

Stricken language would be deleted from and underlined language would be added to present law.  
Act 65 of the Regular Session

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As Engrossed: H1/25/21

# A Bill

HOUSE BILL 1217

By: Representative Dotson

By: Senator J. Dismang

## For An Act To Be Entitled

*AN ACT CONCERNING THE EXTENSION AND REPEAL OF  
ADMINISTRATIVE RULES; TO AMEND THE PROCESS FOR A  
STATE AGENCY RULE TO EXPIRE UNLESS EXTENDED BY THE  
LEGISLATIVE COUNCIL; TO ESTABLISH A PROCESS FOR THE  
EXPEDITED REPEAL OF RULES THAT DO NOT MEET THE  
DEFINITION OF A RULE; AND FOR OTHER PURPOSES.*

## Subtitle

*CONCERNING THE EXTENSION AND REPEAL OF  
ADMINISTRATIVE RULES.*

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

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

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

(a) As used in this subchapter:

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

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

(2)(A) "Rule" means an agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice of an agency, including



without limitation the amendment or repeal of a prior rule.

(B) "Rule" does not mean:

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

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

(iii) Intra-agency memoranda; and

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

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

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

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

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

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

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

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

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

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

(ii) The schedule established by the Legislative Council under subdivision (d)(2)(A)(i) of this section shall provide for the evaluation of the agencies within a rule review group in monthly increments

during the rule evaluation period; and

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

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

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

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

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

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

(a) Includes the following information for each rule:

(1) The initial effective date of the rule;

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

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

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

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

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

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

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

(B) A copy of each rule as it exists at the time of filing

the rule report; and

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

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

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

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

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

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

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

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

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

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

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

(b) The repeal of a rule not extended or otherwise repealed under this section shall be effective no later than one hundred eighty (180) days following the meeting of the Legislative Council at which the Legislative Council declined to extend the rule or accepted an agency's recommendation to not extend or otherwise repeal the rule; and

(ii) Not subject to the Arkansas Administrative

Procedure Act, § 25-15-201 et seq.

(B) If the Legislative Council declines to extend an agency rule 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 shall initiate a rulemaking process under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., no later than sixty (60) days following the meeting of the Legislative Council at which the Legislative Council declined to extend the rule, including without limitation the adoption of an emergency rule.

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

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

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

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

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

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

~~(a)(1) Except as provided in § 25-15-403 and under subdivision (a)(2) of this section, unless a rule is extended by the Governor and the Legislative Council, an agency rule shall maintain in full force and effect 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 approximately equal.~~

~~(2) If the Governor has not determined the groups by January 1,~~

~~2019, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall determine the six (6) groups to ensure that the number of agencies in each group and the number of subject matter areas represented by each group are approximately equal.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(B) No earlier than May 1 of every twenty-fourth year after May 1, 2023, and no later than July 1 of every twenty-fourth year after 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 that does not meet the legal definition of a rule;

(2) The development of the Code of Arkansas Rules under § 25-15-

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

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

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

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

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

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

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

(A) The initial effective date of the rule;

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

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

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

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

(A) Effective immediately; and

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

(3) Within ten (10) days after the Legislative Council's

acceptance of an agency's written request to repeal a rule under this section, the agency shall notify the Secretary of State that the rule has been repealed under this section.

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

(1) Be filed at any time; and

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

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

*SECTION 4. TEMPORARY LANGUAGE - DO NOT CODIFY.*

(a) The evaluation of a rule review group and renewal and extension of its rules by the Legislative Council under § 25-15-401 et seq. prior to the effective date of this act, including without limitation the first rule review group under subdivision (d)(1)(A) of this section, shall be considered an evaluation and extension under this act.

(b) This act applies to the agencies within a rule review group under § 25-15-401 et seq. that were evaluated by the Legislative Council prior to the effective date of this act.

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

(d)(1)(A) The initial rule evaluation period for the first rule review group under this act began on October 1, 2019, and ended on September 31, 2020.

(B) The initial rule evaluation period for the second rule review group under this act shall begin on October 1, 2023, and end on September 31, 2024.

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

(D) The initial rule evaluation period for the fourth rule review group under this act shall begin on October 1, 2027, and end on September 31, 2028.

(E) The initial rule evaluation period for the fifth rule review group under this act shall begin on October 1, 2029, and end on September 31, 2030.

(F) The initial rule evaluation period for the sixth rule review group under this act shall begin on October 1, 2031, and end on September 31, 2032.

(2)(A) Except as provided in subdivision (d)(2)(B) of this section, each rule review group shall be subject to reevaluation by the Legislative Council during a period that begins every twelfth year following the date for the beginning of a rule evaluation period under subdivision (d)(1) of this section and ends every twelfth year following the date for the ending of a rule evaluation period under subdivision (d)(1) of this section.

(B)(i) The reevaluation of the first rule review group under subdivision (d)(1)(A) of this section shall begin on October 1, 2033, and end on September 31, 2034.

(ii) Future reevaluations of the first rule review group shall begin every twelfth year following the date of the beginning of the reevaluation under subdivision (d)(2)(B)(i) of this section and end every twelfth year following the date for the end of the reevaluation under subdivision (d)(2)(B)(i) of this section.

/s/Dotson

APPROVED: 2/4/21