

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

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As Engrossed: H3/21/13  
**A Bill**

HOUSE BILL 2021

By: Representatives Shepherd, *Alexander, Ballinger, Bell, Biviano, Bragg, Clemmer, Cozart, Davis, Dotson, C. Douglas, Farrer, Fite, Harris, House, Hutchison, Lowery, Mayberry, D. Meeks, S. Meeks, Scott*

By: Senator *J. Dismang*

### For An Act To Be Entitled

AN ACT TO AMEND THE LAW REGARDING RULE MAKING BY AGENCIES; TO REQUIRE FINANCIAL IMPACT STATEMENTS BE FILED WITH ALL RULES; TO REQUIRE WRITTEN FINDINGS FROM THE AGENCY WHEN A SUBSTANTIAL FINANCIAL IMPACT EXISTS; AND FOR OTHER PURPOSES.

### Subtitle

TO AMEND THE LAW REGARDING RULE MAKING BY AGENCIES; TO REQUIRE FINANCIAL IMPACT STATEMENTS BE FILED WITH ALL RULES; AND TO REQUIRE WRITTEN FINDINGS FROM THE AGENCY WHEN A SUBSTANTIAL FINANCIAL IMPACT EXISTS.

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

SECTION 1. Arkansas Code § 6-11-132 is amended to read as follows:

6-11-132. Financial impact statements for administrative rules.

(a)(1) ~~Except as provided in subsection (b) of this section, for each rule promulgated by the~~ The State Board of Education or and the State Board of Workforce Education and Career Opportunities under State Board of Career Education shall promulgate their rules as provided under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., ~~the board promulgating the rule shall file a financial impact statement with the Bureau of Legislative~~



Research.

~~(2)(b)~~ The scope of the financial impact statement shall be determined by the board promulgating the rule but as provided under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and shall include, ~~at a minimum,~~ without limitation a public school district's estimated cost to comply with and implement the rule.

~~(3) This subsection applies to an emergency rule for permanent adoption.~~

~~(b) For each emergency rule not for permanent adoption, if the State Board of Education or the State Board of Workforce Education and Career Opportunities has reason to believe that the development of a financial impact statement for the emergency rule promulgated by it will be so speculative as to be cost prohibitive, the board promulgating the rule shall submit to the bureau a statement and explanation to that effect.~~

~~(c) Neither the State Board of Education nor the State Board of Workforce Education and Career Opportunities shall promulgate a rule with respect to which it has not complied with this section.~~

SECTION 2. Arkansas Code § 10-3-309(e), concerning financial impact statements reviewed by the General Assembly, is amended to read as follows:

(e)(1)(A) Before any rule or regulation of any state agency may be revised, promulgated, amended, or changed, a copy of the rule or amendment to existing rules and a financial impact statement shall be filed with the bureau at least thirty (30) days before the expiration of the period for public comment on the rule pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., or other acts pertaining to the rule-making authority of that agency.

(B) The scope of the financial impact statement shall be ~~determined by the agency but~~ as provided under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and shall include, ~~at a minimum,~~ without limitation the estimated cost of complying with the rule or regulation and the estimated cost for the agency to implement the rule or regulation.

~~(C) Except as provided in § 6-11-132, if the agency has reason to believe that the development of a financial impact statement will be so speculative as to be cost prohibitive, the agency shall submit a statement and explanation to that effect.~~

~~(D) If the purpose of a state agency rule or regulation is to implement a federal rule or regulation, the financial impact statement shall be limited to any incremental additional cost of the state rule or regulation as opposed to the federal rule or regulation.~~

(2) The bureau shall review the proposed revised or amended rule or regulation and, if it is believed that the rule or regulation is contrary to legislative intent, shall file a statement thereof with the Legislative Council.

(3) ~~In either event, the proposed rule or regulation~~ Filings under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and any comment on the proposed rule or regulation prepared by the bureau shall be submitted to the Legislative Council at the next regular meeting following its filing with the Legislative Council.

SECTION 3. Arkansas Code § 25-15-202 is amended to read as follows:  
25-15-202. Definitions.

As used in this subchapter:

(1)(A) "Adjudication" means an agency process for the formulation of an order.

(B) "Adjudication" does not include ~~prisoner inmate~~ disciplinary proceedings conducted by the Department of Correction and the Department of Community Correction;

(2)(A) "Agency" means ~~each~~ a board, commission, department, officer, or other authority of the government of the State of Arkansas, whether ~~or not~~ within, or subject to review by, another agency, except the General Assembly, the courts, and Governor.

(B) The word "agency" shall include the Division of Child Care and Early Childhood Education of the Department of Human Services and the Child Care Appeal Review Panel for purposes of administrative appeal.

(C) The word "agency" shall not include the Arkansas Public Service Commission, the Arkansas Pollution Control and Ecology Commission, the Workers' Compensation Commission, and the Department of Workforce Services, ~~it being determined by the General Assembly that~~ as the existing laws governing those agencies provide adequate administrative procedures for those agencies.

~~(D) Nothing in this subchapter shall be construed to~~ This

subchapter does not repeal delegations of authority as provided by law;

(3) "Financial impact statement" means a realistic statement of a new or increased cost or obligation of complying with a proposed rule to a:

(A) Private individual, entity, and business; and

(B) State, county, and municipal government;

(4) "License" includes ~~any~~ an agency permit, certificate, approval, registration, charter, or similar form of permission required by law;

~~(4)(5)~~ "Licensing" means ~~any~~ an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, or amendment of a license;

~~(5)(6)~~ "Order" means the final disposition of an agency in any matter other than rule making, including licensing and rate making, in which the agency is required by law to make its determination after notice and hearing;

~~(6)(7)~~ "Party" means ~~any~~ a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in ~~any~~ an agency proceeding;

~~(7)(8)~~ "Person" means ~~any~~ an individual, partnership, corporation, association, or public or private organization of any character;

~~(8)(A)(9)(A)~~ "Rule" means ~~any~~ 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 ~~any~~ an agency and includes, but is not limited to, the amendment or repeal of a prior rule.

(B) "Rule" does not mean:

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

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

(iii) Intra-agency memoranda; and

~~(9)(10)~~ "Rule making" means an agency process for the formulation, amendment, or repeal of a rule.

SECTION 4. Arkansas Code § 25-15-204 is amended to read as follows:

25-15-204. Rules – Procedure for adoption.

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

(1)(A)(i) Give at least thirty (30) days' notice of its intended action.

(ii) The thirty-day period shall begin on the first day of the publication of notice.

(B) The notice shall include ~~a~~:

(i) A statement of the terms or substance of the intended action or a description of the subjects and issues involved; and ~~the~~

(ii) ~~The time, the place where~~ location, and ~~the~~ manner in which an interested ~~persons~~ person may present ~~their views~~ his or her position on the intended action ~~or the subjects and issues involved of the agency or on the issues related to the intended action of the agency.~~

(C) The notice shall be mailed to ~~any~~:

(i) A person specified by law; and ~~to all persons~~

(ii) A person who ~~have~~ has requested advance notice of rule-making proceedings.

(D)~~(i)~~ Unless otherwise provided by law, the notice shall be published ~~in~~:

(i) In a newspaper of general daily circulation for three (3) consecutive days and, when appropriate, in those trade, industry, or professional publications that the agency may select; ~~and~~

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

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

(B) ~~Opportunity for oral hearing must be granted~~ The agency shall grant an opportunity for an oral hearing if requested by twenty-five (25) persons, by a governmental subdivision or agency, or by an association having ~~no fewer than~~ at least twenty-five (25) members.

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

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

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

(3) ~~Comply with § 25-15-301 et seq.~~ Consider the following factors:

(A) Whether the agency is required by statute to adopt the proposed rule, whether by a specific date, and whether the agency has discretion to promulgate rules;

(B) Other statutes relevant to the proposed rule and its alternatives;

(C) The specific nature and significance of the problem the agency addresses with the proposed rule including without limitation:

(i) The nature and degree of the risks the problem poses;

(ii) The priority of addressing those risks as opposed to other matters or activities within the agency's jurisdiction;

(iii) Whether the problem warrants new agency action; and

(iv) The countervailing risks that may be posed by alternative rules for the agency;

(D) Whether existing rules have created or contributed to the problem the agency is addressing with the proposed rule, and whether those rules could be amended or repealed to address the problem in whole or in part;

(E) Reasonable alternatives to the proposed rule including without limitation:

(i) Adopting no rule;

(ii) Amending or repealing existing rules; and

(iii) Other potential responses that could be taken

instead of agency action;

(F) The financial impact of the proposed rule;

(G) Any other factor relevant to the need for and alternatives to the proposed rule.

(b)(1) An agency shall not adopt, amend, or repeal a rule unless the rule is based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule.

(2) An agency shall adopt the least costly rule considered under this section, unless:

(A) The additional benefits of the more costly rule justify its additional cost;

(B) The agency explains its reason for adoption of the more costly rule in writing;

(C) The reason is based on the interests of public health, safety, or welfare; and

(D) The reason is within the scope of the agency's statutory authority.

~~(b)(1)(c)(1)~~ (c)(1) If an agency finds that imminent peril to the public health, safety, or welfare or compliance with a federal law or law or regulations regulation requires adoption of a rule upon less than thirty (30) days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it may choose, to adopt an emergency rule.

(2) Except as provided in § 5-64-204, the rule may be effective for no longer than one hundred twenty (120) days.

(3) If, after the expiration of the effective period of an emergency rule, an agency wishes to adopt a successive emergency rule that is identical or substantially similar to the expired emergency rule, the agency shall not adopt the successive emergency rule earlier than thirty (30) days after the expiration of the emergency rule.

~~(e)(1)(d)(1)~~ (d)(1) ~~Every agency shall accord any~~ A person the right to may petition an agency for the issuance, amendment, or repeal of ~~any a~~ a rule.

(2) Within thirty (30) days after submission of a petition, the agency shall:

(A) Deny the petition, stating in writing its reasons for

the denial; or

(B) Initiate rule-making proceedings.

~~(d)(1)(A)(e)(1)(A) Every An agency, including those exempted under § 25-15-202,~~ shall file with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research a copy of each rule ~~adopted~~ proposed by it and a ~~statement of financial impact~~ statement for the proposed rule.

(B) ~~Rules~~ A rule shall be filed in compliance with this section and with §§ 25-15-218 and 10-3-309.

(2) The Secretary of State shall keep a register of the rules open to public inspection, and it shall be a permanent register.

~~(3)(A) The scope of the financial impact statement shall be determined by the agency but at a minimum shall include the estimated cost of complying with the rule and the estimated cost for the agency to implement the rule.~~

~~(B) Except as provided in § 6-11-132, if the agency has reason to believe that the development of a financial impact statement will be so speculative as to be cost prohibitive, the agency shall submit a statement and explanation to that effect.~~

~~(C) If the purpose of a state agency rule is to implement a federal rule or regulation, the financial impact statement shall be limited to any incremental~~ include:

(i) The cost to implement the federal rule or regulation; and

(ii) The additional cost of the state rule, as opposed to the federal rule or regulation.

(4)(A) If a financial impact statement reveals a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined, the agency shall file written findings at the time of filing the financial impact statement.

(B) The written findings shall be filed simultaneously with the financial impact statement and shall include without limitation:

(i) A statement of the rule's basis and purpose;

(ii) The problem the agency seeks to address with

the proposed rule, including a statement of whether a rule is required by statute;

(iii) A description of the factual evidence that:

(a) Justifies the agency's need for the proposed rule; and

(b) Describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

(iv) A list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(v) A list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(vi)(a) A statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule.

(b) If existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

(vii) An agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including without limitation whether:

(a) The rule is achieving the statutory objectives;

(b) The benefits of the rule continue to justify its costs; and

(c) The rule can be amended or repealed to reduce costs while continuing to achieve the statutory objections.

~~(e)(1)(A)~~(f)(1)(A) Each rule adopted by an agency is effective thirty (30) days after filing of the final rule unless a later date is specified by law or in the rule itself.

(B) A final rule shall not be filed until the thirty-day public comment period required under subdivision (a)(1)(A) of this section has expired.

(C)(i) After the expiration of the thirty-day public comment period and before the effective date of the rule, the agency promulgating the rule shall take appropriate measures to make the final rule known to the persons who may be affected by the rule.

(ii) Appropriate measures shall include without limitation posting the following information on the agency's website:

(a) The final rule;

(b) Copies of all written comments submitted to the agency regarding the rule;

(c) A summary of all written and oral comments submitted to the agency regarding the rule and the agency's response to those comments; ~~and~~

(d) A summary of the financial impact of the rule; and

(e) The proposed effective date of the final rule.

(2)(A)(i) However, an emergency rule may become effective immediately upon filing or at a stated time less than thirty (30) days after filing if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare.

(ii) The agency's finding ~~and~~, a brief statement of the reasons for the finding, and the financial impact statement shall be filed with the rule.

(B) The agency shall take appropriate measures to make emergency rules known to the persons who may be affected by the emergency rules.

~~(f)(g)~~ ~~No~~ A rule adopted after June 30, 1967, is not valid unless adopted and filed in substantial compliance with this section.

~~(g)(1)(h)(1)~~ In ~~any~~ a proceeding ~~brought~~ that questions the existence of imminent peril to the public health, safety, or welfare, a written finding by an agency that ~~adoption of any~~ adopting an emergency rule was necessary to avoid the loss of federal funding or certification establishes a prima facie case of the existence of imminent peril to the public health, safety, or welfare.

(2) The burden of proof shifts to the challenger to rebut the existence of the condition by a preponderance of the evidence.

SECTION 5. Arkansas Code Title 25, Chapter 15, Subchapter 3, is repealed.

~~25-15-301. Definitions.~~

~~As used in this subchapter:~~

~~(1)(A) "Agency" means each board, commission, department, office, or other authority of the government of the State of Arkansas whether or not within or subject to review by another agency.~~

~~(B) "Agency" does not include the General Assembly and the judiciary;~~

~~(2)(A) "Rule" means any agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice of any agency and includes, but is not limited to, the amendment or repeal of a prior rule.~~

~~(B) "Rule" does not mean:~~

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

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

~~(iii) Intra-agency memoranda; and~~

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

~~25-15-302. Determination of effect of proposed rule on small businesses.~~

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

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

~~(A) Adopted on an emergency basis;~~

~~(B) That is federally mandated; or~~

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

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

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

~~25-15-303. Economic impact statement.~~

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

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

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

~~(2) A description of how small businesses will be adversely affected;~~

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

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

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

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

~~(c) The agency shall submit the economic impact statement and the proposed rule to the Director of the Arkansas Economic Development Commission.~~

~~(d)(1) Within ten business (10) days of the receipt of the economic impact statement and the proposed rule, the director shall provide detailed~~

~~information in writing to the agency regarding whether, in the reasoned opinion of the director, the agency has satisfactorily completed the economic impact statement and whether the agency has taken sufficient measures to balance the objectives of the proposed rule with the interests of the affected small businesses.~~

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

~~(ii) The director shall send the proposed rules to the members of the Regulatory Review Committee in any manner he or she considers reasonable and may set a deadline for the receipt of responses from members of the committee.~~

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

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

~~(c)(1) Upon receiving from the director the information described in this section, the agency shall promptly consider the information.~~

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

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

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

*/s/Shepherd*