

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

A Bill

HOUSE BILL 1737

5 By: Representative Branscum
6

For An Act To Be Entitled

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

14 PROVIDING THAT ADMINISTRATIVE RULES
15 PROMULGATED BY A STATE AGENCY SHALL NOT
16 BECOME EFFECTIVE UNTIL REVIEWED AND
17 APPROVED BY A LEGISLATIVE COMMITTEE.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code § 6-15-2106(b), concerning rules implementing
24 a school rating system, is amended to read as follows:

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

29 (1) The Common Core State Standards;

30 (2) Assessments that correlate with those standards; and

31 (3) Rules adopted under the requirements of a law enacted by
32 Congress for general education, including without limitation the Elementary
33 and Secondary Education Act of 1965 as reauthorized by the No Child Left
34 Behind Act of 2001, 20 U.S.C. § 6301 et seq., or any supplementary federal
35 regulations, directives, or decisions of the United States Department of
36 Education pertaining to that legislation.



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3 SECTION 2. Arkansas Code § 10-3-309 is amended to read as follows:
4 10-3-309. Review and approval of state agency rules, ~~regulations,~~
5 ~~amendments, revisions, etc.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

20 ~~(3)(A) The Legislative Council may recommend and refer the~~
 21 ~~recommendation to the appropriate committee or committees of the General~~
 22 ~~Assembly.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 ~~(3) Filings under the Arkansas Administrative Procedure Act, §~~
32 ~~25-15-201 et seq., and any comment on the proposed rule or regulation~~
33 ~~prepared by the bureau shall be submitted to the Legislative Council at the~~
34 ~~next regular meeting following its filing with the Legislative Council.~~

35 ~~(f)(1) In addition, before any rule or regulation of any state agency~~
36 ~~may be revised, promulgated, amended, or changed, a copy of the rule or~~

1 ~~amendment to existing rules shall be filed with the interim committees of the~~
 2 ~~General Assembly having responsibility for review of that agency under Acts~~
 3 ~~1977, No. 100.~~

4 ~~(2) The filing shall be made at least thirty (30) days before~~
 5 ~~the expiration of the period for public comment on the rule, pursuant to the~~
 6 ~~Arkansas Administrative Procedure Act, § 25-15-201 et seq., or other acts~~
 7 ~~pertaining to the rulemaking authority of the agency.~~

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

11 (2) "State agency" includes without limitation:

12 (A) The Arkansas State Game and Fish Commission;

13 (B) The State Highway Commission;

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

16 (D) State-supported institutions of higher education.

17 (c)(1) A state agency shall file a proposed rule with the Legislative
 18 Council at least thirty (30) days before the expiration of the period for
 19 public comment on the rule under the Arkansas Administrative Procedure Act, §
 20 25-15-201 et seq., or other laws or policies pertaining to the rule-making
 21 authority of that state agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35
36 SECTION 3. Arkansas Code § 23-115-207(c), concerning rulemaking of the

1 Arkansas Lottery Commission, is amended to read as follows:

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

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

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

9 (B) The commission shall file its rules with the Arkansas
10 Lottery Commission Legislative Oversight Committee for review and approval at
11 least thirty (30) days before the expiration of the public comment period.
12

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

16 (c)(1) The Arkansas Lottery Commission Legislative Oversight Committee
17 shall perform all duties or functions of the Legislative Council required by
18 law concerning the contracts, rules, reports, or other information filed with
19 the Arkansas Lottery Commission Legislative Oversight Committee under
20 subsection (b) of this section, including without limitation the review and
21 approval of rules under § 10-3-309.
22

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

26 (c) All rules promulgated pursuant to this section shall be
27 promulgated in conformity with the Arkansas Administrative Procedure Act, §
28 25-15-201 et seq., and after legislative review and approval as required by §
29 10-3-309.
30

31 SECTION 6. Arkansas Code § 25-15-204 is amended to read as follows:
32 25-15-204. Rules – Procedure for adoption.

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

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

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

3 (B) The notice shall include:

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

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

9 (C) The notice shall be mailed to:

10 (i) A person specified by law; and

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

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

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

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

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

22 (B) The agency shall grant an opportunity for an oral
23 hearing if requested by twenty-five (25) persons, by a governmental
24 subdivision or agency, or by an association having at least twenty-five (25)
25 members.

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

30 (D) If an interested person requests a statement of the
31 reasons for and against the adoption of a rule before adoption or within
32 thirty (30) days after adoption, the agency shall issue a concise statement
33 of the principal reasons for and against its adoption, incorporating its
34 reasons for overruling the considerations urged against its adoption.

35 (E) When rules are required by law to be made on the
36 record after opportunity for an agency hearing, the provisions of that law

1 shall apply in place of this subdivision (a)(2); and

2 (3) Consider the following factors:

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

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

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

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

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

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

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

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

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

24 (i) Adopting no rule;

25 (ii) Amending or repealing existing rules; and

26 (iii) Other potential responses that could be taken
27 instead of agency action;

28 (F) The financial impact of the proposed rule; and

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

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

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

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

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

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

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

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

15 (2) An agency shall not file an emergency rule with the
16 Secretary of State for adoption until the emergency rule has been:

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

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

22 ~~(2)(3)~~ Except as provided in ~~§ 5-64-204~~ § 5-64-201, the rule may
23 be effective for no longer than one hundred twenty (120) days.

24 ~~(3)(4)~~ If, after the expiration of the effective period of an
25 emergency rule, an agency wishes to adopt a successive emergency rule that is
26 identical or substantially similar to the expired emergency rule, the agency
27 shall not adopt the successive emergency rule earlier than thirty (30) days
28 after the expiration of the emergency rule.

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

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

33 (A) Deny the petition, stating in writing its reasons for
34 the denial; or

35 (B) Initiate rule-making proceedings.

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

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

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

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

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

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

12 (B) The additional cost of the state rule.

13 (4)(A) If a financial impact statement reveals a new or
14 increased cost or obligation of at least one hundred thousand dollars
15 (\$100,000) per year to a private individual, private entity, private
16 business, state government, county government, municipal government, or to
17 two (2) or more of those entities combined, the agency shall file written
18 findings at the time of filing the financial impact statement.

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

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

22 (ii) The problem the agency seeks to address with
23 the proposed rule, including a statement of whether a rule is required by
24 statute;

25 (iii) A description of the factual evidence that:

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

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

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

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

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

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

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

11 (a) The rule is achieving the statutory
 12 objectives;

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

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

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

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

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

24 ~~(f)(1)(A)~~ (g)(1)(A) Each rule adopted by an agency is effective ~~thirty~~
 25 ~~(30)~~ ten (10) days after filing of the final rule with the Secretary of State
 26 unless a later date is specified by law or in the rule itself.

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

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

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

36 (a) The final rule;

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

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

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

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

10 (2)(A)(i) However, an emergency rule may become effective
11 immediately upon filing or at a stated time less than ~~thirty (30)~~ ten (10)
12 days after filing if the agency finds that this effective date is necessary
13 because of imminent peril to the public health, safety, or welfare.

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

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

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

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

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

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