

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

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

HOUSE BILL 1737

By: Representative Branscum

For An Act To Be Entitled

AN ACT PROVIDING THAT ADMINISTRATIVE RULES
PROMULGATED BY A STATE AGENCY SHALL NOT BECOME
EFFECTIVE UNTIL REVIEWED AND APPROVED BY A
LEGISLATIVE COMMITTEE; AND FOR OTHER PURPOSES.

Subtitle

PROVIDING THAT ADMINISTRATIVE RULES
PROMULGATED BY A STATE AGENCY SHALL NOT
BECOME EFFECTIVE UNTIL REVIEWED AND
APPROVED BY A LEGISLATIVE COMMITTEE.

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

SECTION 1. Arkansas Code § 6-15-2106(b), concerning rules implementing a school rating system, is amended to read as follows:

(b) The state board may, by rules adopted under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and reviewed and approved under § 10-3-309, redesignate the levels of performance categories and improvement categories under this subchapter to be consistent with:

- (1) The Common Core State Standards;
- (2) Assessments that correlate with those standards; and
- (3) Rules adopted under the requirements of a law enacted by Congress for general education, including without limitation the Elementary and Secondary Education Act of 1965 as reauthorized by the No Child Left Behind Act of 2001, 20 U.S.C. § 6301 et seq., or any supplementary federal regulations, directives, or decisions of the United States Department of Education pertaining to that legislation.



SECTION 2. Arkansas Code § 10-3-309 is amended to read as follows:

10-3-309. Review and approval of state agency rules, ~~regulations, amendments, revisions, etc.~~

(a)(1)(A) In the passage of this section, the General Assembly is aware of the significant number of laws which have been enacted granting to boards, commissions, departments, and administrative agencies of state government the authority to promulgate and enforce rules ~~and regulations~~.

(B) The General Assembly is further aware that ample safeguards have not been established whereby the General Assembly may be informed of circumstances in which administrative rules ~~and regulations~~ do not conform to legislative intent.

(2) It is the purpose of this section to establish a method for continuing legislative review and approval of such rules ~~and regulations~~ whereby the General Assembly at each legislative session may take remedial ~~steps~~ to correct abuses of rulemaking authority or clarify legislative intent with respect to the rulemaking authority granted the administrative boards, commissions, departments, or agencies.

~~(b)(1)(A) Whenever a state agency finalizes the promulgation of a rule or regulation or a revision, amendment, or change in the regulation, a copy shall be filed with the Bureau of Legislative Research if the rule or regulation contains any changes from the initial filing of the rule or regulation.~~

~~(B) A state agency shall notify the Legislative Council of its intention to repeal any rule or regulation which is on file with the bureau.~~

~~(2) As used in this section, "state agency" means any office, board, commission, department, council, bureau, or other agency of state government having authority by statute enacted by the General Assembly to promulgate or enforce the administrative rules and regulations.~~

~~(c)(1) The research staff of the bureau shall study and review all current rules, or proposed rules, and all adopted amendments and revisions of rules by state agencies and shall report to the Legislative Council in regard to them.~~

~~(2) The Legislative Council shall act in an advisory capacity to~~

~~the General Assembly with respect to administrative rules and procedures and shall report to the General Assembly at each regular session all administrative rules and regulations which the Legislative Council believes to be contrary to legislative intent or promulgated without legislative authority.~~

~~(d)(1)(A) — The Legislative Council may selectively review possible, proposed, or adopted rules and regulations and prescribe appropriate Legislative Council procedures for that purpose.~~

~~(B) — The Legislative Council may receive and investigate complaints from members of the public with respect to possible, proposed, or adopted rules and regulations and hold public proceedings on those complaints.~~

~~(2)(A) — The Legislative Council may request a representative of an agency whose possible, proposed, or adopted rule or regulation is under examination to attend a Legislative Council meeting and answer relevant questions.~~

~~(B) — The Legislative Council may also communicate to the agency its nonbinding comments on any possible, proposed, or adopted rule or regulation and request the agency to respond to them in writing.~~

~~(3)(A) — The Legislative Council may recommend and refer the recommendation to the appropriate committee or committees of the General Assembly:~~

~~(i) — Enactment of a statute to improve the operation of an agency; and~~

~~(ii) — That a particular rule or regulation be superseded in whole or in part by statute.~~

~~(B) — Subdivision (d)(3)(A) of this section does not preclude any committee of the General Assembly from reviewing a rule or regulation on its own motion or recommending that it be superseded in whole or in part by statute.~~

~~(4)(A)(i) — If the Legislative Council considers all or any portion of a rule or regulation to be beyond the procedural or substantive authority delegated to the adopting agency, the Legislative Council may file notice of that with the agency issuing the rule or regulation in question.~~

~~(ii) — The notice shall contain a concise statement detailing the precise reasons that the Legislative Council considers the rule~~

~~or regulation, or portion thereof, to be beyond the procedural or substantive authority delegated to the agency.~~

~~(B) The Legislative Council shall maintain a permanent register open to public inspection of all notices.~~

~~(C)(i) Within thirty (30) calendar days after the filing of an objection by the Legislative Council to a rule or regulation, the issuing agency shall respond in writing to the Legislative Council.~~

~~(ii) After receipt of the response, the Legislative Council may withdraw or modify its findings.~~

~~(D) The failure of the Legislative Council to file a notice regarding a rule or regulation is not an implied legislative authorization of its procedural or substantive validity.~~

~~(5) The Legislative Council may make nonbinding recommendations to an agency that it adopt a rule or regulation.~~

~~(c)(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 as provided under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and shall include 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.~~

~~(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) 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.~~

~~(f)(1) In addition, 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 shall be filed with the interim committees of the General Assembly having responsibility for review of that agency under Acts 1977, No. 100.~~

~~(2) The filing shall be made 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 rulemaking authority of the agency.~~

(b)(1) As used in this section, "state agency" means an office, board, commission, department, council, bureau, or other agency of state government having authority to promulgate or enforce administrative rules.

(2) "State agency" includes without limitation:

(A) The Arkansas State Game and Fish Commission;

(B) The State Highway Commission;

(C) The Arkansas State Highway and Transportation Department; and

(D) State-supported institutions of higher education.

(c)(1) A state agency shall file a proposed rule with the Legislative Council at least thirty (30) days before the expiration of the period for public comment on the rule under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., or other laws or policies pertaining to the rule-making authority of that state agency.

(2) A state agency shall file a proposed emergency rule with the Legislative Council as soon as practicable.

(d) A state agency shall not file a final rule or emergency rule with the Secretary of State for adoption unless the final rule or emergency rule has been:

(A) Reviewed and approved by the Legislative Council or its designated subcommittee; or

(B) Reviewed and approved in writing by the House chair of the Legislative Council and the Senate chair of the Legislative Council on behalf of the Legislative Council.

~~(g)(1)~~ (e)(1) The Joint Budget Committee shall establish the Administrative Rule and Regulation Review Subcommittee.

(2)(A) The Administrative Rule and Regulation Review Subcommittee shall consist of twenty-two (22) members of the General Assembly.

(B)(i) Nine (9) members of the Administrative Rule ~~and Regulation Review~~ Subcommittee shall be appointed by the Senate Cochair of the Joint Budget Committee.

(ii) The Senate Cochair of the Joint Budget Committee shall designate one (1) of his or her appointees as Senate Cochair of the Administrative Rule ~~and Regulation Review~~ Subcommittee.

(C)(i) Nine (9) members of the Administrative Rule ~~and Regulation Review~~ Subcommittee shall be appointed by the House Cochair of the Joint Budget Committee.

(ii) The House Cochair of the Joint Budget Committee shall designate one (1) of his or her appointees as House Cochair of the Administrative Rule ~~and Regulation Review~~ Subcommittee.

(3) The cochairs and co-vice chairs of the Legislative Council shall be ex officio members of the Administrative Rule ~~and Regulation Review~~ Subcommittee.

(4)(A) The Administrative Rule ~~and Regulation Review~~ Subcommittee may meet only during a regular, fiscal, or extraordinary session of the General Assembly.

(B) The Administrative Rule ~~and Regulation Review~~ Subcommittee shall meet at the call of the cochairs of the Administrative Rule ~~and Regulation Review~~ Subcommittee.

(5)(A) During a regular, fiscal, or extraordinary session of the General Assembly, the Administrative Rule ~~and Regulation Review~~ Subcommittee may perform the functions assigned to the Legislative Council under this section.

(B) Actions taken by the Administrative Rule ~~and Regulation Review~~ Subcommittee under subdivision ~~(g)(5)(A)~~(e)(5)(A) of this section have the same effect as actions taken by the Legislative Council under this section.

(C) If the Administrative Rule ~~and Regulation Review~~ Subcommittee meets during a regular, fiscal, or extraordinary session of the General Assembly, the Administrative Rule ~~and Regulation Review~~ Subcommittee shall file a report of its actions with the Legislative Council as soon as practicable.

SECTION 3. Arkansas Code § 23-115-207(c), concerning rulemaking of the

Arkansas Lottery Commission, is amended to read as follows:

(c)(1)~~(A)~~ Except as provided in subdivision ~~(e)(1)(B)~~(c)(2) of this section, the promulgation of rules under this chapter shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

~~(B) The commission shall not be required to file rules under § 10-3-309.~~

(2)(A) The promulgation of rules by the commission shall ~~be exempt from § 10-3-309~~ comply with § 23-115-1102.

(B) The commission shall file its rules with the Arkansas Lottery Commission Legislative Oversight Committee for review and approval at least thirty (30) days before the expiration of the public comment period.

SECTION 4. Arkansas Code § 23-115-1102(c)(1), concerning the duties of the Arkansas Lottery Commission Legislative Oversight Committee, is amended to read as follows:

(c)(1) The Arkansas Lottery Commission Legislative Oversight Committee shall perform all duties or functions of the Legislative Council required by law concerning the contracts, rules, reports, or other information filed with the Arkansas Lottery Commission Legislative Oversight Committee under subsection (b) of this section, including without limitation the review and approval of rules under § 10-3-309.

SECTION 5. Arkansas Code § 25-10-129(c), concerning rules of the Department of Human Services to assure compliance with federal statutes, rules, and regulations, is amended to read as follows:

(c) All rules promulgated pursuant to this section shall be promulgated in conformity with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and after legislative review and approval as required by § 10-3-309.

SECTION 6. 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 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:

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

(ii) The time, location, and manner in which an interested person may present his or her position on the intended action of the agency or on the issues related to the intended action of the agency.

(C) The notice shall be mailed to:

(i) A person specified by law; and

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

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

(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) By the Secretary of State on the Internet for thirty (30) days under § 25-15-218;

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

(B) 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 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 (e) of this section.

(D) If an interested person requests a statement of the reasons for and against the adoption of a rule before adoption or within thirty (30) days after adoption, the agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating 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) 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; and

(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.

(c)(1) If an agency finds that imminent peril to the public health, safety, or welfare or compliance with a federal law or 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) An agency shall not file an emergency rule with the Secretary of State for adoption until the emergency rule has been:

(A) Reviewed and approved by the Legislative Council or its designated subcommittee under § 10-3-309; or

(B) Reviewed and approved in writing by the House chair of the Legislative Council and the Senate chair of the Legislative Council on behalf of the Legislative Council under § 10-3-309.

~~(2)(3)~~ Except as provided in ~~§ 5-64-204~~ § 5-64-201, the rule may be effective for no longer than one hundred twenty (120) days.

~~(3)(4)~~ 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.

(d)(1) A person may petition an agency for the issuance, amendment, or repeal of 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.

(e)(1)(A) An agency shall file with the Secretary of State, the

Arkansas State Library, and the ~~Bureau of Legislative Research~~ Legislative Council a copy of each rule, including without limitation an emergency rule, proposed by it and a financial impact statement for the proposed rule.

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

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

(3) If the purpose of a state agency rule is to implement a federal rule or regulation, the financial impact statement shall include:

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

(B) The additional cost of the state rule.

(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.

(f) An agency shall not file a final rule with the Secretary of State for adoption unless the final rule has been:

(1) Reviewed and approved by the Legislative Council or its designated subcommittee under § 10-3-309; or

(2) Reviewed and approved in writing by the House chair of the Legislative Council and the Senate chair of the Legislative Council on behalf of the Legislative Council under § 10-3-309.

~~(f)(1)(A)~~ (g)(1)(A) Each rule adopted by an agency is effective ~~thirty~~ ~~(30)~~ ten (10) days after filing of the final rule with the Secretary of State 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;

(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)~~ ten (10) 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, 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.

~~(g)~~(h) A rule adopted after June 30, 1967, is not valid unless adopted and filed in substantial compliance with this section.

~~(h)(1)~~(i)(1) In a proceeding that questions the existence of imminent peril to the public health, safety, or welfare, a written finding by an agency that 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.