of public  
8 carriers made by the division shall be upon the approval of the ~~Arkansas~~  
9 ~~Transportation Commission~~ Arkansas Highway Commission;

10 (b) Any person aggrieved by any assessment of  
11 any public carrier made by the division and approved by the ~~Arkansas~~  
12 ~~Transportation Commission~~ Arkansas Highway Commission shall, upon petition,  
13 be entitled to a hearing before that commission, and appeals from the rulings  
14 of the commission shall be to the ~~circuit court~~ Court of Appeals upon the  
15 record made before the commission in the manner provided by law;

16 (2) An Assessment Coordination Division, the duties of which  
17 shall be such of those formerly imposed upon the Arkansas Assessment  
18 Coordination Department as shall be assigned to the division by the  
19 commission. None of the duties so assigned shall relate to the assessment of  
20 the properties of public carriers or public utilities.

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22 SECTION 2. Arkansas Code § 26-24-123 is amended to read as follows:  
23 26-24-123. Appeal of actions or orders.

24 (a)(1) ~~Any taxpayer~~ A party to a proceeding aggrieved by ~~the action or~~  
25 an order of the Arkansas Public Service Commission respecting the assessment  
26 or equalization of property ~~shall have the right of appeal to the circuit~~  
27 ~~court and thence to the Arkansas Supreme Court, the original assessment that~~  
28 has been fixed by the commission, may obtain a review of the order in the  
29 Court of Appeals as provided by §§ 23-2-422 - 23-2-424.

30 (2) The review of the order may be had by filing, within thirty  
31 (30) days from the date of the action or order appealed, in the Court of  
32 Appeals, a notice of appeal stating:

- 33 (A) The nature of the proceeding before the commission;
- 34 (B) The identity of the order complained of ;
- 35 (C) The reasons why the order is claimed to be unlawful;

36 and

1                   (D) A prayer that the order of the commission be modified,  
 2 remanded, or set aside in whole or in part.

3                   (3) No appeal shall lie from the action or order of the  
 4 commission on original assessments unless the property owner shall have first  
 5 exhausted his or her remedy before the commission by way of a petition for  
 6 review.

7           ~~(b)(1) All appeals from the commission involving the assessment or~~  
 8 ~~equalization of property locally assessed may be either to the circuit court~~  
 9 ~~of the county where the property is located or the Pulaski County Circuit~~  
 10 ~~Court.~~

11           ~~(2) All appeals involving the assessment or equalization of~~  
 12 ~~property, the original assessment of which has been fixed by the commission,~~  
 13 ~~shall be the Pulaski County Circuit Court.~~

14           (b)(1)(A) A copy of the notice of appeal shall immediately be  
 15 transmitted by the Clerk of the Court of Appeals to the Secretary of the  
 16 Arkansas Public Service Commission.

17                   (B) Within thirty (30) days from the service of the notice  
 18 of appeal, the commission shall file with the Court of Appeals the record  
 19 upon which the order complained of was entered.

20           (2)(A) The record shall consist of a complete transcript of the  
 21 record in the case made before the commission that shall include a copy of  
 22 all the following in the case:

- 23                           (i) Pleadings;
- 24                           (ii) Proceedings;
- 25                           (iii) Testimony;
- 26                           (iv) Exhibits;
- 27                           (v) Orders;
- 28                           (vi) Findings; and
- 29                           (vii) Opinions.

30                   (B) The parties and the commission may stipulate that only  
 31 a specified portion of the record as made before the commission shall be  
 32 included in the transcript to be filed with the Court of Appeals.

33           ~~(e) All appeals shall be taken within thirty (30) days from the date~~  
 34 ~~of the action or order appealed from by filing a written notice with the~~  
 35 ~~commission and shall be tried de novo.~~

36           (c)(1) Upon the filing of the notice of appeal and the record, the

1 Court of Appeals shall have original and exclusive jurisdiction, to affirm,  
 2 modify, or set aside the order of the commission in whole or in part.

3 (2) An objection to any order of the commission shall not be  
 4 considered by the Court of Appeals unless the objection was raised before the  
 5 commission in the application for rehearing.

6 (3) The findings of the commission as to facts, if supported by  
 7 substantial evidence, are conclusive.

8 ~~(d) No appeal shall lie from the action or order of the commission on~~  
 9 ~~original assessments unless the property owner shall have first exhausted his~~  
 10 ~~remedy before the commission by way of petition for review.~~

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 12 SECTION 3. Arkansas Code § 26-26-1610 is amended to read as follows:  
 13 26-26-1610. Notice of assessment – Review and refunds.

14 (a) After the Tax Division of the Arkansas Public Service Commission  
 15 shall have completed the original assessment of any property within its  
 16 jurisdiction, it shall, as soon as practicable, give notice in writing by  
 17 first-class mail to the owner, officer, agent, or attorney making the  
 18 statement, or, if no statement has been filed, then the notice is to be  
 19 forwarded by first-class mail to the party or company against which the  
 20 assessment has been made, showing the total amount of the assessment.

21 (b)(1) If the owner of the property so assessed is dissatisfied with  
 22 the assessment made by the division, as approved by the Arkansas Public  
 23 Service Commission or the Arkansas Transportation Commission, the owner,  
 24 within ten (10) days from date of notice, may file with the appropriate  
 25 commission a written petition for review of the assessment.

26 (2)(A) All hearings on the petition shall be had before the  
 27 appropriate commission or its agent, ~~on or before November 1 after assessment~~  
 28 ~~notice has been given.~~

29 (B) The appropriate commission shall issue its order on  
 30 the petition within two hundred forty (240) days after the date the petition  
 31 for review is filed.

32 (3) However, hearings ~~hearings~~ Hearings on petitions for review of  
 33 assessments of bus lines, motor carriers, airlines, water transportation  
 34 companies, and private car companies, which assessments are certified to the  
 35 Director of the Department of Finance and Administration for collection of  
 36 tax, shall be to the appropriate commission or its agent, on or before

1 December 31 of the assessing year.

2 (c)(1) The party or company, ~~on an appeal to the Pulaski County~~  
3 ~~Circuit Court~~ during the pendency of a petition for review and on appeal from  
4 an order or finding of the appropriate commission, ~~during the pendency of a~~  
5 pending final judgment after any appeal, shall pay all taxes due before the  
6 date on which penalties are attached based upon the original assessment.

7 (2) If on or prior to the final date for the payment of taxes  
8 without penalty, the final judgment of the court shall have been entered, all  
9 taxes due shall be based upon the amount of the assessment arising under the  
10 final judgment.

11 (d)(1) In the event any company shall not have paid, on or before the  
12 final date for payment of taxes without penalty, all taxes due based upon the  
13 assessment record on the tax rolls on the final date, then the company shall  
14 be required to pay, in addition to these taxes and by reason of the  
15 delinquency, all penalties at the time provided by law, together with the  
16 costs as shall have accrued.

17 (2)(A) At the time the payment is made, the company shall, in  
18 writing, advise the official to whom payment of taxes, penalties, and costs  
19 have been paid that a specified amount thereof is being paid under protest.

20 (B)(i) Upon receipt of the payment and written protest,  
21 the collecting official shall cause the specified amount set forth by the  
22 company to be deposited in an Ad Valorem Tax Protest Fund.

23 (ii) If, as a result of any final judgment, the  
24 company shall be entitled to a refund, then the collecting official shall  
25 cause a refund, as determined by the final judgment, to be made from the  
26 fund; and the remaining, if any, or the whole, if no refund is due the  
27 company, shall be distributed for the benefit of the respective taxing units  
28 entitled thereto.

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