

THE BILL DRAFTING PROCESS



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The Bureau of Legislative Research's Legal Division consists of 3 sections:

- ▶ The Legal Research and Drafting section, which prepares substantive bills for consideration by the General Assembly.
- ▶ The Statutory Review section, which incorporates acts of the General Assembly into the Arkansas Code and reviews substantive bills during the bill drafting process.
- ▶ The Administrative Rules Review section, which reviews state agency administrative rules as part of their consideration for approval by the Legislative Council and is also preparing a codification of state agency rules.

All told, the Bureau employs 25 attorneys that serve in a variety of roles.



Today we will:

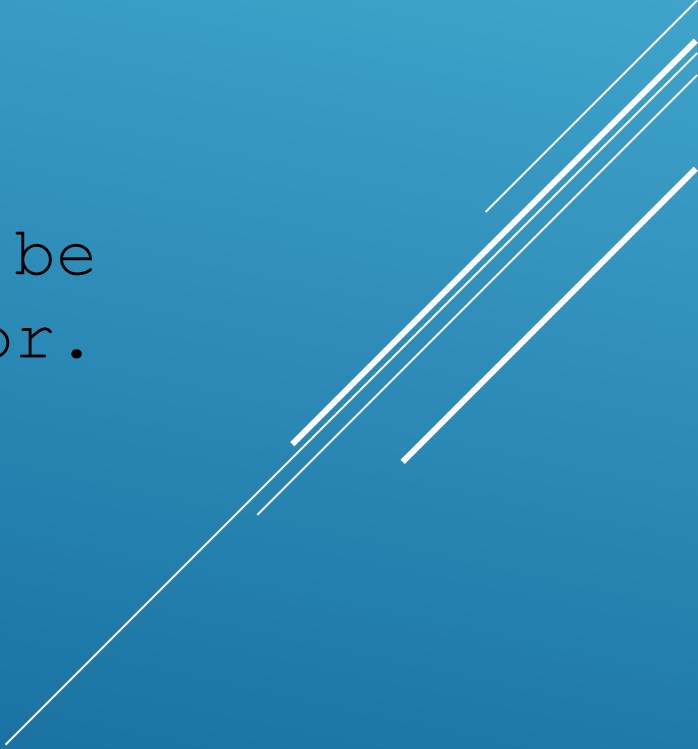
- ▶ Examine the anatomy of a bill in Arkansas.
 - ▶ Conduct a case study of the bill drafting process.
 - ▶ Look at some common issues that arise.
 - ▶ Answer questions.
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Arkansas Constitution, Article 5, § 21:

No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house, as to change its original purpose.

Arkansas Constitution, Article 5, § 22:

Every bill shall be read at length, on three different days, in each house; unless the rules be suspended by two-thirds of the house, when the same may be read a second or third time on the same day; and no bill shall become a law unless, on its final passage, the vote be taken by yeas and nays; the names of the persons voting for and against the same be entered on the journal; and a majority of each house be recorded thereon as voting in its favor.



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

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023

A Bill

HOUSE BILL

4
5 By: Representative <NA>

For An Act To Be Entitled

8 AN ACT TO CHANGE THE DATE THAT THE GENERAL ASSEMBLY
9 MEETS IN REGULAR SESSION; AND FOR OTHER PURPOSES.

Subtitle

13 TO CHANGE THE DATE THAT THE GENERAL
14 ASSEMBLY MEETS IN REGULAR SESSION.

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

19 SECTION 1. Arkansas Code § 10-2-101(a), concerning the time for the
20 General Assembly to meet in regular session, is amended to read as follows:

21 (a)(1) The General Assembly shall meet in regular session at 12:00
22 noon on the ~~second Monday in January~~ first Monday in February in each odd-
23 numbered year.

24 (2)(A) However, in any odd-numbered year following the election
25 of a nonincumbent governor, the General Assembly ~~upon convening~~ shall convene
26 at 12:00 noon on the second Monday in January ~~may~~ and remain in session only
27 for such time not to exceed two (2) days as is necessary to open and publish
28 the votes for various constitutional offices, to swear in the state
29 constitutional officers and members of the General Assembly, to organize and
30 select officers, and to otherwise prepare for the regular session.

31 (B) The General Assembly may then stand in recess for a
32 period not to exceed thirty (30) days.



- 1 State of Arkansas
- 2 94th General Assembly
- 3 Regular Session, 2023
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5 By: Representative <NA>

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For An Act To Be Entitled

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AN ACT TO CHANGE THE DATE THAT THE GENERAL ASSEMBLY
MEETS IN REGULAR SESSION; AND FOR OTHER PURPOSES.

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Subtitle

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TO CHANGE THE DATE THAT THE GENERAL
ASSEMBLY MEETS IN REGULAR SESSION.

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

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19 SECTION 1. A. 1. C. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20.



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32 period not to exceed thirty (30) days.

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Bill drafting case study:

One day you are driving on the Capitol grounds and get behind a group of bicycle riders who are cutting between both moving and parked cars. You see them scratch one of the cars. The bicycle riders then drive onto the sidewalk and knock down several pedestrians. You conclude that bicycle riding on the Capitol grounds is dangerous and should be prohibited. You would also like for any type of trespassing on the Capitol grounds to be a Class B misdemeanor.


Step 1: Present the idea to a Bureau of Legislative Research bill drafting attorney.

- ▶ BLR has attorneys assigned by subject matter specialty.
 - ▶ There is not a “right way” to request a bill – there is no specific information you have to have.
 - ▶ Requests are confidential.
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Step 2: Find the appropriate part of the law to amend.

- ▶ The Arkansas Code has 28 Titles and over 50 individual volumes.
 - ▶ Each Title covers a specific subject matter – Title 5 is Criminal Offenses, Title 6 is Education, Title 7 is Elections, and so on.
 - ▶ Each Title has chapters and subchapters arranged by topic – everything is organized in a logical manner for searchability.
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Finding the correct section of law for this request:

- ▶ Title 22 of the Arkansas Code deals with Public Property.
 - ▶ Chapter 3 of Title 22 deals with “Public Buildings and other Facilities.”
 - ▶ Subchapter 2 of Chapter 3 deals with the “Capitol Building and Grounds Generally.”
 - ▶ Section 10 of Subchapter 2 deals with “Trespassing Upon State Capitol Grounds”.
 - ▶ Thus, the section we are looking at is Arkansas Code § 22-3-210.
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22-3-210 Trespassing upon State Capitol grounds.

(a) (1) It shall be unlawful for any person to ride, drive, walk, go, or enter upon the public lawns or grounds belonging to the State of Arkansas whereon is located the State Capitol Building unless the person confines himself or herself to the public driveways or walkways upon the grounds.

(2) However, this section shall not apply to the custodian of any state institutions or grounds, to any of his or her assistants, deputies, or employees, nor to any grounds laid out and designated by the custodian as playgrounds or public parks.

(b) Any person who violates subsection (a) of this section shall be guilty of a violation and upon conviction shall be fined not more than one hundred dollars (\$100).

Step 3: Mark up the subsection with strikethrough and underline.

SECTION 1. Arkansas Code § 22-3-210 is amended to read as follows:

22-3-210 Trespassing upon State Capitol grounds.

(a) (1) It shall be unlawful for any person to:

(A) ~~ride~~ Ride, drive, walk, go, or enter upon the public lawns or grounds belonging to the State of Arkansas whereon is located the State Capitol Building unless the person confines himself or herself to the public driveways or walkways upon the grounds; or

(B) Ride a bicycle upon the public driveways or walkways upon the grounds.

(2) However, this section shall not apply to the custodian of any state institutions or grounds, to any of his or her assistants, deputies, or employees, nor to any grounds laid out and designated by the custodian as playgrounds or public parks.

(b) Any person who violates subsection (a) of this section shall be guilty of a ~~violation and upon conviction shall be fined not more than one hundred dollars (\$100)~~ Class B misdemeanor.

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Step 4: We need a Title and a Subtitle – descriptive but not too specific

Title

An Act to Amend Arkansas Law Concerning Trespassing on the State Capitol Grounds; and For Other Purposes.

Subtitle

To Amend Arkansas Law Concerning Trespassing on the State Capitol Grounds.

What we try to avoid:

An Act to Provide that Riding a Bicycle on the State Capitol Grounds is a Class B Misdemeanor.

Step 5: Do we need an emergency clause?

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that this act prohibits the riding of bicycles on the State Capitol grounds; that riding bicycles on the State Capitol grounds presents a threat to the health and safety of persons visiting the State Capitol and therefore threatens the public peace, health, and safety; and that this act should become effective as soon as possible to protect the safety of State Capitol visitors. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

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

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill **DRAFT MBM/MBM**
HOUSE BILL

5 By: Representative <NA>
6

For An Act To Be Entitled

8 AN ACT TO AMEND ARKANSAS LAW CONCERNING TRESPASSING
9 ON THE STATE CAPITOL GROUNDS; TO DECLARE AN
10 EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

12 TO AMEND ARKANSAS LAW CONCERNING
13 TRESPASSING ON THE STATE CAPITOL GROUNDS;
14 AND TO DECLARE AN EMERGENCY.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20
21 SECTION 1. Arkansas Code § 22-3-210 is amended to read as follows:
22 22-3-210 Trespassing upon State Capitol grounds.

23 (a)(1) It shall be unlawful for any person to:

24 (A) ~~ride~~ Ride, drive, walk, go, or enter upon the public
25 lawns or grounds belonging to the State of Arkansas whereon is located the
26 State Capitol Building unless the person confines himself or herself to the
27 public driveways or walkways upon the grounds; or

28 (B) Ride a bicycle upon the public driveways or walkways
29 upon the grounds.

30 (2) However, this section shall not apply to the custodian of any
31 state institutions or grounds, to any of his or her assistants, deputies, or
32 employees, nor to any grounds laid out and designated by the custodian as
33 playgrounds or public parks.

34 (b) Any person who violates subsection (a) of this section shall be
35 guilty of a ~~violation and upon conviction shall be fined not more than one~~
36 ~~hundred dollars~~ ~~(\$100)~~ Class B misdemeanor.

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HB

1 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
2 General Assembly of the State of Arkansas that this act prohibits the riding
3 of bicycles on the State Capitol grounds; that riding bicycles on the State
4 Capitol grounds presents a threat to the health and safety of persons
5 visiting the State Capitol and therefore threatens the public peace, health,
6 and safety; and that this act should become effective as soon as possible to
7 protect the safety of State Capitol visitors. Therefore, an emergency is
8 declared to exist, and this act being immediately necessary for the
9 preservation of the public peace, health, and safety shall become effective
10 on:

11 (1) The date of its approval by the Governor;


12 (2) If the bill is neither approved nor vetoed by the Governor, the
13 expiration of the period of time during which the Governor may veto the bill;
14 or

15 (3) If the bill is vetoed by the Governor and the veto is overridden,
16 the date the last house overrides the veto.
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Step 6: BLR Internal Review Process.

- ▶ Cold review by another attorney with subject matter expertise.
 - ▶ Review by two professional editors.
 - ▶ Returned to drafting attorney with comments for his or her consideration.
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Step 7: Final product.

- ▶ Drafting attorney considers comments from review process and incorporates as appropriate.
 - ▶ Bill is delivered to sponsor in draft form with any relevant comments that pertain to the draft.
 - ▶ If member authorizes, drafting attorney will generate a copy of the bill with the bar code (“run the bill for introduction”) and it will be delivered to appropriate chamber for filing. Bills cannot be changed after this step – if changes are necessary, the attorney will prepare a new bill and we will need to discard the other bill.
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Amendments:

- ▶ The same drafting attorney that prepared a bill will generally prepare amendments to that bill, regardless of the amendment's sponsor.
 - ▶ Amendments are instructions to the bill engrossers on how to change the bill. Amendments generally have to be read alongside the bill itself to be fully understood.
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Amendment request to our case study bill:

After the bill is filed, a member likes the idea of prohibiting bicycle riding on the State Capitol grounds but believes the penalty is too low. They suggest you make the penalty for trespassing on the State Capitol grounds a Class A misdemeanor.

Let's look back at the core text of the bill:

- ▶ SECTION 1. Arkansas Code § 22-3-210 is amended to read as follows:
 - ▶ 22-3-210 Trespassing upon State Capitol grounds.
 - ▶ (a) (1) It shall be unlawful for any person to:
 - ▶ (A) ~~ride~~ Ride, drive, walk, go, or enter upon the public lawns or grounds belonging to the State of Arkansas whereon is located the State Capitol Building unless the person confines himself or herself to the public driveways or walkways upon the grounds; or
 - ▶ (B) Ride a bicycle upon the public driveways or walkways upon the grounds.
 - ▶ (2) However, this section shall not apply to the custodian of any state institutions or grounds, to any of his or her assistants, deputies, or employees, nor to any grounds laid out and designated by the custodian as playgrounds or public parks.
 - ▶ (b) Any person who violates subsection (a) of this section shall be guilty of a ~~violation and upon conviction shall be fined not more than one hundred dollars (\$100)~~ Class B misdemeanor.

The language of the amendment only reflects the changes that the engrossing clerks need to make to the bill:

Page 1, line 36, delete "B" and substitute "A".



ARKANSAS HOUSE

94th General Assembly - Regular Session, 2023

Amendment Form

DRAFT

Subtitle of House Bill No. 1001

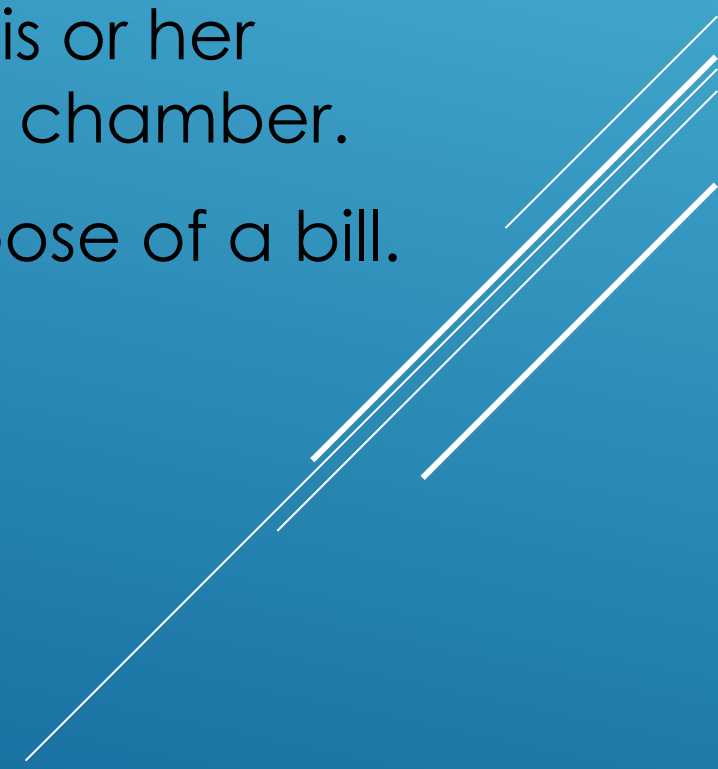
TO AMEND ARKANSAS LAW CONCERNING TRESPASSING ON THE STATE CAPITOL GROUNDS; AND
TO DECLARE AN EMERGENCY.

Amendment No. ___ to House Bill No. 1001


Amend House Bill 1001 as originally introduced:

Page 1, line 36, delete "B" and substitute "A"


More info on amendments:

- ▶ Amendments are filed either in committee or on the floor (although adoption of an amendment on the floor will result in the bill being re-referred to committee).
 - ▶ An additional option – a member may amend his or her own bill on the “member’s own” calendar in the chamber.
 - ▶ An amendment cannot defeat the original purpose of a bill.
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More info on amendments:

- ▶ If an amendment is adopted in committee, it is not engrossed until it is approved by the full body – committee amendments will not immediately show up as part of the bill on the website.
 - ▶ Amendments must be based on the most current version of the bill. This can be problematic if you have an amendment prepared but wait to introduce it.
 - ▶ Adopting multiple amendments at the same time in committee often creates issues.
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Bill drafting timelines:

- ▶ Drafting a bill accurately requires time to craft the language and ensure that precise details such as citations are correct.
 - ▶ We also receive a large number of requests each day and we try to process them in the order received.
 - ▶ As such, a good rule of thumb is that the bill drafting process will take 4 to 5 days (sometimes less, sometimes more).
 - ▶ The amendment process also requires a high degree of accuracy and we ask that you allow as much time as possible for an amendment to be prepared.
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Common issues that arise in the bill drafting process:

- ▶ There is an official “Code style” in which we prepare Arkansas legislation. There is a specific numbering format and a preference for the use of certain terms, such as “shall” and “may” instead of “will”, “can”, or other synonyms.
- ▶ The Arkansas Constitution prohibits special or local bills – bills that benefit a specific person, group, or governmental unit – unless there is a statewide impact. For example, a bill generally cannot benefit a single school district or town without additional facts.

Common issues that arise in the bill drafting process:

- ▶ Staff will add co-sponsors to a bill based upon a member's request. If you do not want a member to add your name to a bill as a co-sponsor without your clear assent, you can file a statement making that request.
 - ▶ If there are any potential constitutional concerns, conflicts with federal law, or similar issues that might arise during the consideration of a bill, the drafting attorney will advise you of these when delivering the bill.
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Confidentiality:

- ▶ Under the Freedom of Information Act, unpublished memoranda, working papers, and correspondence of members of the General Assembly are exempt from disclosure. This only applies when in your possession – if materials are in the possession of another entity subject to FOIA they are not exempt if that person receives a FOIA request.
- ▶ Arkansas law doubles down on this concept for legislative staff - § 10-2-129 provides that drafting requests and information requests made to a legislative employee by a legislator are confidential, as well as any supporting documents you provide to staff and work product produced by staff for your benefit.
- ▶ Legislative business done on a private device (such as a cell phone or private laptop) is a public record just as if you generated it on a state-owned computer or device. It is exempt from disclosure as a working paper under FOIA, but it is a public record.

QUESTIONS?

