

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
90th General Assembly  
Regular Session, 2015

# A Bill

SENATE BILL 177

By: Senator J. Woods  
By: Representative Sabin

## For An Act To Be Entitled

AN ACT TO PLACE PROSECUTING ATTORNEYS UNDER THE JURISDICTION OF THE INDEPENDENT CITIZENS COMMISSION CREATED UNDER ARKANSAS CONSTITUTION, ARTICLE 19, SECTION 31; TO AMEND ARKANSAS CONSTITUTION, ARTICLE 19, SECTION 31, UNDER THE AUTHORITY GRANTED IN ARKANSAS CONSTITUTION, ARTICLE 19, SECTION 31, SUBSECTION (L); TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

## Subtitle

PLACING THE SALARIES OF PROSECUTING ATTORNEYS UNDER THE JURISDICTION OF THE INDEPENDENT CITIZENS COMMISSION; AMENDING ARKANSAS CONSTITUTION, ARTICLE 19, SECTION 31; AND DECLARING AN EMERGENCY.

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

SECTION 1. DO NOT CODIFY. Findings.

The General Assembly finds:

(1) Arkansas Constitution, Article 19, § 31(1), provides that Arkansas Constitution, Article 19, § 31, may be amended by the General Assembly in the same manner as required for amendment of laws initiated by the people so long as such amendments are germane to Arkansas Constitution, Article 19, § 31(1), and consistent with its policy and purposes;

(2) Prosecuting attorneys are constitutional officers originally



established under Arkansas Constitution, Article 7, § 24 and now authorized under Arkansas Constitution, Amendment 80, § 20;

(3) The jurisdiction of the independent citizens commission established in Arkansas Constitution, Article 19, § 31, currently includes all constitutional officers other than prosecuting attorneys;

(4) Constitutional officers, including prosecuting attorneys, are paid from the Constitutional Officers Fund; and

(5) Placing prosecuting attorneys under the jurisdiction of the independent citizens commission to provide for continuity in the establishment of salaries payable from the Constitutional Officers Fund is germane to Arkansas Constitution, Article 19, § 31 and consistent with its policy and purposes.

SECTION 2. Pursuant to Arkansas Constitution, Article 19, § 31(1), Arkansas Constitution, Article 19, § 31, is amended to read as follows:

§ 31. Independent citizens commission.

(a) As provided in this section, members of the General Assembly shall have no authority to set salaries for:

- (1) Their positions as members of the General Assembly;
- (2) Elected constitutional officers of the executive department;
- (3) Justices; ~~and~~
- (4) Judges; and
- (5) Prosecuting attorneys.

(b)(1) There is created an independent citizens commission for the purpose of setting salaries of elected constitutional officers of the executive department, members of the General Assembly, justices, ~~and~~ judges, and prosecuting attorneys as provided in this section.

(2)(A) Each member of the independent citizens commission shall serve a term of four (4) years.

(B) A person shall not serve more than two (2) terms on the independent citizens commission.

(3) The independent citizens commission shall consist of seven (7) members as follows:

- (A) Two (2) members appointed by the Governor;
- (B) Two (2) members appointed by the President Pro Tempore of the Senate;

(C) Two (2) members appointed by the Speaker of the House of Representatives; and

(D) One (1) member appointed by the Chief Justice of the Supreme Court.

(4) Vacancies on the independent citizens commission shall be filled in the manner of the original appointment.

(5) The independent citizens commission shall elect from its membership:

(A) A chair; and

(B) Other officers deemed necessary by the independent citizens commission.

(6) Four (4) members of the independent citizens commission shall constitute a quorum for the purpose of transacting business.

(7) A majority vote of the total membership of the independent citizens commission is required for any action of the independent citizens commission.

(8) The office of the Auditor of State shall provide staff assistance as may be requested by the independent citizens commission.

(c)(1) In making appointments to the independent citizens commission, the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court shall consider racial, gender, and geographical diversity.

(2) A member of the independent citizens commission shall be:

(A) A citizen of the United States;

(B) A resident of the State of Arkansas for at least two (2) years preceding his or her appointment;

(C) A qualified elector; and

(D) At least twenty-five (25) years of age.

(3) The following persons shall not serve on the independent citizens commission:

(A) A person holding civil office;

(B) An employee of the State of Arkansas;

(C) A person required by law to register as a lobbyist; or

(D)(i) An immediate family member of:

(a) A person holding civil office;

(b) An employee of the State of Arkansas; or

(c) A person required by law to register as a lobbyist.

(ii) As used in subdivision (c)(3)(D)(i) of this section, "immediate family member" means a person's spouse, a child of the person or spouse, a child's spouse, a parent of the person or the spouse, a brother or sister of the person or the spouse, anyone living or residing in the same residence or household with the person or the spouse, or anyone acting or serving as an agent of the person.

(d) The independent citizens commission shall have the duty to review and adjust as it deems necessary the salaries for the following positions:

- (1) Governor;
- (2) Lieutenant Governor;
- (3) Attorney General;
- (4) Secretary of State;
- (5) Treasurer of State;
- (6) Auditor of State;
- (7) Commissioner of State Lands;
- (8) Member of the General Assembly;
- (9) Chief Justice of the Supreme Court;
- (10) Justice of the Supreme Court;
- (11) Chief Judge of the Court of Appeals;
- (12) Judge of the Court of Appeals;
- (13) Circuit court judge; ~~and~~
- (14) District court judge; and
- (15) Prosecuting attorney.

(e)(1) The salaries of the positions under subsection (d) of this section:

(A) Shall not be subject to appropriation by the General Assembly; and

(B) Shall be paid from the Constitutional Officers Fund or its successor fund or fund accounts in the amount determined by the independent citizens commission.

(2)(A) If the independent citizens commission proposes to adjust a salary for a position under subsection (d) of this section, the independent citizens commission shall:

- (i) Provide notice to the public of the proposed

salary adjustment;

(ii) Make available to the public any data reviewed by the independent citizens commission in determining the proposed salary adjustment; and

(iii)(a) Afford the public a reasonable opportunity to provide public comment on the proposed salary adjustment.

(b) The opportunity for public comment under subdivision (e)(2)(A)(iii)(a) of this section shall not exceed forty-five (45) days.

(B) A proposed salary adjustment of the independent citizens commission shall not be considered a rule under the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

(3) Upon satisfying (e)(2)(A)(i)-(iii) of this section, the independent citizens commission may file the adjusted salary with the Auditor of State.

(4) An adjustment to a salary shall be effective ten (10) days after it is filed with the Auditor of State.

(5) When considering whether or not to adjust a salary for a position under subsection (d) of this section, the independent citizens commission shall include in its considerations the overall economic condition of the state at that time.

(f)(1)(A) The independent citizens commission, by a majority vote of the total membership of the independent citizens commission cast during its first regularly scheduled meeting of each calendar year, may authorize payment to its members of a stipend not to exceed eighty-five dollars (\$85.00) per day for each meeting attended or for any day while performing any proper business of the independent citizens commission.

(B) Stipends shall be paid by the Auditor of State from funds available for that purpose.

(2) Members of the independent citizens commission shall receive no other compensation, expense reimbursement, or in-lieu-of payments.

(g)(1) The independent citizens commission shall provide that the salaries of circuit judges be uniform throughout the state.

(2)(A) Except as provided in this subdivision (g)(2), the independent citizens commission may increase or diminish the salaries for the positions under subsection (d) of this section.

(B) The independent citizens commission may increase but not diminish the salaries for the positions under subdivisions (d)(9)-(14) of this section.

(3)(A) Except as provided in subdivision (g)(3)(B) and subdivision (m)(4)(B) of this section, no single adjustment at any one (1) time to a salary by the independent citizens commission shall exceed fifteen percent (15%) of the salary to be increased or diminished.

(B) Salary adjustments resulting from the initial review of the independent citizens commission under subdivision (i)(3) of this section shall not be subject to subdivision (g)(3)(A) of this section.

(4) The independent citizens commission shall provide for salaries to be paid in monthly installments.

(h) Salaries for the positions under subsection (d) of this section shall continue as existing on November 4, 2014, until adjusted by the independent citizens commission.

(i)(1) Initial members of the independent citizens commission shall be appointed within thirty (30) days of the effective date of this section.

(2) The President Pro Tempore of the Senate shall call the first meeting of the independent citizens commission, which shall occur within forty-five (45) days of the effective date of this section.

(3)(A) The independent citizens commission:

(i) Shall complete an initial review of the salaries for the positions under subsection (d) of this section no later than ninety (90) days after the effective date of this section; and

(ii) May file any adjustments in salary resulting from the initial review with the Auditor of State upon satisfying (e)(2)(A)(i)-(iii) of this section.

(B) No later than ninety (90) days after the effective date of this section, the independent citizens commission shall also provide recommendations to the President Pro Tempore of the Senate and the Speaker of the House of Representatives concerning the amounts to be paid to members of the General Assembly for:

(i) Per diem;

(ii) Reimbursement for expenses; and

(iii) Reimbursement for mileage.

(4)(A) After completing the initial review under subdivision

(i)(3) of this section, the independent citizens commission shall meet as necessary to review the salaries of the positions under subsection (d) of this section but shall not meet less than one (1) time per year.

(B) The independent citizens commission may adjust the salaries of the positions under subsection (d) of this section as provided in this section as it deems necessary.

(j) No later than ninety (90) days before the commencement of a regular session, the independent citizens commission shall provide recommendations to the President Pro Tempore of the Senate and the Speaker of the House of Representatives concerning the amounts to be paid to members of the General Assembly for:

- (1) Per diem;
- (2) Reimbursement for expenses; and
- (3) Reimbursement for mileage.

(k) The independent citizens commission shall be subject to the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq.

(l) The General Assembly, in the same manner as required for amendment of laws initiated by the people, may amend this section, so long as such amendments are germane to this section and consistent with its policy and purposes.

(m)(1) Salaries for the positions under subdivision (d)(15) of this section shall continue as existing on November 4, 2014, until adjusted by the independent citizens commission.

(2) No later than thirty (30) days after the effective date of this subsection, the independent citizens commission shall begin a study of salaries for the positions under subdivision (d)(15) of this section.

(3) The independent citizens commission shall complete its review of the salaries for the positions under subdivision (d)(15) of this section no later than thirty (30) days after the date it begins its study under subdivision (m)(2) of this section.

(4)(A) If at the conclusion of its study under subdivision (m)(2) of this section the independent citizens commission determines that a salary revision for the positions under subdivision (d)(15) is appropriate, the independent citizens commission shall propose an adjustment under subsection (e) of this section.

(B) Initial salary revisions for the positions under

subdivision (d)(15) resulting from the study under subdivision (m)(2) of this section are not subject to subdivision (g)(3)(A) of this section.

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that this act places prosecuting attorneys under the jurisdiction of the independent citizens commission established under Arkansas Constitution, Article 19, Section 31; that the salaries of prosecuting attorneys are payable from the Constitutional Officers Fund in the same manner as the other officials under the jurisdiction of the independent citizens commission, but only the salaries of prosecuting attorneys are subject to appropriation; and that this act should become effective immediately to provide clarity in the appropriation process for prosecuting attorney salaries. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

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

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

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