

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

State of Arkansas  
93rd General Assembly  
Regular Session, 2021

# A Bill

HOUSE BILL 1925

By: Representative Cloud

## For An Act To Be Entitled

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

## Subtitle

TO CREATE A MECHANISM FOR THE RECALL OF CERTAIN COUNTY ELECTED OFFICERS; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. Arkansas Code Title 14, Chapter 14, Subchapter 13, is amended to add an additional section to read as follows:

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

(a) The General Assembly finds that:

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Does not conflict with any constitutional mandate;

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

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

(b) As used in this section:

(1) "Elected county official" means a person elected to one (1) of the following offices:

(A) County judge;

(B) Sheriff;

(C) Clerk of the circuit court;

- (D) County clerk;
- (E) Assessor;
- (F) Coroner;
- (G) Treasurer;
- (H) County surveyor; and
- (I) Collector of taxes;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“PETITION FOR RECALL

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

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

my signature.”

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

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

"STATE OF ARKANSAS  
COUNTY OF \_\_\_\_\_

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

Signature \_\_\_\_\_

Address \_\_\_\_\_

Subscribed and sworn to before me this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signature \_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_."

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the ability of Arkansas citizens to recall elected county officials with terms of four (4) years or more is essential to transparency and accountability at the local level, considering that the offices named in this act were extended from two-year terms to four-year terms effective in 2017 without a corresponding ability to recall these officials as municipalities are able to do; and that this act should become effective at the earliest opportunity to protect the public peace, health, and safety by allowing counties to implement recalls for elected county officials whose terms began in 2017 or later and with regard to whom citizens have had no recourse until now to hold accountable. 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.