

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

SENATE BILL 73

By: Senator B. Sample

## For An Act To Be Entitled

AN ACT TO AMEND THE LAW RELATED TO CABINET-LEVEL DEPARTMENTS; TO PROVIDE FOR STATE ENTITY TRANSFERS; TO AMEND DEFINITIONS; AND FOR OTHER PURPOSES.

## Subtitle

TO AMEND THE LAW RELATED TO CABINET-LEVEL DEPARTMENTS; TO PROVIDE FOR STATE ENTITY TRANSFERS; AND TO AMEND DEFINITIONS.

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

SECTION 1. Arkansas Code § 25-43-103, concerning the definitions under the general provisions of the Transformation and Efficiencies Act of 2019, is amended to add additional subdivisions to read as follows:

(6) "Complete state entity transfer" means the transfer of all or part of an independent state entity to a cabinet-level department or to a state entity within a cabinet-level department;

(7) "Independent state entity" means a state entity that is not part of a cabinet-level department;

(8) "Independent state entity transfer" means a transfer of the administrative functions of a state entity from a cabinet-level department to an independent state entity; and

(9) "Interdepartmental state entity transfer" means a transfer of a state entity and the administrative functions of a state entity located in a cabinet-level department to a another cabinet-level department.

SECTION 2. Arkansas Code Title 25, Chapter 43, Subchapter 1, is



amended to add additional sections to read as follows:

25-43-112. Complete state entity transfer.

(a) When all or part of an independent state entity is transferred to a cabinet-level department or a state entity within a cabinet-level department under a complete state entity transfer, the statutory authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting or purchasing of the independent state entity, are transferred to the cabinet-level department or the state entity within the cabinet-level department.

(b) When all or part of an independent state entity is transferred by a complete state entity transfer to a cabinet-level department or a state entity within a cabinet-level department, the independent state entity's prescribed powers, duties, and functions, including rulemaking, regulation, and licensing; promulgation of rules, rates, and standards; and the rendering of findings, orders, and adjudications, are transferred to the secretary of the cabinet-level department or the head of the state entity within the cabinet-level department into which the independent state entity or part of the independent state entity has been transferred.

(c)(1) A complete state entity transfer does not affect the orders, rules, regulations, directives, or standards made or promulgated before the effective date of the complete state entity transfer.

(2) The orders, rules, regulations, directives, or standards under subdivision (c)(1) of this section shall continue with full force and effect until amended or repealed pursuant to authority given by law.

(d) Following a complete state entity transfer, the members of a statutory board or commission so transferred, and their successors, shall continue to be selected in the manner and serve for the terms provided by the statutes applicable to that board or commission.

25-43-113. Independent state entity transfer.

(a) A state entity subject previously to a cabinet-level department transfer may be established subsequently as an independent state entity under an independent state entity transfer and shall no longer be a part of a cabinet-level department.

(b)(1) An independent state entity transfer shall:

(A) Transfer the administrative functions of a state entity subject to a cabinet-level department transfer under this chapter to the independent state entity subject to an independent state entity transfer under this chapter;

(B) Be administered under the direction and supervision of the creation statutes of the independent state entity;

(C) Allow the independent state entity to exercise all administrative functions of the independent state entity, unless otherwise provided by law;

(D) Require the independent state entity to be responsible for the employment of all employees of the independent state entity;

(E) Require the cabinet-level department to transfer the positions and employees performing the statutory duties of the state entity previously subject to a cabinet-level transfer to the independent state entity;

(F) Allow the independent state entity to establish job descriptions, duties, salaries, and benefits of the employee positions of the independent state entity, unless otherwise provided by law;

(G) Require the independent state entity to compensate the employees of the independent state entity in accordance with the Uniform Classification and Compensation Act, § 21-5-201 et seq., unless otherwise provided by law;

(H) Require the independent state entity to ensure all programs and positions funded by special funds allocated by law to the independent state entity continue to be used for the designated purposes of the programs and positions, respectively; and

(I) Not reduce a right that an employee of a state entity transferred subject to a cabinet-level department transfer under this chapter and subsequently transferred to an independent state entity has under any civil service or merit system.

(2) An independent state entity transfer shall revoke all authority of a cabinet-level department over an independent state entity and the independent state entity's employees.

(c) An independent state entity shall provide all administrative support, employment needs, and staff to carry out the orders, rules, directives, and standards promulgated or issued by the independent state

entity, unless otherwise provided by law.

(d) A state entity subject to an independent state entity transfer under this chapter shall continue to exercise the state entity's statutory authority and powers and carry out the state entity's duties and functions as exercised and carried out before the state entity was subject to a cabinet-level department transfer, unless otherwise provided by law, including without limitation:

(1) The promulgation of rules;

(2) The collection of fees;

(3) Licensing, certification, or registration authority over designated occupations; and

(4) The creation of programs, unless otherwise provided by law.

(e)(1) Any revenue, including without limitation cash funds, special revenue, trust fund income, federal grants, aid, reimbursements, nonrevenue receipts, and other moneys, securities and investments held in accounts by a state entity subject to an independent state entity transfer under this chapter, including without limitation unexpended balances that may be carried forward shall:

(A) Be held by the independent state entity;

(B) Continue to be held in the accounts of the independent state entity; and

(C) Be used solely for the purposes for which the revenue was collected or allocated as provided by law.

(2) Revenue under subdivision (e)(1) of this section includes revenue regardless of when the revenue was collected, including without limitation revenue collected after July 1, 2022.

(f)(1) Except as provided in subdivision (f)(2) of this section, all records, employees, unexpended balances of state appropriations or state allocations, and functions of budgeting and purchasing of a state entity subject to an independent state entity transfer under this chapter are transferred from the cabinet-level department to the independent state entity.

(2) All records pertaining to bonds issued by a state entity previously subject to a cabinet-level department transfer under this chapter shall remain with the independent state entity subject to an independent state entity transfer under this chapter.

(g)(1) All real property owned in fee simple by a state entity subject to a cabinet-level department transfer under this chapter shall remain in the name of the independent state entity, to be administered by the independent state entity.

(2)(A) Except as otherwise provided in subdivision (g)(2)(B) or subdivision (g)(2)(C) of this section, all other property of the state entity subject to an independent state entity transfer under this chapter, including without limitation real property not subject to subdivision (g)(1) of this section, personal property, fixtures, contracts, and assignable leases, shall be transferred from the cabinet-level department to the independent state entity subject to an independent state entity transfer under this chapter.

(B) Any property constructed using special or cash revenue of a state entity previously subject to a cabinet-level department transfer under this chapter shall remain the property of the independent state entity after an independent state entity transfer.

(C) Contracts, instruments, or securities pertaining to or made in connection with the issuance of bonds or financing of programs shall remain with the independent state entity.

(h) A state entity subject to an independent state entity transfer under this chapter may continue to use all remaining stationery, branded material, or other similar items until the stationery, branded material, or other similar items are expended.

(i)(1) A state entity subject to an independent state entity transfer under this chapter designated as a public body politic and corporate shall continue as a public body politic and corporate following the independent state entity transfer.

(2) Bonds or other obligations of a state entity subject to an independent state entity transfer under this chapter designated as a public body politic and corporate shall:

(A) Continue to state on their face that such bonds are obligations only of the independent state entity subject to an independent state entity transfer under this chapter; and

(B) Not constitute:

(i) An indebtedness of the State of Arkansas;

(ii) An indebtedness for which the faith and credit of the State of Arkansas or any of the state's revenue are pledged; or

(iii) A secured lien on or a security interest in property of the state.

25-43-114. Independent state entities – Powers and duties.

(a) An independent state entity shall:

- (1) Execute the powers and duties prescribed by law;
- (2) Administer each independent state entity subject to an independent state entity transfer under this chapter;
- (3) Make contracts, grants, and employ, to the extent funds are available, employees necessary to carry out the purposes of the independent state entity; and
- (4) Perform all administrative functions of the independent state entity, unless otherwise provided by law.

(b) An independent state entity may:

- (1) Assist other state entities and federal departments, agencies, boards, commissions, and institutions by performing services in conformity with the purposes of the independent state entity;
- (2) Maintain and administer real property, unless otherwise provided by law;
- (3) Maintain and administer all other property, unless otherwise provided by law; and
- (4) Provide administrative support, employment needs, and staff to carry out the orders, rules, regulations, directives, or standards promulgated or issued by the independent state entity.

25-43-115. Independent state entity transfer effect on preexisting rules, regulations, etc.

(a) An independent state entity transfer does not affect the orders, rules, regulations, directives, or standards made or promulgated before the effective date of the independent state entity transfer under this chapter.

(b) The orders, rules, regulations, directives, or standards under subsection (a) of this section shall continue to be effective until amended or repealed pursuant to authority given by law.

(c) The following shall not be impaired by an independent state entity transfer and shall continue to be effective:

- (1) Bonds issued by the Arkansas Development Finance Authority;

(2) Contracts and obligations securing bonds issued by the Arkansas Development Finance Authority or pertaining to bonds issued by the Arkansas Development Finance Authority; and

(3) Programs financed by bonds issued by the Arkansas Development Finance Authority.

25-43-116. Funds and personnel transferred.

(a) A fund or fund account name that due to a transfer under this chapter has not been revised in an appropriation or in the Arkansas Code to the same fund or fund account name enacted by the Ninety-Third General Assembly shall be payable from the appropriation enacted with the fund or fund account name as originally enacted by the Ninety-Third General Assembly.

(b) Unless otherwise provided by law, when all or part of a state entity is subject to a transfer under this chapter, the state entity's authorized job classifications, employees, property, unexpended balances of appropriations, allocations, and funds are transferred to the state entity as authorized by a transfer under this chapter.

(c)(1) A state entity appropriation transferred from a paying account or fund not established in a state entity subject to a transfer under this chapter is payable and appropriated from a cash fund established in the State Treasury in the same amount and for the same purpose as that transferred state entity.

(2) No funding or cash fund appropriation may be established under subdivision (c)(1) of this section that is not authorized to be transferred or in a greater amount than is transferred.

(d)(1) Any classification title for a state entity that is subject to a transfer under this chapter may be revised as determined appropriate by the Office of Personnel Management to reference the appropriate state entity.

(2) The authority under subdivision (d)(1) of this section does not allow for revisions to:

(A) A pay grade;

(B) A line item;

(C) The number of authorized job classifications; or

(D) A job duty.

25-43-117. Interdepartmental state entity transfer.

(a) When all or part of an existing state entity is transferred from a cabinet-level department or a state entity within a cabinet-level department to another cabinet-level department or a state entity within a cabinet-level department under an interdepartmental state entity transfer, the statutory authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting or purchasing of the transferred state entity, are transferred to the other cabinet-level department or the state entity within another cabinet-level department.

(b) When an existing state entity is transferred by an interdepartmental state entity transfer to another cabinet-level department or a state entity within another cabinet-level department, the administrative functions of the transferred state entity's shall be transferred to the cabinet-level department or the state entity within another cabinet-level department as if subject to a cabinet-level department transfer.

(c)(1) An interdepartmental state entity transfer does not affect the orders, rules, regulations, directives, or standards made or promulgated prior to the effective date of the interdepartmental state entity transfer.

(2) The orders, rules, regulations, directives, or standards under subdivision (c)(1) of this section shall continue with full force and effect until amended or repealed pursuant to authority given by law.

(d) Following an interdepartmental state entity transfer, the members of a statutory board or commission so transferred, and their successors, shall continue to be selected in the manner and serve for the terms provided by the statutes applicable to that board or commission.