

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

HOUSE BILL

1543

By: Representatives Wilson and Mahony

For An Act To Be Entitled

"AN ACT TO MAKE THE ARKANSAS GENERAL ASSEMBLY AN
INDISPENSABLE PARTY IN ALL ACTIONS FILED AGAINST THE STATE;
TO ESTABLISH THE STATE ADVOCATE COMMISSION; TO CREATE THE
OFFICE OF STATE ADVOCATE; AND FOR OTHER PURPOSES."

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

SECTION 1. The State of Arkansas is declared to be an indispensable, necessary and proper party in all actions brought against any officer of the state or any political subdivision of the state including, but not limited to counties, municipal corporations, school districts, and special improvement districts.

SECTION 2. Every action brought against any officer of the state, any political subdivision of the state, or any action alleging the unconstitutionality of an Act of the Arkansas General Assembly, shall name the State of Arkansas as a co-defendant, and service of process upon the State of Arkansas shall be accomplished in the form and manner prescribed by the Arkansas Court Rules of Civil Procedure by personally serving a copy of the summons and complaint upon the State Advocate or his appointed agent or representative.

SECTION 3. (a) There is established the State Advocate Commission, which shall be composed of the following three (3) members:

(1) The Chief Justice of the Arkansas Supreme Court or his designee, who shall serve as chairman;

(2) A member of the Arkansas Bar Association to be appointed by the President of the Arkansas Bar Association.

(3) A member of the public at large to be appointed by the Governor of the State of Arkansas.

(b) The State Advocate Commission shall receive no compensation for their services, but members other than the Chief Justice shall be entitled to per diem for each day spent in attending meetings of the Commission or otherwise attending to official business of the Commission at the rate prescribed by law for members of the General Assembly for attending meetings of the Joint Interim Committee on Judiciary, plus mileage at the rate prescribed by state travel regulations for state employees.

(c) The per diem and mileage for members of the State Advocate Commission shall be paid by the Office of the Secretary of State for the State of Arkansas from funds specifically appropriated to the Secretary of State for that purpose.

(d) The members of the State Advocate Commission, other than the Chief Justice, shall serve for a term of four (4) years. An appointment made to fill a vacancy prior to the expiration of a term shall be for the remainder of such term.

SECTION 4. (a) The State Advocate Commission shall select and appoint the State Advocate from a list of five (5) candidates furnished to the Commission by the Arkansas Bar Association. Such appointment shall be confirmed by the House of Representatives and the Senate of the Arkansas General Assembly. Should the position of State Advocate be selected and appointed when the General Assembly is not in session, the appointment shall be considered for confirmation by the members of the Joint Interim Committee on the Judiciary at its next regular meeting date for joint interim committees. It shall take a majority vote of the total membership of the Joint Interim Committee on the Judiciary present and voting to tentatively confirm the appointment of the State Advocate subject to official confirmation at the next regular or special session of the Arkansas General Assembly.

(b) The State Advocate shall qualify for office by filing the oath of office required in the Arkansas Constitution with the Office of the Secretary of State.

(c) The State Advocate shall serve for a term of four (4) years unless removed from office for cause, and is not prohibited from succeeding himself.

SECTION 5. (a) There is established an office of State Advocate.

(b) The State Advocate shall:

- (1) be a citizen of the United States;
- (2) be at least thirty (30) years of age;
- (3) be of good moral character;
- (4) be licensed to practice law in state and federal courts at both the trial and appellate levels; and
- (5) have practiced law six (6) years or whose service upon the bench of any court of record, when added to the time he may have practiced law, shall be equal to six (6) years.

SECTION 6. (a) The office of State Advocate shall be located in the Office of the Secretary of State.

(b) The State Advocate may establish the organizational structure of the office and employ persons which he deems necessary for the operation of the office, provided the organizational structure conforms to the positions authorized and the limitations as provided by appropriation for the office by the Arkansas General Assembly.

SECTION 7. (a) The State Advocate shall review all actions brought against the State of Arkansas, its political subdivisions, and actions alleging the unconstitutionality of an Act of the Arkansas General Assembly, to determine the potential effect or impact on the State of Arkansas, its officials, employees, or its financial resources, and take whatever action he deems necessary, including the use of the State of Arkansas's legal resources or the hiring of outside legal counsel, to protect the interests of the State of Arkansas, or any officer thereof, its political subdivisions, its public officials, its public employees, or the interests of the public at large.

(b) The State Advocate may respond to any complaint, but is not required to answer or respond to complaints which name the State of Arkansas as a co-defendant based upon the provisions of this Act. No default judgments shall be entered by any court in the State of Arkansas against the State of Arkansas.

(c) The State Advocate shall work under the supervision of the State Advocate Commission and shall keep the State Advocate Commission informed of all actions taken on behalf of any state entity.

SECTION 8. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 9. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 10. It is hereby found and determined by the General Assembly that legal actions brought against the State of Arkansas at every level should be closely monitored and their potential effects on the state's officials, employees and most importantly, their potential impact on the state's financial resources should be analyzed so that the interests of the state at every level can be fully protected by a strong independent voice; that until this Act becomes effective all potential claims against the state will not be fully known and protected; and that this Act should therefore be given immediate effect. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

