

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.

Act 143 of the Regular Session

1 State of Arkansas

As Engrossed: S1/18/07 S1/31/07

2 86th General Assembly

A Bill

3 Regular Session, 2007

SENATE BILL 55

4
5 By: Senator Altes

6 By: Representatives Norton, Medley, E. Brown, Glidewell, Key, M. Martin, Schulte, Walters, Wells,
7 Reynolds, Hoyt, Maxwell, Rosenbaum, Garner

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10 **For An Act To Be Entitled**

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

13
14 **Subtitle**

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

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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:



1 (i) Statements concerning the internal management of
2 an agency and statements that do not affect the private rights or procedures
3 available to the public;

4 (ii) Declaratory rulings issued pursuant to § 25-15-
5 206; or

6 (iii) Intra-agency memoranda; and

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

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

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

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

17 (A) Adopted on an emergency basis;

18 (B) That is federally mandated; or

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

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

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

27
28 25-15-303. Economic impact statement.

29 (a) An agency required to prepare an economic impact statement under §
30 25-15-302(c) shall comply with this section.

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

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

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

1 affected;

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

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

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

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

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

18 (d)(1) Within ten (10) days of the receipt of the economic impact
19 statement and the proposed rule, the director shall provide detailed
20 information in writing to the agency regarding whether, in the reasoned
21 opinion of the director, the agency has satisfactorily completed the economic
22 impact statement and whether the agency has taken sufficient measures to
23 balance the objectives of the proposed rule with the interests of the
24 affected small businesses.

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

30 (B) If appropriate, the director shall convey these
31 communications to the agency.

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

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

1 (2)(A) If the agency determines that no action shall be taken in
2 response to the information received from the director, the agency may
3 respond in writing to the director and explain its reasons for this
4 determination.

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

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

10
11 SECTION 2. Arkansas Code § 25-15-204(a), concerning the adoption,
12 amendment, or repeal of administrative rules, is amended to read as follows:

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

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

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

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

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

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

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

35 (B) Opportunity for oral hearing must be granted if
36 requested by twenty-five (25) persons, by a governmental subdivision or

1 agency, or by an association having no fewer than twenty-five (25) members.

2 (C) The agency shall fully consider all written and oral
3 submissions respecting the proposed rule before finalizing the language of
4 the proposed rule and filing the proposed rule as required by subsection (d)
5 of this section.

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

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

14 (3) Comply with § 25-15-301 et seq.
15

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

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

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

29 (3) If the bill is vetoed by the Governor and the veto is
30 overridden, the date the last house overrides the veto.
31

32 /s/ Altes

34 APPROVED: 2/23/2007