

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015

A Bill

SENATE BILL 933

4
5 By: Senator Rapert
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For An Act To Be Entitled

8 AN ACT TO CREATE A REMOVAL AND REPLACEMENT PROCESS
9 FOR AN AGENCY, BOARD, OR COMMISSION MEMBER WHO IS NOT
10 SUBJECT TO CONFIRMATION BY THE SENATE; AND FOR OTHER
11 PURPOSES.
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Subtitle

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15 TO CREATE A REMOVAL AND REPLACEMENT
16 PROCESS FOR AN AGENCY, BOARD, OR
17 COMMISSION MEMBER WHO IS NOT SUBJECT TO
18 CONFIRMATION BY THE SENATE.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code Title 25, Chapter 16, Subchapter 8, is
24 amended to add an additional section to read as follows:

25 25-16-806. Removal and replacement of positions without confirmation.

26 (a) As used in this section:

27 (1) "Good cause" includes:

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

30 (B) Gross dereliction of duty;

31 (C) Gross abuse of authority; or

32 (D) The unexcused absence of an agency, board, or
33 commission member from three (3) successive regular meetings without
34 attending any intermediary called special meetings; and

35 (2) "Good cause" does not include any vote, decision, opinion,
36 or other regularly performed or otherwise reasonably exercised power of a



1 member.

2 (b)(1) The Governor may remove for good cause an agency, board, or
3 commission member whose office or position is filled by gubernatorial
4 appointment that is not subject to confirmation by the Senate or a majority
5 of senators.

6 (2) The Governor may appoint a qualified individual to replace
7 the removed member to serve the remainder of the removed member's term.

8 (c) All orders of removal by the Governor shall:

9 (1) Be in writing;

10 (2) Be delivered to the removed member or counsel for the
11 member; and

12 (3) Specifically set out the grounds relied upon for removal.

13 (d) Removal of an agency, board, or commission member shall be in
14 accordance with the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (3)(A) If the court determines that good cause has been shown,
25 it shall enter an order removing the member in question from office and
26 revoking his or her commission.

27 (B) If the court determines that good cause has not been
28 shown by clear and convincing evidence, the court shall order the removed
29 member reinstated to his or her position and upon request shall award a
30 reasonable attorney's fee and court costs to the reinstated party.

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

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

1 (i) An agency, board, or commission action in which the appointed
2 replacement participates shall not be void, voidable, or in any way subject
3 to invalidation on grounds of participation of the appointed replacement or
4 lack of participation by the removed member in the event that the circuit
5 court or the Supreme Court orders the removed member reinstated.
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