

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas As Engrossed: H2/21/19 S3/11/19

2 92nd General Assembly

A Bill

3 Regular Session

HOUSE BILL 1431

4

5 By: Representative Dotson

6 By: Senator K. Hammer

7

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For An Act To Be Entitled

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AN ACT TO AMEND ARKANSAS LAW CONCERNING

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ADMINISTRATIVE RULES; AND FOR OTHER PURPOSES.

11

12

13

Subtitle

14

TO AMEND ARKANSAS LAW CONCERNING

15

ADMINISTRATIVE RULES.

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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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20 SECTION 1. Arkansas Code § 25-15-202(2)(C), concerning definitions

21 applicable to the Administrative Procedure Act, is amended to read as

22 follows:

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(C)(i) The Except as provided in subdivision (2)(C)(ii) of this

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section, the word "agency" shall not include the Arkansas Public Service

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Commission, the Arkansas Pollution Control and Ecology Commission, the

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Workers' Compensation Commission, and the Department of Workforce Services,

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as the existing laws governing those agencies provide adequate administrative

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procedures for those agencies.

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(ii) The word "agency" as used in § 25-15-216 shall

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include the Arkansas Public Service Commission, the Arkansas Pollution

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Control and Ecology Commission, the Workers' Compensation Commission, and the

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Department of Workforce Services.

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34 SECTION 2. Arkansas Code § 25-15-216 is amended to read as follows:

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25-15-216. Review of agency rules.

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(a)(1) As soon as is practicable after each regular session and fiscal



1 session of the General Assembly, each agency shall review any newly enacted
2 laws to determine whether:

3 ~~(1)~~(A) Any existing rule should be repealed or amended; or

4 ~~(2)~~(B) Any new rule should be adopted.

5 ~~(b)~~(2) At the conclusion of each review, the agency shall adopt
6 a written report of the result of the review.

7 ~~(e)~~(3) A copy of each report shall be maintained as a public
8 record by the agency.

9 (b)(1) If an agency determines that a newly enacted law requires the
10 repeal or amendment of an existing rule or the adoption of a new rule and the
11 newly enacted law does not provide a specific date for the repeal, amendment,
12 or adoption of the rule, the final version of the new, amended, or repealed
13 rule shall be filed for adoption with the Secretary of State:

14 (A) On or before January 1 of the following year, if the
15 newly enacted law results from a regular or fiscal session of the General
16 Assembly;

17 (B) On or before the one hundred eightieth day following
18 sine die adjournment, if the newly enacted law results from a special session
19 of the General Assembly; or

20 (C) If approval of a rule under § 10-3-309 has not
21 occurred by the date under subdivision(b)(1)(A) or subdivision(b)(1)(B) of
22 this section, as soon as practicable after approval under § 10-3-309.

23 (2) An agency shall file the proposed rule with the Legislative
24 Council, or the Joint Budget Committee if the General Assembly is in regular,
25 fiscal or extraordinary session, under § 10-3-309 sufficiently in advance of
26 the date under subdivision (b)(1)(A) or subdivision (b)(1)(B) of this section
27 so that the Legislative Council or Joint Budget Committee may consider the
28 rule for approval before the appropriate date.

29 (3)(A) If an agency fails to file the final version of the new,
30 amended, or repealed rule for adoption as required by subdivision (b)(1) of
31 this section, the executive head of the agency at issue or his or her
32 designee shall appear before the Legislative Council or its appropriate
33 subcommittee on a monthly basis until the final version of the new, amended,
34 or repealed rule is filed for adoption with the Secretary of State.

35 (B) When appearing before the Legislative Council or its
36 appropriate subcommittee, the executive head of the agency at issue or his or

1 her designee shall:

2 (i) Describe why the agency has been unable to
3 comply with subdivision (b)(1) of this section;

4 (ii) Provide an update on the current status of the
5 necessary rule changes;

6 (iii) Describe the steps the agency is taking to
7 address the failure to comply with subdivision (b)(1) of this section; and

8 (iv) Provide an anticipated date for when the final
9 version of the new, amended, or repealed rule will be filed for adoption with
10 the Secretary of State.

11
12 SECTION 3. DO NOT CODIFY.

13 The General Assembly finds that:

14 (1) It is common for acts of the General Assembly to delegate
15 rulemaking authority to a state agency for the purpose of implementing and
16 administering various duties and responsibilities;

17 (2) Broad interpretation of rulemaking authority by a state
18 agency results in the state agency's supplanting the role of the General
19 Assembly by effectively legislating in areas not intended by the General
20 Assembly; and

21 (3) A state agency that has been delegated rulemaking authority
22 should limit its rulemaking to only those areas absolutely necessary and
23 should avoid broad applications or interpretations of its rulemaking power.

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25 SECTION 4. Arkansas Code Title 25, Chapter 15, Subchapter 2, is
26 amended to add an additional section to read as follows:

27 25-15-220. Rulemaking power to be narrowly interpreted.

28 (a) As used in this section:

29 (1) "Rule" means a state agency statement of general
30 applicability and future effect that implements, interprets, or prescribes
31 law or policy or describes the organization, procedure, or practice of a
32 state agency; and

33 (2)(A) "State agency" means an office, board, commission,
34 department, council, bureau, governmental entity, or other agency of state
35 government having authority to promulgate or enforce rules.

36 (B) "State agency" includes without limitation the:

1 (i) Arkansas State Game and Fish Commission, if the
2 rule is promulgated under authority of a statute enacted by the General
3 Assembly; and

4 (ii) State Highway Commission and the Arkansas
5 Department of Transportation, if the rule is promulgated under authority of a
6 statute enacted by the General Assembly.

7 (C) This section applies to one (1) or more of the
8 following if the Legislative Council adopts rules under § 10-3-309(b)(2)(B)
9 including the respective entity in the definition of "state agency" under §
10 10-3-309(2)(A):

11 (i) Each rule of the Arkansas State Game and Fish
12 Commission;

13 (ii) Each rule of the State Highway Commission and
14 the Arkansas Department of Transportation; and

15 (iii) An institution of higher education.

16 (b)(1) The authority of a state agency to promulgate a rule when so
17 empowered by an act of the General Assembly shall be narrowly interpreted by
18 the state agency.

19 (2) As part of the narrow interpretation of its rulemaking
20 authority under subdivision (b)(1) of this section, a state agency shall
21 without limitation:

22 (A) Limit its rulemaking to only those areas or subject
23 matters that are absolutely necessary to fulfill its statutory duty or
24 obligations; and

25 (B) Not promulgate a rule that is inconsistent with the
26 legislative intent of an act empowering a state agency to promulgate a rule.

27 (c) A proposed rule that is promulgated based upon a broad
28 interpretation of a state agency's rulemaking power rather than a narrow
29 interpretation of that rulemaking power may be deemed as inconsistent with
30 state law for the purposes § 10-3-309(f)(1).

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32 /s/Dotson