

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: S2/13/01

A Bill

HOUSE BILL 1358

5 By: Representatives Womack, House
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE 25-16-804 REGARDING THE
10 REMOVAL OF MEMBERS OF CERTAIN BOARDS AND COMMISSIONS;
11 AND FOR OTHER PURPOSES.
12
13

Subtitle

15 AN ACT TO AMEND ARKANSAS CODE 25-16-804
16 REGARDING THE REMOVAL OF MEMBERS OF
17 CERTAIN BOARDS AND COMMISSIONS.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code 25-16-804 is amended to read as
23 follows:

24 25-16-804. Removal and replacement.

25 (a) ~~(1)~~ As used in this section, unless the context otherwise
26 requires:

27 ~~(1)(A)~~ "good Good cause" includes:

28 ~~(A)(i)~~ Conduct constituting a criminal offense
29 involving moral turpitude;

30 ~~(B)(ii)~~ *Gross dereliction of duty; or*

31 ~~(C)(iii)~~ *Gross abuse of authority; or*

32 (iv) The unexcused absence of a board or
33 commission member from three (3) successive regular meetings, without
34 attending any intermediary called special meetings.

35 ~~(2)(B)~~ 'Good cause' does not include any vote, decision,
36 opinion, or other regularly performed or otherwise reasonably exercised power

1 of a board or commission member.

2 (b)(1) The Governor may remove, for good cause, a state board or
3 commission member whose office or position is filled by gubernatorial
4 appointment, subject to confirmation by the Senate. If the Senate is not in
5 session, confirmation shall be by written petition of a majority of the
6 Senators.

7 (2) The Governor may appoint a qualified individual to replace
8 the board or commission member removed to serve the remainder of his term,
9 subject to confirmation by the Senate under circumstances where confirmation
10 is normally required.

11 (c) All orders of removal by the Governor shall be in writing, shall
12 be delivered to the member removed or counsel for the member, and shall
13 specifically set out the grounds relied upon for removal.

14 (d) Removal of board or commission members shall be in accordance with
15 the following:

16 (1)(A) Within thirty (30) calendar days after each regular board
17 or commission meeting, the secretary of each board or commission shall notify
18 the Governor in writing of any member who has been absent from three (3)
19 successive regular meetings without attending any intermediary called special
20 meetings;

21 (B) The secretary's notice to the Governor shall include a
22 copy of all meeting notices and attendance records for the past year;

23 (2) The Governor may remove any board or commission secretary
24 who fails to submit the notices and documentation required by this section;

25 (3) Within sixty (60) calendar days after receiving the notice
26 and supporting documentation from the board or commission secretary, the
27 Governor shall notify the board or commission member in writing of his or her
28 intent to remove the member for cause;

29 (4) Within twenty (20) calendar days after the date of the
30 Governor's notice, the member may request an excused absence as provided by
31 this section or may file notice with the Governor's Office that the member
32 disputes the attendance records and the reasons therefor;

33 (5) The Governor shall grant an excuse for illness of the member
34 when verified by a written sworn statement by an attending physician, or
35 other proper excuse as determined by the Governor; and

36 (6) After twenty (20) calendar days after the date of the

1 Governor's notice, if no rebuttal is received or other adequate documentation
2 submitted, the member may be removed.

3 (e) Any board or commission member referred to the Governor because of
4 excessive absences under the provision of this section shall not be entitled
5 to any per diem, stipend, or expense reimbursement for travel to or
6 attendance at subsequent meeting until the board or commission receives
7 notification from the Governor that the member has been excused for the
8 absences.

9 ~~(d)(1)~~~~(f)(1)~~ A removed board or commission member may institute
10 proceedings for review by filing a petition in the Circuit Court of Pulaski
11 County within thirty (30) days after delivery to him or his attorney of the
12 Governor's order of removal.

13 (2) This petition shall not supersede or stay the order of
14 removal, nor shall any court enter an order to this effect or one which would
15 impair the authority of the Governor to appoint a replacement whose service
16 begins immediately upon fulfillment of the normal requirements for assuming
17 office.

18 ~~(e)(1)~~~~(g)(1)~~ When the matter is heard by the Circuit Court of Pulaski
19 County, it shall be tried de novo without a jury.

20 (2) The Governor shall have the burden of proof to show by clear
21 and convincing evidence that good cause existed for removal of the board or
22 commission member in question from office and for revoking his commission.

23 (3) If the court determines that good cause has been shown, it
24 shall enter an order removing the board or commission member in question from
25 office and revoking his commission. If the court determines that good cause
26 has not been shown by clear and convincing evidence, the court shall order
27 the removed member reinstated to his position and, upon request, shall award
28 a reasonable attorney's fee and court costs to the reinstated party.

29 ~~(f)(1)~~~~(h)(1)~~ Subject to the restrictions of subsection (d) of this
30 section on supersedeas or stay orders, a removed board or commission member
31 may appeal the decision of the circuit court to the Arkansas Supreme Court.

32 (2) The Governor may appeal the decision of the circuit court to
33 the Arkansas Supreme Court, but the appeal shall not preclude the circuit
34 court, in its discretion, from entering an order reinstating the removed
35 member.

36 ~~(g)(i)~~ No board or commission action in which the appointed

1 replacement participates shall be void, voidable, or in any way subject to
2 invalidation on grounds of participation of the appointed replacement or lack
3 of participation by the removed member in the event that the circuit court or
4 the Arkansas Supreme Court orders the removed member reinstated.

5 /s/ *Womack*

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36