

I. RELOCATION OF ARKANSAS SOVEREIGNTY ACT OF 2021

1 State of Arkansas *As Engrossed: S4/27/21*
2 93rd General Assembly **A Bill**
3 Regular Session, 2021

HOUSE BILL 1957

4

5 By: Representatives Wardlaw, Shepherd, Dalby, Eubanks, Warren, L. Fite, Wing, Payton, Speaks, Haak,
6 Bryant, Rye, Tollett, Christiansen, Brooks, Lundstrum, Coleman, *Beaty Jr., Beck, Bentley, Cloud,*
7 *Lowery, McClure, McNair, Gonzales, M. Gray, Hillman, Pilkington, Richmond, Slape, Vaught, Breaux,*
8 *Brown, Eaves, Evans, M. McElroy, S. Smith, Watson, Wooten, Boyd, Bragg, Cozart, Dotson, Hawks,*
9 *Maddox, Deffenbaugh, Jean, Jett, Ladyman, M. Berry*

10 By: Senators Irvin, Hickey, J. Dismang, B. Sample, *B. Ballinger, L. Eads, J. English, Flipppo, K. Hammer,*
11 *Hester, B. Johnson, M. Pitsch, Rapert, Rice*

12

13

For An Act To Be Entitled

14

AN ACT CONCERNING THE ENFORCEMENT OF FEDERAL FIREARM
15 BANS WITHIN THE STATE OF ARKANSAS; CONCERNING STATE
16 CONSTITUTIONAL RIGHTS; AND FOR OTHER PURPOSES.

17

18

19

Subtitle

20

CONCERNING THE ENFORCEMENT OF FEDERAL
21 FIREARM BANS WITHIN THE STATE OF
22 ARKANSAS; AND CONCERNING STATE
23 CONSTITUTIONAL RIGHTS.

24

25

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

27

28 SECTION 1. Arkansas Code Title 1, is amended to add an additional
29 chapter to read as follows:

30

CHAPTER 6

31

ARKANSAS SOVEREIGNTY ACT OF 2021

32

33 1-6-101. Title.

34

This chapter shall be known and may be cited as the "Arkansas
35 Sovereignty Act of 2021".

36



1 1-6-102. Legislative findings.

2 The General Assembly finds that:

3 (1) The State of Arkansas is firmly resolved to support and
4 defend the United States Constitution against every aggression, either
5 foreign or domestic, and the General Assembly is duty bound to watch over and
6 oppose every infraction of those principles that constitute the basis of the
7 United States because only a faithful observance of those principles can
8 secure the nation's existence and the public happiness;

9 (2) Acting through the United States Constitution, the people of
10 the several states created the United States Government to be their agent in
11 the exercise of a few defined powers, while reserving to the state
12 governments the power to legislate on matters that concern the lives,
13 liberties, and properties of citizens in the ordinary course of affairs;

14 (3) The limitation of the United States Government's power is
15 affirmed under the Tenth Amendment to the United States Constitution, which
16 defines the total scope of federal power as being that which has been
17 delegated by the people of the several states to the United States
18 Government, and all power not delegated to the United States Government in
19 the United States Constitution is reserved to the states respectively, or to
20 the people themselves;

21 (4) Whenever the United States Government assumes powers that
22 the people did not grant it in the United States Constitution, its acts are
23 unauthoritative, void, and of no force;

24 (5)(A) The several states of the United States are not united on
25 the principle of unlimited submission to the United States Government.

26 (B) The United States Government created by the United
27 States Constitution is not the exclusive or final judge of the extent of the
28 powers granted to it by the United States Constitution, because that would
29 have made the United States Government's discretion, and not the United
30 States Constitution, the measure of those powers.

31 (C) To the contrary, as in all other cases of compacts
32 among powers having no common judge, each party has an equal right to judge
33 itself, as well as infractions and the mode and measure of redress.

34 (D)(i) Although the several states have granted supremacy
35 to laws and treaties made under the powers granted in the United States
36 Constitution, such supremacy does not apply to various federal statutes,

1 orders, rules, regulations, or other actions that restrict or prohibit the
2 manufacture, ownership, and use of firearms, firearm accessories, or
3 ammunition exclusively within the borders of Arkansas.

4 (ii) Such statutes, orders, rules, regulations, and
5 other actions exceed the powers granted to the United States Government
6 except to the extent that they are necessary and proper for the United States
7 Government and regulation of the land and naval forces of the United States
8 Armed Forces or for the organizing, arming, and disciplining of militia
9 forces actively employed in the service of the United States Armed Forces;

10 (6) The people of the several states have given the United
11 States Congress the power "to regulate commerce with foreign nations, and
12 among the several states, and with the Indian tribes", but regulating
13 commerce does not include the power to limit citizens' right to keep and bear
14 arms in defense of their families, neighbors, persons, or property or to
15 dictate what sort of arms and accessories law-abiding, mentally competent
16 Arkansas citizens may buy, sell, exchange, or otherwise possess within the
17 borders of this state;

18 (7)(A) The people of the several states have also given the
19 United States Congress the power "to lay and collect taxes, duties, imposts
20 and excises, to pay the debts and provide for the common defense and general
21 welfare of the United States" and "to make all laws which shall be necessary
22 and proper for carrying into execution ... the powers vested by this
23 Constitution in the Government of the United States, or in any department or
24 officer thereof".

25 (B)(i) These federal constitutional provisions merely
26 identify the means by which the United States Government may execute its
27 limited powers and ought not to be so construed as themselves to give
28 unlimited powers because to do so would be to destroy the balance of power
29 between the United States Government and the state governments.

30 (ii) The General Assembly denies any claim that the
31 taxing and spending powers of the United States Congress can be used to
32 diminish in any way the people's right to keep and bear arms; and

33 (8) The people of Arkansas have vested the General Assembly with
34 the authority to regulate the manufacture, possession, exchange, and use of
35 firearms within this state's borders, subject only to the limits imposed by
36 the Second Amendment to the United States Constitution and Arkansas

1 Constitution, Article 2, § 5.

2

3 1-6-103. Definitions.

4 As used in this chapter:

5 (1) "Federal ban" means a federal law, executive order, rule, or
6 regulation that is enacted, adopted, or becomes effective on or after January
7 1, 2021, that infringes upon, calls into question, or prohibits, restricts,
8 or requires individual licensure for or registration of the purchase,
9 ownership, possession, transfer, or use of any firearm, any magazine or other
10 ammunition feeding device, or other firearm accessory; and

11 (2) "Firearm" means a self-loading rifle, pistol, revolver, or
12 shotgun or any manually loaded rifle, pistol, revolver, or shotgun.

13

14 1-6-104. Firearm rights.

15 (a) All acts, laws, orders, rules, and regulations of the United
16 States Government that were enacted on or after January 1, 2021, that
17 infringe on the people's right to keep and bear arms as guaranteed by the
18 Second Amendment to the United States Constitution and Arkansas Constitution,
19 Article 2, § 5, are invalid in this state, shall not be recognized by this
20 state, are specifically rejected by this state, and shall be considered null
21 and void and of no effect in this state.

22 (b) Such a federal ban that is null and void in this state under
23 subsection (a) of this section includes without limitation:

24 (1) Any tax, levy, fee, or stamp imposed on firearms, firearm
25 accessories, or ammunition not common to all other goods and services that
26 could have a chilling effect on the purchase or ownership of those items by
27 law-abiding citizens that was enacted after January 1, 2021;

28 (2) Any registering or tracking of firearms, firearm
29 accessories, or ammunition that could have a chilling effect on the purchase
30 or ownership of those items by law-abiding citizens;

31 (3) Any registering or tracking of the owners of firearms,
32 firearm accessories, or ammunition that could have a chilling effect on the
33 purchase or ownership of those items by law-abiding citizens;

34 (4) Any act forbidding the possession, ownership, use, or
35 transfer of any type of firearm, firearm accessory, or ammunition by law-
36 abiding citizens; and

1 (5) Any act ordering the confiscation of firearms, firearm
2 accessories, or ammunition from law-abiding citizens.

3 (c)(1) The following persons shall not enforce or assist federal
4 agencies or officers in the enforcement of any federal statute, executive
5 order, or federal agency directive that conflicts with Arkansas Constitution,
6 Article 2, § 5, or any Arkansas law:

7 (A) A public officer or employee of this state; or

8 (B) A representative, agent, or employee of a
9 municipality, a county, or the state, acting under the color of law, with all
10 the rights, grants, and assignments of a law enforcement officer in the
11 state.

12 (2) The persons and prohibitions described under subdivision
13 (c)(1) of this section include personnel, agents of the state or local
14 government, including volunteers, the use of tax dollars, and persons having
15 authority to enforce or attempt to enforce any of the infringements on the
16 right to keep and bear arms described under subsection (b) of this section.

17 (d) An elected official who knowingly directs any law enforcement
18 officer to assist a federal law enforcement agency in violating the rights of
19 a person as described under subsection (c) of this section upon conviction is
20 guilty of an unclassified misdemeanor.

21 (e) A law enforcement officer not described under subdivision (d) of
22 this section who knowingly assists a federal law enforcement agency in
23 violating the rights of a person as described under subsection (c) of this
24 section is subject to being decertified as a law enforcement officer.

25
26 1-6-105. Enumerated rights.

27 (a) All federal acts, laws, orders, rules, and regulations that were
28 enacted on or after January 1, 2021, that infringe on the enumerated rights
29 under Arkansas Constitution, Article 2, are invalid in this state, shall not
30 be recognized by this state, are specifically rejected by this state, and
31 shall be considered null and void and of no effect in this state.

32 (b)(1) The following persons shall not enforce or assist federal
33 agencies or officers in the enforcement of any federal statute, executive
34 order, or federal agency directive that conflicts with Arkansas Constitution,
35 Article 2, § 5, or any Arkansas law:

36 (A) A public officer or employee of this state; or

1 (B) A representative, agent, or employee of a
2 municipality, a county, or the state, acting under the color of law, with all
3 the rights, grants, and assignments of a law enforcement officer in the
4 state.

5 (2) The persons and prohibitions described under subdivision
6 (b)(1) of this section include personnel, agents of the state or local
7 government, including volunteers, the use of tax dollars, and persons having
8 authority to enforce or attempt to enforce any of the infringements on the
9 rights described under subsection (a) of this section.

10 (c) An elected official who knowingly directs any law enforcement
11 officer to assist a federal law enforcement agency in violating the rights
12 described under subsection (a) of this section upon conviction is guilty of
13 an unclassified misdemeanor.

14
15 1-6-106. Exceptions.

16 This chapter shall not be construed to prohibit or otherwise limit a
17 state law enforcement officer, state employee, or employee of a political
18 subdivision of the state from cooperating, communicating, or collaborating
19 with a federal agency if the primary purpose is not:

20 (1) Law enforcement activity related to a federal ban, as
21 defined under § 1-6-103(1); or

22 (2) The investigation of a violation of a federal ban, as
23 defined under § 1-6-103(1).

24
25 /s/Wardlaw

26
27
28 APPROVED: 4/29/21

**II. REDEFINED TERM “SERIOUS
HARM” UNDER THE HUMAN
TRAFFICKING ACT OF 2013, ARK.
CODE § 5-18-101 ET SEQ.**

Act 1106 of 2021

State of Arkansas *As Engrossed: H3/2/21 H3/9/21 H4/15/21 S4/22/21*

93rd General Assembly

A Bill

Regular Session, 2021

HOUSE BILL 1554

By: Representative Penzo

By: Senator B. Ballinger

For An Act To Be Entitled

AN ACT TO ESTABLISH SAFE HARBOR PROVISIONS FOR
VICTIMS OF HUMAN TRAFFICKING; TO ESTABLISH AN
AFFIRMATIVE DEFENSE; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH SAFE HARBOR PROVISIONS FOR
VICTIMS OF HUMAN TRAFFICKING; AND TO
ESTABLISH AN AFFIRMATIVE DEFENSE.

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

*SECTION 1. Arkansas Code Title 5, Chapter 2, Subchapter 2, is amended
to add an additional section to read as follows:*

5-2-210. Human trafficking – Affirmative defense.

*(a) As used in this section, "victim of trafficking of persons" means
a person who has been subjected to trafficking of persons, § 5-18-103.*

*(b) It is an affirmative defense to an offense listed under subsection
(c) of this section if at the time a person engaged in the conduct charged to
constitute the offense the person was:*

(1) A victim of trafficking of persons; and

*(2) Engaged in the offense as a result of the trafficking of
persons.*

*(c) The affirmative defense under this section may be raised only in a
prosecution for one (1) or more of the following offenses:*

(1) Forgery, § 5-37-201;

(2) Defrauding a prospective adoptive parent, § 5-37-216;



1 (3) A prostitution offense under § 5-70-101 et seq.;
2 (4) Obscene performance at a live public show, § 5-68-305; or
3 (5) A controlled substance offense under § 5-64-401 et seq. that
4 is not a Class Y felony.

5
6 SECTION 2. Arkansas Code § 5-18-102(5)(B), concerning the definition
7 of "involuntary servitude" as used in the Human Trafficking Act of 2013, is
8 amended to read as follows:

9 (B) Abuse or threatened abuse of ~~the~~ law or legal process;

10
11 SECTION 3. Arkansas Code § 5-18-102, concerning definitions used in
12 the Human Trafficking Act of 2013, is amended to add additional subdivisions
13 to read as follows:

14 (16) "Abuse or threatened abuse of law or legal process" means
15 the use or threatened use of a law or legal process, whether administrative,
16 civil, or criminal, in any manner or for any purpose for which the law was
17 not designed, in order to exert pressure on another person to cause that
18 person to take some action or refrain from taking some action; and

19 (17) "Serious harm" means any harm, whether physical or
20 nonphysical, including psychological, financial, or reputational harm, that
21 is sufficiently serious, under all the surrounding circumstances, to compel a
22 reasonable person of the same background and in the same circumstances to
23 perform or to continue performing labor or a service in order to avoid
24 incurring the harm.

25
26 SECTION 4. Arkansas Code § 5-18-103(a), concerning the elements of the
27 offense of trafficking of persons, is amended to read as follows:

28 (a) A person commits the offense of trafficking of persons if he or
29 she knowingly:

30 (1) Recruits, harbors, transports, obtains, entices, solicits,
31 isolates, provides, or maintains a person knowing that the person will be
32 subjected to involuntary servitude;

33 (2) Benefits financially or benefits by receiving anything of
34 value from participation in a venture under subdivision (a)(1) of this
35 section;

36 (3) Subjects a person to involuntary servitude;

5-18-102. Definitions.

As used in this chapter:

(1) “Commercial sexual activity” means a sexual act or sexually explicit performance for which anything of value is given, promised, or received, directly or indirectly, by a person;

(2) “Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of the personal services of a person under his or her control as a security for debt, if:

(A) The value of the debtor's personal services or of the personal services of a person under his or her control as reasonably assessed is not applied toward the liquidation of the debt;

(B) The length and nature of the debtor's personal services or of the personal services of a person under his or her control are not respectively limited and defined; or

(C) The principal amount of the debt does not reasonably reflect the value of the items or services for which the debt was incurred;

(3) “Extortion” means the obtaining of property, labor, a service, credit, a commercial sexual activity, or a sexually explicit performance from another person or of an official act of a public officer through a wrongful use of force or fear or under color of official right;

(4) “Financial harm” means extortion of credit, criminal violation of the usury laws, or employment contracts that violate the statutes of frauds, § 4-59-101;

(5) “Involuntary servitude” means the inducement or compulsion of a person to engage in labor, services, or commercial sexual activity by means of:

(A) A scheme, plan, or pattern of behavior with a purpose to cause a person to believe that if he or she does not engage in labor, services, or commercial sexual activity, he or she or another person will suffer serious physical injury or physical restraint;

(B) Abuse or threatened abuse of the legal process;

(C) The causing of or the threat to cause serious harm to a person;

(D) Physically restraining or threatening to physically restrain another person;

(E) The kidnapping of or threat to kidnap a person;

(F) The taking of another person's personal property or real property;

(G) The knowing destruction, concealment, removal, confiscation, or possession

of an actual or purported passport, other immigration document, or other actual or purported government identification document of another person;

(H) Extortion or blackmail;

(I) Deception or fraud;

(J) Coercion, duress, or menace;

(K) Debt bondage;

(L) Peonage; or

(M) The facilitation or control of a victim's access to an addictive controlled substance;

(6) "Labor" means work of economic or financial value;

(7) "Menace" means a possible danger or threat;

(8) "Minor" means a person less than eighteen (18) years of age;

(9) "Organization" means the same as defined in § 5-2-501;

(10) "Peonage" means holding a person against his or her will to pay off a debt;

(11) "Serious harm" means any harm, whether physical or nonphysical, including without limitation psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances as the victim to perform or to continue performing labor or service, a commercial sex act, or a sexually explicit performance in order to avoid incurring that harm;

(12) "Service" means an act committed at the behest of, under the supervision of, or for the benefit of another person;

(13)(A) "Sex act" means any touching of the sexual or other intimate parts of another person for the purpose of gratifying the sexual desire of a person.

(B) "Sex act" includes without limitation the touching of the person as well as touching by the person, whether directly or through clothing;

(14)(A) "Sexually explicit performance" means an act or show, whether public or private, live, photographed, recorded, or videotaped with a purpose to:

(i) Either:

(a) Appeal to the prurient interest; or

III. ELECTION LAW CONFLICTS –

**Date for drawing of ballot order of
candidates in school elections
Acts 448 and 610 of 2021**

1 State of Arkansas As Engrossed: H2/4/21 S2/22/21

2 93rd General Assembly

A Bill

3 Regular Session, 2021

HOUSE BILL 1332

4

5 By: Representative Boyd

6 By: Senator B. Ballinger

7

8

For An Act To Be Entitled

9

AN ACT TO AMEND ELECTION LAW; TO AMEND PUBLICATION

10

REQUIREMENTS; TO AMEND SCHOOL ELECTION LAW; TO AMEND

11

ELECTION NOTICE REQUIREMENTS; AND FOR OTHER PURPOSES.

12

13

14

Subtitle

15

TO AMEND ELECTION LAW; TO AMEND

16

PUBLICATION REQUIREMENTS; TO AMEND SCHOOL

17

ELECTION LAW; AND TO AMEND ELECTION

18

NOTICE REQUIREMENTS.

19

20

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

22

23 SECTION 1. Arkansas Code § 6-14-102(c), concerning the annual school
24 election date and special school election, is amended to read as follows:

25 (c)(1) ~~In any election year in which~~ When the annual school election
26 is not held at the same time as a preferential primary or general election,
27 if no more than one (1) candidate for ~~any~~ a school district director position
28 presents a petition or notice as required by § 6-14-111 and if there are no
29 other ballot issues to be submitted to school district electors for
30 consideration, with the exception of the local tax rate if that rate is not
31 being changed or restructured, the board of directors of ~~any~~ a school
32 district, by resolution, may request the county board of election
33 commissioners to:

34

(A) Reduce the number of polling places;

35

(B) Open no polling places on election day so that the

36

election can be conducted by absentee ballot and early voting only; or



1 (C)(i) ~~Open no polling places on election day and hold an~~
2 ~~election by candidate under the procedure in § 7-11-107(b) Declare an~~
3 ~~election by candidate to be held;~~

4 (ii) Open no polling places; and

5 (iii) Allow the candidate to cast a ballot for
6 himself or herself at a designated time and location on election day or
7 during the period that would otherwise be designated for early voting.

8 (2)(A) ~~If the annual school election is not held at the same~~
9 ~~time as a preferential primary election or general election and upon request~~
10 ~~by proper resolution adopted by the board of directors of any school~~
11 ~~district, the county board of election commissioners may provide that no~~
12 ~~polling places be open on election day so that the election can be conducted~~
13 ~~by:~~

14 ~~(i) Absentee ballot and early voting only; or~~

15 ~~(ii) Election by candidate under the procedure in §~~
16 ~~7-11-107(b).~~

17 (B) If a county uses electronic voting machines or
18 electronic vote tabulating devices, and is holding an election under
19 subdivision (c)(1) of this section, the county board of election
20 commissioners may use:

21 ~~(i)~~(A) The electronic voting machines or electronic
22 vote tabulating devices; or

23 ~~(ii)~~(B) Paper ballots counted by hand and provide no
24 voting machines to be used in the election, notwithstanding any other
25 provision in the Arkansas Code.

26
27 SECTION 2. Arkansas Code § 6-14-111(k), concerning candidate filing
28 procedures for school elections, is amended to read as follows:

29 (k) The order in which the names of the respective candidates are to
30 appear on the ballot shall be determined by lot at the public meeting of the
31 county board of election commissioners held not later than:

32 (1) ~~seventy-two~~ Seventy-two (72) days before the annual school
33 election, if the election is to be held on the:

34 (A) First Tuesday following the first Monday in November;

35 (B) Third Tuesday in May for elections held in odd
36 numbered years; or

(C) Tuesday four (4) weeks prior to the third Tuesday in June for years in which the office of Governor will appear on the ballot at the general election; or

(2) Eighty-nine (89) days before the annual school election if the election is to be held on the first Tuesday after the first Monday in March for years in which the office of President of the United States will appear on the ballot at the general election.

SECTION 3. Arkansas Code § 7-5-202(a)(1), concerning public notice of elections, is amended to read as follows:

(a)(1) It shall be the duty of the county board of election commissioners at least ~~twenty (20) days~~ eight (8) days before ~~each the beginning of early voting for a preferential primary, general primary, and general election and at least ten (10) days before the holding of each general primary,~~ general runoff, school, or special election to give public notice in a newspaper of general circulation in the county of:

(A) The date of the election;
(B) The hours of voting on election day;
(C) The places and times for early voting;
(D) Polling sites for holding the elections in the county;
(E) The candidates and offices to be elected at that time;
(F) The time and location of the opening, processing, canvassing, and counting of ballots; and

(G) The location where ~~a list~~ lists of appointed election officials, deputy county clerks, or additional deputies hired to conduct early voting can be found and the ~~date~~ dates the ~~list is~~ lists are available; and

(H) Directions for filing a written objection to the service of an election official, deputy county clerk, or additional deputy.

SECTION 4. Arkansas Code § 7-5-202(a)(2)(B), concerning public notice of elections, is amended to read as follows:

(B) Another person makes an objection to his or her service to the county board of election commissioners within ~~ten (10)~~ seven (7) calendar days after posting the list of officials.

1 State of Arkansas

As Engrossed: S3/17/21

2 93rd General Assembly

A Bill

3 Regular Session, 2021

SENATE BILL 496

4
5 By: Senator Rapert

6 By: Representative Hawks
7

For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS ELECTION LAW; TO AMEND THE
10 LAW CONCERNING SPECIAL ELECTIONS; TO ESTABLISH
11 UNIFORM DATES FOR HOLDING SPECIAL ELECTIONS; AND FOR
12 OTHER PURPOSES.
13

Subtitle

14
15 TO AMEND ARKANSAS ELECTION LAW; TO AMEND
16 THE LAW CONCERNING SPECIAL ELECTIONS; AND
17 TO ESTABLISH UNIFORM DATES FOR HOLDING
18 SPECIAL ELECTIONS.
19
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code § 6-14-102(a)(1)(A)(ii)(a) and (b),
25 concerning the annual school election date and special school elections, are
26 amended to read as follows:

27 (a) ~~First~~ Second Tuesday following the first
28 Monday in November; or

29 (b) ~~Third~~ Second Tuesday in May.
30

31 SECTION 2. Arkansas Code § 6-14-102(b), concerning the annual school
32 election date and special school elections, is amended to read as follows:

33 (b) The board of directors of any school district shall have the
34 authority to hold a special school election concerning the tax rate or debt
35 issues ~~on a date other than that fixed by law under § 7-11-205~~ provided that:

36 (1) All constitutional and statutory requirements for the annual



1 school election are met, notwithstanding subsection (a) of this section;

2 (2) ~~The election is held before the date of the annual school~~
3 ~~election; and~~

4 ~~(3) The Commissioner of Elementary and Secondary Education~~
5 ~~approves the date of the election; and~~

6 (3) The board of directors of a school district files a document
7 calling for the special school election with the district's domiciled county
8 clerk not less than seventy (70) days before the date of the special school
9 election.

10
11 SECTION 3. Arkansas Code § 6-14-111(k), concerning candidate filing
12 procedures, is amended to read as follows:

13 (k) The order in which the names of the respective candidates are to
14 appear on the ballot shall be determined by lot at the public meeting of the
15 county board of election commissioners held not later than ~~seventy-two (72)~~
16 ~~days before the annual school election.;~~

17 (1) The deadline to conduct the ballot draw for the preferential
18 primary or general election for an annual school election held in even-
19 numbered years;

20 (2) The seventh day of March for an annual school election held
21 on the second Tuesday in May of an odd-numbered year; and

22 (3) Seventy-two (72) days before an annual school election held
23 on the second Tuesday of November of an odd-numbered year.
24

25 SECTION 4. Arkansas Code § 6-14-122(b), concerning the consolidation,
26 annexation, or merger of school districts, is amended to read as follows:

27 (b) The boards of directors of the school districts may, by resolution
28 duly adopted and with the approval of the Commissioner of Elementary and
29 Secondary Education, set a date for the annual school election in that year
30 for the school districts involved on a date ~~other than the date set in § 6-~~
31 ~~14-102 for all school districts under § 7-11-205~~, provided only one (1)
32 annual school election may be held in any school district in one (1) calendar
33 year.
34

35 SECTION 5. Arkansas Code § 6-53-602(b)(2), concerning the formation of
36 a proposed technical college district, is amended to read as follows:

1 ~~receipt of a certified copy of the ordinance on the next special election~~
2 date under § 7-11-205 and shall be conducted in the manner prescribed by law
3 for holding state, county, or municipal elections, so far as the manner may
4 be applicable.

5
6 SECTION 39. Arkansas Code § 26-78-103(b)(1), concerning the procedure
7 for levying a County and Municipality Vehicle Tax, is amended to read as
8 follows:

9 (b)(1) Notwithstanding other provisions of this chapter, before the
10 tax levied by any county quorum court upon owners residing everywhere in the
11 county or only upon owners residing within the county but outside the
12 corporate boundaries of all municipalities in the county may be collected,
13 the county court shall call a special election in accordance with § 7-11-201
14 et seq. upon the first levy of the tax by the county quorum court, to be held
15 ~~not more than ninety (90) days from the date of the adoption of the levy of~~
16 ~~the tax by the quorum court~~ on the next special election date under § 7-11-
17 205, at which election the qualified electors of the area to be affected by
18 the tax shall vote on the question of the levy of the tax.

19
20 SECTION 40. Arkansas Code § 26-78-111(c), concerning the requirement
21 for an election on the question of issuing revenue bonds, is amended to read
22 as follows:

23 (c) The ordinance or order shall specifically state the purpose for
24 which the bonds are to be issued, the total amount of the issue, and the date
25 upon which the election is to be held, which date shall ~~not occur earlier~~
26 ~~than thirty (30) days after the passage of the ordinance or the entering of~~
27 ~~the order~~ be on the next special election date under § 7-11-205.

28
29 SECTION 41. EFFECTIVE DATE. This act is effective on January 1,
30 2022.

31
32
33 /s/Rapert

34
35 APPROVED: 4/8/21

IV. ELECTION LAW CONFLICTS –

**Amendments to Arkansas Code §
7-4-120 by Acts 756 and 974**

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

HOUSE BILL 1803

By: Representatives Lowery, Wing
By: Senators K. Hammer, M. Johnson

For An Act To Be Entitled

AN ACT ESTABLISH THE ARKANSAS BALLOTING INTEGRITY ACT
OF 2021; TO AMEND ARKANSAS LAW CONCERNING ELECTION
EXPENSE ALLOCATION; TO AMEND THE COMPLAINT PROCESS
FOR ELECTION LAW VIOLATIONS; TO AMEND THE AUTHORITY
AND DUTIES OF THE STATE BOARD OF ELECTION
COMMISSIONERS; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE ARKANSAS BALLOTING
INTEGRITY ACT OF 2021.

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

SECTION 1. DO NOT CODIFY. Title.

This act shall be known and may be cited as the "Arkansas Balloting
Integrity Act of 2021".

~~SECTION 2.~~ Arkansas Code § 7-4-120 is amended to read as follows:

7-4-120. Complaints of election law violations – Definitions.

(a)(1) Except as provided in subdivision (a)(2) of this section, the
State Board of Election Commissioners may investigate alleged violations,
render findings, institute corrective actions, and impose sanctions according
to this subchapter for violations of election and voter registration laws.

(2) The State Board of Election Commissioners shall not
investigate alleged violations, render findings, or impose sanctions
concerning violations of:



1 (A) The provisions of § 7-1-103(a)(1)-(4), (6), and (7);
 2 or

3 (B) Campaign finance and disclosure laws for which the
 4 Arkansas Ethics Commission has the duty and authority to investigate and
 5 sanction under §§ 7-6-217 and 7-6-218.

6 (b)(1) A complaint shall be filed with the State Board of Election
 7 Commissioners in writing ~~within thirty (30) days of~~ no earlier than the date
 8 established by law for the delivery or mailing of absentee ballots to a voter
 9 and no later than thirty (30) days following the certification of an election
 10 by a county board of election commissioners of the following:

11 (A) An alleged violation of the ~~voter registration~~ laws
 12 regarding elections including without limitation:

- 13 (i) Voter registration;
- 14 (ii) Requests for absentee ballots;
- 15 (iii) Delivery of absentee ballots;
- 16 (iv) Casting of ballots;
- 17 (v) Ballot tabulation;
- 18 (vi) Certification of election results;
- 19 (vii) Administration of an election;
- 20 (viii) Election processes; or
- 21 (ix) Conduct of an election; or

22 (B) The election or elections affected or associated with
 23 the complaint~~+~~.

24 (2) A complaint shall be signed by the complainant under penalty
 25 of perjury.

26 (3)(A) A complaint shall clearly:

- 27 (i) Describe the alleged violation, including
 28 without limitation the supporting facts for the violation or incident;
- 29 (ii) State when or the approximate date that the
 30 alleged violation or incident occurred; and
- 31 (iii) State the location or locations of the alleged
 32 violation or incident.

33 (B)(i) The complaint may specify, suggest, or recommend a
 34 desired resolution to the complaint.

35 (ii) If the complaint is timely filed but does not
 36 specify the desired resolution of the complainant:

1 (a) The State Board of Election Commissioners
2 ~~shall~~ may:

3 (1) ~~notify~~ Notify the complainant that
4 a desired resolution is not specified;

5 (2) Inform the complainant that other
6 formal or informal resolutions may be appropriate; and

7 (3) Inform the complainant that the
8 State Board of Election Commissioners may initiate a lawful resolution,
9 correction, or remedy as the State Board of Election Commissioners deems
10 appropriate; and

11 (b) The complainant may file the additional
12 information within ten (10) days from mailing of the notice.

13 (4)(A) If a complaint does not meet the requirements of this
14 section, the complainant shall be notified that the complaint may be
15 corrected by amendment in writing within ten (10) days and that a failure to
16 make the necessary corrections shall result in the complaint shall be being
17 dismissed.

18 (B) If a complaint is dismissed because it does not meet
19 the requirements of this section, the State Board of Election Commissioners
20 shall notify the complainant of the fact of dismissal.

21 (5) A person shall not file a frivolous complaint.

22 (6)(A) If a complaint is filed as required by this section, the
23 State Board of Election Commissioners shall investigate the alleged
24 violation.

25 (B) Immediately upon beginning an investigation under this
26 section, the State Board of Election Commissioners shall notify the person or
27 persons under investigation of the fact of the investigation and the nature
28 of the investigation.

29 (C) If at the conclusion of the investigation, the State
30 Board of Election Commissioners finds that there is probable cause to believe
31 there has been a violation of the voter registration laws or election laws,
32 the State Board of Election Commissioners may set a public hearing.

33 (c)(1) The State Board of Election Commissioners shall maintain a
34 record of all inquiries, investigations, and proceedings.

35 (2) Except as provided in subdivisions (c)(3) and (4) of this
36 section, records under this section are exempt from disclosure under the

1 Freedom of Information Act of 1967, § 25-19-101 et seq., until:

2 (A) A hearing by the State Board of Election Commissioners
3 is set; or

4 (B) The investigation by the State Board of Election
5 Commissioners is closed by the State Board of Election Commissioners.

6 (3) The State Board of Election Commissioners ~~may~~ shall
7 disclose, through its members or staff, otherwise confidential information to
8 proper law enforcement officers, agencies, and other entities as is necessary
9 to conduct the investigation under this section.

10 (4) The records of the investigation upon which the State Board
11 of Election Commissioners has based its findings shall be opened to public
12 inspection thirty (30) days after the final adjudication in which the State
13 Board of Election Commissioners makes a final decision.

14 (d)(1) If the State Board of Election Commissioners determines that
15 the complaint can be addressed through documentary submissions and without a
16 formal investigation, the State Board of Election Commissioners may address
17 the complaint with documentary submissions.

18 (2) If the State Board of Election Commissioners determines that
19 an investigation is necessary, the State Board of Election Commissioners
20 shall provide to the person who is the subject of the complaint:

21 (A) A copy of the complaint if a copy has not previously
22 been provided; and

23 (B) Instructions for filing a response.

24 (3) The State Board of Election Commissioners may:

25 (A) Administer oaths for the purpose of taking sworn
26 statements from witnesses in the course of its investigations;

27 (B) Request the person who is the subject of the complaint
28 to answer allegations in writing, produce relevant evidence, or appear in
29 person before the State Board of Election Commissioners; and

30 (C)(i) Subpoena any person or the books, records, or other
31 documents relevant to the investigation or inquiry.

32 (ii) The subpoena may direct any law enforcement
33 officer of the county concerned or the Director of the Division of Arkansas
34 State Police to seize any public record that is withheld.

35 (4) The State Board of Election Commissioners shall:

36 (A) Provide the person subpoenaed with reasonable notice

1 of the subpoena and an opportunity to respond; and

2 (B) Advise the complainant and the person who is the
3 subject of the complaint in writing of the final action of the State Board of
4 Election Commissioners.

5 (e) If the State Board of Election Commissioners finds a violation of
6 the voter registration laws or election laws under its jurisdiction, the
7 State Board of Election Commissioners may:

8 (1) Issue a public letter of caution, warning, ~~or~~ reprimand, or
9 a conditional warning of consequences that shall be imposed if corrective
10 action is not completed;

11 (2) Impose a fine of no less than twenty-five dollars (\$25.00)
12 and no more than one thousand dollars (\$1,000) for a negligent, knowing, or
13 intentional violation;

14 (3) Report the information obtained in the investigation and the
15 findings and determinations of the State Board of Election Commissioners to
16 the appropriate law enforcement authorities;

17 (4) Make expenditures and order ~~Order~~ payment of the costs of
18 the investigation and hearing;

19 (5) Combine any of the two (2) or more of the actions or
20 sanctions authorized under this section.

21 (f) The State Board of Election Commissioners shall advise the
22 complainant and the person who is the subject of the complaint of the:

23 (1) Finding of the State Board of Election Commissioners;

24 (2) Final action taken and sanctions issued by the State Board
25 of Election Commissioners against a person associated with the complaint and
26 a response thereto; and

27 (3) Reasons for the findings, final actions, and sanctions.

28 (g) The State Board of Election Commissioners shall maintain a record
29 of all inquiries, investigations, and proceedings.

30 (h)(1) The State Board of Election Commissioners shall adopt rules
31 concerning the imposition of fines under this section.

32 (2) If a person fails to pay the fines ordered by the State
33 Board of Election Commissioners under this section, the State Board of
34 Election Commissioners may obtain a judgment from a court for the amount of
35 the fine imposed by filing suit in the:

36 (A) Pulaski County Circuit Court;

1 (B) Circuit court of the county in which the person
2 resides; or

3 (C) Small claims division of a district court.

4 (3) The fee for filing of a suit in a circuit or district court
5 in this state shall be waived for the State Board of Election Commissioners.

6 (4) All moneys received by the State Board of Election
7 Commissioners in payment of fines shall be deposited into the State Treasury
8 as general revenues.

9 (i)(1) The State Board of Election Commissioners shall conclude its
10 investigation and take its final action under this section within one hundred
11 eighty (180) days of the filing of a complaint.

12 (2) The State Board of Election Commissioners shall announce its
13 final action as a final administrative decision.

14 (3) However, if the State Board of Election Commissioners fails
15 to take its final action within one hundred eighty (180) days, the final
16 administrative action shall be effective within one hundred eighty (180) days
17 of the filing of the complaint.

18 ~~(2)(4)~~ If the State Board of Election Commissioners holds a
19 hearing under this section, the State Board of Election Commissioners shall
20 conclude all actions under this section within two hundred forty (240) days.

21 (j) A final action of the State Board of Election Commissioners under
22 this section is an adjudication for purposes of judicial review under § 25-
23 15-212.

24 (k) As used in this section:

25 (1) "Election laws" means the United States Constitution,
26 Arkansas Constitution, and the statutes, final court decisions of general
27 applicability, and rules of the United States and the State of Arkansas
28 ~~statutes~~ concerning elections conducted by county boards of election
29 commissioners and the rules promulgated by the State Board of Election
30 Commissioners under § 7-4-101 concerning elections conducted by county boards
31 of election commissioners;

32 (2) "Frivolous" means clearly lacking any basis in fact or law;
33 and

34 (3) "Voter registration laws" means those laws under the United
35 States Constitution, the Arkansas Constitution, Amendment 51, and the
36 statutes, final court decisions, and rules promulgated by the United States

1 and the State of Arkansas concerning voter registration laws pursuant to
2 Arkansas Constitution, Amendment 51.

3
4 SECTION 3. Arkansas Code § 7-5-104 is amended to read as follows:

5 7-5-104. Election expenses – Allocation.

6 (a)(1) All expenses of general elections and runoff elections for
7 presidential, congressional, state, district, county, township, or municipal
8 offices in this state shall be paid by the counties in which they are held.

9 (2) However, any city or incorporated town shall reimburse the
10 county board of election commissioners for the expenses of the elections in
11 an amount equal to a figure derived by multiplying fifty percent (50%) of the
12 total cost of each election by a fraction, the numerator of which shall be
13 the number of voters from the city or incorporated town casting ballots in
14 each election prepared by the county board of election commissioners, and the
15 denominator of which shall be the total number of voters casting ballots in
16 each election.

17 (b)(1) Except for the expense of party primary elections under § 7-7-
18 201 et seq., all expenses for special elections, including runoff elections
19 as required by law, for congressional, state, district, county, and township
20 offices shall be paid by the counties in which they are held.

21 (2) All expenses of special elections, including any runoff
22 elections as required by law, for municipal offices shall be paid by the city
23 or incorporated town calling for the elections.

24 (3) All expenses of special elections called by any county for
25 the purpose of referring a question or measure to the voters of the county
26 shall be paid by the county.

27 (4) All expenses of special elections called by any city or
28 incorporated town for the purpose of referring a question or measure to the
29 voters of the city or incorporated town shall be paid by the city or
30 incorporated town.

31 (c)(1) The county board of election commissioners shall determine the
32 expenses necessary to conduct a free, equal, and lawful election in order to
33 comply with the United States Constitution, laws of the United States,
34 Arkansas Constitution, and the laws of the State of Arkansas.

35 (2) The county board of election commissioners shall:

36 (A) Prepare an election budget estimate of the expenses of

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

As Engrossed: S4/13/21

A Bill

SENATE BILL 644

4
5 By: Senator K. Hammer
6 By: Representative Ladyman
7

For An Act To Be Entitled

8
9 AN ACT CONCERNING THE INVESTIGATION OF VIOLATIONS OF
10 ELECTION LAW; TO ESTABLISH AN ELECTION LAW VIOLATION
11 HOTLINE; TO AMEND THE LAW CONCERNING INVESTIGATIONS
12 BY THE STATE BOARD OF ELECTION COMMISSIONERS; AND FOR
13 OTHER PURPOSES.

Subtitle

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17 CONCERNING THE INVESTIGATION OF
18 VIOLATIONS OF ELECTION LAW; AND TO
19 ESTABLISH AN ELECTION LAW VIOLATION
20 HOTLINE.
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22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 7-1-103(b), concerning miscellaneous
26 misdemeanor offenses and penalties related to violations of election laws, is
27 amended to add an additional subdivision to read as follows:

28 (3) A person convicted of a misdemeanor offense as listed in
29 this section shall be barred from serving as an election official in
30 subsequent elections.
31

32 SECTION 2. Arkansas Code § 7-1-104, concerning miscellaneous felonies
33 and penalties related to violations of election laws, is amended to add an
34 additional subsection to read as follows:

35 (c) A person convicted of a felony as listed in this section shall be
36 barred from serving as an election official in subsequent elections.



1
2 SECTION 3. Arkansas Code § 7-4-120(b), concerning complaints of
3 election law violations, is amended to read as follows:

4 (b)(1) A complaint:

5 (A) ~~shall~~ Shall be filed with the State Board of Election
6 Commissioners in writing within thirty (30) days of:

7 ~~(A)(i)~~ An alleged violation of the voter
8 registration laws; ~~or~~

9 ~~(B)(ii)~~ The election associated with the complaint;
10 or

11 (iii) The alleged election law violation;
12 ~~(2)(B)~~ May be referred to the State Board of Election
13 Commissioners by the Joint Performance Review Committee and is not subject to
14 the thirty (30) day filing requirement under subdivision (b)(1)(A) of this
15 section; and

16 ~~(C)(i)~~ A complaint shall Shall be signed by the
17 complainant under penalty of perjury.

18 (ii) If a complaint is referred to the State Board
19 of Election Commissioners by the Joint Performance Review Committee under
20 subdivision (b)(1)(B) of this section, the Chair of the Joint Performance
21 Review Committee shall be the complainant.

22 ~~(3)(A)(2)(A)~~ A complaint shall clearly:
23 (i) Describe the alleged violation, including
24 without limitation the supporting facts for the violation;
25 (ii) State when the alleged violation occurred; and
26 (iii) State the location of the alleged violation.
27 (B)(i) The complaint may specify a desired resolution to
28 the complaint.

29 (ii) If the complaint is timely filed but does not
30 specify the desired resolution of the complainant:

31 (a) The State Board of Election Commissioners
32 shall notify the complainant that a desired resolution is not specified; and

33 (b) The complainant may file the additional
34 information within ten (10) days from mailing of the notice.

35 (3) If the complaint is referred to the State Board of Election
36 Commissioners by the Joint Performance Review Committee, the complaint shall

1 include:

2 (A) A report of the findings of the Joint Performance
3 Review Committee, including any hearing testimony the Joint Performance
4 Review Committee believes relevant; and

5 (B) The recommendations of the Joint Performance Review
6 Committee that may be submitted to the State Board of Election Commissioners,
7 including without limitation a recommendation:

8 (i) For a letter of reprimand to an election
9 official;

10 (ii) For decertification as an election official in
11 the next election cycle, including all associated primary and runoff
12 elections;

13 (iii) That the State Board of Election Commissioners
14 take over and conduct elections in the county in question if the violation or
15 violations are considered severe by the Joint Performance Review Committee
16 and would threaten a county's ability to conduct an equal, free, and
17 impartial election, or the appearance of an equal, free and impartial
18 election; or

19 (iv) That state turnback funds be withheld from a
20 county when the State Board of Election Commissioners conducts an election on
21 behalf of a county and the county refuses to reimburse the State Board of
22 Election Commissioners for expenses incurred.

23 (4)(A) If a complaint does not meet the requirements of this
24 section, the complaint shall be dismissed.

25 (B) If a complaint is dismissed because it does not meet
26 the requirements of this section, the State Board of Election Commissioners
27 shall notify the complainant of the fact of dismissal.

28 (5) A person shall not file a frivolous complaint.

29 (6)(A) If a complaint is filed as required by this section, the
30 State Board of Election Commissioners shall investigate the alleged
31 violation.

32 (B) Immediately upon beginning an investigation under this
33 section, the State Board of Election Commissioners shall notify the person
34 under investigation of the fact of the investigation and the nature of the
35 investigation.

36 (C) If at the conclusion of the investigation, the State

1 Board of Election Commissioners finds that there is probable cause to believe
2 there has been a violation of the voter registration laws or election laws,
3 the State Board of Election Commissioners may set a public hearing.
4

5 SECTION 4. Arkansas Code § 7-4-120(e), concerning complaints of
6 election law violations, is amended to read as follows:

7 (e) If the State Board of Election Commissioners finds a violation of
8 the voter registration laws or election laws under its jurisdiction, the
9 State Board of Election Commissioners may:

10 (1) Issue a public letter of caution, warning, or reprimand;

11 (2) Impose a fine of no less than twenty-five dollars (\$25.00)
12 and no more than one thousand dollars (\$1,000) for a negligent, knowing, or
13 intentional violation;

14 (3) Report the information obtained in the investigation and the
15 findings and determinations of the State Board of Election Commissioners to
16 the appropriate law enforcement authorities;

17 (4) Order payment of the costs of the investigation and hearing;
18 or

19 (5) Decertify an election official from appointment as an
20 election official;

21 (6) Issue an order that the State Board of Election
22 Commissioners shall take over and conduct elections in the county in question
23 if the violation is considered severe by the State Board of Election
24 Commissioners and would threaten either a county's ability to conduct an
25 equal, free, and impartial election, or the appearance of an equal, free and
26 impartial election; or

27 ~~(5)(7)~~ Combine any of the sanctions authorized under this
28 section.
29

30 SECTION 5. Arkansas Code § 7-5-202(c)(1)(F), concerning public notice
31 of elections, is amended to read as follows:

32 (F)(i) General information on federal and state laws
33 regarding prohibitions on acts of fraud and misrepresentation; and

34 (ii) Information about the availability of the
35 Attorney General's election law violation hotline, including without
36 limitation the hotline telephone number of the Attorney General's election

V. ELECTION LAW CONFLICTS –

**Dates for public notice of elections,
objections to certain election officials
Acts 448 and 1051 of 2021**

1 State of Arkansas As Engrossed: H2/4/21 S2/22/21

2 93rd General Assembly

A Bill

3 Regular Session, 2021

HOUSE BILL 1332

4

5 By: Representative Boyd

6 By: Senator B. Ballinger

7

8

For An Act To Be Entitled

9

AN ACT TO AMEND ELECTION LAW; TO AMEND PUBLICATION

10

REQUIREMENTS; TO AMEND SCHOOL ELECTION LAW; TO AMEND

11

ELECTION NOTICE REQUIREMENTS; AND FOR OTHER PURPOSES.

12

13

14

Subtitle

15

TO AMEND ELECTION LAW; TO AMEND

16

PUBLICATION REQUIREMENTS; TO AMEND SCHOOL

17

ELECTION LAW; AND TO AMEND ELECTION

18

NOTICE REQUIREMENTS.

19

20

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

22

23

SECTION 1. Arkansas Code § 6-14-102(c), concerning the annual school
election date and special school election, is amended to read as follows:

24

25

(c)(1) ~~In any election year in which~~ When the annual school election
is not held at the same time as a preferential primary or general election,
if no more than one (1) candidate for ~~any~~ a school district director position
presents a petition or notice as required by § 6-14-111 and if there are no
other ballot issues to be submitted to school district electors for
consideration, with the exception of the local tax rate if that rate is not
being changed or restructured, the board of directors of ~~any~~ a school
district, by resolution, may request the county board of election
commissioners to:

33

34

(A) Reduce the number of polling places;

35

(B) Open no polling places on election day so that the

36

election can be conducted by absentee ballot and early voting only; or



1 (C) Tuesday four (4) weeks prior to the third Tuesday in
2 June for years in which the office of Governor will appear on the ballot at
3 the general election; or

4 (2) Eighty-nine (89) days before the annual school election if
5 the election is to be held on the first Tuesday after the first Monday in
6 March for years in which the office of President of the United States will
7 appear on the ballot at the general election.

8
9 SECTION 3. Arkansas Code § 7-5-202(a)(1), concerning public notice of
10 elections, is amended to read as follows:

11 (a)(1) It shall be the duty of the county board of election
12 commissioners at least ~~twenty (20) days~~ eight (8) days before each the
13 beginning of early voting for a preferential primary, general primary, and
14 general election and at least ten (10) days before the holding of each
15 general primary, general runoff, school, or special election to give public
16 notice in a newspaper of general circulation in the county of:

17 (A) The date of the election;
18 (B) The hours of voting on election day;
19 (C) The places and times for early voting;
20 (D) Polling sites for holding the elections in the county;
21 (E) The candidates and offices to be elected at that time;
22 (F) The time and location of the opening, processing,
23 canvassing, and counting of ballots; and

24 (G) The location where a ~~list~~ lists of appointed election
25 officials, deputy county clerks, or additional deputies hired to conduct
26 early voting can be found and the ~~date~~ dates the ~~list is~~ lists are available;
27 and

28 (H) Directions for filing a written objection to the
29 service of an election official, deputy county clerk, or additional deputy.
30

31 SECTION 4. Arkansas Code § 7-5-202(a)(2)(B), concerning public notice
32 of elections, is amended to read as follows:

33 (B) Another person makes an objection to his or her
34 service to the county board of election commissioners within ~~ten (10)~~ seven
35 (7) calendar days after posting the list of officials.
36

1 State of Arkansas As Engrossed: S4/8/21 S4/15/21 H4/22/21
2 93rd General Assembly
3 Regular Session, 2021

A Bill

SENATE BILL 582

4
5 By: Senators K. Hammer, M. Johnson
6 By: Representatives Ladyman, Barker, Beaty Jr., Beck, Bentley, M. Berry, S. Berry, Boyd, Bragg,
7 Brooks, Brown, Carr, Cavanaugh, Christiansen, Cloud, Coleman, C. Cooper, Cozart, Crawford, Dalby,
8 M. Davis, Eaves, Eubanks, Evans, L. Fite, Gazaway, Gonzales, M. Gray, Haak, Hawks, Hollowell,
9 Lowery, Lundstrum, Maddox, McCollum, McGrew, McNair, S. Meeks, Payton, Penzo, Pilkington,
10 Richmond, Rye, B. Smith, S. Smith, Speaks, Vaught, Warren, Watson, Wing, Wooten
11

For An Act To Be Entitled

12
13 AN ACT TO AMEND ARKANSAS LAW CONCERNING COUNTY BOARDS
14 OF ELECTION COMMISSIONERS; TO AMEND HOW COUNTY BOARDS
15 OF ELECTION COMMISSIONERS TAKE THE OATH; TO AMEND
16 ARKANSAS LAW CONCERNING ELECTIONS; TO AMEND THE LAW
17 CONCERNING POLL WORKERS; AND FOR OTHER PURPOSES.
18
19

Subtitle

20
21 TO AMEND ARKANSAS LAW CONCERNING COUNTY
22 BOARDS OF ELECTION COMMISSIONERS; TO
23 AMEND HOW COUNTY BOARDS OF ELECTION
24 COMMISSIONERS TAKE THE OATH; AND TO AMEND
25 ARKANSAS LAW CONCERNING ELECTIONS.
26
27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 SECTION 1. Arkansas Code § 7-4-102(b)(2) and (3), concerning the oath
31 and election of members of county boards of election commissioners, are
32 amended to read as follows:

33 (2)(A) Upon receipt of the notice, the county clerk shall send
34 to each of the county election commissioners, by registered mail, ~~notice to~~
35 ~~appear before the clerk~~ within thirty (30) days of selection as a county
36 election commissioner, a notice to take and subscribe to the oath prescribed



1 essential skills.

2
3 SECTION 4. Arkansas Code § 7-4-109(e), concerning the qualifications
4 of state and county commissioners, election officials, poll workers, and
5 certified election monitors, is amended to add additional subdivisions to
6 read as follows:

7 (4)(A) A county board of election commissioners by a majority
8 vote shall designate a person to attend the required training as a county
9 election coordinator.

10 (B) The State Board of Election Commissioners shall not
11 provide training or compensation for attending training to a county election
12 coordinator if the county election coordinator has not been designated to
13 take the required training by a county board of election commissioners.

14 (5)(A) The State Board of Election Commissioners shall identify
15 at least one (1) person not employed by a county in any capacity each year,
16 who shall receive the same training as a county election coordinator, and who
17 shall receive compensation for attending training.

18 (B) The person identified by the State Board of Election
19 Commissioners may be a state employee being cross-trained, or a person who is
20 not a state employee that the State Board of Election Commissioners considers
21 qualified to become an acting county election coordinator as a special
22 employee of the State Board of Election Commissioners.

23
24 SECTION 5. Arkansas Code § 7-5-202(a)(2), concerning service as an
25 election official, deputy county clerk, or additional deputy, is amended to
26 read as follows:

27 (2) A person shall not serve as an election official if:

28 (A) The person is:

29 (i) Married to or related within the second degree
30 of consanguinity to a candidate running for office in the election;

31 (ii) The spouse of a member of a county board of
32 election commissioners, except the spouse of a member of a county board of
33 election commissioners may work as a poll worker if no objection is made to
34 his or her service as a poll worker to the county board of election
35 commissioners within ten (10) calendar days after posting the list of
36 officials; or

1 (iii) A county party chair or his or her spouse,
2 except the county party chair or his or her spouse may work as a poll worker
3 if no objection is made to his or her service to the county board of election
4 commissioners within ten (10) calendar days after posting the list of
5 officials; and

6 (B) Another person makes an objection to his or her
7 service to the county board of election commissioners within ten (10)
8 calendar days after posting the list of officials.

9
10
11 /s/K. Hammer
12
13

14 **APPROVED: 4/29/21**
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VI. ELECTION LAW CONFLICTS –

**Campaign contribution levels
Acts 384 and 385 of 2021**

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: S3/3/21

A Bill

SENATE BILL 383

By: Senator C. Tucker

For An Act To Be Entitled

AN ACT TO AMEND CAMPAIGN CONTRIBUTION AMOUNTS; TO
AMEND THE LAW CONCERNING CAMPAIGN PRACTICES; TO
REQUIRE THE ARKANSAS ETHICS COMMISSION TO PROMULGATE
RULES; TO AMEND PORTIONS OF THE LAW RESULTING FROM
INITIATED ACT 1 OF 1990 AND INITIATED ACT 1 OF 1996;
AND FOR OTHER PURPOSES.

Subtitle

TO AMEND CAMPAIGN CONTRIBUTION AMOUNTS;
TO AMEND THE LAW CONCERNING CAMPAIGN
PRACTICES; AND TO REQUIRE THE ARKANSAS
ETHICS COMMISSION TO PROMULGATE RULES.

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

SECTION 1. Arkansas Code § 7-6-203(a)(1)(A), resulting from Initiated
Act 1 of 1990 and Initiated Act 1 of 1996, concerning campaign finance
contributions, limitations, acceptance or solicitation, use as personal
income, and disposition, is amended to read as follows:

(a)(1)(A) It shall be unlawful for any candidate for any public office
or for any person acting on the candidate's behalf to accept campaign
contributions in excess of ~~two thousand seven hundred dollars (\$2,700)~~ the
maximum campaign contribution level established by rule of the Arkansas
Ethics Commission under subsection (i) of this section per election from:
(i) An individual;
(ii) A political party that meets the definition of
a political party under § 7-1-101;



(iii) A political party that meets the requirements of § 7-7-205;

(iv) A county political party committee;

(v) A legislative caucus committee; or

(vi) An approved political action committee.

SECTION 2. Arkansas Code § 7-6-203(b)(1), resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996, concerning campaign finance contributions, limitations, acceptance or solicitation, use as personal income, and disposition, is amended to read as follows:

(b)(1) It shall be unlawful for any person to make a contribution to a candidate for any public office or to any person acting on the candidate's behalf, which in the aggregate exceeds ~~two thousand seven hundred dollars (\$2,700)~~ the maximum campaign contribution level established by rule of the Arkansas Ethics Commission per election.

SECTION 3. Arkansas Code § 7-6-203(i), resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996, concerning campaign finance contributions, limitations, acceptance or solicitation, use as personal income, and disposition, is amended to read as follows:

(i) The Arkansas Ethics Commission shall establish the maximum campaign contribution limit by rule as follows:

(1) The adjusted campaign contribution limit shall be calculated from a base amount of two thousand dollars (\$2,000) as of January 1, 2015;

~~(1)(2)~~ The contribution limits under subdivision (a)(1)(A) and subdivision (b)(1) of this section shall be adjusted at the beginning of each odd-numbered year in an amount equal to the percentage certified to the Federal Election Commission by the United States Bureau of Labor Statistics under 52 U.S.C. § 30116(c) as existing on January 1, 2015;

~~(2)(3)~~ If the amount after adjustment under subdivision (1)(1)(i)(2) of this section is not a multiple of one hundred dollars (\$100), the Arkansas Ethics Commission shall round the amount to the nearest multiple of one hundred dollars (\$100); and

~~(3)(4)~~ The Arkansas Ethics Commission shall promulgate rules identifying the adjusted contribution limit under subdivision (i)(1) of this section this subsection.

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/s/C. Tucker

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APPROVED: 3/17/21

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

As Engrossed: S3/3/21

A Bill

SENATE BILL 384

4
5 By: Senators C. Tucker, B. Ballinger
6 By: Representatives M. Gray, Vaught
7

For An Act To Be Entitled

8
9 AN ACT TO AMEND ARKANSAS LAW CONCERNING CAMPAIGN
10 CONTRIBUTIONS; TO AMEND CAMPAIGN PRACTICES; TO AMEND
11 PORTIONS OF THE LAW RESULTING FROM INITIATED ACT 1 OF
12 1990 AND INITIATED ACT 1 OF 1996; AND FOR OTHER
13 PURPOSES.
14

Subtitle

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17 TO AMEND ARKANSAS LAW CONCERNING CAMPAIGN
18 CONTRIBUTIONS; TO AMEND CAMPAIGN
19 PRACTICES; AND TO AMEND PORTIONS OF THE
20 LAW RESULTING FROM INITIATED ACT 1 OF
21 1990 AND INITIATED ACT 1 OF 1996.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 **SECTION 1.** *Arkansas Code § 7-6-203(b)(1), resulting from Initiated Act*
27 *1 of 1990 and Initiated Act 1 of 1996, concerning campaign finance*
28 *contributions, limitations, acceptance or solicitation, use as personal*
29 *income, and disposition, is amended to read as follows:*

30 (b)(1)(A) It shall be unlawful for any person to make a contribution
31 to a candidate for any public office or to any person acting on the
32 candidate's behalf, which in the total aggregate amount exceeds two thousand
33 seven hundred dollars (\$2,700) per election.

34 (B) The total aggregate amount per election is based on
35 the total contributions made to a candidate by a donor during an election
36 regardless of which office or offices the candidate is seeking, and the



1 aggregate amount during an election applies even if a candidate:

2 (i) Seeks more than one (1) office during the
3 election; or

4 (ii) Concludes a campaign or otherwise withdraws
5 from the election.

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7 SECTION 2. DO NOT CODIFY. Effective date.

8 This act is effective for all elections after January 1, 2023.

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10 */s/C. Tucker*

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13 **APPROVED: 3/17/21**
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VII. ELECTION LAW CONFLICTS –

**Carryover funds in political campaigns
Acts 737, 272, 324, and 1029 of 2021**

1 State of Arkansas As Engrossed: H3/30/21 H4/1/21
2 93rd General Assembly **A Bill**
3 Regular Session, 2021

HOUSE BILL 1675

4
5 By: Representative Evans
6 By: Senator J. English
7

8 **For An Act To Be Entitled**

9 AN ACT TO AMEND THE LAW CONCERNING CAMPAIGN FINANCE;
10 TO REPEAL THE PROVISIONS CONCERNING CARRYOVER FUNDS;
11 TO MODIFY THE USE OF CAMPAIGN FUNDS; TO AMEND
12 PORTIONS OF INITIATED ACT 1 OF 1990 AND INITIATED ACT
13 1 OF 1996; AND FOR OTHER PURPOSES.
14

15 **Subtitle**

16
17 TO AMEND THE LAW CONCERNING CAMPAIGN
18 FINANCE; TO REPEAL THE PROVISIONS
19 CONCERNING CARRYOVER FUNDS; TO MODIFY THE
20 USE OF CAMPAIGN FUNDS; AND TO AMEND
21 PORTIONS OF INITIATED ACT 1 OF 1990 AND
22 INITIATED ACT 1 OF 1996.
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 **SECTION 1.** Arkansas Code § 7-6-201(3), concerning the definition of
28 "carryover funds" as applied to campaign financing and resulting from
29 Initiated Act 1 of 1990 and Initiated Act 1 of 1996, is repealed.

30 ~~(3)(A) "Carryover funds" means the amount of campaign funds~~
31 ~~retained from the last election by the candidate for future use but not to~~
32 ~~exceed the annual salary, excluding expense allowances, set by Arkansas law~~
33 ~~for the office sought.~~

34 ~~(B) "Carryover funds" does not include campaign signs,~~
35 ~~campaign literature, and other printed campaign materials that were:~~

36 ~~(i) Purchased by the campaign;~~



1 ~~(ii) Reported on the appropriate contribution and~~
2 ~~expenditure report for the campaign at the time of the purchase; and~~
3 ~~(iii) Retained for use in a future campaign by the~~
4 ~~same candidate;~~

5
6 SECTION 2. Arkansas Code § 7-6-201(17)(A), concerning the definition
7 of "surplus campaign funds" as applied to campaign financing and resulting
8 from Initiated Act 1 of 1990 and Initiated Act 1 of 1996, is amended to read
9 as follows:

10 (17)(A) "~~Surplus~~ Remaining campaign funds" means any balance of
11 campaign funds over expenses incurred as of the day of the election except
12 for:

13 (i) ~~Carryover funds; and~~
14 ~~(ii)~~ Any funds required to repay loans made by the
15 candidate from his or her personal funds to the campaign; or
16 (ii) ~~to~~ To repay loans made by financial
17 institutions to the candidate and applied to the campaign.

18
19 SECTION 3. Arkansas Code § 7-6-203(f)(4)(A), concerning contribution,
20 limitation, acceptance, use as personal income, and disposition of campaign
21 funds and resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996,
22 is amended to read as follows:

23 (4)(A)(i) For purposes of this subsection, a candidate or
24 officeholder, who uses campaign funds ~~or carryover funds~~ to fulfill any
25 commitment, obligation, or expense that would exist regardless of the
26 candidate's campaign or officeholder activity, shall be deemed to have taken
27 campaign funds as personal income.

28 (ii) Candidates or officeholders may use campaign
29 funds ~~or carryover funds~~ to fulfill any commitment, obligation, or expense
30 authorized by law, or permitted by an Arkansas Ethics Commission rule or
31 opinion at the time of the expenditure, or reasonably and legitimately
32 related to a campaign or officeholder activity.

33
34 SECTION 4. Arkansas Code § 7-6-203(f)(5), concerning contribution,
35 limitation, acceptance, use as personal income, and disposition of campaign
36 funds and resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996,

1 is amended to read as follows:

2 (5) If a candidate loses an election or if an officeholder is no
3 longer in office, ~~and after disposing of surplus funds, has carryover funds~~
4 ~~remaining~~, personal use of campaign funds remains prohibited by this section
5 ~~for expenses~~ unless the expenses relate to a future candidacy and shall
6 comply with subdivision (f)(4) of this section.

7

8 SECTION 5. Arkansas Code § 7-6-203(f)(7), concerning contribution,
9 limitation, acceptance, use as personal income, and disposition of campaign
10 funds and resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996,
11 is amended to read as follows:

12 (7) It is an affirmative defense to a prosecution for taking
13 campaign funds as personal income if the candidate or officeholder shows by a
14 preponderance of the evidence that:

15 (A) ~~If the personal property was retained as carryover~~
16 campaign funds, and the candidate or officeholder:

17 (i) ~~(A)~~ Reported the personal property as ~~carryover~~
18 campaign funds; and

19 (ii) ~~(B)~~ Retained or disposed of the personal
20 property in the manner that is required by law for ~~carryover~~ campaign funds;
21 ~~or~~

22 (B) ~~If the personal property was retained as surplus~~
23 ~~funds, the candidate or officeholder:~~

24 (i) ~~Reported the personal property as surplus funds,~~
25 ~~and~~

26 (ii) ~~Retained or disposed of the personal property~~
27 ~~in the manner that is required by law for surplus funds.~~

28

29 SECTION 6. Arkansas Code § 7-6-203(g), concerning contribution,
30 limitation, acceptance, use as personal income, and disposition of campaign
31 funds and resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996,
32 is amended to read as follows:

33 (g)(1) ~~Within thirty (30) days following the end of the month in which~~
34 ~~an election is held or a candidate has withdrawn, a~~ A candidate ~~shall~~ may
35 turn over ~~surplus~~ campaign funds to either:

36 (A) The Treasurer of State for the benefit of the General

1 Revenue Fund Account of the State Apportionment Fund;

2 (B) A political party as defined in § 7-1-101 or a
3 political party caucus of the General Assembly, the Senate, or the House of
4 Representatives;

5 (C) A nonprofit organization that is exempt from taxation
6 under Section 501(c)(3) of the Internal Revenue Code;

7 (D) Cities of the first class, cities of the second class,
8 or incorporated towns; or

9 (E) The contributors to the candidate's campaign.

10 ~~(2) If the candidate's campaign has not ended, disposal of~~
11 ~~surplus campaign funds shall not be required and the candidate may carry~~
12 ~~forward any remaining funds to the general primary election, general~~
13 ~~election, or general runoff election for that same office.~~

14 ~~(3)(A) If an unopposed candidate agrees not to solicit further~~
15 ~~campaign contributions by filing an affidavit declaring such an agreement,~~
16 ~~the candidate may dispose of any surplus campaign funds prior to a general~~
17 ~~election as soon as the time has passed to declare an intent to be a write-in~~
18 ~~candidate pursuant to § 7-5-205.~~

19 ~~(B) For an unopposed nonpartisan candidate, the affidavit~~
20 ~~may be filed after the deadlines have passed to declare as a filing fee~~
21 ~~candidate, petition candidate, or write-in candidate under § 7-10-103.~~

22 ~~(C) The affidavit shall be filed in the office in which~~
23 ~~the candidate is required to file reports of contributions received and~~
24 ~~expenditures made.~~

25 ~~(D) Unopposed candidates and defeated candidates who file~~
26 ~~the affidavit are exempt from further reporting requirements provided that~~
27 ~~the affidavit contains:~~

28 ~~(i) All campaign activity not previously reported;~~
29 ~~and~~

30 ~~(ii) A statement that the candidate's campaign fund~~
31 ~~has a zero (\$0.00) balance.~~

32 ~~(4)(A)(2)(A) Carryover funds may be expended at any time for any~~
33 ~~purpose not prohibited by this chapter and may be used as campaign funds for~~
34 ~~seeking any public office~~ Remaining campaign funds may be maintained after an
35 election and used to run for election or re-election.

36 (B) Nothing shall prohibit a person at any time from

1 disposing of all or any portion of his or her carryover campaign funds in the
2 same manner as for surplus campaign funds manner set out under subdivision
3 (g)(1) of this section. However, the candidate shall not take the funds as
4 personal income or as income for his or her spouse or dependent children.

5 ~~(B)(i) When a person having carryover funds files as a~~
6 ~~candidate for public office, his or her carryover funds shall be transferred~~
7 ~~to the person's active campaign fund. Once transferred, the funds will no~~
8 ~~longer be treated as carryover funds.~~

9 ~~(ii) This subdivision (g)(4)(B) shall not apply to~~
10 ~~carryover funds from an election held prior to July 1, 1997.~~

11 ~~(iii) This subdivision (g)(4)(B) shall not apply to~~
12 ~~a campaign debt.~~

13 ~~(C)(i) If carryover funds are expended prior to~~
14 ~~transferring the funds to an active campaign fund, the expenditures shall be~~
15 ~~reported pursuant to this subdivision (g)(4)(C). A person shall file an~~
16 ~~expenditure report concerning carryover funds if, since the last report~~
17 ~~concerning the carryover funds, the person has expended in excess of five~~
18 ~~hundred dollars (\$500). The report shall be filed at the office in which the~~
19 ~~candidate was required to file his or her campaign contribution and~~
20 ~~expenditure reports for the previous campaign not later than fifteen (15)~~
21 ~~days after a calendar quarter in which a report becomes required. No report~~
22 ~~is required in any calendar quarter in which the cumulative expenditure limit~~
23 ~~has not been exceeded since the person's last report.~~

24 ~~(ii) The person shall also file an expenditure~~
25 ~~report for the calendar quarter in which he or she transfers the carryover~~
26 ~~funds to an active campaign fund.~~

27 ~~(iii)(a) A person who retains carryover funds shall~~
28 ~~file an annual report outlining the status of the carryover fund account as~~
29 ~~of December 31 unless the person has filed a quarterly report during the~~
30 ~~calendar year pursuant to subdivisions (g)(4)(C)(i) and (ii) of this section.~~

31 ~~(b) The annual report shall be due by January~~
32 ~~31 of each year.~~

33 ~~(c) A person who retains carryover funds from~~
34 ~~a general election held in November or a runoff election held in November is~~
35 ~~not required to file an annual report for the year of the general election or~~
36 ~~runoff election from which carryover funds were retained.~~

~~(iv) The carryover fund reports of a candidate for school district, township, municipal, or county office shall be filed with the county clerk of the county in which the election was held.~~

~~(v)(a) The carryover fund reports of a candidate for state or district office shall be filed with the Secretary of State.~~

~~(b) The carryover fund reports of a candidate for state or district office filed with the Secretary of State shall be filed in electronic form through the official website of the Secretary of State. The Arkansas Ethics Commission shall approve the format used by the Secretary of State for the filing of carryover fund reports in electronic form under this subdivision (g)(4)(C)(v)(b) to ensure that all required information is requested. The official website of the Secretary of State shall allow for searches of carryover fund report information required to be filed in electronic form under this subdivision (g)(4)(C)(v)(b).~~

~~(D)(i)(C)(i) Carryover Campaign funds may be retained by a person for not more than ten (10) years after the last election at which he or she was a candidate, or if applicable, not more than ten (10) years after the last day that the person held office, and any remaining carryover campaign funds shall be disposed of in the same manner as for surplus campaign funds manner set out under subdivision (g)(1) of this section.~~

~~(ii)(a) The officer with whom the person last filed a final campaign report shall provide the person timely notice of the requirements of this subdivision (g)(4)(D)(g)(2)(C) prior to the expiration of the ten-year period.~~

~~(b) However, failure to provide the notice does not relieve the person of his or her obligation under this subsection.~~

~~(E)(i)(D)(i) The use of carryover campaign funds to pay an elected candidate's own personal expenses for food, lodging, conference fees, or travel to attend a conference related to the performance of his or her responsibilities as an elected official shall not be considered a taking of campaign funds as personal income.~~

~~(ii) The reimbursement of expenses shall be a result of travel and the source of the reimbursement shall be authorized under the rules of the House of Representatives or the Senate and used to reimburse the carryover campaign account.~~

~~(iii) The reimbursement amount shall be reported in~~

1 the elected candidate's ~~carryover~~ campaign fund report.

2 ~~(5)(3)~~ After the date of an election at which the person is a
3 candidate for nomination or election, the person shall not accept campaign
4 contributions for that election except for the sole purpose of raising funds
5 to retire campaign debt.

6 ~~(6)(4)~~ Surplus Campaign funds or remaining Surplus campaign
7 funds ~~or carryover funds~~ given to a political party caucus shall be
8 segregated in an account separated from other caucus funds and shall not be
9 used:

10 (A) By the political party caucus to make a campaign
11 contribution; or

12 (B) To provide any personal income to any candidate who
13 donated surplus campaign funds or remaining campaign funds ~~or carryover~~
14 ~~funds~~.

15

16 SECTION 7. Arkansas Code § 7-6-207(a)(1), concerning reports of
17 contributions by candidates for state or district office and resulting from
18 Initiated Act 1 of 1990 and Initiated Act 1 of 1996, is amended to add an
19 additional subdivision to read as follows:

20 (F) If a candidate keeps remaining campaign funds after an
21 election, the candidate shall continue filing the reports required by this
22 subsection.

23

24 SECTION 8. Arkansas Code § 7-6-207(b)(1), concerning reports of
25 contributions by candidates for state or district office and resulting from
26 Initiated Act 1 of 1990 and Initiated Act 1 of 1996, is amended to add an
27 additional subdivision to read as follows:

28 (H) The total amount of all nonitemized expenditures made
29 during the filing period; and

30 (I) A list of all disbursements made under § 7-6-
31 203(g)(1); and

32 (J) The current balance of campaign funds.

33

34 SECTION 9. Arkansas Code § 7-6-207(b)(2), concerning reports of
35 contributions by candidates for state or district office and resulting from
36 Initiated Act 1 of 1990 and Initiated Act 1 of 1996, is amended to read as

1 follows:

2 (2)(A) ~~When the~~ If a candidate's campaign has ended and the
3 candidate does not retain remaining campaign funds, the final report shall
4 also indicate which option under § 7-6-203(g) was used to dispose of any
5 ~~surplus of campaign funds, the amount of funds disposed of by the candidate,~~
6 ~~and.~~

7 (B) If a candidate's campaign has ended and the candidate
8 is retaining remaining campaign funds, the final report shall also indicate
9 the amount of funds retained by the candidate in accordance with § 7-6-
10 201(3).

11 ~~(B)(C)~~ (C) If the candidate's campaign has not ended, disposal
12 of campaign funds shall not be required and the candidate may carry forward
13 any remaining campaign funds to the general primary election, general
14 election, or general runoff election for that same office.

15

16 SECTION 10. Arkansas Code § 7-6-208(a), concerning reports of
17 contributions by candidates for school district, township, or municipal
18 office and resulting from Initiated Act 1 of 1990 and Initiated Act 1 of
19 1996, is amended to read as follows:

20 (a) Reports Required. Except as provided in subsection (d) of this
21 section, each candidate for school district, township, or municipal office,
22 or a person acting in the candidate's behalf, shall:

23 (1)(A) For each year in which a candidate is not listed on a
24 ballot for election, file an annual report of all contributions received and
25 expenditures made during that year.

26 (B) The annual report shall be filed no later than fifteen
27 (15) days after the end of the year;

28 (2) No later than seven (7) days prior to any preferential
29 primary election, runoff election, general election, school election, or
30 special election in which the candidate's name appears on the ballot, file a
31 preelection report of all contributions received and expenditures made
32 between the period covered by the previous report, if any, and the period ten
33 (10) days before the election. In case of a runoff election, the report shall
34 cover all contributions received and expenditures made during that period of
35 time that begins after the date of the election from which the runoff arose
36 and ends ten (10) days before the runoff election;

1 ~~(2)~~(3) No later than thirty (30) days after the end of the month
2 in which the candidate's name has appeared on the ballot in any preferential
3 primary election, runoff election, general election, school election, or
4 special election, or when only one (1) candidate qualifies for a particular
5 office or position and no position or name of an unopposed candidate shall
6 appear on a ballot, file a final report of all contributions received and
7 expenditures made that have not been disclosed on reports previously required
8 to be filed. A final report is required regardless of whether a candidate has
9 received contributions or made expenditures in excess of five hundred dollars
10 (\$500);

11 ~~(3)~~(4) File supplemental reports of all contributions received
12 and expenditures made after the date of preparation of the final report. The
13 supplemental reports shall be filed within thirty (30) days after the receipt
14 of a contribution or the making of an expenditure; and

15 ~~(4)~~(A)(5)(A) No later than thirty (30) days after the end of the
16 month in which the candidate has withdrawn, file a final report of all
17 contributions received and expenditures made that have not been disclosed on
18 reports previously required to be filed.

19 (B) If a candidate withdraws from the campaign, the
20 candidate shall notify the county clerk in writing of the withdrawal; and

21 (6) If a candidate keeps remaining campaign funds after an
22 election, the candidate shall continue filing the reports required by this
23 subsection.

24
25 SECTION 11. Arkansas Code § 7-6-209(a), concerning reports of
26 contributions by candidates for county office and resulting from Initiated
27 Act 1 of 1990 and Initiated Act 1 of 1996, is amended to read as follows:

28 (a) Reports Required. Except as provided in subsection (d) of this
29 section, each candidate for county office or a person acting in the
30 candidate's behalf shall:

31 (1)(A) For each year in which a candidate is not listed on a
32 ballot for election, file an annual report of all contributions received and
33 expenditures made during that year.

34 (B) The annual report shall be filed no later than fifteen
35 (15) days after the end of the year;

36 (2) No later than seven (7) days prior to any preferential

1 primary election, runoff election, general election, or special election in
2 which the candidate's name appears on the ballot, file a preelection report
3 of all contributions received and expenditures made between the period
4 covered by the previous report, if any, and the period ten (10) days before
5 the election. In case of a runoff election, the report shall cover all
6 contributions received and expenditures made during that period of time that
7 begins after the date of the election from which the runoff arose and ends
8 ten (10) days before the runoff election;

9 ~~(2)~~(3) No later than thirty (30) days after the end of the month
10 in which the candidate's name has appeared on the ballot in any preferential
11 primary election, runoff election, general election, or special election, or
12 when only one (1) candidate qualifies for a particular office or position and
13 no position or name of an unopposed candidate shall appear on a ballot, file
14 a final report of all contributions received and expenditures made that have
15 not been disclosed on reports previously required to be filed. A final report
16 is required regardless of whether a candidate has received contributions or
17 made expenditures in excess of five hundred dollars (\$500);

18 ~~(3)~~(4) File supplemental reports of all contributions received
19 and expenditures made after the date of preparation of the final report, and
20 the supplemental reports shall be filed within thirty (30) days after the
21 receipt of a contribution or the making of an expenditure; and

22 ~~(4)~~(A)(5)(A) No later than thirty (30) days after the end of the month
23 in which the candidate has withdrawn, a final report of all contributions
24 received and expenditures made that have not been disclosed on reports
25 previously required to be filed.

26 (B) If a candidate withdraws from the campaign, the
27 candidate shall notify the county clerk in writing of the withdrawal; and

28 (6) If a candidate keeps remaining campaign funds after an
29 election, the candidate shall continue filing the reports required by this
30 subsection.

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32
33 /s/Evans

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35 APPROVED: 4/16/21

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

HOUSE BILL 1372

By: Representative Bryant

For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS LAW CONCERNING CAMPAIGN
FINANCE; TO AMEND ARKANSAS LAW CONCERNING CARRYOVER
FUNDS; TO ESTABLISH A MINIMUM AMOUNT OF CARRYOVER
FUNDS FOR AN OFFICE WITHOUT AN ANNUAL SALARY; AND FOR
OTHER PURPOSES.

Subtitle

TO AMEND ARKANSAS LAW CONCERNING CAMPAIGN
FINANCE; TO AMEND ARKANSAS LAW CONCERNING
CARRYOVER FUNDS; AND TO ESTABLISH A
MINIMUM AMOUNT OF CARRYOVER FUNDS FOR AN
OFFICE WITHOUT AN ANNUAL SALARY.

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

SECTION 1. Arkansas Code § 7-6-201(3), concerning the definition of
"carryover funds", is amended to add an additional subdivision to read as
follows:

(C) If the office sought does not have an annual salary, "carryover
funds" means an amount of three thousand dollars (\$3,000) or less;

APPROVED: 3/4/21



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

As Engrossed: H2/25/21

A Bill

SENATE BILL 183

5 By: Senator K. Ingram
6 By: Representative McCullough
7

For An Act To Be Entitled

8
9 AN ACT TO AMEND CAMPAIGN FINANCE LAW; TO CHANGE THE
10 USE OF CAMPAIGN FUNDS AND CARRYOVER FUNDS; TO
11 PROHIBIT THE USE OF CAMPAIGN FUNDS OR CARRYOVER FUNDS
12 TO PAY FOR AN ETHICS VIOLATION; TO AMEND PROVISIONS
13 OF LAW RESULTING FROM INITIATED ACT 1 OF 1990 AND
14 INITIATED ACT 1 OF 1996; AND FOR OTHER PURPOSES.
15
16

Subtitle

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18 TO AMEND CAMPAIGN FINANCE LAW; TO
19 PROHIBIT THE USE OF CAMPAIGN FUNDS OR
20 CARRYOVER FUNDS TO PAY FOR AN ETHICS
21 VIOLATION; AND TO AMEND PROVISIONS OF LAW
22 RESULTING FROM INITIATED ACT 1 OF 1990
23 AND INITIATED ACT 1 OF 1996.
24
25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

28 SECTION 1. Arkansas Code § 7-6-203(f)(4)(A), concerning campaign
29 finance limitations and use of campaign finance funds as personal income and
30 resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996, is
31 amended to add an additional subdivision to read as follows:

32 (iii) If a candidate or officeholder is assessed a
33 fine by the Arkansas Ethics Commission under § 7-6-218(b)(4)(B) for the use
34 of campaign funds or carryover funds as personal income, a candidate or
35 office holder shall not use campaign funds or carryover funds to pay the
36 fine.



SECTION 2. Arkansas Code § 7-6-203(g)(4), concerning campaign finance limitations and use of campaign funds as personal income and resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996, is amended to add an additional subdivision to read as follows:

(F) If a candidate or officeholder uses campaign funds or carryover funds to pay a fine imposed by the Arkansas Ethics Commission under § 7-6-218(b)(4)(B) for the use of campaign funds or carryover funds as personal income, the candidate or officeholder shall be deemed to have taken campaign funds as personal income.

/s/K. Ingram

APPROVED: 3/15/21

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

A Bill

SENATE BILL 699

5 By: Senator M. Johnson
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING CAMPAIGN FINANCE;
9 TO AMEND THE LAW CONCERNING MANDATORY ELECTRONIC
10 REPORT FILING; TO DECLARE AN EMERGENCY; AND FOR OTHER
11 PURPOSES.
12
13

Subtitle

15 TO AMEND THE LAW CONCERNING CAMPAIGN
16 FINANCE; TO AMEND THE LAW CONCERNING
17 MANDATORY ELECTRONIC REPORT FILING; AND
18 TO DECLARE AN EMERGENCY.
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 **SECTION 1.** Arkansas Code § 7-6-230(a), concerning the alternative to
24 electronic filing of reports, is amended to read as follows:

25 (a)(1) A candidate required to file carryover fund reports in
26 electronic form under § 7-6-203 and campaign contribution and expenditure
27 reports in electronic form under § 7-6-207 may file reports in paper form
28 under this section ~~if~~:

29 ~~(A) The candidate does not have access to the technology~~
30 ~~necessary to submit reports in electronic form; and~~

31 ~~(B) Submitting reports in electronic form would constitute~~
32 ~~a substantial hardship for the candidate.~~

33 (2)(A) A candidate filing reports in paper form under
34 subdivision (a)(1) of this section shall submit with his or her first paper
35 report in an election cycle a notarized affidavit on a form prepared by the
36 Secretary of State ~~declaring that~~:



1 ~~(i) The candidate does not have access to the~~
 2 ~~technology necessary to submit reports in electronic form;~~
 3 ~~(ii) Submitting reports in electronic form would~~
 4 ~~constitute a substantial hardship for the candidate; and~~
 5 ~~(iii) The candidate agrees to file all other reports~~
 6 ~~in paper form for the duration of the election cycle.~~

7 (B) The Secretary of State shall:

8 (i) Not accept a report in paper form under
 9 subdivision (a)(1) of this section if a notarized affidavit was not submitted
 10 with the first paper report in the election cycle;

11 (ii) Provide written notice to the candidate within
 12 five (5) business days if the report in paper form was not filed or accepted;
 13 and

14 (iii) Provide the reason the report in paper form
 15 was not filed or accepted.

16 (C) The Secretary of State shall develop electronic
 17 reporting forms, including without limitation:

18 (i) A cover sheet for a reporting period;

19 (ii) Campaign contribution reports; and

20 (iii) Campaign expenditure reports.

21 (D) The Secretary of State shall develop electronic
 22 reporting forms in a manner that allows a candidate to:

23 (i) Fill out an electronic form for each reporting
 24 period in an electronic word processing file, portable document format, or
 25 equivalent format that may be saved in a read-only format;

26 (ii) Upload the electronic reporting forms
 27 electronically by an upload to the internet or delivered by electronic media
 28 to the Secretary of State; and

29 (iii) Combine all electronic forms into a single
 30 document that is available to the public in an electronically searchable
 31 format.

32
 33 SECTION 2. DO NOT CODIFY. Duty of Secretary of State.

34 The Secretary of State shall:

35 (1) Develop criteria for an updated and simplified electronic
 36 campaign finance online reporting system by January 1, 2022; and

1 (2) Develop a timeline of the expected time to implement the
2 updated and simplified electronic campaign finance online reporting system.

3
4 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
5 General Assembly of the State of Arkansas that the online campaign finance
6 reporting forms and system of the Secretary of State result in inaccurate
7 reports; that transparency in campaign finance reporting is an important
8 function of preserving the public trust; that ensuring the accuracy and ease
9 of campaign finance reporting will ensure candidates are fully complying with
10 campaign finance laws; and that this act is immediately necessary because the
11 current electronic reporting system is difficult to use and creates
12 inconsistencies in the campaign finance reporting and damages the public
13 trust. Therefore, an emergency is declared to exist, and this act being
14 immediately necessary for the preservation of the public peace, health, and
15 safety shall become effective on:

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

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

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

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24 **APPROVED: 4/29/21**
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**VIII. COTTAGE FOOD
PRODUCTION OPERATIONS AS AN
EXEMPT FOOD SERVICE
ESTABLISHMENT**

Acts 306 and 1040 of 2021

State of Arkansas *As Engrossed: H2/9/21 S2/23/21*
93rd General Assembly **A Bill**
Regular Session, 2021

HOUSE BILL 1118

By: Representative Dotson
By: *Senator B. Davis*

For An Act To Be Entitled

AN ACT TO AMEND THE PROVISIONS APPLICABLE TO SALES BY
A COTTAGE FOOD PRODUCTION OPERATION; TO PROVIDE THAT
SALES BY A COTTAGE FOOD PRODUCTION OPERATION THROUGH
THE INTERNET ARE EXEMPT FROM THE DEFINITION OF "FOOD
SERVICE *ESTABLISHMENT*"; TO DECLARE AN EMERGENCY; AND
FOR OTHER PURPOSES.

Subtitle

TO PROVIDE THAT SALES BY A COTTAGE FOOD
PRODUCTION OPERATION THROUGH THE INTERNET
ARE EXEMPT FROM THE DEFINITION OF "FOOD
SERVICE *ESTABLISHMENT*"; AND TO DECLARE AN
EMERGENCY.

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

SECTION 1. Arkansas Code § 20-57-201(2)(B)(vi)(a), concerning the
exemptions from the definition of "food service establishment" for purposes
of the Department of Health, is amended to read as follows:

(vi)(a) A cottage food production operation,
on the condition that the cottage food production operation offers its
products directly to the consumer:

(1) From the site where the products are
produced;

(2) At a physical or online farmers'
market;



1 (3) At a county fair;
2 (4) At a special event; ~~or~~
3 (5)(A) At a pop-up shop within another
4 established business.

5 (B) As used in this subdivision
6 (2)(B)(vi)(a), "pop-up shop" means a cottage food production operation
7 selling items in an unaffiliated established business for a limited time
8 period with the consent of the owner of the unaffiliated established business
9 and the owner or employee of the cottage food production operation being
10 present at the point of sale; or

11 (6) Through the internet if the sale
12 from the cottage food production operation is directly to an end consumer
13 located in:

14 (A) This state; or
15 (B) Another state if the cottage
16 food production operation complies with all federal regulations regarding
17 food safety.

18
19 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
20 General Assembly of the State of Arkansas that cottage food producers
21 typically sell year-round from their homes, physical farmers' markets, and
22 online farmers' markets; that with growing season quickly approaching, a crop
23 or cottage food could be lost or destroyed if the effective date of this act
24 is delayed; that a delay in the effective date of this act could cause
25 significant economic hardship for cottage food producers; and that this act
26 is immediately necessary to ensure the maximum positive effect in the
27 community. Therefore, an emergency is declared to exist, and this act being
28 immediately necessary for the preservation of the public peace, health, and
29 safety shall become effective on:

30 (1) The date of its approval by the Governor;
31 (2) If the bill is neither approved nor vetoed by the Governor,
32 the expiration of the period of time during which the Governor may veto the
33 bill; or
34 (3) If the bill is vetoed by the Governor and the veto is
35 overridden, the date the last house overrides the veto.
36

/s/Dotson

APPROVED: 3/9/21

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State of Arkansas As Engrossed: S2/8/21 S3/3/21 S4/14/21 H4/21/21

93rd General Assembly

A Bill

Regular Session, 2021

SENATE BILL 248

By: Senators B. Davis, B. Ballinger

By: Representative Payton

For An Act To Be Entitled

AN ACT TO CREATE THE FOOD FREEDOM ACT; TO EXEMPT
CERTAIN PRODUCERS OF HOMEMADE FOOD OR DRINK PRODUCTS
FROM LICENSURE, CERTIFICATION, AND INSPECTION; AND
FOR OTHER PURPOSES.

Subtitle

TO CREATE THE FOOD FREEDOM ACT; AND TO
EXEMPT CERTAIN PRODUCERS OF HOMEMADE FOOD
OR DRINK PRODUCTS FROM LICENSURE,
CERTIFICATION, AND INSPECTION.

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

SECTION 1. Arkansas Code § 20-57-201(1) and (2), concerning the
definitions of "cottage food production operation" and "food service
establishment", are amended to read as follows:

~~(1) "Cottage food production operation" means a person who
produces food items in the person's home that are not potentially hazardous
foods, including without limitation:~~

~~(A) Bakery products;~~

~~(B) Candy;~~

~~(C) Fruit butter;~~

~~(D) Jams;~~

~~(E) Jellies;~~

~~(F) Chocolate covered fruit and berries that are not cut;~~

and



1 ~~(C) Similar products specified in rules adopted by the~~
2 ~~Department of Health;~~

3 ~~(2)(A)(i)(1)(A)(i)~~ "Food service establishment" means any place
4 where food is prepared, processed, stored, or intended for use or consumption
5 by the public regardless of whether there is a charge for the food.

6 (ii) "Food service establishment" includes wholesale
7 and retail food stores, convenience stores, food markets, delicatessens,
8 restaurants, food processing or manufacturing plants, bottling and canning
9 plants, wholesale and retail block and prepackaged ice manufacturing plants,
10 food caterers, and food warehouses.

11 (iii) "Food service establishment" does not include
12 supply vehicles or locations of vending machines.

13 (B) The following are also exempt:

14 (i) Group homes routinely serving ten (10) or fewer
15 persons;

16 (ii) Daycare centers routinely serving ten (10) or
17 fewer persons;

18 (iii) Potluck suppers, community picnics, or other
19 group gatherings where food is served but not sold;

20 (iv) A person at a farmers' market that offers for
21 sale only one (1) or more of the following:

22 (a) Fresh unprocessed fruits or vegetables;

23 (b) Maple syrup, sorghum, or honey that is
24 produced by a maple syrup or sorghum producer or beekeeper; or

25 (c) Commercially prepackaged food that is not
26 potentially hazardous, ~~on the condition that the food is contained in~~
27 ~~displays, the total space of which equals less than one hundred cubic feet~~
28 ~~(100 cu. ft.) on the premises where the person conducts business at the~~
29 ~~farmers' market; or~~

30 (d) Homemade food or drink products under the
31 Food Freedom Act, § 20-57-501 et seq.;

32 (v) A person who offers for sale at a roadside stand
33 only fresh fruits and fresh vegetables that are unprocessed or a homemade
34 food or drink product under the Food Freedom Act, § 20-57-501 et seq.;

35 ~~(vi)(a) A cottage food production operation, on the~~
36 ~~condition that the operation offers its products directly to the consumer;~~

1 ~~(1) From the site where the products are~~
2 ~~produced;~~
3 ~~(2) At a physical or online farmers'~~
4 ~~market;~~
5 ~~(3) At a county fair;~~
6 ~~(4) At a special event; or~~
7 ~~(5)(A) At a pop-up shop within another~~
8 ~~established business.~~

9 ~~(B) As used in this subdivision~~
10 ~~(2)(B)(vi)(a), "pop-up shop" means a cottage food production operation~~
11 ~~selling items in an unaffiliated established business for a limited time~~
12 ~~period with the consent of the owner of the unaffiliated established business~~
13 ~~and the owner or employee of the cottage food production operation being~~
14 ~~present at the point of sale.~~

15 ~~(b)(1) Upon request, each product offered~~
16 ~~under subdivision (2)(B)(vi)(a) of this section shall be made available to~~
17 ~~the department for sampling.~~

18 ~~(2) Each product shall be clearly~~
19 ~~labeled and shall make no nutritional claims.~~

20 ~~(3) The label required under subdivision~~
21 ~~(2)(B)(vi)(b)(2) of this section shall include the following:~~

22 ~~(A) The name and address of the~~
23 ~~business;~~

24 ~~(B) The name of the product;~~

25 ~~(C) The ingredients in the~~
26 ~~product; and~~

27 ~~(D) The following statement in 10-~~
28 ~~point type: "This Product is Home-Produced";~~

29 ~~(vii)(vi) A maple syrup and sorghum processor and~~
30 ~~beekeeper if the processor or beekeeper offers only maple syrup, sorghum, or~~
31 ~~honey directly to the consumer from the site where those products are~~
32 ~~processed or homemade food or drink products under the Food Freedom Act, §~~
33 ~~20-57-501 et seq., or both;~~

34 ~~(viii)(vii) A person who offers for sale only one~~
35 ~~(1) or more of the following foods at a festival or celebration, on the~~
36 ~~condition that the festival or celebration is organized by a political~~

1 subdivision of the state and lasts for a period not longer than seven (7)
2 consecutive days:

- 3 (a) Fresh unprocessed fruits or vegetables;
4 (b) Maple syrup, sorghum, or honey if produced
5 by a maple syrup or sorghum processor or beekeeper; ~~or~~
6 (c) Commercially prepackaged food that is not
7 potentially hazardous, ~~on the condition that the food is contained in~~
8 ~~displays, the total space of which equals less than one hundred cubic feet~~
9 ~~(100 cu. ft.); or~~

10 (d) Homemade food or drink products under the
11 Food Freedom Act, § 20-57-501 et seq.;

12 ~~(ix)~~(viii) A farm market that offers for sale at the
13 farm market only one (1) or more of the following:

- 14 (a) Fresh unprocessed fruits or vegetables;
15 (b) Maple syrup, sorghum, or honey that is
16 produced by a maple syrup or sorghum producer or beekeeper; ~~or~~
17 (c) Commercially prepackaged food that is not
18 potentially hazardous, ~~on the condition that the food is contained in~~
19 ~~displays, the total space of which equals less than one hundred cubic feet~~
20 ~~(100 cu. ft.) on the premises where the person conducts business at the farm~~
21 ~~market; or~~

22 (d) Homemade food or drink products under the
23 Food Freedom Act, § 20-57-501 et seq.;

24 ~~(x)~~(ix) An establishment that offers only
25 prepackaged foods that are not potentially hazardous as defined by the State
26 Board of Health; and

27 ~~(xi)~~(x) Ice vending machines or kiosks where ice is
28 dispensed in the open air and that are totally self-contained; and

29 (xi) A producer or informed end consumer engaged in
30 transactions under the Food Freedom Act, § 20-57-501 et seq.; and

31
32 SECTION 2. Arkansas Code § 20-57-209 is repealed.

33 ~~20-57-209. Pop-up shop inspections and restrictions.~~

34 ~~(a) The Department of Health may inspect a cottage food production~~
35 ~~operation that operates as a pop-up shop as defined in § 20-57-~~
36 ~~201(2)(B)(vi)(a)(5) within another established business.~~

~~(b) A cottage food production operation that operates as a pop-up shop shall not sell or offer for sale foods at wholesale distribution.~~

SECTION 3. Arkansas Code Title 20, Chapter 57, is amended to add an additional subchapter to read as follows:

Subchapter 5 – Food Freedom Act

20-57-501. Title.

This subchapter shall be known and may be cited as the "Food Freedom Act".

20-57-502. Purpose.

The purpose of this subchapter is to allow for a producer's production and sale of homemade food or drink products for an informed end consumer and to encourage the expansion of agricultural sales at farmers' markets, ranches, farms, and producers' homes or offices by:

(1) Facilitating the purchase and consumption of fresh and local agricultural products;

(2) Enhancing the agricultural economy; and

(3) Providing citizens of Arkansas with unimpeded access to healthy food and drink products from known sources.

20-57-503. Definitions.

As used in this subchapter:

(1)(A) "Delivery" means the transfer of a homemade food or drink product resulting from a transaction between a producer and an informed end consumer.

(B) "Delivery" includes the transfer of a homemade food or drink product to an informed end consumer by the producer or producer's designated agent at a farm, ranch, farmers' market, home, office, or any location permitted under this subchapter or agreed to between the producer and the informed end consumer;

(2) "Farmers' market" means a common facility or area where several vendors may gather on a regular, recurring basis to sell a variety of fresh fruits and vegetables, locally grown farm products, and other items permitted under this subchapter directly to consumers;

1 (3) "Homemade food or drink product" means a food or drink
2 product that is processed at the private residence of the producer, including
3 a farm or ranch where the producer resides, that is exempt from state
4 licensure, inspection, certification, and packaging and labeling
5 requirements, and that is non-time/temperature control for safety food;

6 (4) "Informed end consumer" means a person who:

7 (A) Is the last person to purchase any homemade food or
8 drink product;

9 (B) Does not resell the homemade food or drink product;
10 and

11 (C) Has been informed that the homemade food or drink
12 product:

13 (i) Is not regulated, inspected, certified, or
14 subject to state packaging or labeling requirements; and

15 (ii) Has not been processed in a facility that is
16 subject to state licensing, permitting, inspection, or regulation;

17 (5)(A) "Non-time/temperature control for safety food" means food
18 that does not require time or temperature control for safety to limit
19 pathogenic microorganism growth or toxin formation and as defined in the
20 rules of the Department of Health.

21 (B) "Non-time/temperature control for safety food"
22 includes without limitation pickled cucumbers and other acidified vegetables
23 that have an equilibrium pH of 4.6 or less if:

24 (i)(a) The recipe:

25 (1) Is from a source approved by the
26 department; or

27 (2) Has been tested by an appropriately
28 certified laboratory that confirmed the finished product has an equilibrium
29 pH value of 4.6 or less,

30 (b) If a recipe is not as described in
31 subdivision (5)(B)(i)(a), the producer shall test each batch of the recipe
32 with a calibrated pH meter to confirm the finished product has an equilibrium
33 pH value of 4.6 or less;

34 (ii) The batch is labelled with a unique number; and

35 (iii) The producer maintains records that include:

36 (a) The batch number;

- 1 (b) The recipe used by the producer;
2 (c) The source of the recipe or testing
3 results if applicable; and
4 (d) The date that the batch was prepared;
5 (6) "Process" means operations a producer performs in the
6 preparing, producing, or processing of the producer's homemade food or drink
7 products and includes cooking, baking, drying, mixing, cutting, fermenting,
8 preserving, dehydrating, growing, and raising;
9 (7) "Producer" means a person who processes homemade food or
10 drink products on the person's private residence;
11 (8)(A) "Time/temperature control for safety food" means food
12 that requires time or temperature control for safety to limit pathogenic
13 microorganism growth or toxin formation and as defined in the rules of the
14 department.
15 (B) "Time/temperature control for safety food" includes:
16 (i) An animal food that is raw or heat treated;
17 (ii) Food of plant origin that is heat treated or
18 consists of raw seed sprouts;
19 (iii) Cut leafy greens;
20 (iv) Cut tomatoes or mixtures of cut tomatoes; and
21 (v) Garlic-in-oil mixtures; and
22 (9) "Transaction" means the exchange of buying and selling in
23 person, by telephone or online, and the delivery of the homemade food or
24 drink product.
25
26 20-57-504. Food freedom.
27 (a) Unless otherwise provided in this section, homemade food or drink
28 products produced and sold in compliance with this subchapter are exempt from
29 state licensure, certification, inspection, and packaging and labeling
30 requirements.
31 (b) A transaction under this subchapter shall:
32 (1)(A) Be directly between the seller and the informed end
33 consumer.
34 (B) The seller of a homemade food or drink product may be
35 the producer of the homemade food or drink product, an agent of the producer,
36 or a third-party vendor, including a retail shop or grocery store;

1 (2) Occur in Arkansas or in another state if the seller complies
2 with all applicable federal laws;

3 (3) Not involve the sale of meat, poultry, seafood, or
4 time/temperature control for safety food products;

5 (4) Be delivered by the producer, agent of the producer, third-
6 party vendor, or third-party carrier to the informed end consumer; and

7 (5) Satisfy the disclosure requirements in § 20-57-505.

8
9 20-57-505. Disclosures.

10 (a) The following information shall be provided to the informed end
11 consumer as described in subsection (b) of this section:

12 (1) The date that the homemade food or drink product was
13 manufactured, produced, or processed;

14 (2) The name, address, and telephone number of the producer of
15 the homemade food or drink product, or an identification number provided by
16 the Department of Agriculture if requested by the producer to protect the
17 producer's safety;

18 (3) The common or usual name of the homemade food or drink
19 product;

20 (4) The ingredients of the homemade food or drink product in
21 descending order of predominance; and

22 (5) The following statement: "This product was produced in a
23 private residence that is exempt from state licensing and inspection. This
24 product may contain allergens."

25 (b) The information required under subsection (a) of this section
26 shall be provided on:

27 (1) A label affixed to the:

28 (A) Package if the homemade food or drink product is
29 packaged; or

30 (B) Container and a separate written document provided to
31 the informed end consumer upon sale if the homemade food or drink product is
32 offered for sale from a bulk container;

33 (2) A placard displayed at the point of sale if the homemade
34 food or drink product is not packaged or offered for sale from a bulk
35 container; or

36 (3) The website on which the homemade food or drink product is

1 offered for sale if the product is offered for sale online.

2
3 20-57-506. Exemption – Location sold.

4 (a) Except as provided in this subchapter, a homemade food or drink
5 product shall not be sold or used in any food service establishment.

6 (b) A homemade food or drink product may be sold:

7 (1) From a retail space located at the ranch, farm, home, or
8 office where the homemade food or drink product is produced; or

9 (2) At a retail location of a third-party vendor of the homemade
10 food or drink product.

11 (c) A seller who is operating in a retail space or location that also
12 sells food and drink made in a licensed food service establishment shall keep
13 homemade food or drink products separate from the items prepared or processed
14 in the licensed food service establishment.

15
16 20-57-507. Applicability – Preemption.

17 (a) This subchapter does not:

18 (1) Impede the Department of Health in any investigation of
19 food-borne illness;

20 (2) Change the requirements for brand inspection or animal
21 health inspections;

22 (3) Preclude an agency from providing assistance, consultation,
23 or inspection, at the request of the producer;

24 (4) Preclude the production or sale of food items otherwise
25 allowed by law, including without limitation incidental sales of milk that
26 has not been pasteurized under § 20-59-248;

27 (5) Change the regulation of other goods and services where
28 homemade food or drink products are also produced or sold;

29 (6) Exempt producers or sellers of homemade food or drink
30 products from any applicable:

31 (A) Tax law;

32 (B) Fishing or hunting law;

33 (C) Federal law, including any federal law prohibiting the
34 sale of certain food items in interstate commerce; or

35 (D) Another state's laws; or

36 (7) Conflict with the authority of the department to ensure food

1 is not adulterated or misbranded under the Food, Drug, and Cosmetic Act, §
2 20-56-201 et seq.

3 (b) This subchapter preempts county, municipal, and other political
4 subdivision jurisdictions from prohibiting and regulating the production and
5 sale of homemade food or drink products.

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8 /s/B. Ballinger

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11 APPROVED: 4/29/21
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IX. TWO ACTS, SAME PURPOSE, TECHNICAL CONFLICT?

Acts 404 and 894 of 2021

1 State of Arkansas

2 93rd General Assembly

3 Regular Session, 2021

A Bill

HOUSE BILL 1662

4
5 By: Representative Maddox

6 By: Senator B. Davis

For An Act To Be Entitled

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9 AN ACT TO AMEND THE FORMULA RATE REVIEW ACT; TO
10 DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

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14 TO AMEND THE FORMULA RATE REVIEW ACT; AND
15 TO DECLARE AN EMERGENCY.

16
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19
20 SECTION 1. Arkansas Code § 23-4-422 is amended to read as follows:

21 23-4-422. Cost allocation – Definition.

22 (a)(1) The Arkansas Public Service Commission shall establish and
23 regulate the rates and charges of a public utility under this subchapter and
24 shall allocate or assign costs among all classes of customers of the public
25 utility.

26 (2) In determining the rates for utility services and the cost
27 allocation among all of a public utility's classes of customers, the
28 commission shall:

29 (A) Consider the costs and expenses incurred by the public
30 utility in providing the utility services to customers in each class;

31 (B) Consider the economic impact of the proposed rates and
32 charges for utility services by giving equal consideration to each class of
33 customers; and

34 (C) Make findings that are based on substantial evidence.

35 (b) Notwithstanding the commission's authority to otherwise determine
36 and fix rates for all classes of customers, including allocating or assigning



1 costs and designing rates, if the commission finds that it will be beneficial
 2 to economic development or the promotion of employment opportunities, and
 3 that it will result in just and reasonable rates for all classes of
 4 customers, the commission shall determine rates and charges for utility
 5 services that:

6 (1) For the class of customers with the highest level of
 7 consumption per customer which has rates that include a demand component, and
 8 any successors to such class, as they existed on ~~January 1, 2015~~ January 1,
 9 2021, ensure that all costs and expenses related to demand and capacity are
 10 identified and allocated on a demand basis and recovered from customers in
 11 those classes through a demand rate component and not through a volumetric
 12 rate component unless the commission determines that the rates should be
 13 adjusted under subsections (e) and (f) of this section;

14 (2) For the retail jurisdiction rate classes, ensure that:

15 (A) All electric utility production plant, production-
 16 related costs, nonfuel production-related costs, purchased capacity costs,
 17 and any energy costs incurred resulting from the electric utility's
 18 environmental compliance are classified as production demand costs; and

19 (B)(i) Production demand costs are allocated to each
 20 customer class pursuant to the average and excess method shown in Table 4-10B
 21 on page 51 of the 1992 National Association of Regulatory Utility
 22 Commissioners Electric Utility Cost Allocation Manual, as it existed on
 23 ~~January 1, 2015~~ January 1, 2021, using the average of the four (4) monthly
 24 coincident peaks for the months of June, July, August, and September for each
 25 class for the coincident peak referenced in Table 4-10B of the manual 1992
 26 National Association of Regulatory Utility Commissioners Electric Utility
 27 Cost Allocation Manual, as it existed on ~~January 1, 2015~~ January 1, 2021, or
 28 any subsequent version of the manual National Association of Regulatory
 29 Utility Commissioners Electric Utility Cost Allocation Manual to the extent
 30 it produces an equivalent result.

31 (ii) Subdivision (b)(2)(B)(i) of this section does
 32 not prescribe an allocation for a wind production plant; and

33 (3)(A)(i) For purposes of allocation of natural gas distribution
 34 plant costs, including costs in distribution mains and related distribution
 35 plant expenses, among the state's retail jurisdiction rate classes, ensure
 36 that each natural gas public utility classifies all natural gas distribution

1 plant costs as customer-related or capacity-related.

2 (ii) For purposes of subdivision (b)(3)(A)(i) of
3 this section, the natural gas distribution plant costs shall include:

4 (a) Amounts charged to account numbers 374
5 through 387, as defined under the account numbering system in the Uniform
6 System of Accounts prescribed for natural gas public utilities by the rules
7 of the commission; and

8 (b) Related depreciation, return on
9 investment, property insurance and taxes, excluding state and federal income
10 taxes, and fixed operation and maintenance expense charged to account numbers
11 870 through 894, as defined under the account numbering system in the Uniform
12 System of Accounts prescribed for natural gas public utilities by the rules
13 of the commission, including all labor-related costs for the expenses
14 described in this subdivision (b)(3)(A).

15 (iii) To develop a cost allocation method under this
16 section for natural gas utilities, the commission shall use the Gas
17 Distribution Rate Design Manual, June 1989 edition, as prepared by the
18 National Association of Regulatory Utility Commissioners, as it existed on
19 ~~January 1, 2015~~ January 1, 2021, or any subsequent version of the ~~manual~~ Gas
20 Distribution Rate Design Manual, to the extent it produces an equivalent
21 result.

22 (B)(i) The customer-related natural gas distribution plant
23 costs shall be allocated to each customer class based on the number of
24 customers in each class.

25 (ii) The customer-related portion of natural gas
26 distribution plant costs related to account numbers 374 through 376, as
27 defined under the account numbering system in the Uniform System of Accounts
28 prescribed for natural gas public utilities by the rules of the commission,
29 shall be the percentage of the average cost of all mains that is represented
30 by the average cost of the minimum size main and computed using a cost
31 allocation method based upon the predominant size main that is installed by
32 the natural gas public utility that is at least two inches (2") in diameter,
33 with the investment costs of the predominant size mains set as the minimum
34 size.

35 (iii) The customer-related portion of natural gas
36 distribution costs related to account numbers 377 through 387, as defined

1 under the account numbering system in the Uniform System of Accounts
2 prescribed for natural gas public utilities by the rules of the commission,
3 shall be computed using a study that reflects the investments required to
4 meter, regulate, and connect each class of customers to the natural gas
5 utility's system.

6 (iv) Any remaining natural gas distribution plant
7 costs shall be classified as capacity-related costs.

8 (C)(i) Except for natural gas distribution plant costs
9 related to account numbers 380 through 385, as defined under the account
10 numbering system in the Uniform System of Accounts prescribed for natural gas
11 public utilities by the rules of the commission, the natural gas distribution
12 plant costs classified as capacity-related costs shall be allocated to the
13 customer classes based on the contribution to peak day demand that is made by
14 each customer class.

15 (ii) As used in subdivision (b)(3)(C)(i) of this
16 section, "peak day demand" means the computed quantity of gas that would be
17 supplied to each customer class calculated using the coldest day in a recent
18 thirty-year period for each gas utility.

19 (c) In an application for a general change or modification in a public
20 utility's rates and charges under this subchapter:

21 (1) A public utility may present evidence that demonstrates that
22 the implementation of rates under subsection (b) of this section will result
23 in rates that will be beneficial to economic development or the promotion of
24 employment opportunities and result in just and reasonable rates for all
25 classes of customers; and

26 (2) A public utility shall present evidence of whether or not
27 rate design in subdivision (b)(1) of this section results in an increase to
28 the base rate charges that are billed to customers in the affected class of
29 more than ten percent (10%) as compared to the then currently approved base
30 rate charges of the applicable rate schedules.

31 (d)(1) Unless the commission adjusts the rates under subsection (e) or
32 subsection (f) of this section, the commission shall by order establish and
33 design rates, allocate or assign costs to all classes of customers, and
34 regulate the rates for each class of customers of a public utility according
35 to this section except as limited under § 23-4-1205(c)(3)(B), § 23-4-1207(d)
36 and § 23-4-1208(a)(2)(B) and (C).

1 (2) For an electric utility whose class of customers with the
2 highest level of consumption per customer that has rates that include a
3 demand component, and any successors to such a class, as they existed on
4 January 1, 2021, has an annual usage for the class as a whole in excess of
5 seven million megawatt hours (7,000,000 MWh), and if the electric utility has
6 a formula rate review approved and in effect under § 23-4-1208(a)(1) on or
7 before March 15, 2021:

8 (A) The commission shall determine rates and charges for
9 utility services in accord with § 23-4-422(b)(1) and (2) without regard to
10 any findings described in § 23-4-422; and

11 (B) The commission shall not adjust the rates under
12 subsection (e) or subsection (f) of this section, except as provided in § 23-
13 4-1207(d) and § 23-4-1208(a)(2)(B) and (C).

14 (e) Pursuant to the commission's authority to otherwise determine and
15 fix rates for all classes of customers, including allocating or assigning
16 costs and designing rates, the commission may adjust rates under subdivisions
17 (b)(2) and (3) of this section if the commission finds:

18 (1) It is in the public interest;

19 (2) It is necessary to produce just and reasonable rates; or

20 (3) Implementation of rates under subdivisions (b)(2) and (3) of
21 this section will result in rates that are not beneficial to economic
22 development or the promotion of employment opportunities.

23 (f) If implementation of rates under subdivision (b)(1) of this
24 section will result in an increase in the base rate charges billed to
25 customers in the affected class of more than ten percent (10%) as compared to
26 the currently approved base rate charges of the applicable rate schedules,
27 the commission may adjust the rates to ensure that the greatest increase in
28 the base rate charges billed to customers in the affected class is ten
29 percent (10%) as compared to the then currently approved base rate charges of
30 the applicable rate schedules.

31 (g) If the commission makes any adjustment under subsections (e) and
32 (f) of this section, the commission shall provide in an order the rationale
33 for determining that rates under subsection (b) of this section may not be
34 just and reasonable and the rationale for determining that the rates adjusted
35 in the order of the commission are just and reasonable and in the public
36 interest. The commission shall make its findings based on substantial

1 evidence.

2 (h) An electric cooperative corporation established under the Electric
3 Cooperative Corporation Act, § 23-18-301 et seq., is not subject to this
4 section.

5 (i) Effective March 27, 2015, the cost allocation provisions of this
6 section shall apply to any pending application for a change in general rates
7 and charges.

8
9 **SECTION 2.** Arkansas Code § 23-4-1205(c)(3), concerning the procedure
10 for a rate change under the Formula Rate Review Act, is amended to read as
11 follows:

12 (3)(A) The rates that are approved in the application for a
13 general change in rates and charges shall remain in effect during the formula
14 rate review term under § 23-4-1208, subject to the rate adjustments under
15 this subchapter.

16 (B) As part of an extension of the initial five-year term
17 of a formula rate review under § 23-4-1207(d) and § 23-4-1208(a)(3), for an
18 electric utility if the electric utility's class of customers with the
19 highest level of consumption per customer that has rates that include a
20 demand component, any successors to such a class, as they existed on January
21 1, 2021, has an annual usage for the class as a whole in excess of seven
22 million megawatt hours (7,000,000 MWh), the commission shall approve changes
23 to the rate design within an individual customer class consistent with § 23-
24 4-422(b)(1).

25
26 **SECTION 3.** Arkansas Code § 23-4-1206 is amended to read as follows:
27 23-4-1206. Formula rate review – Required information.

28 (a) A formula rate review mechanism approved by the Arkansas Public
29 Service Commission shall specify the minimum information required with each
30 annual rate review filing.

31 (b) Annual formula rate review filings under an approved formula rate
32 review mechanism shall be developed using the formula rate review test period
33 designated by the public utility under § 23-4-1205(a)(2).

34 (c)(1) Annual formula rate review filings shall be prepared consistent
35 with the ~~commission's~~ Arkansas Public Service Commission's order on the
36 public utility's application for a general change in rates and charges.

1 (2) In the case of a formula rate review test period that uses a
 2 test period based on a projected year, an electing public utility may
 3 support, in its discretion, any portion of that projected data through the
 4 use of information that relies on historical averages.

5 (d) Any costs disallowed by the ~~commission~~ Arkansas Public Service
 6 Commission in its order on the public utility's application for a general
 7 change in rates and charges shall not be eligible for recovery under a
 8 formula rate review mechanism.

9 (e)(1) If a formula rate review test period utilizes projected data
 10 under § 23-4-406 or a projected year, rate changes under § 23-4-1207 shall
 11 include an adjustment to net any differences between the prior formula rate
 12 review test period change in revenue and the actual historical year change in
 13 revenue for that same year.

14 (2) A public utility shall report any differences between the
 15 prior formula rate review test period change in revenue and the historical
 16 year change in revenue for the same year.

17 (3) Netting shall not begin until a public utility has
 18 accumulated a full twelve (12) months of a historical year to prepare a
 19 report.

20 (4)(A) When calculating the adjustment to net any differences
 21 under subdivision (e)(1) of this section, the Arkansas Public Service
 22 Commission shall include the actual historical year change in revenue for a
 23 historical year, which shall be determined as follows:

24 (i) For the purpose of including all of the elements
 25 of the change of revenue in calculating an adjustment to net any differences
 26 under subdivision (e)(1) of this section, the Arkansas Public Service
 27 Commission shall ensure that the revenue received for the historical year
 28 shall be composed of:

29 (a) Prior formula rate review test period
 30 changes in revenue;

31 (b) Netting revenue from a prior formula rate
 32 review test period; and

33 (c) In order to isolate the change in revenue
 34 for the corresponding prior projected year being netted, prior projected year
 35 revenue for the year being netted; and

36 (ii) The Arkansas Public Service Commission shall

1 calculate an adjustment to net any differences under subdivision (e)(1) of
 2 this section by calculating the differences between the prior formula rate
 3 review test period changes in revenue and the prior projected year revenue
 4 for the year being netted.

5 (B) If the prior formula rate review test period change in
 6 revenue being netted was limited by § 23-4-1207(d)(2), the Arkansas Public
 7 Service Commission shall ensure that the revenue recovered shall be either:

8 (i) Applied first to any revenue amounts remaining
 9 from the prior approved formula rate review test periods specified in
 10 subdivision (e)(4)(A) of this section, second to the netting adjustment
 11 specified in subdivision (e)(4)(A) of this section, and last to the prior
 12 projected year revenue for the year being netted specified in subdivision
 13 (e)(4)(A) of this section; or

14 (ii) Proportioned by:

15 (a) Calculating the sum of:

16 (1) The revenue adjustment amount
 17 determined under § 23-4-1207(b); and

18 (2) The netting adjustment determined
 19 under subdivision (e)(2) of this section and this subdivision (e)(4);

20 (b) Calculating the percentage of the sum
 21 represented by:

22 (1) The revenue adjustment amount
 23 determined under § 23-4-1207(b); and

24 (2) The netting adjustment determined
 25 under subdivision (e)(2) of this section and this subdivision (e)(4); and

26 (c) Applying the percentages calculated in
 27 subdivision (e)(4)(B)(ii)(b) of this section to the actual historical year
 28 change in revenue for that same year.

29 (C)(i) For the initial term of a formula rate review
 30 mechanism approved and in effect on or before March 15, 2021, a public
 31 utility may choose to apply either subdivision (e)(4)(B)(i) or subdivision
 32 (e)(4)(B)(ii) of this section for the term of an approved formula rate review
 33 approved under § 23-4-1208(a)(1).

34 (ii) The Arkansas Public Service Commission shall
 35 authorize the public utility to use the chosen methodology.

36 (iii) Except as provided in subdivisions (e)(4)(D)

1 and (E) of this section, the authorized methodology shall remain in effect.

2 (D) During the final year of the initial five-year term of
 3 any formula rate review mechanism approved and in effect before March 15,
 4 2021, that uses a test period based upon a projected year, the public utility
 5 shall follow subdivision (e)(4)(B)(ii) of this section.

6 (E)(i) During any five-year extension term of a formula
 7 rate review mechanism that uses a test period based upon a projected year,
 8 the public utility shall propose, and the Arkansas Public Service Commission
 9 shall authorize, a public utility to follow subdivision (e)(4)(B)(ii) of this
 10 section for the five-year extension of the term of the formula rate review
 11 mechanism.

12 (ii) For any formula rate review mechanism that uses
 13 a test period based upon a projected year and has an initial term that
 14 commences after January 1, 2021, the public utility shall follow subdivision
 15 (e)(4)(B)(ii) of this section for the initial five-year term of the formula
 16 rate review mechanism.

17 (f) The public utility shall submit documentation fully supporting all
 18 calculations and adjustments as required by the rules of the ~~commission~~
 19 Arkansas Public Service Commission.

20 (g)(1) A Except as provided in subdivision (g)(2) of this section and
 21 § 23-4-1208(a)(4) and (5), a public utility or any other party to the
 22 proceeding subject to the ~~commission's~~ Arkansas Public Service Commission's
 23 rules and procedures may propose additional adjustments that are based on
 24 factors unique to the public utility.

25 (2) The Arkansas Public Service Commission shall not approve any
 26 adjustments or changes to the formula rate review filings that are
 27 inconsistent with the findings in the Arkansas Public Service Commission's
 28 order on the public utility's application for a general change in rates or
 29 charges, including:

30 (A) The rates that are approved in the application for a
 31 general change in rates and charges shall remain in effect during the formula
 32 rate review term consistent with § 23-4-1205(c)(3)(B); and

33 (B) The Arkansas Public Service Commission shall not
 34 approve any adjustments or changes to the formula rate review filings that
 35 are inconsistent with the findings in the Arkansas Public Service
 36 Commission's order on the public utility's application for a general change

1 in rates or charges, including:

2 (i) A review of all of the components of a public
3 utility's books and records, including the balance sheet and income statement
4 accounts as were included in the findings in the Arkansas Public Service
5 Commission's order on the public utility's application for a general change
6 in rates or charges, and shall continue to treat those items in a manner
7 consistent with the findings in the Arkansas Public Service Commission's
8 order on the public utility's most recent application for a general change in
9 rates or charges; and

10 (ii) The public utility has designated the public
11 utility's formula rate review test period as based on a projected year under
12 § 23-4-1205(a)(2) shall be allowed to recover its allowance for funds used
13 during construction and is determined according to the uniform system of
14 accounts adopted by the Arkansas Public Service Commission, and any
15 applicable accounting guidance issued by the Federal Energy Regulatory
16 Commission, and conforms with generally accepted accounting principles,
17 through rates.

18
19 SECTION 4. Arkansas Code § 23-4-1207(d), concerning the formula for
20 adjustments under the Formula Rate Review Act, is amended to read as follows:

21 (d)(1)(A) The total change in the formula rate review mechanism
22 revenue level shall be allocated to each applicable rate schedule based on an
23 equal percentage of the base rate revenue used in the development of rates in
24 the Arkansas Public Service Commission's order addressing the public
25 utility's last application for a general change in rates and charges.

26 (B) As part of an extension of the five-year term of a
27 formula rate review under § 23-4-1208(a)(3), for an electric utility if the
28 electric utility's class of customers with the highest level of consumption
29 per customer that has rates that include a demand component, and any
30 successors to such a class, as they existed on January 1, 2021, has an annual
31 usage for the class as a whole in excess of seven million megawatt hours
32 (7,000,000 MWh), the commission shall adjust the cost allocation, with
33 respect to the total change in the formula rate review mechanism revenue
34 level under subdivision (d)(1)(A) of this section, to each applicable rate
35 schedule consistent with § 23-4-422(b)(2) and § 23-4-422(d)(2) and using the
36 public utility's most recent cost of service that was submitted under the

1 terms of the public utility's formula rate review mechanism.

2 (C) The public utility shall file the resulting rate
3 schedules as part of any formula rate review compliance filing.

4 (2) The total amount of a revenue increase or decrease for each
5 rate class shall not exceed four percent (4%) of each rate class's total
6 revenue for the twelve (12) calendar months preceding the formula rate review
7 test period.

8
9 SECTION 5. Arkansas Code § 23-4-1208 is amended to read as follows:

10 23-4-1208. Term – Formula rate review.

11 (a)(1) The term of any formula rate review approved by the Arkansas
12 Public Service Commission shall not exceed five (5) years from the date of
13 the commission's final order on the application by the public utility for a
14 general change in rates and charges.

15 (2)(A)(i) Upon a determination that it is in the public
16 interest, a public utility may request and the commission may extend the term
17 of the formula rate review mechanism by a period of no more than five (5)
18 years beyond the initial term.

19 (ii) For an electric utility if the electric
20 utility's class of customers with the highest level of consumption per
21 customer that has rates that include a demand component, and any successors
22 to such a class, as they existed on January 1, 2021, has an annual usage for
23 the class as a whole in excess of seven million megawatt hours (7,000,000
24 MWh):

25 (a) An electric utility may request, and the
26 commission shall approve, an extension of the term of the formula rate review
27 mechanism by a period of five (5) years beyond the initial five-year term,
28 provided the request is made on or before March 15, 2021; and

29 (b) Any requests for an extension of the
30 initial term of a formula rate plan mechanism made after March 15, 2021,
31 shall be subject to subdivision (a)(2)(A)(i) of this section.

32 (B) As part of any extension of the initial term of a
33 formula rate review, for an electric utility if the electric utility's class
34 of customers with the highest level of consumption per customer that has
35 rates that include a demand component, and any successors to such a class, as
36 they existed on January 1, 2021, has an annual usage for the class as a whole

1 in excess of seven million megawatt hours (7,000,000 MWh), the commission
2 shall adjust the cost allocation of any adjustment with respect to the total
3 change in the formula rate review mechanism revenue level under § 23-4-
4 1207(d) to each applicable rate schedule consistent with § 23-4-422(b)(2) and
5 § 23-4-422(d)(2) using the public utility's most recent cost of service that
6 was submitted under the terms of the public utility's formula rate review
7 mechanism, and the public utility shall file with the commission the
8 resulting rate schedules as part of any formula rate review compliance
9 filing.

10 (C) As part of any extension of the initial term of a
11 formula rate review mechanism, for an electric utility if the electric
12 utility's class of customers with the highest level of consumption per
13 customer that has rates that include a demand component, and any successors
14 to such a class, as they existed on January 1, 2021, has an annual usage for
15 the class as a whole in excess of seven million megawatt hours (7,000,000
16 MWh), the commission shall approve changes to the rate design within an
17 individual customer class under § 23-4-1205(c)(3)(B) and subject to § 23-4-
18 422(b)(1) using the public utility's most recent cost of service that was
19 submitted under the terms of the public utility formula rate review
20 mechanism, and the public utility shall file with the commission the
21 resulting rate schedules as part of any formula rate review compliance
22 filing.

23 (3) During the five-year term of an extension of any formula
24 rate review mechanism with an initial five-year term approved before March
25 15, 2021, for an electric utility if the electric utility's class of
26 customers with the highest level of consumption per customer that has rates
27 that include a demand component, and any successors to such a class, as they
28 existed on January 1, 2021, has an annual usage for the class as a whole in
29 excess of seven million megawatt hours (7,000,000 MWh):

30 (A)(i) If the commission as part of its order in the
31 public utility's most recent application for a general change in rates and
32 charges under § 23-4-401 et seq. adjusted the cost allocation to each
33 applicable rate schedule under the then-applicable provisions of § 23-4-422,
34 then the commission shall:

35 (a) Use a public utility's most recent cost of
36 service that was submitted under the terms of the public utility's formula

1 rate review mechanism;

2 (b) Adjust the revenues recoverable from each
3 class of customers to implement the unadjusted cost allocation in an equal
4 annual adjustment over the five-year term of an extension; and

5 (c) This subdivision (a)(3)(A) shall be used
6 to adjust the amounts under § 23-4-1207(d)(1).

7 (ii) The commission shall not make any other
8 adjustments to the amounts under § 23-4-1207(d);

9 (B) For a public utility's class of customers with the
10 highest level of consumption per customer that has rates with a demand
11 component, any decrease in the costs allocated to that class of customers
12 under subdivision (a)(3)(A) of this section shall serve to lower the maximum
13 amount of the revenue increase for that class under § 23-4-1207(d)(2);

14 (C) For a public utility's classes of customers other than
15 the class of customers with the highest level of consumption per customer
16 that has rates with a demand component, any increase in the costs allocated
17 to those classes of customers as well as any amounts that lower the maximum
18 revenue increase for any class of customers under subdivision (a)(3)(B) of
19 this section shall be included in the adjustment of customer rates for those
20 classes of customers subject to § 23-4-1207(d)(2);

21 (D) For a public utility's nonresidential classes of
22 customers that have rates with a demand component other than the class of
23 customers with the highest level of consumption per customer that has rates
24 with a demand component, the public utility may establish and the commission
25 shall approve a maximum level of consumption or demand to be eligible for
26 service as part of those classes that is lower than the minimum level of
27 consumption or demand to be eligible for the class of customers with the
28 highest level of consumption per customer that has rates with a demand
29 component; and

30 (E) If the commission as part of its order in the public
31 utility's most recent application for a general change in rates and charges
32 under § 23-4-401 et seq. adjusted the rate design for the class of customers
33 with the highest level of consumption per customer that has rates with a
34 demand component under the then-applicable provisions of § 23-4-422, then:

35 (i) The commission shall approve changes to the rate
36 design within an individual customer class under § 23-4-1205(c)(3)(B) subject

1 to § 23-4-422(b)(1) using the utility's most recent cost of service that was
2 submitted under the terms of its formula rate review mechanism;

3 (ii) The commission shall modify the rate design
4 changes required under § 23-4-422(b)(1), § 23-4-1205(c)(3)(B), and this
5 subdivision (a)(3), as described in this subdivision (a)(3)(E); and

6 (iii) The commission shall adjust the rate design to
7 the class of customers with the highest level of consumption per customer,
8 which has rates with a demand component in an equal annual adjustment over
9 the first three (3) years of the five-year term of an extension, and the
10 public utility shall file the resulting rate schedules annually as part of
11 any formula rate review compliance filing until the adjustment in this
12 subdivision (a)(3)(E)(iii) is fully implemented.

13 (4) During the five-year term of an extension, for an electric
14 public utility with a formula rate review mechanism that uses a test period
15 based on a projected year with an initial five-year term and that was
16 approved and in effect by the commission before March 15, 2021, for an
17 electric utility if the electric utility's class of customers with the
18 highest level of consumption per customer that has rates that include a
19 demand component, and any successors to such a class, as they existed on
20 January 1, 2021, has an annual usage for the class as a whole in excess of
21 seven million megawatt hours (7,000,000 MWh):

22 (A) The debt-to-equity ratio, for the purpose of setting
23 rates, shall be fixed at a public utility's actual debt-to-equity ratio
24 reflected in the commission order issued on December 11, 2020, addressing the
25 annual formula rate review filing during the final year of the initial five-
26 year term;

27 (B) If the commission imputes a level of short-term debt
28 for ratemaking purposes, the amount, stated as a percentage, shall not exceed
29 the amount included in the capital structure reflected in the commission
30 order issued on December 11, 2020, addressing the annual formula rate review
31 filing during the final year of the initial five-year term;

32 (C) The target rate of return in effect during the initial
33 five-year term of the formula rate review mechanism shall continue to be in
34 effect for the five-year term of an extension;

35 (D) All other capital structure components, for the
36 purpose of setting rates as well as all other components of a public

1 utility's books and records, including the balance sheet and income statement
2 accounts, shall be determined consistent with § 23-4-1206(g); and

3 (E) If the commission imputes any amount for any
4 liabilities that are reflected in the capital structure for ratemaking
5 purposes, it shall not include any amount stated as a percentage that exceeds
6 the amount stated as a percentage included in the capital structure reflected
7 in the commission order issued on December 11, 2020, addressing the annual
8 formula rate review filing during the final year of the initial five-year
9 term.

10 (5) During the five-year term of an extension, for an electric
11 public utility with a formula rate review mechanism that uses a test period
12 based on a projected year with an initial five-year term and that was
13 approved and in effect by the commission before March 15, 2021, for an
14 electric utility if the electric utility's class of customers with the
15 highest level of consumption per customer that has rates that include a
16 demand component, and any successors to such a class, as they existed on
17 January 1, 2021, has an annual usage for the class as a whole in excess of
18 seven million megawatt hours (7,000,000 MWh), to the extent practicable, the
19 public utility shall do the following with respect to providing support for
20 its annual formula rate review evaluation reports during the five-year term
21 of the extension:

22 (A)(i) The public utility shall support the purpose for
23 and level of its projected year investments or expenses with those
24 projections based primarily upon historical averages and making specific
25 adjustments to those amounts instead of basing those projections primarily on
26 the public utility's corporate budget.

27 (ii) The public utility shall use its four-year
28 average historical plant balances for enumerated blanket funding projects
29 associated with capital investment that are mandated by law or regulation,
30 customer-driven, or necessary to maintain the reliability of the electric
31 grid as the baseline for the investments going forward, and to complete this,
32 the public utility may categorize investments according to the public
33 utility's primary objective, including mandated work, preapproved projects,
34 storm work, and reliability work instead of using the public utility's
35 corporate budget to determine the amount included in the projected year.

36 (iii) For any projects that fall outside the

1 recurring enumerated categories that are based on the historical averaging,
2 the public utility shall separately identify, to the extent practicable, each
3 project and support the project as a specific adjustment to the projected
4 year amounts, similar to the presentation of an adjustment made during an
5 application for a general change or modification in rates and charges, and to
6 complete this, the public utility may determine that projects should be
7 grouped together when the projects contain a combination of proposed
8 investments associated with both baseline reliability and load stability
9 projects, such as pole line and circuit inspection programs, and other
10 reliability efforts that the public utility plans to undertake in the
11 projected year;

12 (B) The public utility shall use the four-year historical
13 averages described in subdivision (a)(5)(A)(ii) of this section, except that:

14 (i) The public utility shall adjust the historical
15 averages upward or downward for specific capital projects and anticipated
16 cost increases or decreases that the utility reasonably expects are likely to
17 occur within the projected year and for which the utility provides additional
18 support consistent with other filing support thresholds that the commission
19 applied to the utility's formula rate review mechanism during its initial
20 five-year term; and

21 (ii) Expenses related to capital investments that
22 the utility has already explained shall not require separate support,
23 including depreciation and property taxes;

24 (C)(i) The support for the projected year, described in
25 subdivisions (a)(5)(A) and (B) of this section, shall be applied to the
26 transmission and generation functional areas to the extent deemed practicable
27 by the public utility.

28 (ii) If not practicable, the public utility shall
29 use reasonable efforts to establish a similar framework to present capital
30 investment;

31 (D) The public utility shall use reasonable efforts to
32 develop a similar methodology as described in subdivision (a)(4) of this
33 section and this subdivision (a)(5) for projected year expenses; and

34 (E) Not less than forty-five (45) days before the public
35 utility's annual evaluation report filing:

36 (i) The public utility shall make available to the

1 other eligible parties in the formula rate review proceeding information
2 regarding the public utility's construction projects and purchases that
3 closed to plant during the historical year; and

4 (ii) To the extent reasonably practicable, the
5 public utility shall provide an overview of its planned distribution projects
6 describing the public utility's projected year planned distribution
7 unadjusted investment and expenses.

8 (6) Subdivisions (a)(4) and (5) of this section are subject to
9 the applicable accounting and tax requirements, including the normalization
10 rules of the Internal Revenue Service as in effect on January 1, 2021, and
11 generally acceptable accounting principles.

12 ~~(3)(7)~~ The rate review mechanism shall continue until all
13 historical years have been netted under § 23-4-1206(e)(1) and rates have been
14 adjusted under § 23-4-1207(c).

15 (b)(1) A formula rate review shall continue until a final order is
16 issued on an application for a general change in rates and charges filed by a
17 public utility or an application for a change in general rates and charges
18 filed by the public utility as ordered by the commission. The rate review
19 mechanism shall continue until all historical years have been netted under §
20 23-4-1206(e)(1) and rates have been adjusted under § 23-4-1207(c).

21 (2)(A) A public utility may file an application for a change in
22 rates and charges under § 23-4-401 et seq. at any time during an extension of
23 the term of a formula rate review mechanism.

24 (B) If the public utility does not file an application for
25 a change in general rates and charges under § 23-4-401 et seq. under
26 subdivision (b)(2)(A) of this section before the final year of an extension
27 term, the public utility shall do so during the final year of the extension
28 of the term of a formula rate review mechanism.

29 (3) In any application for a change in general rates and charges
30 filed during or at the conclusion of the initial term or any extension of the
31 term of a formula rate review mechanism that uses a test period based upon a
32 projected year:

33 (A) A public utility's prior designation of a formula rate
34 review test period based upon a projected year under § 23-4-1205(a)(2) shall
35 not affect the public utility's right to designate a test period to justify
36 new rates under § 23-4-406;

1 (B) A public utility's formula rate review test period
2 based upon a projected year under § 23-4-1205(a)(2) may include, at the
3 public utility's discretion, all or part of the same historical periods or
4 projected periods as those included in a test period to justify new rates
5 under § 23-4-406; and

6 (C) An application described in this subdivision (b)(3)
7 shall not limit subdivision (b)(1) of this section.

8
9 SECTION 6. DO NOT CODIFY. Retroactivity. This act applies to any
10 formula rate review approved and in effect under the Formula Rate Review Act,
11 § 23-4-1201 et seq., on or before March 15, 2021.

12
13 SECTION 7. DO NOT CODIFY. Applicability. This act applies to any
14 formula rate review approved and in effect under the Formula Rate Review Act,
15 § 23-4-1201 et seq., on or before March 15, 2021.

16
17 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the
18 General Assembly of the State of Arkansas that investments by public
19 utilities that provide utility service in Arkansas are required to provide
20 reliable service at reasonable rates, but the costs that drive public utility
21 rates are changing; that public utilities need to have procedures that permit
22 the rates to change in response to those changing conditions that affect
23 costs and address the allocation of costs and design of rates; and that this
24 act is immediately necessary to maintain stable rates and to mitigate the
25 magnitude of future rate changes by public utilities by clarification of the
26 regulatory framework to ease the investment procedure for public utilities.
27 Therefore, an emergency is declared to exist, and this act being immediately
28 necessary for the preservation of the public peace, health, and safety shall
29 become effective on:

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

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

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

36 **APPROVED: 3/22/21**

State of Arkansas

As Engrossed: S3/9/21 S4/7/21

93rd General Assembly

A Bill

Regular Session, 2021

SENATE BILL 489

By: Senator B. Davis

By: Representative Maddox

For An Act To Be Entitled

AN ACT TO AMEND THE FORMULA RATE REVIEW ACT; TO
DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE FORMULA RATE REVIEW ACT; AND
TO DECLARE AN EMERGENCY.

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

SECTION 1. Arkansas Code § 23-4-422 is amended to read as follows:

23-4-422. Cost allocation — Definition.

(a)(1) The Arkansas Public Service Commission shall establish and regulate the rates and charges of a public utility under this subchapter and shall allocate or assign costs among all classes of customers of the public utility.

(2) In determining the rates for utility services and the cost allocation among all of a public utility's classes of customers, the commission shall:

(A) Consider the costs and expenses incurred by the public utility in providing the utility services to customers in each class;

(B) Consider the economic impact of the proposed rates and charges for utility services by giving equal consideration to each class of customers; and

(C) Make findings that are based on substantial evidence.

(b) Notwithstanding the commission's authority to otherwise determine and fix rates for all classes of customers, including allocating or assigning



1 costs and designing rates, if the commission finds that it will be beneficial
2 to economic development or the promotion of employment opportunities, and
3 that it will result in just and reasonable rates for all classes of
4 customers, the commission shall determine rates and charges for utility
5 services that:

6 (1) For the class of customers with the highest level of
7 consumption per customer which has rates that include a demand component, and
8 any successors to such class, as they existed on ~~January 1, 2015~~ January 1,
9 2021, ensure that all costs and expenses related to demand and capacity are
10 identified and allocated on a demand basis and recovered from customers in
11 those classes through a demand rate component and not through a volumetric
12 rate component unless the commission determines that the rates should be
13 adjusted under subsections (e) and (f) of this section;

14 (2) For the retail jurisdiction rate classes, ensure that:

15 (A) All electric utility production plant, production-
16 related costs, nonfuel production-related costs, purchased capacity costs,
17 and any energy costs incurred resulting from the electric utility's
18 environmental compliance are classified as production demand costs; and

19 (B)(i) Production demand costs are allocated to each
20 customer class pursuant to the average and excess method shown in Table 4-10B
21 on page 51 of the 1992 National Association of Regulatory Utility
22 Commissioners Electric Utility Cost Allocation Manual, as it existed on
23 ~~January 1, 2015~~ January 1, 2021, using the average of the four (4) monthly
24 coincident peaks for the months of June, July, August, and September for each
25 class for the coincident peak referenced in Table 4-10B of the ~~manual~~ 1992
26 National Association of Regulatory Utility Commissioners Electric Utility
27 Cost Allocation Manual, as it existed on ~~January 1, 2015~~ January 1, 2021, or
28 any subsequent version of the ~~manual~~ National Association of Regulatory
29 Utility Commissioners Electric Utility Cost Allocation Manual to the extent
30 it produces an equivalent result.

31 (ii) Subdivision (b)(2)(B)(i) of this section does
32 not prescribe an allocation for a wind production plant; and

33 (3)(A)(i) For purposes of allocation of natural gas distribution
34 plant costs, including costs in distribution mains and related distribution
35 plant expenses, among the state's retail jurisdiction rate classes, ensure
36 that each natural gas public utility classifies all natural gas distribution

1 plant costs as customer-related or capacity-related.

2 (ii) For purposes of subdivision (b)(3)(A)(i) of
3 this section, the natural gas distribution plant costs shall include:

4 (a) Amounts charged to account numbers 374
5 through 387, as defined under the account numbering system in the Uniform
6 System of Accounts prescribed for natural gas public utilities by the rules
7 of the commission; and

8 (b) Related depreciation, return on
9 investment, property insurance and taxes, excluding state and federal income
10 taxes, and fixed operation and maintenance expense charged to account numbers
11 870 through 894, as defined under the account numbering system in the Uniform
12 System of Accounts prescribed for natural gas public utilities by the rules
13 of the commission, including all labor-related costs for the expenses
14 described in this subdivision (b)(3)(A).

15 (iii) To develop a cost allocation method under this
16 section for natural gas utilities, the commission shall use the Gas
17 Distribution Rate Design Manual, June 1989 edition, as prepared by the
18 National Association of Regulatory Utility Commissioners, as it existed on
19 January 1, 2015 January 1, 2021, or any subsequent version of the manual Gas
20 Distribution Rate Design Manual, to the extent it produces an equivalent
21 result.

22 (B)(i) The customer-related natural gas distribution plant
23 costs shall be allocated to each customer class based on the number of
24 customers in each class.

25 (ii) The customer-related portion of natural gas
26 distribution plant costs related to account numbers 374 through 376, as
27 defined under the account numbering system in the Uniform System of Accounts
28 prescribed for natural gas public utilities by the rules of the commission,
29 shall be the percentage of the average cost of all mains that is represented
30 by the average cost of the minimum size main and computed using a cost
31 allocation method based upon the predominant size main that is installed by
32 the natural gas public utility that is at least two inches (2") in diameter,
33 with the investment costs of the predominant size mains set as the minimum
34 size.

35 (iii) The customer-related portion of natural gas
36 distribution costs related to account numbers 377 through 387, as defined

1 under the account numbering system in the Uniform System of Accounts
2 prescribed for natural gas public utilities by the rules of the commission,
3 shall be computed using a study that reflects the investments required to
4 meter, regulate, and connect each class of customers to the natural gas
5 utility's system.

6 (iv) Any remaining natural gas distribution plant
7 costs shall be classified as capacity-related costs.

8 (C)(i) Except for natural gas distribution plant costs
9 related to account numbers 380 through 385, as defined under the account
10 numbering system in the Uniform System of Accounts prescribed for natural gas
11 public utilities by the rules of the commission, the natural gas distribution
12 plant costs classified as capacity-related costs shall be allocated to the
13 customer classes based on the contribution to peak day demand that is made by
14 each customer class.

15 (ii) As used in subdivision (b)(3)(C)(i) of this
16 section, "peak day demand" means the computed quantity of gas that would be
17 supplied to each customer class calculated using the coldest day in a recent
18 thirty-year period for each gas utility.

19 (c) In an application for a general change or modification in a public
20 utility's rates and charges under this subchapter:

21 (1) A public utility may present evidence that demonstrates that
22 the implementation of rates under subsection (b) of this section will result
23 in rates that will be beneficial to economic development or the promotion of
24 employment opportunities and result in just and reasonable rates for all
25 classes of customers; and

26 (2) A public utility shall present evidence of whether or not
27 rate design in subdivision (b)(1) of this section results in an increase to
28 the base rate charges that are billed to customers in the affected class of
29 more than ten percent (10%) as compared to the then currently approved base
30 rate charges of the applicable rate schedules.

31 (d)(1) Unless the commission adjusts the rates under subsection (e) or
32 subsection (f) of this section, the commission shall by order establish and
33 design rates, allocate or assign costs to all classes of customers, and
34 regulate the rates for each class of customers of a public utility according
35 to this section except as limited under § 23-4-1205(c)(3)(B), § 23-4-1207(d),
36 and § 23-4-1208(a)(2)(B) and (C).

1 (2) For an electric utility whose class of customers with the
2 highest level of consumption per customer that has rates that include a
3 demand component, and any successors to such a class, as they existed on
4 January 1, 2021, has an annual usage for the class as a whole in excess of
5 five million megawatt hours (5,000,000 MWh), and if the electric utility has
6 a formula rate review approved and in effect under § 23-4-1208(a)(1) on or
7 before March 15, 2021:

8 (A) The commission shall determine rates and charges for
9 utility services in accord with § 23-4-422(b)(1) and (2) without regard to
10 any findings described in § 23-4-422; and

11 (B) The commission shall not adjust the rates under
12 subsection (e) or subsection (f) of this section, except as provided in § 23-
13 4-1207(d) and § 23-4-1208(a)(2)(B) and (C).

14 (e) Pursuant to the commission's authority to otherwise determine and
15 fix rates for all classes of customers, including allocating or assigning
16 costs and designing rates, the commission may adjust rates under subdivisions
17 (b)(2) and (3) of this section if the commission finds:

18 (1) It is in the public interest;

19 (2) It is necessary to produce just and reasonable rates; or

20 (3) Implementation of rates under subdivisions (b)(2) and (3) of
21 this section will result in rates that are not beneficial to economic
22 development or the promotion of employment opportunities.

23 (f) If implementation of rates under subdivision (b)(1) of this
24 section will result in an increase in the base rate charges billed to
25 customers in the affected class of more than ten percent (10%) as compared to
26 the currently approved base rate charges of the applicable rate schedules,
27 the commission may adjust the rates to ensure that the greatest increase in
28 the base rate charges billed to customers in the affected class is ten
29 percent (10%) as compared to the then currently approved base rate charges of
30 the applicable rate schedules.

31 (g) If the commission makes any adjustment under subsections (e) and
32 (f) of this section, the commission shall provide in an order the rationale
33 for determining that rates under subsection (b) of this section may not be
34 just and reasonable and the rationale for determining that the rates adjusted
35 in the order of the commission are just and reasonable and in the public
36 interest. The commission shall make its findings based on substantial

1 evidence.

2 (h) An electric cooperative corporation established under the Electric
3 Cooperative Corporation Act, § 23-18-301 et seq., is not subject to this
4 section.

5 (i) Effective March 27, 2015, the cost allocation provisions of this
6 section shall apply to any pending application for a change in general rates
7 and charges.

8
9 **SECTION 2. Arkansas Code § 23-4-1205(c)**, concerning the procedure for
10 a rate change under the Formula Rate Review Act, is amended to read as
11 follows:

12 (c)(1)(A) A An electric or natural gas public utility that has filed a
13 notice of intent or has an application for a general change in rates and
14 charges pending under § 23-4-401 et seq. that contains a notice of election
15 to be regulated under a formula rate review effective March 27, 2015, shall
16 be regulated under this subchapter.

17 (B)(i) A water or sewer public utility that has filed a
18 notice of intent or has an application for a general change in rates and
19 charges pending under § 23-4-401 et seq. that contains a notice of election
20 to be regulated under a formula rate review effective March 27, 2015, may
21 request that the water or sewer public utility be regulated under this
22 subchapter.

23 (ii) Upon a public interest determination, the
24 commission may authorize the water or sewer public utility's request under
25 subdivision (c)(1)(B)(i) of this section to be regulated under this
26 subchapter.

27 (2)(A) A public utility shall not file for an initial formula
28 rate review until at least one hundred eighty (180) days after rates have
29 become effective pursuant to the final order on the application for a general
30 change in rates.

31 (B) A public utility that has filed a notice of intent or
32 has an application for a general change in rates and charges pending under §
33 23-4-401 et seq. that contains a notice of election to be regulated under a
34 formula rate review effective March 27, 2015, may file for the initial
35 formula rate review one hundred fifty (150) days after rates have become
36 effective pursuant to the final order in the general rate case.

1 (3)(A) The rates that are approved in the application for a
2 general change in rates and charges shall remain in effect during the formula
3 rate review term under § 23-4-1208, subject to the rate adjustments under
4 this subchapter.

5 (B) As part of an extension of the initial five-year term
6 of a formula rate review under § 23-4-1207(d) and § 23-4-1208(a)(3), for an
7 electric utility if the electric utility's class of customers with the
8 highest level of consumption per customer that has rates that include a
9 demand component, any successors to such a class, as they existed on January
10 1, 2021, has an annual usage for the class as a whole in excess of five
11 million megawatt hours (5,000,000 MWh), the commission shall, and for all
12 other utilities the commission may approve changes to the rate design within
13 an individual customer class consistent with § 23-4-422(b)(1).

14
15 SECTION 3. Arkansas Code § 23-4-1206 is amended to read as follows:

16 23-4-1206. Formula rate review – Required information.

17 (a) A formula rate review mechanism approved by the Arkansas Public
18 Service Commission shall specify the minimum information required with each
19 annual rate review filing.

20 (b) Annual formula rate review filings under an approved formula rate
21 review mechanism shall be developed using the formula rate review test period
22 designated by the public utility under § 23-4-1205(a)(2).

23 (c)(1) Annual formula rate review filings shall be prepared consistent
24 with the ~~commission's~~ Arkansas Public Service Commission's order on the
25 public utility's application for a general change in rates and charges.

26 (2) In the case of a formula rate review test period that uses a
27 test period based on a projected year, an electing public utility may support
28 any portion of the electing public utility's projected data through the use
29 of information that relies on historical averages.

30 (d) Any costs disallowed by the ~~commission~~ Arkansas Public Service
31 Commission in its order on the public utility's application for a general
32 change in rates and charges shall not be eligible for recovery under a
33 formula rate review mechanism.

34 (e)(1) If a formula rate review test period utilizes projected data
35 under § 23-4-406 or a projected year, rate changes under § 23-4-1207 shall
36 include an adjustment to net any differences between the prior formula rate

1 review test period change in revenue and the actual historical year change in
2 revenue for that same year.

3 (2) A public utility shall report any differences between the
4 prior formula rate review test period change in revenue and the historical
5 year change in revenue for the same year.

6 (3) Netting shall not begin until a public utility has
7 accumulated a full twelve (12) months of a historical year to prepare a
8 report.

9 (4)(A) When calculating the adjustment to net any differences
10 under subdivision (e)(1) of this section, the Arkansas Public Service
11 Commission shall include the actual historical year change in revenue for a
12 historical year, which shall be determined as follows:

13 (i) For the purpose of including all of the elements
14 of the change of revenue in calculating an adjustment to net any differences
15 under subdivision (e)(1) of this section, the Arkansas Public Service
16 Commission shall ensure that the revenue received for the historical year
17 shall be composed of:

18 (a) Prior formula rate review test period
19 changes in revenue;

20 (b) Netting revenue from a prior formula rate
21 review test period; and

22 (c) In order to isolate the change in revenue
23 for the corresponding prior projected year being netted, prior projected year
24 revenue for the year being netted; and

25 (ii) The Arkansas Public Service Commission shall
26 calculate an adjustment to net any differences under subdivision (e)(1) of
27 this section by calculating the differences between the prior formula rate
28 review test period changes in revenue and the prior projected year revenue
29 for the year being netted.

30 (B) If the prior formula rate review test period change in
31 revenue being netted was limited by § 23-4-1207(d)(2), the Arkansas Public
32 Service Commission shall ensure that the revenue recovered shall be either:

33 (i) Applied first to any revenue amounts remaining
34 from the prior approved formula rate review test periods specified in
35 subdivision (e)(4)(A) of this section, second to the netting adjustment
36 specified in subdivision (e)(4)(A) of this section, and last to the prior

1 projected year revenue for the year being netted specified in subdivision
2 (e)(4)(A) of this section; or

3 (ii) Proportioned by:

4 (a) Calculating the sum of:

5 (1) The revenue adjustment amount
6 determined under § 23-4-1207(b); and

7 (2) The netting adjustment determined
8 under subdivision (e)(2) of this section and this subdivision (e)(4);

9 (b) Calculating the percentage of the sum
10 represented by:

11 (1) The revenue adjustment amount
12 determined under § 23-4-1207(b); and

13 (2) The netting adjustment determined
14 under subdivision (e)(2) of this section and this subdivision (e)(4); and

15 (c) Applying the percentages calculated in
16 subdivision (e)(4)(B)(ii)(b) of this section to the actual historical year
17 change in revenue for that same year.

18 (C)(i) For the initial term of a formula rate review
19 mechanism approved and in effect on or before March 15, 2021, a public
20 utility may choose to apply either subdivision (e)(4)(B)(i) or subdivision
21 (e)(4)(B)(ii) of this section for the term of an approved formula rate review
22 approved under § 23-4-1208(a)(1).

23 (ii) The Arkansas Public Service Commission shall
24 authorize the public utility to use the chosen methodology.

25 (iii) Except as provided in subdivisions (e)(4)(D)
26 and (E) of this section, the authorized methodology shall remain in effect.

27 (D) During the final year of the initial five-year term of
28 any formula rate review mechanism approved and in effect before March 15,
29 2021, that uses a test period based upon a projected year, the public utility
30 shall follow subdivision (e)(4)(B)(ii) of this section.

31 (E)(i) During any five-year extension term of a formula
32 rate review mechanism that uses a test period based upon a projected year,
33 the public utility shall propose, and the Arkansas Public Service Commission
34 shall authorize, a public utility to follow subdivision (e)(4)(B)(ii) of this
35 section for the five-year extension of the term of the formula rate review
36 mechanism.

1 (ii) For any formula rate review mechanism that uses
2 a test period based upon a projected year and has an initial term that
3 commences after January 1, 2021, the public utility shall follow subdivision
4 (e)(4)(B)(ii) of this section for the initial five-year term of the formula
5 rate review mechanism.

6 (f) The public utility shall submit documentation fully supporting all
7 calculations and adjustments as required by the rules of the ~~commission~~
8 Arkansas Public Service Commission.

9 (g)(1) A Except as provided in subdivision (g)(4) of this section and
10 § 23-4-1208(a)(2)(A)(ii) and (5), a public utility or any other party to the
11 proceeding subject to the ~~commission's~~ Arkansas Public Service Commission's
12 rules and procedures may propose additional adjustments that are based on
13 factors unique to the public utility.

14 (2) The Arkansas Public Service Commission shall not make any
15 adjustments to the rates that are approved in the application for a general
16 change in rates and charges during the formula rate review term except for
17 those made under § 23-4-1205(c)(3)(B).

18 (3) If a public utility has designated its formula rate review
19 test period as based on a projected year under § 23-4-1205(a)(2), the public
20 utility shall be allowed to recover its allowance for funds used during
21 construction that is determined according to the uniform system of accounts
22 adopted by the Arkansas Public Service Commission and any applicable
23 accounting guidance issued by the Federal Energy Regulatory Commission and
24 conforms with generally accepted accounting principles, through rates
25 developed using a projected year.

26 (4) Unless the Arkansas Public Service Commission finds that it
27 is in the public interest and makes specific findings in support, the
28 Arkansas Public Service Commission shall not approve any adjustments or
29 changes to the formula rate review filings that are inconsistent with the
30 findings in the Arkansas Public Service Commission's order on the public
31 utility's application for a general change in rates or charges, including a
32 review of all of the components of a public utility's books and records,
33 including the balance sheet and income statement accounts as were included in
34 the findings in the Arkansas Public Service Commission's order on the public
35 utility's application for a general change in rates or charges, and shall
36 continue to treat those items in a manner consistent with the findings in the

1 Arkansas Public Service Commission's order on the public utility's most
2 recent application for a general change in rates or charges, except that an
3 adjustment shall not be approved under this subsection that is inconsistent
4 with other provisions of this chapter.

5
6 SECTION 4. Arkansas Code § 23-4-1207(d), concerning the formula for
7 adjustments under the Formula Rate Review Act, is amended to read as follows:

8 (d)(1)(A) The total change in the formula rate review mechanism
9 revenue level shall be allocated to each applicable rate schedule based on an
10 equal percentage of the base rate revenue used in the development of rates in
11 the Arkansas Public Service Commission's order addressing the public
12 utility's last application for a general change in rates and charges.

13 (B) As part of an extension of the five-year term of a
14 formula rate review under § 23-4-1208(a)(3), for an electric utility if the
15 electric utility's class of customers with the highest level of consumption
16 per customer that has rates that include a demand component, and any
17 successors to such a class, as they existed on January 1, 2021, has an annual
18 usage for the class as a whole in excess of five million megawatt hours
19 (5,000,000 MWh), the commission shall, and for all other utilities the
20 commission may, adjust the cost allocation, with respect to the total change
21 in the formula rate review mechanism revenue level under subdivision
22 (d)(1)(A) of this section, to each applicable rate schedule consistent with §
23 23-4-422(b)(2) and § 23-4-422(d)(2) and using the public utility's most
24 recent cost of service that was submitted under the terms of the public
25 utility's formula rate review mechanism.

26 (C) The public utility shall file the resulting rate
27 schedules as part of any formula rate review compliance filing.

28 (2) The total amount of a revenue increase or decrease for each
29 rate class shall not exceed four percent (4%) of each rate class's total
30 revenue for the twelve (12) calendar months preceding the formula rate review
31 test period.

32
33 SECTION 5. Arkansas Code § 23-4-1208 is amended to read as follows:

34 23-4-1208. Term – Formula rate review.

35 (a)(1) The term of any formula rate review approved by the Arkansas
36 Public Service Commission shall not exceed five (5) years from the date of

1 the commission's final order on the application by the public utility for a
2 general change in rates and charges.

3 (2)(A)(i) Upon a determination that it is in the public
4 interest, a public utility may request and the commission may extend the term
5 of the formula rate review mechanism by a period of no more than five (5)
6 years beyond the initial term.

7 (ii) Except as provided in subdivision
8 (a)(2)(A)(iii) of this section, as part of granting any extension of the
9 initial term of a formula rate mechanism, the public utility may propose and
10 the commission may make the following adjustments, consistent with this
11 subchapter and other applicable statutory provisions for a public utility or
12 any other party to a proceeding subject to the commission's jurisdiction that
13 may be proposed, and the commission may approve:

14 (a) Reasonable and necessary revisions to the
15 formula rate plan mechanism proposed by the parties that are necessary to
16 ensure that the mechanism is consistent with the public interest but that do
17 not materially change the provisions of the formula rate plan mechanism; and

18 (b) An increase or decrease to the utility's
19 authorized return on equity by no more than ten (10) basis points based upon
20 consideration of § 23-4-410(c)-(e), including making any required findings.

21 (iii) For an electric utility if the electric
22 utility's class of customers with the highest level of consumption per
23 customer that has rates that include a demand component, and any successors
24 to such a class, as they existed on January 1, 2021, has an annual usage for
25 the class as a whole in excess of five million megawatt hours (5,000,000
26 MWh):

27 (a) An electric utility may request, and the
28 commission shall approve, an extension of the term of the formula rate review
29 mechanism by a period of five (5) years beyond the initial five-year term,
30 provided the request is made on or before March 15, 2021; and

31 (b) Any requests for an extension of the
32 initial term of a formula rate plan mechanism made after March 15, 2021,
33 shall be subject to subdivision (a)(2)(A)(i) of this section.

34 (B) As part of any extension of the initial term of a
35 formula rate review, for an electric utility if the electric utility's class
36 of customers with the highest level of consumption per customer that has

1 rates that include a demand component, and any successors to such a class, as
2 they existed on January 1, 2021, has an annual usage for the class as a whole
3 in excess of five million megawatt hours (5,000,000 MWh), the commission
4 shall adjust the cost allocation of any adjustment with respect to the total
5 change in the formula rate review mechanism revenue level under § 23-4-
6 1207(d) to each applicable rate schedule consistent with § 23-4-422(b)(2) and
7 § 23-4-422(d)(2) using the public utility's most recent cost of service that
8 was submitted under the terms of the public utility's formula rate review
9 mechanism, and the public utility shall file with the commission the
10 resulting rate schedules as part of any formula rate review compliance
11 filing.

12 (C) As part of any extension of the initial term of a
13 formula rate review mechanism, for an electric utility if the electric
14 utility's class of customers with the highest level of consumption per
15 customer that has rates that include a demand component, and any successors
16 to such a class, as they existed on January 1, 2021, has an annual usage for
17 the class as a whole in excess of five million megawatt hours (5,000,000
18 MWh), the commission shall approve changes to the rate design within an
19 individual customer class under § 23-4-1205(c)(3)(B) and subject to § 23-4-
20 422(b)(1) using the public utility's most recent cost of service that was
21 submitted under the terms of the public utility formula rate review
22 mechanism, and the public utility shall file with the commission the
23 resulting rate schedules as part of any formula rate review compliance
24 filing.

25 (3) During the five-year term of an extension of any formula
26 rate review mechanism with an initial five-year term approved before March
27 15, 2021, for an electric utility if the electric utility's class of
28 customers with the highest level of consumption per customer that has rates
29 that include a demand component, and any successors to such a class, as they
30 existed on January 1, 2021, has an annual usage for the class as a whole in
31 excess of five million megawatt hours (5,000,000 MWh):

32 (A)(i) If the commission as part of its order in the
33 public utility's most recent application for a general change in rates and
34 charges under § 23-4-401 et seq. adjusted the cost allocation to each
35 applicable rate schedule under the then-applicable provisions of § 23-4-422,
36 then the commission shall:

1 (a) Use a public utility's most recent cost of
2 service that was submitted under the terms of the public utility's formula
3 rate review mechanism;

4 (b) Adjust the revenues recoverable from each
5 class of customers to implement the unadjusted cost allocation in an equal
6 annual adjustment over the five-year term of an extension; and

7 (c) This subdivision (a)(3)(A) shall be used
8 to adjust the amounts under § 23-4-1207(d)(1).

9 (ii) The commission shall not make any other
10 adjustments to the amounts under § 23-4-1207(d);

11 (B) For a public utility's class of customers with the
12 highest level of consumption per customer that has rates with a demand
13 component, any decrease in the costs allocated to that class of customers
14 under subdivision (a)(3)(A) of this section shall serve to lower the maximum
15 amount of the revenue increase for that class under § 23-4-1207(d)(2);

16 (C) For a public utility's classes of customers other than
17 the class of customers with the highest level of consumption per customer
18 that has rates with a demand component, any increase in the costs allocated
19 to those classes of customers as well as any amounts that lower the maximum
20 revenue increase for any class of customers under subdivision (a)(3)(B) of
21 this section shall be included in the adjustment of customer rates for those
22 classes of customers subject to § 23-4-1207(d)(2);

23 (D) For a public utility's nonresidential classes of
24 customers that have rates with a demand component other than the class of
25 customers with the highest level of consumption per customer that has rates
26 with a demand component, the public utility may establish and the commission
27 shall approve a maximum level of consumption or demand to be eligible for
28 service as part of those classes that is lower than the minimum level of
29 consumption or demand to be eligible for the class of customers with the
30 highest level of consumption per customer that has rates with a demand
31 component; and

32 (E) If the commission as part of its order in the public
33 utility's most recent application for a general change in rates and charges
34 under § 23-4-401 et seq. adjusted the rate design for the class of customers
35 with the highest level of consumption per customer that has rates with a
36 demand component under the then-applicable provisions of § 23-4-422, then:

1 (i) The commission shall approve changes to the rate
2 design within an individual customer class under § 23-4-1205(c)(3)(B) subject
3 to § 23-4-422(b)(1) using the utility's most recent cost of service that was
4 submitted under the terms of its formula rate review mechanism;

5 (ii) The commission shall modify the rate design
6 changes required under § 23-4-422(b)(1), § 23-4-1205(c)(3)(B), and this
7 subdivision (a)(3), as described in this subdivision (a)(3)(E); and

8 (iii) The commission shall adjust the rate design to
9 the class of customers with the highest level of consumption per customer,
10 which has rates with a demand component in an equal annual adjustment over
11 the first three (3) years of the five-year term of an extension, and the
12 public utility shall file the resulting rate schedules annually as part of
13 any formula rate review compliance filing until the adjustment in this
14 subdivision (a)(3)(E)(iii) is fully implemented.

15 (4) During the five-year term of an extension, for an electric
16 public utility with a formula rate review mechanism that uses a test period
17 based on a projected year with an initial five-year term and that was
18 approved and in effect by the commission before March 15, 2021, for an
19 electric utility if the electric utility's class of customers with the
20 highest level of consumption per customer that has rates that include a
21 demand component, and any successors to such a class, as they existed on
22 January 1, 2021, has an annual usage for the class as a whole in excess of
23 five million megawatt hours (5,000,000 MWh):

24 (A) The debt-to-equity ratio, for the purpose of setting
25 rates, shall be fixed at a public utility's actual debt-to-equity ratio
26 reflected in the commission order issued on December 11, 2020, addressing the
27 annual formula rate review filing during the final year of the initial five-
28 year term;

29 (B) If the commission imputes a level of short-term debt
30 for ratemaking purposes, the amount, stated as a percentage, shall not exceed
31 the amount included in the capital structure reflected in the commission
32 order issued on December 11, 2020, addressing the annual formula rate review
33 filing during the final year of the initial five-year term;

34 ((C) The target return rate in effect during the five-year
35 term of the formula rate review mechanism shall be set equal to an amount
36 that is ten (10) basis points lower than the target return rate in effect

1 during the initial five-year term of the formula rate review mechanism;

2 (D) All other capital structure components, for the
3 purpose of setting rates as well as all other components of a public
4 utility's books and records, including the balance sheet and income statement
5 accounts, shall be determined consistent with § 23-4-1206(g); and

6 (E) If the commission imputes any amount for any
7 liabilities that are reflected in the capital structure for ratemaking
8 purposes, it shall not include any amount stated as a percentage that exceeds
9 the amount stated as a percentage included in the capital structure reflected
10 in the commission order issued on December 11, 2020, addressing the annual
11 formula rate review filing during the final year of the initial five-year
12 term.

13 (5) During the five-year term of an extension, for an electric
14 public utility with a formula rate review mechanism that uses a test period
15 based on a projected year with an initial five-year term and that was
16 approved and in effect by the commission before March 15, 2021, for an
17 electric utility if the electric utility's class of customers with the
18 highest level of consumption per customer that has rates that include a
19 demand component, and any successors to such a class, as they existed on
20 January 1, 2021, has an annual usage for the class as a whole in excess of
21 five million megawatt hours (5,000,000 MWh), to the extent practicable, the
22 public utility shall do the following with respect to providing support for
23 its annual formula rate review evaluation reports during the five-year term
24 of the extension:

25 (A)(i) The public utility shall support the purpose for
26 and level of its projected year investments or expenses with those
27 projections based primarily upon historical averages and making specific
28 adjustments to those amounts instead of basing those projections primarily on
29 the public utility's corporate budget.

30 (ii) The public utility shall use its four-year
31 average historical plant balances for enumerated blanket funding projects
32 associated with capital investment that are mandated by law or regulation,
33 customer-driven, or necessary to maintain the reliability of the electric
34 grid as the baseline for the investments going forward, and to complete this,
35 the public utility may categorize investments according to the public
36 utility's primary objective, including mandated work, preapproved projects,

1 storm work, and reliability work instead of using the public utility's
2 corporate budget to determine the amount included in the projected year.

3 (iii) For any projects that fall outside the
4 recurring enumerated categories that are based on the historical averaging,
5 the public utility shall separately identify, to the extent practicable, each
6 project and support the project as a specific adjustment to the projected
7 year amounts, similar to the presentation of an adjustment made during an
8 application for a general change or modification in rates and charges, and to
9 complete this, the public utility may determine that projects should be
10 grouped together when the projects contain a combination of proposed
11 investments associated with both baseline reliability and load stability
12 projects, such as pole line and circuit inspection programs, and other
13 reliability efforts that the public utility plans to undertake in the
14 projected year;

15 (B) The public utility shall use the four-year historical
16 averages described in subdivision (a)(5)(A)(ii) of this section, except that:

17 (i) The public utility shall adjust the historical
18 averages upward or downward for specific capital projects and anticipated
19 cost increases or decreases that the utility reasonably expects are likely to
20 occur within the projected year and for which the utility provides additional
21 support consistent with other filing support thresholds that the commission
22 applied to the utility's formula rate review mechanism during its initial
23 five-year term; and

24 (ii) Expenses related to capital investments that
25 the utility has already explained shall not require separate support,
26 including depreciation and property taxes;

27 (C)(i) The support for the projected year, described in
28 subdivisions (a)(5)(A) and (B) of this section, shall be applied to the
29 transmission and generation functional areas to the extent deemed practicable
30 by the public utility.

31 (ii) If not practicable, the public utility shall
32 use reasonable efforts to establish a similar framework to present capital
33 investment;

34 (D) The public utility shall use reasonable efforts to
35 develop a similar methodology as described in subdivision (a)(4) of this
36 section and this subdivision (a)(5) for projected year expenses; and

1 (E) Not less than forty-five (45) days before the public
2 utility's annual evaluation report filing:

3 (i) The public utility shall make available to the
4 other eligible parties in the formula rate review proceeding information
5 regarding the public utility's construction projects and purchases that
6 closed to plant during the historical year; and

7 (ii) To the extent reasonably practicable, the
8 public utility shall provide an overview of its planned distribution projects
9 describing the public utility's projected year planned distribution
10 unadjusted investment and expenses.

11 (6) Subdivisions (a)(4) and (5) of this section are subject to
12 the applicable accounting and tax requirements, including the normalization
13 rules of the Internal Revenue Service as in effect on January 1, 2021, and
14 generally acceptable accounting principles.

15 ~~(3)~~(7) The rate review mechanism shall continue until all
16 historical years have been netted under § 23-4-1206(e)(1) and rates have been
17 adjusted under § 23-4-1207(c).

18 (b)(1) A formula rate review shall continue until a final order is
19 issued on an application for a general change in rates and charges filed by a
20 public utility or an application for a change in general rates and charges
21 filed by the public utility as ordered by the commission. The rate review
22 mechanism shall continue until all historical years have been netted under §
23 23-4-1206(e)(1) and rates have been adjusted under § 23-4-1207(c).

24 (2)(A) A public utility may file an application for a change in
25 rates and charges under § 23-4-401 et seq. at any time during an extension of
26 the term of a formula rate review mechanism.

27 (B) If the public utility, during the five-year term of an
28 extension, for an electric public utility with a formula rate review
29 mechanism that uses a test period based on a projected year with an initial
30 five-year term that was approved and in effect by the commission before March
31 15, 2021, for an electric utility whose largest class of customers with the
32 highest level of consumption per customer that has rates that include a
33 demand component, and any successors to such a class, as they existed on
34 January 1, 2021, has an annual usage for the class as a whole in excess of
35 five million megawatt hours (5,000,000 MWh), does not file an application for
36 a change in general rates and charges under § 23-4-401 et seq. under

1 subdivision (b)(2)(A) of this section before the final year of an extension
2 term, the electric utility shall do so during the final year of the extension
3 of the term of a formula rate review mechanism.

4 (3) In any application for a change in general rates and charges
5 filed during or at the conclusion of the initial term or any extension of the
6 term of a formula rate review mechanism that uses a test period based upon a
7 projected year:

8 (A) A public utility's prior designation of a formula rate
9 review test period based upon a projected year under § 23-4-1205(a)(2) shall
10 not affect the public utility's right to designate a test period to justify
11 new rates under § 23-4-406;

12 (B) A public utility's formula rate review test period
13 based upon a projected year under § 23-4-1205(a)(2) may include, at the
14 public utility's discretion, all or part of the same historical periods or
15 projected periods as those included in a test period to justify new rates
16 under § 23-4-406; and

17 (C) An application described in this subdivision (b)(3)
18 shall not limit subdivision (b)(1) of this section.

19
20 SECTION 6. DO NOT CODIFY. Retroactivity. This act applies to any
21 formula rate review approved and in effect under the Formula Rate Review Act,
22 § 23-4-1201 et seq., on or before March 15, 2021.

23
24 SECTION 7. DO NOT CODIFY. Applicability. This act applies to any
25 formula rate review approved and in effect under the Formula Rate Review Act,
26 § 23-4-1201 et seq., on or before March 15, 2021.

27
28 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the
29 General Assembly of the State of Arkansas that investments by public
30 utilities that provide utility service in Arkansas are required to provide
31 reliable service at reasonable rates, but the costs that drive public utility
32 rates are changing; that public utilities need to have procedures that permit
33 the rates to change in response to those changing conditions that affect
34 costs and address the allocation of costs and design of rates; and that this
35 act is immediately necessary to maintain stable rates and to mitigate the
36 magnitude of future rate changes by public utilities by clarification of the

1 regulatory framework to ease the investment procedure for public utilities.
2 Therefore, an emergency is declared to exist, and this act being immediately
3 necessary for the preservation of the public peace, health, and safety shall
4 become effective on:

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

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

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

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12
13 */s/B. Davis*

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16 **APPROVED: 4/25/21**
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