

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

HOUSE BILL 1925

5 By: Representative Cloud
6

For An Act To Be Entitled

8 AN ACT TO CREATE A MECHANISM FOR THE RECALL OF
9 CERTAIN COUNTY ELECTED OFFICERS; TO DECLARE AN
10 EMERGENCY; AND FOR OTHER PURPOSES.
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Subtitle

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13 TO CREATE A MECHANISM FOR THE RECALL OF
14 CERTAIN COUNTY ELECTED OFFICERS; AND TO
15 DECLARE AN EMERGENCY.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code Title 14, Chapter 14, Subchapter 13, is
22 amended to add an additional section to read as follows:

23 14-14-1315. Recall from office – Findings – Definitions.

24 (a) The General Assembly finds that:

25 (1) Effective January 1, 2017, the offices of county judge,
26 sheriff, circuit clerk, county clerk, assessor, coroner, treasurer, county
27 surveyor, and collector of taxes were changed to four-year terms by Arkansas
28 Constitution, Amendment 95;

29 (2) Before Arkansas Constitution, Amendment 95, the terms of
30 each of these offices were two (2) years, and the citizenry could exercise
31 its political power at the polls on a more frequent basis if it disapproved
32 of the work of elected county officials;

33 (3) With the terms of these offices now extended, citizens need
34 a mechanism to hold county officials accountable on a more regular basis than
35 four (4) years if desired;

36 (4) Arkansas Constitution, Article 2, § 1, provides that “All



1 political power is inherent in the people and government is instituted for
2 their protection, security and benefit; and they have the right to alter,
3 reform or abolish the same, in such manner as they may think proper.”;

4 (5) Accordingly, this political power reserved for the citizenry
5 may only be limited if an express prohibition by constitutional mandate
6 exists. Sewer Improv. Dist. No. 1 v. Delinquent Lands, 188 Ark. 738, 68
7 S.W.2d 80 (1934);

8 (6) Additionally, the legislative power of the General Assembly
9 may only be limited by the state and federal constitutions, and acts of the
10 General Assembly are presumed constitutional with all doubts being resolved
11 in favor of constitutionality. Stone v. State, 254 Ark. 1011, 498 S.W.2d 634
12 (1973);

13 (7) It is noted that the Supreme Court determined in Speer v.
14 Wood, 128 Ark. 183, 193 S.W. 785 (1917), that the legislature could not enact
15 statutes that usurp the circuit court’s jurisdiction of final judgments for
16 the removal of county officers because Arkansas Constitution, Article 7, §
17 27, provides an exclusive scheme for judgments of removal of such officers;

18 (8) However, the holding in Speer is distinguished from this act
19 in that the General Assembly in Speer sought to direct the circuit court in
20 its duties related to final judgments, whereas this act simply provides a
21 mechanism for the citizenry to exercise its inherent political power as
22 provided in Arkansas Constitution, Article 2, § 1;

23 (9) Further, the “exclusive scheme” for the removal of officers
24 described in Speer specified acts that identify the extent of the circuit
25 court’s jurisdiction when rendering final judgments for the removal of
26 officers, whereas this act creates a recall mechanism that may be used by the
27 citizenry, similar to municipalities, when an officer may be removed for any
28 or no reason. Att’y. Gen. Op. 2010-111;

29 (10) The Arkansas Constitution “is not a grant of power, but
30 constitutes a limitation” on the legislature. Berry v. Gordon, 237 Ark. 547,
31 556, 376 S.W.2d 279, 286 (1964);

32 (11) Thus, the Attorney General wrote that in the absence of a
33 restraint to enact laws regarding recall elections, the legislature has the
34 plenary power to statutorily provide for recall. Att’y. Gen. Op. 87-7;

35 (12) In Board of Trs. of the Univ. of Ark. v. Andrews, 2018 Ark.
36 12, 535 S.W.3d 616 (2018), the Supreme Court overturned years of precedent by

1 holding that the General Assembly cannot waive by law the state’s sovereign
 2 immunity granted by Arkansas Constitution, Article 5, § 20;

3 (13) In reaching its decision in Andrews, the Supreme Court held
 4 that the language of Arkansas Constitution, Article 5, § 20, should be
 5 interpreted precisely as it reads;

6 (14) An interpretation of Arkansas Constitution, Article 2, § 1,
 7 “precisely as it reads” leads to the conclusion that the citizenry holds all
 8 political power, unless expressly limited through another constitutional
 9 provision;

10 (15) Although Arkansas Constitution, Article 7, § 27, limits the
 11 jurisdiction of circuit courts in Arkansas regarding the final judgments for
 12 the removal of county officers, the article is silent regarding any
 13 limitations upon the citizenry to exert political power in removing county
 14 officers for any or no reason at all; and

15 (16) By the passage of this act, the General Assembly expresses
 16 its belief that, upon consideration of this act using the standard of review
 17 established in Andrews, the Supreme Court will:

18 (A) Interpret Arkansas Constitution, Article 2, § 1, and
 19 Arkansas Constitution, Article 7, § 27, precisely as the provisions read in
 20 consideration of the plain and unambiguous language of the provisions;

21 (B) Construe the holding of Speer narrowly, so that it
 22 only applies to the circuit court’s jurisdiction of final judgments for the
 23 removal of county officers; and

24 (C) Determine this act is constitutional as this act:

25 (i) Does not conflict with any constitutional
 26 mandate;

27 (ii) Allows the General Assembly to exercise its
 28 plenary power; and

29 (iii) Allows the citizenry to exercise its
 30 constitutional political power.

31 (b) As used in this section:

32 (1) “Elected county official” means a person elected to one (1)
 33 of the following offices:

34 (A) County judge;

35 (B) Sheriff;

36 (C) Clerk of the circuit court;

- 1 (D) County clerk;
- 2 (E) Assessor;
- 3 (F) Coroner;
- 4 (G) Treasurer;
- 5 (H) County surveyor; and
- 6 (I) Collector of taxes;

7 (2) "Qualified elector" means a person who holds the
 8 qualifications of an elector and who is registered to vote under Arkansas
 9 Constitution, Amendment 51;

10 (3) "Recall" means the voting by the electors of the county to
 11 ascertain whether or not it is the desire of the majority of the electors who
 12 vote in the election to remove the elected county official from that capacity
 13 for the duration of his or her elected term; and

14 (4) "Recall petition" means a petition demanding the removal of
 15 an elected county official.

16 (c)(1) The qualified electors of a county may petition for the recall
 17 of an elected county official by filing a recall petition to recall the
 18 elected county official.

19 (2) The recall petition to recall an elected county official
 20 shall be signed by qualified electors of the county in a number equal to at
 21 least twenty-five percent (25%) of the votes cast for Governor within the
 22 county at the last general election at which a Governor was elected.

23 (d)(1)(A) The recall of an elected county official shall be initiated
 24 by filing a notice of intent to circulate a recall petition with the county
 25 clerk.

26 (B) A recall petition shall not be circulated before the
 27 notice of intent is filed.

28 (C) Within five (5) calendar days after filing the notice
 29 of intent, the filer of the notice of intent shall notify the elected county
 30 official who is the subject of the recall petition by mailing the elected
 31 county official a copy of the notice of intent by certified mail with return
 32 receipt requested.

33 (2) The recall petition shall be filed with the county clerk not
 34 less than sixty (60) calendar days nor more than eighty (80) calendar days
 35 after the filing of the notice of intent to circulate a recall petition.

36 (3)(A) Within thirty (30) calendar days after the recall

1 petition is filed, the county clerk shall determine whether the recall
2 petition is sufficient and, if sufficient, shall state the sufficiency in a
3 letter to the filer of the notice of intent.

4 (B)(i) If the recall petition is found to be insufficient,
5 the letter shall state the reasons for the insufficiency.

6 (ii) The recall petition may be amended to correct
7 or amend an insufficiency within thirty (30) calendar days after the original
8 determination of insufficiency by the county clerk.

9 (C) Within fifteen (15) calendar days after the filing of
10 an amended recall petition, the county clerk shall examine the amended recall
11 petition to determine sufficiency and shall state the sufficiency of the
12 amended recall petition in a letter to the filer of the notice of intent to
13 circulate a recall petition.

14 (4) If the recall petition is deemed sufficient, the county
15 clerk shall certify the recall petition to the county board of election
16 commissioners.

17 (5)(A) A special election for the purpose of submitting the
18 recall proposal to the qualified electors shall be held within ninety (90)
19 calendar days after the certification to the county board of election
20 commissioners.

21 (B) However, if the next following general election is to
22 be held within one hundred twenty (120) calendar days of the original or
23 amended recall petition, the recall proposal shall be submitted at the next
24 following general election.

25 (e)(1) The recall petition shall be in substantially the following
26 form:

27 “PETITION FOR RECALL

28 To the County Clerk of (County Name), Arkansas:

29 We, the undersigned legal voters of (County Name), Arkansas,
30 respectfully order that (Name of Elected County Official, Office) be referred
31 to the people of (County Name), Arkansas, to the end that the elected county
32 official may be approved or rejected by the vote of legal voters at an
33 election to be held for that purpose; and each of us for himself or herself
34 says: I have personally signed this petition; I am a legal voter of (County
35 Name), Arkansas, and my printed name, date of birth, residence, city or town
36 of residence, and date of signing this petition are correctly written after

1 my signature.”

2 (2)(A) Each sheet of each recall petition containing the
3 signatures shall be verified in substantially the following form by the
4 person who circulated the sheet of the recall petition by his or her
5 affidavit attached to the recall petition.

6 (B) The affidavit shall be in substantially the following
7 form:

8 "STATE OF ARKANSAS
9 COUNTY OF _____

10
11 I, _____ under oath, state that the above-listed persons
12 signed this sheet, and each of them signed his or her name on this sheet in
13 my presence. I believe that each has correctly stated his or her name, date
14 of birth, residence, city or town of residence, and date of signing the
15 petition.

16
17 Signature _____

18 Address _____

19 Subscribed and sworn to before me this the _____ day of _____, _____.

20 Signature _____

21
22 Notary Public

23 My Commission Expires: _____."

24 (3) A recall petition shall be sufficient if the recall petition
25 substantially follows the format of this section, disregarding clerical and
26 technical errors.

27 (f)(1) At the election, the recall proposal shall be submitted to the
28 qualified electors in substantially the following form:

29 “FOR the removal of (name of official) from the office of (name of
30 office) []

31 AGAINST the removal of (name of official) from the office of (name
32 of office) []”.

33 (2)(A)(i) If a majority of the qualified electors voting on the
34 recall proposal at the election vote for the removal of the elected county
35 official, a vacancy shall exist in the office and shall be filled in the
36 manner provided by law.

1 (ii) The elected county official shall vacate the
2 office immediately upon certification of the election.

3 (B) If a majority of the qualified electors voting on the
4 recall proposal at the election vote against the removal of the elected
5 county official, the elected county official shall continue to serve during
6 the term for which he or she was elected.

7 (g) After one (1) recall petition and election, a recall petition
8 shall not be filed against the same elected county official during the same
9 term of office.

10 (h) All expenses of an election for the recall of an elected county
11 official shall be paid for in the same manner and from the same source as
12 provided by applicable law for election expenses.

13 (i)(1) A recall proposal shall be considered a local-option ballot
14 question for purposes of applicable laws on measures referred to voters.

15 (2) An elected county official, any person or entity acting on
16 behalf of an elected county official, or any other person or entity who
17 receives contributions or makes expenditures for the purpose of attempting to
18 influence the qualification, passage, or defeat of a recall petition or
19 recall proposal shall be considered a local-option ballot question committee
20 as defined under § 3-8-702 and shall comply with applicable laws on measures
21 referred to voters.

22
23 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
24 General Assembly of the State of Arkansas that the ability of Arkansas
25 citizens to recall elected county officials with terms of four (4) years or
26 more is essential to transparency and accountability at the local level,
27 considering that the offices named in this act were extended from two-year
28 terms to four-year terms effective in 2017 without a corresponding ability to
29 recall these officials as municipalities are able to do; and that this act
30 should become effective at the earliest opportunity to protect the public
31 peace, health, and safety by allowing counties to implement recalls for
32 elected county officials whose terms began in 2017 or later and with regard
33 to whom citizens have had no recourse until now to hold accountable.
34 Therefore, an emergency is declared to exist, and this act being immediately
35 necessary for the preservation of the public peace, health, and safety shall
36 become effective on:

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(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.