

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

State of Arkansas
88th General Assembly
First Extraordinary Session, 2012

A Bill

SENATE BILL 879

By: Senator Maloch

For An Act To Be Entitled

AN ACT TO PROVIDE FOR THE EXPIRATION OF LEGISLATIVE
AUTHORITY TO PROMULGATE CERTAIN RULES UNLESS
CONTINUED BY THE GENERAL ASSEMBLY; AND FOR OTHER
PURPOSES.

Subtitle

TO PROVIDE FOR THE EXPIRATION OF
LEGISLATIVE AUTHORITY TO PROMULGATE
CERTAIN RULES UNLESS CONTINUED BY THE
GENERAL ASSEMBLY.

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

SECTION 1. Arkansas Code § 10-3-309(d), concerning the review of administrative rules by the Legislative Council, is amended to add an additional subdivision to read as follows:

(6)(A) On or before January 1 preceding a regular session of the General Assembly, the Legislative Council shall present to the Speaker of the House of Representatives and the President Pro Tempore of the Senate draft legislation representing its recommendations concerning those rules becoming void on July 1 of that year under § 25-15-204 for which the General Assembly should grant continued legislative authority.

(B) The draft legislation may be in substantially the following form: "All rules of Arkansas state agencies for which legislative authority will expire on July 1 of [insert year] under § 25-15-204 are granted continued legislative authority and shall continue in effect except for the following:".



(C) The draft legislation may specify that continued legislative authority for a rule:

(i) Has no expiration; or

(ii) Expires on a date certain.

(D) The granting of continued legislative authority for a rule does not constitute legislative approval of the rule.

SECTION 2. Arkansas Code § 25-15-204(f), concerning the procedures for adopting an administrative rule, is amended to read as follows and the remaining subsections are redesignated accordingly:

(f)(1) Except as provided in subdivision (f)(2) of this section, the legislative authority to promulgate a rule filed under subsection (e) of this section expires on July 1 of the next odd-numbered year following the filing of the final rule, and the rule shall become void unless the General Assembly provides continued legislative authority for the rule.

(2) The legislative authority to promulgate a rule filed under subsection (e) of this section does not expire on July 1 of the next following odd-numbered year if:

(A) The rule is explicitly mandated by a federal law or regulation; or

(B) A provision of the Arkansas Constitution vests the agency with specific constitutional authority to regulate.

(g) No rule adopted after June 30, 1967, is valid unless adopted and filed in substantial compliance with this section.

~~(g)~~(h)(1) In any 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 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.