

1 State of Arkansas  
2 94th General Assembly  
3 Regular Session, 2023  
4

As Engrossed: S3/27/23

# A Bill

SENATE BILL 53

5 By: Joint Budget Committee  
6

## For An Act To Be Entitled

8 AN ACT TO MAKE AN APPROPRIATION FOR PERSONAL SERVICES  
9 AND OPERATING EXPENSES FOR THE DEPARTMENT OF HUMAN  
10 SERVICES - DIVISION OF MEDICAL SERVICES FOR THE  
11 FISCAL YEAR ENDING JUNE 30, 2024; AND FOR OTHER  
12 PURPOSES.  
13  
14

## Subtitle

15 AN ACT FOR THE DEPARTMENT OF HUMAN  
16 SERVICES - DIVISION OF MEDICAL SERVICES  
17 APPROPRIATION FOR THE 2023-2024 FISCAL  
18 YEAR.  
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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24 SECTION 1. REGULAR SALARIES - OPERATIONS. There is hereby established  
25 for the Department of Human Services - Division of Medical Services for the  
26 2023-2024 fiscal year, the following maximum number of regular employees.  
27

Item No.	Class Code	Title	Maximum No. of Employees	Maximum Annual Salary Rate Fiscal Year 2023-2024
32	(1) N249N	DHS DIVISION DIRECTOR	1	GRADE SE02
33	(2) N027N	DHS DEPUTY DIRECTOR ADULT SERVICES	1	GRADE SE01
34	(3) L016N	REGISTERED PHARMACIST	4	GRADE MP05
35	(4) L009C	NURSE MANAGER	1	GRADE MP03
36	(5) L027C	REGISTERED NURSE SUPERVISOR	3	GRADE MP02



1	(6)	L038C REGISTERED NURSE	9	GRADE MP01
2	(7)	D006N STATE SYSTEMS ARCHITECT	1	GRADE IT10
3	(8)	D007C INFORMATION SYSTEMS MANAGER	2	GRADE IT08
4	(9)	D030C INFORMATION SYSTEMS COORDINATOR	1	GRADE IT07
5	(10)	D038C SENIOR SOFTWARE SUPPORT ANALYST	1	GRADE IT06
6	(11)	D061C INFORMATION SYSTEMS COORDINATION SPEC	1	GRADE IT05
7	(12)	D058C COMPUTER OPERATIONS COORDINATOR	1	GRADE IT04
8	(13)	D068C INFORMATION SYSTEMS ANALYST	1	GRADE IT04
9	(14)	A019N DHS DEP CHIEF FIN OFFICER-MEDICAL SVCS	1	GRADE GS15
10	(15)	G286C DMS DEPUTY DIRECTOR	1	GRADE GS15
11	(16)	P077C DHS COMM & COMMUNITY ENGAGEMENT OFCR	1	GRADE GS14
12	(17)	N100N DHS/DMS ADD - MEDICAL SERVICES	1	GRADE GS14
13	(18)	N110N DHS ASST DIR CONTRACT MONITORING UNIT	1	GRADE GS13
14	(19)	N128N DHS ASST DIR QUALITY ASSURANCE	1	GRADE GS13
15	<del>(20)</del>	<del>D026N DHS ELIGIBILITY SYSTEM PROGRAM MGR</del>	<del>1</del>	<del>GRADE GS13</del>
16	(21)	G025C ATTORNEY SUPERVISOR	1	GRADE GS12
17	(22)	N168N DHS DIR HOME & COMMUNITY BASED SVCS	1	GRADE GS12
18	(23)	A016C DHS DMS BUSINESS OPERATIONS MANAGER	8	GRADE GS12
19	(24)	G073C ATTORNEY	1	GRADE GS10
20	(25)	L010C DHS DMS MEDICAL ASSISTANCE MANAGER	4	GRADE GS10
21	(26)	G099C DHS PROGRAM ADMINISTRATOR	17	GRADE GS09
22	(27)	R021C BUDGET ANALYST	1	GRADE GS08
23	(28)	G152C DHS PROGRAM MANAGER	8	GRADE GS08
24	(29)	A081C AUDITOR	1	GRADE GS07
25	(30)	G183C DHS PROGRAM COORDINATOR	7	GRADE GS07
26	(31)	C037C ADMINISTRATIVE ANALYST	2	GRADE GS06
27	(32)	R027C BUDGET SPECIALIST	1	GRADE GS06
28	(33)	C013C MEDICAL SERVICES REPRESENTATIVE	1	GRADE GS06
29	(34)	C036C ADMINISTRATIVE REVIEW ANALYST	1	GRADE GS05
30	(35)	L070C HEALTH CARE ANALYST	4	GRADE GS05
31	(36)	C056C ADMINISTRATIVE SPECIALIST III	4	GRADE GS04
32	(37)	A098C FISCAL SUPPORT SPECIALIST	<u>1</u>	GRADE GS04
33		MAX. NO. OF EMPLOYEES	96	

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35 SECTION 2. EXTRA HELP - OPERATIONS. There is hereby authorized, for  
 36 the Department of Human Services - Division of Medical Services for the 2023-

1 2024 fiscal year, the following maximum number of part-time or temporary  
 2 employees, to be known as "Extra Help", payable from funds appropriated  
 3 herein for such purposes: ten (10) temporary or part-time employees, when  
 4 needed, at rates of pay not to exceed those provided in the Uniform  
 5 Classification and Compensation Act, or its successor, or this act for the  
 6 appropriate classification.

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8 SECTION 3. APPROPRIATION - OPERATIONS. There is hereby appropriated,  
 9 to the Department of Human Services, to be payable from the paying account as  
 10 determined by the Chief Fiscal Officer of the State, for personal services  
 11 and operating expenses of the Department of Human Services - Division of  
 12 Medical Services for the fiscal year ending June 30, 2024, the following:

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14 ITEM	FISCAL YEAR
15 <u>NO.</u>	<u>2023-2024</u>
16 (01) REGULAR SALARIES	\$6,527,589
17 (02) EXTRA HELP	201,892
18 (03) PERSONAL SERVICES MATCHING	2,257,092
19 (04) OVERTIME	2,241
20 (05) MAINT. & GEN. OPERATION	
21 (A) OPER. EXPENSE	1,813,290
22 (B) CONF. & TRAVEL	40,099
23 (C) PROF. FEES	700,000
24 (D) CAP. OUTLAY	0
25 (E) DATA PROC.	0
26 (06) DATA PROCESSING SERVICES	<u>1,299,600</u>
27 TOTAL AMOUNT APPROPRIATED	<u>\$12,841,803</u>

28

29 SECTION 4. APPROPRIATION - GRANTS. There is hereby appropriated, to  
 30 the Department of Human Services, to be payable from the paying account as  
 31 determined by the Chief Fiscal Officer of the State, for grant payments of  
 32 the Department of Human Services - Division of Medical Services for the  
 33 fiscal year ending June 30, 2024, the following:

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35 ITEM	FISCAL YEAR
36 <u>NO.</u>	<u>2023-2024</u>

1	(01) ARKIDS B PROGRAM	\$207,222,020
2	(02) HOSPITAL AND MEDICAL SERVICES	8,034,125,877
3	(03) PRESCRIPTION DRUGS	509,386,547
4	(04) PRIVATE NURSING HOME CARE	957,142,061
5	(05) CHILD AND FAMILY LIFE INSTITUTE	2,100,000
6	(06) INFANT INFIRMARY	2,588,441
7	(07) PUBLIC NURSING HOME CARE	<u>217,529,350</u>
8	TOTAL AMOUNT APPROPRIATED	<u>\$9,930,094,296</u>

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10 SECTION 5. APPROPRIATION - NURSING HOME CLOSURE COSTS. There is hereby  
 11 appropriated, to the Department of Human Services - Division of Medical  
 12 Services, to be payable from the Long-Term Care Trust Fund, for the payment  
 13 of relocation costs of residents in long-term care facilities, maintenance  
 14 and operation of a facility pending correction of deficiencies or closure,  
 15 and reimbursement of residents for personal funds lost for the fiscal year  
 16 ending June 30, 2024, the following:

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18	ITEM	FISCAL YEAR
19	<u>NO.</u>	<u>2023-2024</u>
20	(01) EXPENSES	<u>\$4,500,000</u>

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22 SECTION 6. APPROPRIATION - LONG-TERM CARE FACILITY RECEIVERSHIP. There  
 23 is hereby appropriated, to the Department of Human Services, to be payable  
 24 from the Long Term Care Facility Receivership Fund Account, for the payment  
 25 of expenses of long-term care facility receivers as authorized by law of the  
 26 Department of Human Services - Division of Medical Services - Long-Term Care  
 27 Facility Receivership for the fiscal year ending June 30, 2024, the  
 28 following:

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30	ITEM	FISCAL YEAR
31	<u>NO.</u>	<u>2023-2024</u>
32	(01) EXPENSES	<u>\$100,000</u>

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34 SECTION 7. APPROPRIATION - NURSING HOME QUALITY GRANTS. There is  
 35 hereby appropriated, to the Department of Human Services, to be payable from  
 36 the Long-Term Care Trust Fund, for Nursing Home Quality Care Grants of the

1 Department of Human Services - Division of Medical Services - Nursing Home  
2 Quality Grants for the fiscal year ending June 30, 2024, the following:

ITEM NO.	FISCAL YEAR 2023-2024
(01) NURSING HOME QUALITY GRANTS AND AID	<u>\$4,000,000</u>

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8 SECTION 8. SPECIAL LANGUAGE – CODE AMENDMENT. Arkansas Code Title 20,  
9 Chapter 77, Subchapter 4, is amended to add an additional section to codify  
10 special language in appropriation acts to read as follows:

11 20-77-407. Pharmaceutical dispensing fee survey.

12 (a) No more than two (2) years before making any changes to the  
13 current pharmaceutical dispensing fee, the Department of Human Services shall  
14 conduct an independent survey utilizing generally accepted accounting  
15 principles to determine the cost of dispensing a prescription by pharmacists  
16 in Arkansas.

17 (b)(1) Only factors relative to the cost of dispensing shall be  
18 surveyed under subsection (a) of this section.

19 (2) The factors surveyed under subsection (a) of this section  
20 shall not include actual acquisition costs, average profit, or any  
21 combination of actual acquisition costs or average profit.

22 (c)(1) The survey results obtained under this section shall be the  
23 basis for establishing the dispensing fee paid to participating pharmacies in  
24 the Medicaid prescription drug program in accordance with federal  
25 requirements.

26 (2) The dispensing fee shall be no lower than the cost of  
27 dispensing as determined by the survey conducted under this section.

28 (d) This section does not prohibit the department from increasing the  
29 dispensing fee at any time.

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31 SECTION 9. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS  
32 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW.  
33 MEDICAL SERVICES - GENERAL MEDICAID RATE METHODOLOGY PROVISIONS.

34 (a) Rates established by the Division of Medical Services for the services  
35 or programs covered by this Act shall be calculated by the methodologies  
36 approved by the Centers for Medicare and Medicaid Services (CMS). The

1 Division of Medical Services shall have the authority to reduce or increase  
2 rates based on the approved methodology. Further, the Division of Medical  
3 Services shall have the authority to increase or decrease rates for good  
4 cause including, but not limited to: (1) Identification of provider(s) who  
5 can render needed services of equal quality at rates less than traditionally  
6 charged and who meet the applicable federal and state laws, rules and  
7 regulations pertaining to the provision of a particular service;  
8 (2) Identification that a provider or group of providers has consistently  
9 charged rates to the Arkansas Medicaid Program greater than to other  
10 purchasers of medical services of similar size;  
11 (3) The Division determines that there has been significant changes in the  
12 technology or process by which services are provided by a provider or group  
13 of providers which has affected the costs of providing services, or;  
14 (4) A severe economic downturn in the Arkansas economy which has affected the  
15 overall state budget of the Division of Medical Services.

16 The Division of Medical Services shall make available to requesting  
17 providers, the CMS's inflationary forecasts (CMS Market Basket Index). Rates  
18 established with cost of living increases based on the CMS Market Basket  
19 Index or other indices will be adjusted annually except when the state budget  
20 does not provide sufficient appropriation and funding to affect the change or  
21 portion thereof.

22 (b) Any rate methodology changes proposed by the Division of Medical  
23 Services both of a general and specific nature, shall be subject to prior  
24 approval by the Legislative Council or Joint Budget Committee.

25 Determining the maximum number of employees and the maximum amount of  
26 appropriation and general revenue funding for a state agency each fiscal year  
27 is the prerogative of the General Assembly. This is usually accomplished by  
28 delineating such maximums in the appropriation act(s) for a state agency and  
29 the general revenue allocations authorized for each fund and fund account by  
30 amendment to the Revenue Stabilization law. Further, the General Assembly has  
31 determined that the Department of Human Services – Division of Medical  
32 Services may operate more efficiently if some flexibility is provided to the  
33 Department of Human Services – Division of Medical Services authorizing broad  
34 powers under this section. Therefore, it is both necessary and appropriate  
35 that the General Assembly maintain oversight by requiring prior approval of  
36 the Legislative Council or Joint Budget Committee as provided by this

1 section. The requirement of approval by the Legislative Council or Joint  
2 Budget Committee is not a severable part of this section. If the requirement  
3 of approval by the Legislative Council or Joint Budget Committee is ruled  
4 unconstitutional by a court of competent jurisdiction, this entire section is  
5 void.

6 The provisions of this section shall be in effect only from July 1, ~~2022~~  
7 2023 through June 30, ~~2023~~ 2024.

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9 SECTION 10. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS  
10 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. FUND  
11 USAGE AUTHORIZED. The Arkansas Children's Hospital may request the Department  
12 of Human Services - Division of Medical Services to retain in the Department  
13 of Human Services Grant Fund account an amount not to exceed \$2,100,000 from  
14 funds made available by this Act in the Child and Family Life Institute line  
15 item of the Grants appropriation to be used to match federal funds used for  
16 supplemental Medicaid payments to Arkansas Children's Hospital. These  
17 retained funds shall not be recovered to transfer to the General Revenue  
18 Allotment Reserve Fund.

19 The provisions of this section shall be in effect only from July 1, ~~2022~~  
20 2023 through June 30, ~~2023~~ 2024.

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22 SECTION 11. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS  
23 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. ARKANSAS  
24 HEALTH AND OPPORTUNITY FOR ME AND ARKANSAS HEALTH INSURANCE MARKETPLACE  
25 RESTRICTIONS. (a) As used in this section, "Arkansas Health and Opportunity  
26 for Me" means Arkansas Health and Opportunity for Me established under the  
27 Arkansas Health and Opportunity for Me Act of 2021, Arkansas Code § 23-61-  
28 1001 et seq.

29 (b)(1) Determining the maximum number of employees, the maximum amount  
30 of appropriation, for what purposes an appropriation is authorized, and  
31 general revenue funding for a state agency each fiscal year is the  
32 prerogative of the General Assembly.

33 (2) The purposes of subdivision (b)(1) of this section are  
34 typically accomplished by:

35 (A) Identifying the purpose in the appropriation act;

36 (B) Delineating such maximums in the appropriation act for

1 a state agency; and

2 (C) Delineating the general revenue allocations authorized  
3 for each fund and fund account by amendment to the Revenue Stabilization Law,  
4 Arkansas Code § 19-5-101 et seq.

5 (3) It is both necessary and appropriate that the General  
6 Assembly restrict the use of appropriations authorized in this act.

7 (c)(1) Except as provided in this subsection, the Department of Human  
8 Services shall not allocate, budget, expend, or utilize any appropriation  
9 authorized by the General Assembly for the purpose of advertisement,  
10 promotion, or other activities designed to promote or encourage enrollment in  
11 the Arkansas Health Insurance Marketplace or Arkansas Health and Opportunity  
12 for Me, including without limitation:

13 (A) Unsolicited communications mailed to potential  
14 recipients;

15 (B) Television, radio, or online commercials;

16 (C) Billboard or mobile billboard advertising;

17 (D) Advertisements printed in newspapers, magazines, or  
18 other print media; and

19 (E) Internet websites and electronic media.

20 (2) This subsection does not prohibit the department from:

21 (A) Direct communications with:

22 (i) Licensed insurance agents; and

23 (ii) Persons licensed by the department;

24 (B) Solicited communications with potential recipients;

25 (C)(i) Responding to an inquiry regarding the coverage for  
26 which a potential recipient might be eligible, including without limitation  
27 providing educational materials or information regarding any coverage for  
28 which the individual might qualify.

29 (ii) Educational materials and information  
30 distributed under subdivision (c)(2)(C)(i) of this section shall contain only  
31 factual information and shall not contain subjective statements regarding the  
32 coverage for which the potential recipient might be eligible; and

33 (D) Using an Internet website for the exclusive purpose of  
34 enrolling individuals in the Arkansas Health Insurance Marketplace or  
35 Arkansas Health and Opportunity for Me.

36 (d) The Department of Human Services shall not apply for or accept any



1 funds, including without limitation federal funds, for the purpose of  
2 advertisement, promotion, or other activities designed to promote or  
3 encourage enrollment in the Arkansas Health Insurance Marketplace or Arkansas  
4 Health and Opportunity for Me.

5 (e)(1) Except as provided in subdivision (e)(2) of this section, the  
6 Department of Human Services shall not:

7 (A)(i) Except as provided in subdivision (e)(1)(A)(ii) of  
8 this section, allocate, budget, expend, or utilize an appropriation  
9 authorized by the General Assembly for the purpose of funding activities of  
10 navigators, guides, certified application counselors, and certified licensed  
11 producers under the Arkansas Health Insurance Marketplace Navigator, Guide,  
12 and Certified Application Counselors Act, Arkansas Code § 23-64-601 et seq.

13 (ii) Subdivision (e)(1)(A)(i) of this section does  
14 not apply to regulatory and training responsibilities related to navigators,  
15 guides, certified application counselors, and certified licensed producers;  
16 and

17 (B) Apply for or accept any funds, including without  
18 limitation federal funds, for the purpose of funding activities of  
19 navigators, guides, certified application counselors, and certified licensed  
20 producers under the Arkansas Health Insurance Marketplace Navigator, Guide,  
21 and Certified Application Counselors Act, Arkansas Code § 23-64-601 et seq.

22 (2) Subdivision (e)(1) of this section does not apply to  
23 certified application counselors at health related institutions, including  
24 without limitation the University of Arkansas for Medical Sciences.

25 (f) An appropriation authorized by the General Assembly shall not be  
26 subject to the provisions allowed through reallocation of resources or  
27 transfer of appropriation authority for the purpose of transferring an  
28 appropriation to any other appropriation authorized for the Department of  
29 Human Services to be allocated, budgeted, expended, or utilized in a manner  
30 prohibited by this section.

31 (g) The provisions of this section are severable, and the invalidity  
32 of any subsection or subdivision of this section shall not affect other  
33 provisions of the section that can be given effect without the invalid  
34 provision.

35 (h) This section expires on June 30, ~~2023~~ 2024.

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1 SECTION 12. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS  
2 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. MEDICAL  
3 SERVICES – COMMUNITY AND EMPLOYMENT SUPPORTS MEDICAID WAIVER.

4 (a) Of the funding allocated to the Department of Human Services Grants  
5 Fund Account under § 19-5-402, the first thirty-seven million six hundred  
6 thousand dollars (\$37,600,000) shall be set aside in its own subfund by the  
7 Department of Human Services and shall be used only for home and community-  
8 based services to individuals with intellectual and developmental  
9 disabilities under the Community and Employment Supports Medicaid Waiver  
10 Program or a successor Medicaid Waiver program that provides home and  
11 community-based services to individuals with intellectual and developmental  
12 disabilities.

13 (b) At the close of the fiscal year ending June 30, ~~2023~~ 2024, any  
14 unexpended balance of monies set aside as established in subsection (a)  
15 herein shall be transferred forward and made available for the same purpose  
16 for the fiscal year ending June 30, ~~2024~~ 2025.

17 (c) The provisions of this section shall be in effect only from July 1,  
18 ~~2022~~ 2023 through June 30, ~~2023~~ 2024.

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20 SECTION 13. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS  
21 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW.  
22 ASSISTED LIVING FACILITY REIMBURSEMENT - ACCOUNTING OF HOME AND COMMUNITY-  
23 BASED FUNDS.

24 (a)(1) The Department of Human Services shall take the necessary  
25 action to submit a waiver application to the Centers for Medicare and  
26 Medicaid Services to increase reimbursement rates for assisted living  
27 facilities under the Living Choices Assisted Living Waiver.

28 (2) The department shall study and explore methods to increase the  
29 reimbursement rates for assisted living facilities under the Living Choices  
30 Assisted Living Waiver, including without limitation setting the  
31 reimbursement rate for assisted living facilities under the Living Choices  
32 Assisted Living Waiver as a percentage of the reimbursement rate for nursing  
33 home facilities.

34 (b) The department shall provide an accounting of funds allocated to  
35 qualifying entities under home and community-based services to the  
36 Legislative Council.

1 (c)(1) The Secretary of the Department of Human Services shall  
2 provide, in person, a monthly update to the Legislative Council on the status  
3 of the actions listed in subsections (a) and (b) of this section until the  
4 conclusion or resolution of these actions.

5 (2) If the General Assembly is in session, the secretary shall  
6 provide the updates described in subdivision (c)(1) of this section to the  
7 Joint Budget Committee.

8  
9 SECTION 14. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS  
10 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW.  
11 SEVERABILITY. If any provisions of this act or the application of this act  
12 to any person or circumstance is held invalid, such invalidity shall not  
13 affect other provisions or applications of the act which can be given effect  
14 without the invalid provision or application, and to this end the provisions  
15 of this act are declared to be severable.

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17 SECTION 15. COMPLIANCE WITH OTHER LAWS. Disbursement of funds  
18 authorized by this act shall be limited to the appropriation for such agency  
19 and funds made available by law for the support of such appropriations; and  
20 the restrictions of the State Procurement Law, the General Accounting and  
21 Budgetary Procedures Law, the Revenue Stabilization Law, the Regular Salary  
22 Procedures and Restrictions Act, or their successors, and other fiscal  
23 control laws of this State, where applicable, and regulations promulgated by  
24 the Department of Finance and Administration, as authorized by law, shall be  
25 strictly complied with in disbursement of said funds.

26  
27 SECTION 16. LEGISLATIVE INTENT. It is the intent of the General  
28 Assembly that any funds disbursed under the authority of the appropriations  
29 contained in this act shall be in compliance with the stated reasons for  
30 which this act was adopted, as evidenced by the Agency Requests, Executive  
31 Recommendations and Legislative Recommendations contained in the budget  
32 manuals prepared by the Department of Finance and Administration, letters, or  
33 summarized oral testimony in the official minutes of the Arkansas Legislative  
34 Council or Joint Budget Committee which relate to its passage and adoption.

35  
36 SECTION 17. EMERGENCY CLAUSE. It is found and determined by the

1 General Assembly, that the Constitution of the State of Arkansas prohibits  
2 the appropriation of funds for more than a one (1) year period; that the  
3 effectiveness of this Act on July 1, 2023 is essential to the operation of  
4 the agency for which the appropriations in this Act are provided, and that in  
5 the event of an extension of the legislative session, the delay in the  
6 effective date of this Act beyond July 1, 2023 could work irreparable harm  
7 upon the proper administration and provision of essential governmental  
8 programs. Therefore, an emergency is hereby declared to exist and this Act  
9 being necessary for the immediate preservation of the public peace, health  
10 and safety shall be in full force and effect from and after July 1, 2023.

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12 */s/Joint Budget Committee*  
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