

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021

# A Bill

SENATE BILL 73

4  
5 By: Senator B. Sample

## For An Act To Be Entitled

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

## Subtitle

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

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

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

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

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

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

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

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



1 amended to add additional sections to read as follows:

2 25-43-112. Complete state entity transfer.

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

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

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

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

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

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31 25-43-113. Independent state entity transfer.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 entity, unless otherwise provided by law.

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

8 (1) The promulgation of rules;

9 (2) The collection of fees;

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

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

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

19 (A) Be held by the independent state entity;

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

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

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

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

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

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

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

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

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

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

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

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

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

33           (B) Not constitute:

34           (i) An indebtedness of the State of Arkansas;

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

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

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4           25-43-114. Independent state entities – Powers and duties.

5           (a) An independent state entity shall:

6                   (1) Execute the powers and duties prescribed by law;

7                   (2) Administer each independent state entity subject to an  
8 independent state entity transfer under this chapter;

9                   (3) Make contracts, grants, and employ, to the extent funds are  
10 available, employees necessary to carry out the purposes of the independent  
11 state entity; and

12                   (4) Perform all administrative functions of the independent  
13 state entity, unless otherwise provided by law.

14           (b) An independent state entity may:

15                   (1) Assist other state entities and federal departments,  
16 agencies, boards, commissions, and institutions by performing services in  
17 conformity with the purposes of the independent state entity;

18                   (2) Maintain and administer real property, unless otherwise  
19 provided by law;

20                   (3) Maintain and administer all other property, unless otherwise  
21 provided by law; and

22                   (4) Provide administrative support, employment needs, and staff  
23 to carry out the orders, rules, regulations, directives, or standards  
24 promulgated or issued by the independent state entity.

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26           25-43-115. Independent state entity transfer effect on preexisting  
27 rules, regulations, etc.

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

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

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

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

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

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

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7           25-43-116. Funds and personnel transferred.

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

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

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

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

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

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

31                   (A) A pay grade;

32                   (B) A line item;

33                   (C) The number of authorized job classifications; or

34                   (D) A job duty.

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36           25-43-117. Interdepartmental state entity transfer.

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

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

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

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

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

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