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2 95th General Assembly
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4

A Bill

SENATE BILL 613

5 By: Senators C. Penzo, B. King
6 By: Representatives Duffield, Pilkington
7

For An Act To Be Entitled

8 AN ACT TO CREATE AN ELECTION PROCEDURE TO DETERMINE
9 FLUORIDATION OF A PUBLIC WATER SYSTEM; AND FOR OTHER
10 PURPOSES.
11
12
13

Subtitle

14 TO CREATE AN ELECTION PROCEDURE TO
15 DETERMINE FLUORIDATION OF A PUBLIC WATER
16 SYSTEM.
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code Title 14, Chapter 116, is amended to add an
22 additional subchapter to read as follows:
23

Subchapter 9 - Fluoridation Election

14-116-901. Definitions.

As used in this subchapter:

24 (1) “Canvasser” means a person who circulates a fluoridation
25 election petition or a petition part to obtain the signatures of petitioners;
26

27 (2) “Paid canvasser” means a canvasser who is paid or with whom
28 there is an agreement to pay money or anything of value before or after a
29 signature on a fluoridation election petition is solicited in exchange for
30 soliciting or obtaining a signature on a fluoridation election petition;
31

32 (3) “Petition part” means a petition signature sheet containing
33 the information required under this subchapter;
34

35 (4) “Petitioner” means a person who signs a petition requesting
36



1 a fluoridation election;

2 (5) "Public water system" means a facility, including without
 3 limitation a parent system, consecutive system, or other system, that holds,
 4 treats, and supplies water directly or through a consecutive system or
 5 consecutive systems to five thousand (5,000) persons or more;

6 (6) "Registered voter" means a person who is registered at the
 7 time of signing the petition under Arkansas Constitution, Amendment 51; and

8 (7) "Sponsor" means a person who arranges for the circulation of
 9 a fluoridation election petition or who files a fluoridation election
 10 petition with the official charged with verifying the signatures on the
 11 fluoridation election petition.

12
 13 14-116-902. Petition to determine fluoridation of water in public
 14 water system.

15 (a) An election to determine fluoridation of water in a public water
 16 system shall be called by a petition signed by registered voters supplied by
 17 the public water system in a number equal to thirty-eight percent (38%) of
 18 the registered voters supplied by the public water system.

19 (b) A fluoridation election petition under subsection (a) of this
 20 section shall be filed with the county clerk of the county where the public
 21 water system is domiciled at least one hundred twenty (120) days before:

22 (1) In even-numbered years, the preferential primary election or
 23 the general election; and

24 (2) In odd-numbered years, the date of the special election as
 25 provided under § 14-116-913.

26 (c) The county clerk of the county where the public water system is
 27 domiciled shall:

28 (1) Coordinate with the county clerks of other counties supplied
 29 by the public water system to verify the signatures on a petition filed under
 30 subsection (b) of this section; and

31 (2) Determine the sufficiency of a petition filed under
 32 subsection (b) of this section no later than ten (10) days after the petition
 33 is submitted.

34 (d) The total number of registered voters as certified by the county
 35 clerk to the Secretary of State by June 1 of each year under Arkansas
 36 Constitution, Amendment 51, is the basis on which the required number of

1 signatures of qualified electors on a petition filed under this section shall
2 be computed.

3 (e)(1) The sponsor shall request that the board of the public water
4 system provide an accurate boundary map by parcel for the purpose of counting
5 signatures and conducting the election to the county clerk of the county
6 where the public water system is domiciled.

7 (2) The public water system shall provide the boundary map
8 requested under subdivision (e)(1) of this section to the county clerk of the
9 county where the public water system is domiciled at or before the time for
10 filing the petition.

11
12 14-116-903. Duties of election officers – Penalty for failure to
13 perform.

14 (a) The duties imposed by this subchapter on members of the State
15 Board of Election Commissioners, members of the county boards of election
16 commissioners, election officials, and other officers expressly named in this
17 subchapter shall be performed:

18 (1) In good faith;

19 (2) Within the time provided by this subchapter; and

20 (3) In the manner provided by this subchapter.

21 (b) If a member of a county board of election commissioners, an
22 election official, or another officer charged with a duty under this
23 subchapter knowingly fails to perform that duty, upon conviction he or she
24 shall be guilty of a violation and shall be:

25 (1) Fined not less than one hundred dollars (\$100) nor more than
26 one thousand dollars (\$1,000); and

27 (2) Removed from his or her position or office.

28
29 14-116-904. Hiring and training of paid canvassers.

30 (a)(1) A person shall not provide money or anything of value to
31 another person for obtaining signatures on a fluoridation election petition
32 unless the person receiving the money or item of value meets the requirements
33 of this section.

34 (2) Before a signature is solicited by a paid canvasser, the
35 sponsor shall:

36 (A) Explain the Arkansas law applicable to obtaining

1 signatures on a fluoridation election petition to the paid canvasser; and

2 (B)(i) Provide a complete list under subdivision
 3 (a)(2)(B)(i) of this section of all paid canvassers' names and current
 4 residential addresses to the county clerk.

5 (ii) If additional paid canvassers agree to solicit
 6 signatures on behalf of a sponsor after the complete list is provided, the
 7 sponsor shall provide an updated list of all paid canvassers' names and
 8 current residential addresses to the county clerk.

9 (b) Before obtaining a signature on a fluoridation election petition
 10 as a paid canvasser, a person shall submit in person or by mail to the
 11 sponsor:

12 (1) The full name and any assumed name of the person;

13 (2) The current residence address of the person and the person's
 14 permanent domicile address if the person's permanent domicile address is
 15 different from the person's current residence address;

16 (3) A signed statement taken under oath or solemn affirmation
 17 that states that the person has not pleaded guilty or nolo contendere to or
 18 been found guilty of a criminal offense involving a violation of the election
 19 laws, fraud, forgery, or identification theft in any state;

20 (4) A signed statement that the person has read and understands
 21 the Arkansas law applicable to obtaining signatures on a fluoridation
 22 election petition; and

23 (5) A photograph of the person taken within ninety (90) days of
 24 the submission of the information required under this section.

25 (c) A sponsor shall maintain the information required under this
 26 section for each paid canvasser for three (3) years after the general
 27 election or special election in which the fluoridation election is called.

28
 29 14-116-905. Signing of petition – Penalty for falsification – Notice
 30 of suspected forgery.

31 (a)(1) A person signing a petition under this subchapter shall:

32 (A) Be a registered voter supplied by the public water
 33 system; and

34 (B) After reading the ballot title of the petition in the
 35 presence of the canvasser or having the ballot title of the petition read
 36 aloud to him or her in the presence of the canvasser, sign his or her own

1 name and in his or her own handwriting print his or her own name, address,
2 and birthdate and the date of signing on a petition.

3 (2) If a person signing a petition under subdivision (a)(1) of
4 this section requires assistance due to a disability, another person:

5 (A) May print the person's name, address, and birthdate
6 and the date of signing; and

7 (B) Shall sign and print his or her own name in the margin
8 of the petition.

9 (3) A person who is under eighteen (18) years of age shall not
10 act as a canvasser.

11 (4) A person acting as a canvasser shall not obtain a signature
12 for a petition without disclosing to the potential petitioner that petition
13 fraud is a criminal offense before the potential petitioner signs the
14 petition in the custody of the canvasser by:

15 (A) Verbal notification; or

16 (B) If verbal notification is impossible, written
17 notification with a document that is provided separately from all other
18 petition materials.

19 (b) A person commits a Class A misdemeanor if the person, acting as a
20 canvasser, notary, sponsor, or agent of a sponsor knowingly:

21 (1) Signs a name other than his or her own to a petition;

22 (2) Prints a name, address, or birthdate other than his or her
23 own on a petition unless the petitioner requires assistance due to a
24 disability and the person complies with this section;

25 (3) Solicits or obtains a signature to a petition knowing that
26 the petitioner is not qualified to sign the petition;

27 (4) Pays a person any form of compensation in exchange for
28 signing a petition as a petitioner;

29 (5) Accepts or pays money or anything of value for obtaining
30 signatures on a petition when the person acting as a canvasser, sponsor, or
31 agent of a sponsor knows that the name or address of the person acting as a
32 canvasser is not included on the sponsor's list filed with the county clerk;

33 (6) As a sponsor, files a petition part with the official
34 charged with verifying the signatures knowing that the petition part contains
35 one (1) or more false or fraudulent signatures unless each false or
36 fraudulent signature is clearly stricken by the sponsor before filing;

1 (7) As a canvasser, knowingly accepts a signature when the
 2 person signing the petition has not read the ballot title of the petition in
 3 the presence of the canvasser or the ballot title of the petition has not
 4 been read aloud to the person in the presence of the canvasser; or

5 (8) As a canvasser, fails to disclose to a potential petitioner
 6 that petition fraud is a criminal offense before the potential petitioner
 7 signs the petition in the custody of the canvasser under subdivision (a)(4)
 8 of this section.

9 (c) When the county clerk charged with verifying the signatures has
 10 reasonable grounds to believe that one (1) or more signatures on a petition
 11 is forged, the county clerk shall report the suspected forgery and the basis
 12 for suspecting forgery to the prosecuting attorney of the county.

13 (d)(1) The county clerk shall not count signatures collected and
 14 witnessed by a canvasser if the county clerk finds by a preponderance of the
 15 evidence that the canvasser has violated Arkansas laws regarding canvassing,
 16 perjury, forgery, or fraudulent practices in the procurement of petition
 17 signatures or any provision of the Arkansas Constitution applicable to the
 18 collection of signatures on a fluoridation election petition during the
 19 current election cycle.

20 (2) This subsection shall not constrain the duties and authority
 21 of the county clerk as set forth in Arkansas law.

22
 23 14-116-906. Form of initiative petition – Sufficiency of signatures.

24 (a) The petition for an ordinance, act, or amendment proposed by
 25 initiative under this subchapter shall be on substantially the following
 26 form:

27 “PETITION FOR FLUORIDATION ELECTION

28 To the Honorable _____,

29 County Clerk

30 We, the undersigned registered voters of the State of Arkansas, of
 31 _____ County, Arkansas, respectfully request that an election be held
 32 to determine fluoridation of the water in the public water system in the
 33 district described below, to the end that the same may be adopted, enacted,
 34 or rejected by the vote of the registered voters supplied by the public water
 35 system. Each of us for himself or herself says:

36 I have personally signed this petition; I am a registered voter of

1 County, Arkansas, and my printed name, date of birth,
2 residence, and city or town of residence and the date of signing this
3 petition are correctly written after my signature.

4 (Here insert a description of the public water system in which the
5 election shall be held.)”.

6 (b)(1) The information provided by the petitioner under this
7 subchapter may be used as evidence of the validity or invalidity of the
8 signature.

9 (2) If a signature of a registered voter on a petition under
10 this subchapter is sufficient to verify the registered voter’s name, then it
11 shall not be adjudged invalid for failure to sign the name or write the
12 residence and city or town of residence exactly as it appears on voter
13 registration records, for failure to print the name in the space provided,
14 for failure to provide the correct date of birth, nor for failure to provide
15 the correct date of signing the petition, all the information being an aid to
16 verification rather than a mandatory requirement to perfect the validity of
17 the signature of the petitioner.

18 (c) Additional sheets of petitioner signatures shall not be attached
19 to a petition under this subchapter unless the sheets contain the full
20 language of the petition.

21 (d)(1) The signature section of a petition under this subchapter shall
22 be formatted and shall contain the number of signature lines prescribed by
23 the county clerk.

24 (2) Before the circulation of a petition for signatures under
25 this subchapter, the sponsor shall file a printed petition part with the
26 county clerk in the form that will be used for obtaining signatures.

27
28 14-116-907. Procedure for circulation of petition.

29 (a)(1) Each petition under this subchapter for an election to be held
30 for a public water system that includes more than one (1) county shall be
31 prepared and circulated in a petition part, and each petition part shall be
32 an exact copy of all other petition parts on which signatures of petitioners
33 are to be solicited.

34 (2) When a sufficient number of petition parts are signed by the
35 requisite number of registered voters and are filed and certified by the
36 county clerk, they shall be treated and considered as one (1) petition.

1 (b) Each petition part under this subchapter shall have attached to it
2 the affidavit of the canvasser who collected the signatures on the petition
3 part stating that:

4 (1) The canvasser’s current residence address appearing on the
5 verification is correct;

6 (2) All signatures appearing on the petition part were made in
7 the presence of the canvasser; and

8 (3) To the best of the canvasser’s knowledge and belief each
9 signature is genuine and each person signing is a registered voter.

10 (c) A petition part under this section shall not contain signatures of
11 petitioners from more than one (1) county.

12
13 14-116-908. Form of verification – Penalty for false statement.

14 (a) Each petition under this subchapter that contains signatures shall
15 be verified in substantially the following form by the canvasser’s affidavit
16 on the petition as a part of the petition:

17 “State of Arkansas, County of _____

18 I, _____ (print name of canvasser) _____, being duly
19 sworn, state that each of the foregoing persons signed his or her own name to
20 this sheet of the petition in my presence. To the best of my knowledge and
21 belief, each signature is genuine and each signer is a registered voter of
22 _____ County. At all times during the circulation of this signature
23 sheet, an exact copy of the popular name, ballot title, and text was attached
24 to the signature sheet, and each signer read the ballot title of the petition
25 or had the ballot title of the petition read to the signer in my presence. My
26 current residence address is correctly stated below.

27 Signature _____

28 Residence _____

29 Indicate one: _____ Paid Canvasser _____
30 Volunteer/Unpaid Canvasser

31 Subscribed and sworn to before me this _____ day of
32 _____, 20 _____

33 Signature _____

34 Clerk, Notary, Judge, or Justice of the Peace

35 Seal _____”.

36 (b)(1) If the form provided under subsection (a) of this section is

1 substantially followed in a petition, the form is sufficient.

2 (2) A form provided under this section shall not be held
3 insufficient for clerical and merely technical errors.

4 (c)(1) A petition under this subchapter shall not be disqualified due
5 to clerical or technical errors made by a clerk, notary, judge, or justice of
6 the peace when verifying a canvasser's signature.

7 (2) A petition under this subchapter shall not be disqualified
8 for the failure of a clerk, notary, judge, or justice of the peace to sign
9 exactly as his or her name appears on his or her seal if the signature of a
10 clerk, notary, judge, or justice of the peace is sufficient to verify his or
11 her name.

12 (d) A canvasser who knowingly makes a false statement on a petition
13 verification form required by this section upon conviction is guilty of a
14 Class D felony.

15 (e)(1) A canvasser who witnesses signatures on a petition part shall
16 view a copy of a potential petitioner's photo identification to verify the
17 identity of the potential petitioner before obtaining the signature.

18 (2) If a canvasser cannot verify the identity of the potential
19 petitioner, the canvasser shall not obtain a signature from the potential
20 petitioner.

21 (3) A canvasser who submits a canvasser affidavit under
22 subsection (a) of this section swearing that to the best of the canvasser's
23 knowledge and belief each signature is genuine and that the person signing is
24 a registered voter, but does not comply with the requirements under
25 subdivision (e)(1) of this section, makes a false statement on the petition
26 verification form.

27 (4) As used in this subsection, "photo identification" means a
28 document or identification card permitted under § 7-1-101(40).

29
30 14-116-909. Failure to act on petition – Mandamus – Injunction.

31 (a) If a county clerk does not examine and certify a petition under
32 this subchapter within the time prescribed in § 14-116-902, the sponsor may
33 apply to the circuit court with jurisdiction for appropriate relief.

34 (b) If the circuit court decides that the petition under this
35 subchapter is legally sufficient, the circuit court shall order the county
36 clerk to certify the sufficiency of the petition and set an election date.

1 (c) On a proper showing that a petition under this subchapter is not
2 sufficient, the circuit court may enjoin the county clerk from:

3 (1) Certifying the sufficiency of the petition; or

4 (2) Setting an election date.

5
6 14-116-910. Preservation of records.

7 (a) All petitions, notices, certificates, or other documentary
8 evidence of procedural steps taken under this subchapter shall be filed and
9 preserved.

10 (b) A petition under this subchapter with signatures shall be retained
11 for two (2) years after submission to the county clerk.

12
13 14-116-911. Count of signatures.

14 (a) Upon the initial filing of a petition under this subchapter, the
15 county clerk charged with verifying the signatures shall:

16 (1) Perform an initial count of the signatures; and

17 (2) Determine whether the petition contains, on its face and
18 before verification of the signatures of registered voters, the designated
19 number of signatures required by the Arkansas Constitution and this
20 subchapter in order to call an election.

21 (b) A petition part and all signatures appearing on the petition part
22 shall not be counted for any purpose by the official charged with verifying
23 the signatures, including the initial count of signatures, if one (1) or more
24 of the following is true:

25 (1) The petition is not an original petition, including without
26 limitation a petition that is a photocopy or a fax;

27 (2) The petition lacks the signature, printed name, and
28 residence address of the canvasser or is signed by more than one (1)
29 canvasser;

30 (3) The canvasser is a paid canvasser whose name and the
31 information required under § 14-116-904 were not submitted by the sponsor to
32 the county clerk before the petitioner signed the petition;

33 (4) The canvasser verification is not notarized, is notarized by
34 more than one (1) notary, or lacks a notary signature or a notary seal;

35 (5) The canvasser verification is dated earlier than the date on
36 which a petitioner signed the petition;

1 (6) The petition part clearly contains signatures of petitioners
2 from more than one (1) county unless each signature of a petitioner from
3 another county is clearly stricken before the filing of the petition with the
4 county clerk; or

5 (7) The petition part has a material defect that, on its face,
6 renders the petition part invalid.

7 (c) The following signatures shall not be counted by the official
8 charged with verifying the signatures, including the initial count of
9 signatures:

10 (1) A signature that is not an original signature;

11 (2) A signature that is obviously not that of the purported
12 petitioner;

13 (3) A signature that is illegible and is accompanied by no
14 personally identifying information;

15 (4) A signature for which the corresponding printed name,
16 address, or birthdate is written by someone other than the petitioner except
17 under circumstances of disability of the signer;

18 (5) A signature that has any other material defect that, on its
19 face, renders the signature invalid; and

20 (6) A signature submitted by a canvasser who has not filed a
21 true affidavit with the county clerk as required under subdivision (d)(1) of
22 this section certifying that the canvasser has complied with the Arkansas
23 Constitution and all Arkansas laws regarding canvassing, perjury, forgery,
24 and fraudulent practices in the procurement of petition signatures during the
25 current election cycle.

26 (d)(1) Except as provided under subdivision (d)(4) of this section, a
27 canvasser shall file a true affidavit with the county clerk certifying that
28 the canvasser has complied with the Arkansas Constitution and all Arkansas
29 laws regarding canvassing, perjury, forgery, and fraudulent practices in the
30 procurement of petition signatures during the current election cycle.

31 (2) The county clerk shall not count the signatures submitted by
32 a canvasser until a true affidavit is submitted by the canvasser under
33 subdivision (d)(1) of this section.

34 (3) A true affidavit submitted under subdivision (d)(1) of this
35 section shall have no bearing to establish the genuineness or falsity of the
36 signatures obtained by the canvasser.

1 (4)(A) The inability of a canvasser to submit an affidavit due
 2 to death or medical disability shall not disqualify the signatures gathered
 3 by the canvasser.

4 (B) Subdivision (d)(4)(A) of this section does not excuse
 5 a canvasser from filing the affidavit required under § 14-116-908.

6 (e) A canvasser who has filed a true affidavit under subsection (d) of
 7 this section shall not collect additional signatures unless the county clerk
 8 determines that the sponsor of the fluoridation election petition is eligible
 9 to solicit and add additional signatures to the petition under § 14-14-
 10 915(e).

11
 12 14-116-912. Notification of election.

13 (a) Notice of an election under this subchapter shall be given by the
 14 secretary of the board of directors of the public water system at least
 15 thirty (30) days before the date fixed for the election by publication of a
 16 notice for at least two (2) consecutive weekly insertions in a newspaper
 17 published and having a bona fide circulation in each of the counties supplied
 18 by the public water system.

19 (b) The notice of election shall be in substantially the following
 20 form:

21 “NOTICE OF ELECTION

22 Notice is hereby given that an election will be held in County,
 23 Arkansas, on the day of, 20....., for the
 24 purpose of determining whether the Board of Directors of the
 25 Public Water System shall be authorized to change the status of water
 26 fluoridation in the public water system, and whether the Board of Directors
 27 of the public water system shall be authorized to exercise the powers
 28 conferred on the public water system under Arkansas Code § 14-116-901 et seq.
 29 to carry out the results of the election. The voting places in
 30 County, Arkansas, for this election shall be as follows: (Here will be
 31 inserted the various voting places of the county in which the particular
 32 notice is published.)”.

33 (c) The notice required under this section shall be dated and signed
 34 by the secretary of the board of directors of the public water system.

35
 36 14-116-913. Conduct of election.

1 (a)(1)(A) The county board of election commissioners of the particular
2 county shall cause the question of a change in status of the water
3 fluoridation in a public water system to be placed on the ballot:

4 (i) In even-numbered years, at the general election
5 or preferential primary election; or

6 (ii) In odd-numbered years, at the special election
7 that shall be held on the second Tuesday of March or November.

8 (B) An election held under subdivision (a)(1)(A)(ii) of
9 this section that is scheduled to occur in a month in which the second
10 Tuesday is a legal holiday shall be held on the third Tuesday of the month.

11 (2) The question shall be presented in the following form:

12 " FOR THE FLUORIDATION OF WATER IN [DESCRIPTION OF THE
13 PUBLIC WATER SYSTEM]
14 AGAINST THE FLUORIDATION OF WATER IN [DESCRIPTION OF
15 THE PUBLIC WATER SYSTEM]."

16 (3) Each elector shall be instructed on the ballot to vote "FOR"
17 or "AGAINST" the question by placing an appropriate mark.

18 (b) The county board of election commissioners shall count the votes
19 cast on the question submitted to the voters under this section to determine
20 the fluoridation of water in the public water system and shall deliver its
21 certificate declaring the result of the election, together with the election
22 returns, within three (3) days after the date of the election to the county
23 clerk of the county.

24 (c) Upon petition of twenty-five (25) interested registered voters in
25 the territory affected, within ten (10) days after the date of an election
26 under this section, the county board of election commissioners shall
27 immediately recount the votes and declare the result of the election as
28 determined by the recount.

29 (d) Within twenty (20) days after an election under this section, the
30 county court shall make and have entered on record its order declaring the
31 result of the election.

32 (e)(1) The costs of an election held under this subchapter shall be
33 paid by the board of directors of the public water system.

34 (2) The county clerk of each county holding an election to
35 determine the fluoridation of the water in the public water system shall
36 provide an invoice to the board of directors of the public water system for

1 any expenses incurred by the county in connection with an election under this
2 subchapter.

3
4 14-116-914. Results of election.

5 (a) If a majority of the registered voters supplied by the public
6 water system elect to prohibit fluoridation of water under this subchapter,
7 the public water system shall cease fluoridation of the water within thirty
8 (30) days of the certification of the election results.

9 (b) A subsequent election in the public water system under this
10 subchapter shall not be held earlier than four (4) years after an election is
11 held under this subchapter.

12
13 SECTION 2. Arkansas Code § 20-7-136(b), concerning a statewide
14 fluoridation program, is amended to read as follows:

15 (b) ~~The~~ Unless prohibited by the results of an election under § 14-
16 116-901 et seq., the company, corporation, municipality, county, government
17 agency, or other entity that owns or controls a water system shall control
18 the quantity of fluoride in the water so as to maintain a fluoride content
19 established by the Department of Health.