

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021

# A Bill

HOUSE BILL 1217

4  
5 By: Representative Dotson  
6 By: Senator J. Dismang  
7

## For An Act To Be Entitled

8  
9 AN ACT CONCERNING THE EXTENSION AND REPEAL OF  
10 ADMINISTRATIVE RULES; TO AMEND THE PROCESS FOR A  
11 STATE AGENCY RULE TO EXPIRE UNLESS EXTENDED BY THE  
12 LEGISLATIVE COUNCIL; TO ESTABLISH A PROCESS FOR THE  
13 EXPEDITED REPEAL OF RULES THAT DO NOT MEET THE  
14 DEFINITION OF A RULE; TO DECLARE AN EMERGENCY; AND  
15 FOR OTHER PURPOSES.  
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17

## Subtitle

18  
19 CONCERNING THE EXTENSION AND REPEAL OF  
20 ADMINISTRATIVE RULES; AND TO DECLARE AN  
21 EMERGENCY.  
22  
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
25

26 SECTION 1. Arkansas Code § 25-15-401 is amended to read as follows:

27 25-15-401. ~~Definitions~~ Report, sunset, and extension of rules.

28 (a) As used in this subchapter:

29 (1)(A) "Agency" means a board, commission, department, office,  
30 or other authority of the government of the State of Arkansas, whether within  
31 or subject to review by another agency except the General Assembly, the  
32 courts, and the Governor.

33 (B) "Agency" includes the Division of Child Care and Early  
34 Childhood Education and the Child Care Appeal Review Panel for purposes of  
35 administrative appeal;

36 (2)(A) "Rule" means an agency statement of general applicability



1 and future effect that implements, interprets, or prescribes law or policy or  
2 describes the organization, procedure, or practice of an agency, including  
3 without limitation the amendment or repeal of a prior rule.

4 (B) "Rule" does not mean:

5 (i) A statement that concerns the internal  
6 management of an agency and that does not affect the private rights or  
7 procedures available to the public;

8 (ii) A declaratory ruling issued under § 25-15-206;  
9 or

10 (iii) Intra-agency memoranda; and

11 (3) "Rulemaking" means an agency process for the formulation,  
12 amendment, or repeal of a rule.

13 (b) It is the intent of this section to provide for:

14 (1) The systematic review of agency rules to ensure that rules  
15 are relevant to the agency and necessary for the proper operation of the  
16 agency at issue;

17 (2) The expiration of rules that are not extended by the  
18 Legislative Council as part of the systematic review of agency rules under  
19 this section; and

20 (3) A mechanism for the repeal of rules that are not extended as  
21 part of the systematic review of agency rules under this section.

22 (c)(1) The agencies shall be divided into six (6) rule review groups  
23 to be determined by the Governor to ensure that the number of agencies in  
24 each rule review group and the number of subject matter areas represented by  
25 each rule review group are approximately equal.

26 (2) If a new agency is created, the Governor shall assign the  
27 new agency to a rule review group.

28 (d)(1) The Legislative Council shall evaluate each rule review group  
29 created under subsection (c) of this section.

30 (2) The Legislative Council shall establish a schedule for:

31 (A)(i) The evaluation of the six (6) rule review groups  
32 over a twelve-year period, with one (1) rule review group being evaluated  
33 every two (2) years during a rule evaluation period beginning on October 1  
34 following a regular session of the General Assembly and ending on September  
35 31 of the following year.

36 (ii) The schedule established by the Legislative

1 Council under subdivision (d)(2)(A)(i) of this section shall provide for the  
2 evaluation of the agencies within a rule review group in monthly increments  
3 during the rule evaluation period; and

4 (B) The submission of rule reports to the Legislative  
5 Council.

6 (3) Each agency in a rule review group shall submit a rule  
7 report to the Legislative Council pursuant to a schedule established by the  
8 Legislative Council.

9 (4)(A) The Legislative Council shall reevaluate a rule review  
10 group every twelve (12) years following the completion of the rule evaluation  
11 period under this section.

12 (B) A reevaluation of a rule review group by the  
13 Legislative Council shall follow the procedures under this section.

14 (e)(1) The rule report submitted by an agency under subsection (d) of  
15 this section shall include:

16 (A)(i) A list of all rules in effect that:

17 (a) Includes the following information for  
18 each rule:

19 (1) The initial effective date of the  
20 rule;

21 (2) The date the rule was filed with the  
22 Secretary of State;

23 (3) The authority under which the rule  
24 was promulgated; and

25 (4) If the rule is required under state  
26 or federal law, a statement regarding the requirement; and

27 (b) Distinguishes between rules that the  
28 agency wishes to extend and rules that the agency does not wish to extend.

29 (ii) The agency shall provide in writing the legal  
30 authority or agency justification for each rule that the agency wishes to  
31 extend.

32 (iii) If the agency requests that a rule not be  
33 extended, the agency shall provide in writing the agency justification for  
34 not extending the rule.

35 (iv) If the rule is required under state or federal  
36 law, the agency shall provide a statement regarding the requirement in the

1 rule report;

2 (B) A copy of each rule as it exists at the time of filing  
3 the rule report; and

4 (C) Other information deemed relevant by the Legislative  
5 Council to the review of the rules of the agency.

6 (2) An agency shall promptly amend a rule report under  
7 subsection (d) of this section to include and make note of a rule filed,  
8 amended, or repealed by the agency after the filing of the rule report but  
9 before the consideration of the rule report by the Legislative Council under  
10 subsection (f) of this section.

11 (3) The rule report shall be submitted in a format specified by  
12 the Legislative Council.

13 (f)(1)(A) The Legislative Council shall meet as necessary throughout a  
14 rule evaluation period to consider extending the rules of each agency  
15 scheduled for evaluation under subsection (d) of this section.

16 (B) The Legislative Council may refer one (1) or more of  
17 an agency's rules to a subject matter interim committee of the General  
18 Assembly for review before the Legislative Council's consideration of the  
19 rules under subdivision (f)(1)(A) of this section.

20 (2) As part of its consideration under subdivision (f)(1) of  
21 this section, the Legislative Council shall without limitation:

22 (A) Consider the rules the agency wishes to repeal and the  
23 corresponding justifications submitted by the agency under this section; and

24 (B) Consider the rules the agency wishes to extend and the  
25 corresponding justifications submitted by the agency under this section.

26 (g)(1) The Legislative Council may accept or reject the recommendation  
27 of an agency to extend or repeal a rule.

28 (2)(A) If the Legislative Council declines to extend a rule or  
29 accepts an agency's recommendation to not extend or otherwise repeal a rule,  
30 the repeal of the rule is:

31 (i)(a) Effective at the date and time specified by  
32 the Legislative Council.

33 (b) The repeal of a rule not extended or  
34 otherwise repealed under this section shall be effective no later than one  
35 hundred eighty (180) days following the meeting of the Legislative Council at  
36 which the Legislative Council declined to extend the rule or accepted an

1 agency's recommendation to not extend or otherwise repeal the rule; and

2 (ii) Not subject to the Arkansas Administrative  
3 Procedure Act, § 25-15-201 et seq.

4 (B) If the Legislative Council declines to extend an  
5 agency rule and the result is that the agency has no rules that address an  
6 issue that the agency is required by law to address by rule, the agency shall  
7 initiate a rulemaking process under the Arkansas Administrative Procedure  
8 Act, § 25-15-201 et seq., no later than sixty (60) days following the meeting  
9 of the Legislative Council at which the Legislative Council declined to  
10 extend the rule, including without limitation the adoption of an emergency  
11 rule.

12 (3) Within ten (10) days after the conclusion of the Legislative  
13 Council's consideration of the rule report submitted by the agency, the  
14 agency shall file with the Secretary of State a list of the agency's rules  
15 which have been extended and a list of the agency's rules which have not been  
16 extended or were otherwise repealed.

17 (h)(1) Unless extended or repealed by action of the Legislative  
18 Council under this section, the rules of an agency scheduled for evaluation  
19 by the Legislative Council as part of a rule review group under this section  
20 shall expire on the October 1 following the end of its rule evaluation period  
21 under this section.

22 (2)(A) If an agency scheduled to submit a rule report under  
23 subsection (d) of this section fails to submit its rule report by the  
24 scheduled date, the rules of the agency shall expire on the thirtieth  
25 business day following the scheduled date to submit the rule report.

26 (B) The rules of an agency that fails to submit a rule  
27 report by the scheduled date shall not expire under subdivision (h)(2)(A) of  
28 this section if the agency submits its rule report on or before the thirtieth  
29 business day following the scheduled date to submit the rule report.

30  
31 SECTION 2. Arkansas Code §§ 25-15-402 and 25-15-403 are repealed.

32 ~~25-15-402. Report, sunset, and extension of rules.~~

33 ~~(a)(1) Except as provided in § 25-15-403 and under subdivision (a)(2)~~  
34 ~~of this section, unless a rule is extended by the Governor and the~~  
35 ~~Legislative Council, an agency rule shall maintain in full force and effect~~  
36 ~~for no more than twenty-four (24) years.~~

~~(2) However, this section does not prohibit an agency from proposing, amending, or repealing a rule in an ordinary fashion under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

~~(b)(1) By December 1, 2017, each agency shall file an initial rule report with the Governor and the Legislative Council.~~

~~(2)(A) The initial rule report shall contain a list of all the rules in effect promulgated by the agency.~~

~~(B) The list of rules under subdivision (b)(2)(A) of this section shall include:~~

~~(i) The initial effective date of each rule;~~

~~(ii) The date that each rule was filed with the Secretary of State;~~

~~(iii) The authority under which the rule was promulgated; and~~

~~(iv) If the rule is required under state or federal law, a statement regarding the requirement.~~

~~(c)(1) By July 1, 2018, each agency shall file a final rule report and shall continue to file a rule report according to the schedule determined under § 25-15-403.~~

~~(2)(A) The final rule report shall contain:~~

~~(i) A list of all rules in effect that distinguishes between rules that the agency will continue to enforce and rules that the agency wishes to repeal; and~~

~~(ii) The date that the agency filed its initial rule report under subdivision (b)(1) of this section.~~

~~(B) The agency shall provide in writing the legal authority or agency justification for each rule that will continue to be enforced by the agency.~~

~~(C)(i) If the agency chooses to repeal a rule, the agency shall provide in writing the agency justification for repealing the rule.~~

~~(ii) A rule that an agency chooses to repeal under subdivision (c)(2)(C)(i) of this section is not subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

~~(3) The final rule report shall be assigned to the subject matter interim committees by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.~~

~~(d) By December 31, 2018, each of the subject matter interim committees shall:~~

~~(1) Consider the rules the agency wishes to repeal and the corresponding justifications submitted by the agency under subdivision (c)(2)(C) of this section;~~

~~(2) Consider the agency rules that will continue to be enforced by the agency and the corresponding justification submitted by the agency under subdivision (c)(2)(B) of this section;~~

~~(3) Allow an agency representative and the public to speak about the rules at an interim committee meeting;~~

~~(4) Recommend that the Legislative Council either accept or reject the agency's decision to repeal a rule; and~~

~~(5) Refer the agency rules that will continue to be enforced by the agency to group consideration under § 25-15-403.~~

~~(c)(1) Before December 31 of the fourth year of the consideration of a group of agencies under § 25-15-403, the Legislative Council shall meet on a date or dates set by the President Pro Tempore of the Senate and the Speaker of the House of Representatives to consider renewing the rules of the agencies scheduled for consideration.~~

~~(2) If the Legislative Council does not extend an agency's rules and the result is that the agency has no rules that address an issue that the agency is required by law to address by rule, the agency has sixty (60) days to initiate the rulemaking process under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., including without limitation adoption of an emergency rule.~~

~~(f)(1) If applicable, a final rule report under this section shall be updated by the agency to include and make note of any rule filed, amended, or repealed by the agency during the interim period of time occurring after July 1, 2018, and before it is sent to a group under § 25-15-403.~~

~~(2) An updated final rule report shall include the date the rule was filed, amended, or repealed during the interim.~~

~~25-15-403. Order of implementation.~~

~~(a)(1) The agency rules shall be divided in six (6) groups to be determined by the Governor to ensure that the number of agencies in each group and the number of subject matter areas represented by each group are~~

1 approximately equal.

2           ~~(2) If the Governor has not determined the groups by January 1,~~  
 3 ~~2019, the President Pro Tempore of the Senate and the Speaker of the House of~~  
 4 ~~Representatives shall determine the six (6) groups to ensure that the number~~  
 5 ~~of agencies in each group and the number of subject matter areas represented~~  
 6 ~~by each group are approximately equal.~~

7           ~~(3) If neither the Governor nor the President Pro Tempore of the~~  
 8 ~~Senate and the Speaker of the House of Representatives have determined the~~  
 9 ~~groups by April 1, 2019, all of the state agencies shall be subject to~~  
 10 ~~immediate evaluation in one (1) group and:~~

11                   ~~(A) Except as provided in § 25-15-402 concerning an~~  
 12 ~~initial rule report, a final rule report shall be filed by an agency:~~

13                           ~~(i) No earlier than May 1, 2019, and no later than~~  
 14 ~~July 1, 2019; and~~

15                           ~~(ii) No earlier than May 1 of every twenty-fourth~~  
 16 ~~year after May 1, 2019, and no later than July 1 of every twenty-fourth year~~  
 17 ~~after July 1, 2019; and~~

18                   ~~(B) The evaluation shall be completed no later than:~~

19                           ~~(i) December 31, 2042; and~~

20                           ~~(ii) December 31 of every twenty-fourth year after~~  
 21 ~~December 31, 2042.~~

22           ~~(b)(1) Each group of agencies assigned under subdivision (a)(1) or~~  
 23 ~~subdivision (a)(2) of this section shall be evaluated in a four-year time~~  
 24 ~~period.~~

25           ~~(2) Group 1 shall file a report:~~

26                   ~~(A) No earlier than May 1, 2019, and no later than July 1,~~  
 27 ~~2019; and~~

28                   ~~(B) No earlier than May 1 of every twenty-fourth year~~  
 29 ~~after May 1, 2019, and no later than July 1 of every twenty-fourth year after~~  
 30 ~~July 1, 2019.~~

31           ~~(3) Group 2 shall file a report:~~

32                   ~~(A) No earlier than May 1, 2023, and no later than July 1,~~  
 33 ~~2023; and~~

34                   ~~(B) No earlier than May 1 of every twenty-fourth year~~  
 35 ~~after May 1, 2023, and no later than July 1 of every twenty-fourth year after~~  
 36 ~~July 1, 2023.~~



~~(4) Group 3 shall file a report:~~

~~(A) No earlier than May 1, 2027, and no later than July 1, 2027; and~~

~~(B) No earlier than May 1 of every twenty-fourth year after May 1, 2027, and no later than January 1 of every twenty-fourth year after July 1, 2027.~~

~~(5) Group 4 shall file a report:~~

~~(A) No earlier than May 1, 2031, and no later than July 1, 2031; and~~

~~(B) No earlier than May 1 of every twenty-fourth year after May 1, 2031, and no later than July 1 of every twenty-fourth year after July 1, 2031.~~

~~(6) Group 5 shall file a report:~~

~~(A) No earlier than May 1, 2035, and no later than July 1, 2035; and~~

~~(B) No earlier than May 1 of every twenty-fourth year after May 1, 2035, and no later than July 1 of every twenty-fourth year after July 1, 2035.~~

~~(7) Group 6 shall file a report:~~

~~(A) No earlier than May 1, 2039, and no later than July 1, 2039; and~~

~~(B) No earlier than May 1 of every twenty-fourth year after May 1, 2039, and no later than January 1 of every twenty-fourth year after July 1, 2039.~~

~~(c) Agency rules that have been in effect for twenty-four (24) years or longer on August 1, 2017, shall remain in effect until the date of their first scheduled evaluation as provided under this section unless otherwise approved or rejected in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

SECTION 3. Arkansas Code Title 25, Chapter 15, Subchapter 4, is amended to add an additional section to read as follows:

25-15-404. Expedited repeal of rules that do not meet definition under Arkansas Administrative Procedure Act.

(a) The General Assembly finds:

(1) From time to time agencies promulgate as a rule a statement

1 that does not meet the legal definition of a rule;

2 (2) The development of the Code of Arkansas Rules under § 25-15-  
3 218 has highlighted such statements, particularly those promulgated rules  
4 which only affect the internal management of an agency and are difficult to  
5 codify as they do not require promulgation under the Arkansas Administrative  
6 Procedure Act, § 25-15-201 et seq.; and

7 (3) This section is intended to provide agencies with a  
8 mechanism to repeal rules that do not meet the legal definition of that term  
9 in an expedited fashion.

10 (b)(1)(A) If an agency determines that a rule promulgated by the  
11 agency does not meet the definition of a rule under the Arkansas  
12 Administrative Procedure Act, § 25-15-201 et seq., and desires to repeal the  
13 rule, the agency may file a written request with the Legislative Council  
14 requesting that the rule be repealed.

15 (B) A written request under subdivision (b)(1)(A) of this  
16 section:

17 (i) Is an administrative rule for the purposes of  
18 Arkansas Constitution, Article 5, § 42; and

19 (ii) Is exempt from the Arkansas Administrative  
20 Procedure Act, § 25-15-201 et seq.

21 (2) A written request filed with the Legislative Council under  
22 subdivision (b)(1) of this section shall contain without limitation the  
23 following information:

24 (A) The initial effective date of the rule;

25 (B) The date the rule was filed with the Secretary of  
26 State; and

27 (C) The legal authority or agency justification for the  
28 repeal of the rule that the agency does not believe meets the definition of a  
29 rule under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

30 (c)(1) The Legislative Council may accept or reject the written  
31 request of an agency to repeal a rule under subsection (b) of this section.

32 (2) If the Legislative Council accepts an agency's written  
33 request to repeal a rule under subsection (b) of this section, the repeal of  
34 the rule is:

35 (A) Effective immediately; and

36 (B) Not subject to the Arkansas Administrative Procedure

1 Act, § 25-15-201 et seq.

2 (3) Within ten (10) days after the Legislative Council's  
3 acceptance of an agency's written request to repeal a rule under this  
4 section, the agency shall notify the Secretary of State that the rule has  
5 been repealed under this section.

6 (d) A written request requesting the repeal of a rule under this  
7 section may:

8 (1) Be filed at any time; and

9 (2) Request the repeal of one (1) or more rules that the agency  
10 does not believe meet the definition of a rule under the Arkansas  
11 Administrative Procedure Act, § 25-15-201 et seq.

12 (e) As part of its development and maintenance of the Code of Arkansas  
13 Rules under § 25-15-218, the Bureau of Legislative Research may request that  
14 an agency review a rule to determine if the agency believes the rule meets  
15 the definition of a rule under the Arkansas Administrative Procedure Act, §  
16 25-15-201 et seq.

17  
18 SECTION 4. TEMPORARY LANGUAGE - DO NOT CODIFY.

19 (a) The evaluation of a rule review group by the Legislative Council  
20 under § 25-15-401 et seq. prior to the effective date of this act shall be  
21 considered an evaluation under the provisions of this act.

22 (b) The provisions of this act shall apply to the agencies within a  
23 rule review group under § 25-15-401 et seq. that were evaluated by the  
24 Legislative Council prior to the effective date of this act.

25 (c) This act does not require the Governor to determine rule review  
26 groups under § 25-15-401(c) if he or she has determined rule review groups  
27 under § 25-15-401 et seq. prior to the effective date of this act.

28 (d)(1)(A) The initial rule evaluation period for the first rule review  
29 group under this act shall begin on October 1, 2019, and end on September 31,  
30 2020.

31 (B) The initial rule evaluation period for the second rule  
32 review group under this act shall begin on October 1, 2021, and end on  
33 September 31, 2022.

34 (C) The initial rule evaluation period for the third rule  
35 review group under this act shall begin on October 1, 2023, and end on  
36 September 31, 2024.

1           (D) The initial rule evaluation period for the fourth rule  
2 review group under this act shall begin on October 1, 2025, and end on  
3 September 31, 2026.

4           (E) The initial rule evaluation period for the fifth rule  
5 review group under this act shall begin on October 1, 2027, and end on  
6 September 31, 2028.

7           (F) The initial rule evaluation period for the sixth rule  
8 review group under this act shall begin on October 1, 2029, and end on  
9 September 31, 2030.

10           (2) Each rule review group shall be subject to reevaluation by  
11 the Legislative Council during a period that begins every twelfth year  
12 following the date for the beginning of a rule evaluation period under  
13 subdivision (d)(1) of this section and ends every twelfth year following the  
14 date for the ending of a rule evaluation period under subdivision (d)(1) of  
15 this section.

16  
17       SECTION 5. EMERGENCY CLAUSE. It is found and determined by the  
18 General Assembly of the State of Arkansas that state law currently provides a  
19 process for the review and expiration of state agency rules that protects the  
20 public peace, health, and safety by ensuring that operative rules are  
21 effective and necessary; that this act amends the existing law concerning the  
22 process for the review and expiration of state agency rules, including the  
23 time periods for state agencies to submit rule reports to the Legislative  
24 Council; and that this act cannot operate as intended without becoming  
25 effective immediately upon its approval as a conflict between the existing  
26 and revised time periods for state agencies to submit rule reports to the  
27 Legislative Council creates the possibility of rule reports being filed more  
28 than once based upon the effective date of the act, which would prevent the  
29 act from operating as intended to provide the necessary protections for  
30 public peace, health, and safety. Therefore, an emergency is declared to  
31 exist, and this act being immediately necessary for the preservation of the  
32 public peace, health, and safety shall become effective on:

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

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

1           (3) If the bill is vetoed by the Governor and the veto is  
2 overridden, the date the last house overrides the veto.