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Agency # 108.00

**RULES OF PROCEDURE FOR CITIZEN
COMPLAINTS
REGARDING VIOLATIONS OF STATE
ELECTION AND VOTER REGISTRATION LAWS**

(Effective February 6, 2004; Revised ~~October 28, 2017~~)



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TABLE OF CONTENTS

Scope of Rules	3
§ 600 <u>601</u> Definitions.....	3
§ 601 <u>602</u> Who May File	4-5
§ 602 <u>603</u> Form of Complaint.....	4-5
§ 603 <u>604</u> Filing a Complaint	4-6
§ 604 <u>605</u> Processing a Complaint.....	5-6
§ 605 <u>606</u> Investigations; <u>Determination of Probable Cause</u>	6-7
§ 606 <u>607</u> Oaths and Subpoenas	7-9
§ 607 <u>608</u> <u>Public Hearing</u>	7-10
§ 608 <u>609</u> Imposition of Fines <u>and Other Sanctions</u>	9-12
§ 609 <u>610</u> Final Determination	11-14
§ 610 <u>611</u> Records	11-14
§ 612 Corrective Action.....	14
§ 613 Decertification of a County Election Official.....	15
§ 614 <u>Direct Administration of a County Election</u>	16

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Scope of Rules

These rules set forth the procedures for providing uniform and nondiscriminatory resolution of any complaint alleging a violation of election and voter registration laws under the jurisdiction of the State Board of Election Commissioners in accordance with Arkansas Code Annotated § 7-4-120.

§ ~~600~~ 601 Definitions

(a) “Complainant” means any person who files a complaint with the State Board of Election Commissioners, hereinafter referred to as the “State Board,” alleging that a violation of any election or voter registration law under the State Board of Election Commissioners’ jurisdiction has occurred.

(b) “Dismissed” means a resolution to an allegation within a complaint in which the allegation is resolved without the imposition of a statutory sanction.

(b) c) “Election laws” includes provisions of law from the following sources which concern elections conducted by county boards of election commissioners in conjunction with the county clerk:

(1) The Constitution of the United States;

(2) The Constitution of the State of Arkansas;

(3) Statutory provisions enacted by the United States or the State of Arkansas;

(4) Final court decisions of general applicability in State or Federal Court; and

(5) Rules promulgated by the United States or the State of Arkansas

~~means the Arkansas statutes concerning elections conducted by county boards of election commissioners and the rules promulgated by the State Board of Election Commissioners under § 7-4-101 concerning elections conducted by county boards of election commissioners¹.~~

(d) Election Official - a person who is a member of the county board of election commissioners, a person who performs election coordinator duties, a person who is a poll worker designated by a county board of election commissioners to be an election clerk, election judge, or election sheriff, or a deputy county clerk or a person assigned by a county clerk to conduct early voting.

(2) Election Official - includes a person who serves as:

(A) A member of the county board of election commissioners;

(B) A person who is appointed by the county board of election commissioners to serve as:

(i) an election coordinator;

¹ A.C.A. § 7-4-120 as amended by Act 1253 of 2015

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- (ii) a person appointed to preform tasks related to the election which require the handling of ballots or other election materials or equipment;
- (iii)an election clerk;
- (iv)an election judge;
- (v) an election sheriff; or
- (vi)an absentee ballot clerk; or

(C) A person assigned by a county clerk to conduct early voting administered by the county clerk.

(e) “Federal election cycle” under this rule means the preferential primary, general primary, general election, and general election runoff.

(e f) “Frivolous” means clearly lacking any basis in fact or law.²

(d g) “HAVA” is the federal Help America Vote Act of 2002 that established the Election Assistance Commission to assist in the administration of federal elections and allocated federal funds to states for election administration improvements, including replacing punch card and lever voting machines, improving accessibility for voters with disabilities, implementing a statewide voter registration system, voter and election official training, and other improvements.

(h) “Institute Corrective Actions” – A resolution to a complaint in which the State Board of Election Commissioners directs the respondent to take an action or to refrain from an action so as to cause the respondent to comply with the requirements of an election or voter registration law or to prevent the violation of an election or voter registration law in the future.

(e-i) “Letter of Caution” means a written disposition of an allegation against any person which is advisory in nature, clearly giving notice to the respondent that his or her action or lack of action is a violation of law.

(f-j) “Letter of Instruction” means a written disposition of a complaint of an allegation against an election official or county clerk issued in furtherance of the State Board of Election Commissioner’s responsibility to provide training for election officials. A letter of instruction may be issued when the State Board lacks authority to adjudicate a complaint, when the board makes no finding that an election law violation occurred, or when the board determines that a letter of instruction is preferable to a statutory sanction.

(g-k) “Letter of Reprimand” means a written disposition of an allegation against any person which is condemnatory in nature, clearly giving notice to the respondent that his or her action or lack of action is a violation of the law. The reprimand will require the respondent to refrain from engaging in the same activity again. A reprimand shall be considered more severe than a caution or warning.

² A.C.A. §7-4-120(k)(1) as amended by Act 1253 of 2015

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(h-l) “Letter of Warning” means a written disposition of an allegation against any person which is condemnatory in nature, expressing strong disapproval for the respondent’s misconduct and expressing the view that the misconduct undermines public confidence in the integrity of the election process.

(j-m) “Public Hearing” means a hearing on a complaint by the State Board, open to the public, to adjudicate a complaint.

(n) “Refer to the Proper Authority” means to dismiss from the administrative process and to forward all information relating to the complaint to another law enforcement entity when the SBEC determines that the available information indicates a violation of a criminal law or of a civil law enforced by another agency and the allegations either do not fall within the jurisdiction of the SBEC or further administrative action may damage a future criminal case.

(k-o) “Respondent” means any person whose actions are asserted, in a complaint filed with the State Board, to be in violation of any election or voter registration law under the board’s jurisdiction.

(l-p) “Statutory Sanction” means a letter of caution, warning, or reprimand, a corrective action, a decertification, direct administration of a county’s election, or a fine that can be imposed pursuant to the State Board’s statutory authority to sanction violations of election and voter registration laws.

(m-q) “Voter registration laws” includes provisions of law from the following sources which concern voter registration:

- (1) The Constitution of the United States;
- (2) The Constitution of the State of Arkansas;
- (3) Statutory provisions enacted by the United States or the State of Arkansas;
- (4) Final court decisions of general applicability in State or Federal Court; and
- (5) Rules promulgated by the United States or the State of Arkansas.³

~~Means those laws under Arkansas Constitution, Amendment 51 and the rules promulgated pursuant to Arkansas Constitution, Amendment 51~~

§~~601~~ 602 Who May File

Any person alleging that a violation of any election or voter registration law under the State Board’s jurisdiction has occurred may file a complaint. The State Board may file a complaint of its own volition.

§ ~~602~~ 603 Form of Complaint

³ A.C.A. §7-4-120(k)(3) as amended by Act 1253 of 2015

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(a) A procedurally sufficient complaint must:

- (1) be in writing;
- (2) be signed;
- (3) include an affirmation that facts articulated in the complaint are true and correct to the best of the complainant's knowledge under penalty of perjury;
- (4) clearly describe the alleged incident, election irregularities, or illegalities;
- (5) state approximately when the alleged violation or incident occurred;
- (6) state the location or locations where the alleged activities occurred; and
- (7) provide any supporting facts surrounding the allegations

~~To be considered, a complaint must be in writing, signed, and sworn by the Complainant under penalty of perjury, and must clearly state the alleged election irregularities or illegalities, when and where the alleged activities occurred, and supporting facts surrounding the allegations.~~⁴

§ 603 ~~604~~ Filing a Complaint

A written complaint must be filed no sooner than forty-six (46) with the State Board within thirty (30) days prior to of an alleged voter registration violation or the election affected by or associated with the alleged violation of law and no later than 30 days after the certification of the election in the county where the violation is alleged to have occurred ~~complaint.~~⁵

§ 604 ~~605~~ Processing a Complaint

A. (a) Receipt of Complaint

- (1) Upon receipt, every of a written complaint, it shall be stamped with the current date, filed, entered upon the complaint docket and a copy forwarded to the director. The director shall determine if the written complaint meets the requirements of a complaint as set forth in §§ 602 and 603 ~~603 and 604.~~

B. ~~Notice to Respondent~~

~~Upon receipt of a complaint, the director shall notify the respondent(s) listed in the complaint that a complaint has been filed against him.~~

C. ~~Director's Determination of Sufficiency~~

- (2) ~~Insufficient Complaint~~ If the director determines that the written complaint is deficient in that it is not timely filed, not in proper form, or that the allegations, taken as true, are insufficient to establish a violation of election or voter registration laws under the State

⁴ A.C.A. § 7-4-120(b)(2), (3) as amended by act 1253 of 2015

⁵ A.C.A. § 7-4-120(b)(1) as amended by act 1253 of 2015

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Board’s jurisdiction, the Director shall notify the complainant that the complaint is deficient, describe the nature of the deficiency, and inform the complainant that the complaint may be corrected within ten (10) calendar days of this notice being issued. Failure of the Complainant to cure the procedurally deficient complaint within ten (10) calendar days shall result in the complaint being dismissed if the State Board agrees that the complaint is deficient. The Director shall use all information provided with the complaint to deliver notice of a deficient complaint but shall not be required to provide notice if no contact information or mailing address is provided with the complaint. A complaint filed after the deadline to file a complaint cannot be cured by this process.

~~then the director shall make a report stating those findings and summarizing the complaint and any additional evidence known to the director. The director shall send a copy of the complaint and the report to each commissioner by email and, if requested in advance by a commissioner, by first class mail. The director’s determination shall be considered to be adopted by the State Board on the seventh business day after the date that the director’s determination was sent by email unless, before the seventh business day, any commissioner requests that the board further consider the complaint at a meeting of the board. If the State Board so adopts the director’s determination that the complaint fails to meet the requirements of these rules, then the director shall notify the complainant of that determination and the complaint shall be closed.⁶~~

Desired resolution

~~If the complaint is otherwise timely filed and proper but does not state a desired resolution, the director shall provide to the complainant notice of the deficiency by letter (regular United States mail) and instruct the complainant that he or she may provide the desired resolution to the State Board by letter (regular mail or overnight delivery service) or email.⁷~~

Proper complaint

(b) Staff Report – Sufficient Complaint

(1) If the director determines that the a written complaint is timely, in proper form, and that the allegations, if true, establish a violation of election or voter registration laws under the State Board’s jurisdiction, then the director shall make a concise report stating those findings, analyzing the legal issues raised by the complaint, and summarizing the complaint and including any additional evidence known to the director. Additional evidence known to the director may include the review, the receipt, or the examination of any publicly available information or document that bears on an allegation. A procedurally and substantively sufficient complaint that alleges an election or voter registration law violation within the jurisdiction of the SBEC shall be investigated.

~~The report may include a recommendation by the director that the complaint be addressed~~

⁶ A.C.A. § 7-4-120(b)(4) as amended by act 1253 of 2015

⁷ A.C.A. § 7-4-120(b)(3)(B)(ii) as amended by act 1253 of 2015

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(2) The director may recommend that the complaint be further investigated through either documentary submissions⁸; or through a formal investigation. ~~that it be further investigated⁹; or that it be provided to the proper authority¹⁰.~~ The director shall send a copy of the complaint and the report to each commissioner by email and, if requested in advance by a commissioner, by first class mail. If the director recommends that the complaint be further investigated, either formally or informally, or referred ~~that the complaint be addressed through documentary submissions without statutory sanctions, or that the complaint be forwarded~~ to the proper authority, such recommendation shall be considered to be adopted by the board on the ~~seventh~~ fifth (5) business day after the date that the director's determination was sent by email unless, before the ~~seventh~~ fifth (5) business day, any commissioner requests that the board further consider the complaint at a meeting of the board. ~~If the director recommends that the complaint be addressed through documentary submissions with statutory sanctions, the State Board shall consider the director's recommendation in a meeting of the board.~~

(c) Staff Report – Insufficient Complaint –

(1) If the allegations are found to be procedurally or substantively insufficient the director shall send a copy of the complaint and make a concise report stating those findings to each commissioner by email and, if requested in advance by a commissioner, by first class mail.

(2) The director's determination that the complaint is insufficient shall be considered adopted by the State Board on the fifth business day after the date that the director's determination was sent by email unless, before the fifth business day, any commissioner requests that the board further consider the complaint at a meeting of the board. If the State Board so adopts the director's determination that the complaint is insufficient and fails to meet the requirements of these rules, then the director shall notify the complainant that the complaint has been dismissed.¹¹

(d) Additional Steps Adopted with the Staff Report - In addition to the steps addressed above, the following action may be recommended by the Director or adopted by the SBEC without a recommendation by the Director in a meeting of the SBEC regardless of whether the complaint is found to be sufficient:

(A) The SBEC may issue a letter of instruction;

(B) The SBEC may refer the complaint to the proper authority; or

(C) The SBEC may issue a letter of instruction and refer the complaint to the proper authority.

§ ~~605~~ 606 Investigations; ~~;~~ - Determination of Probable Cause;

⁸— A.C.A. § 7-4-120(d)(1) as amended by act 1253 of 2015

⁹— A.C.A. § 7-4-120(d) as amended by act 1253 of 2015

¹⁰— A.C.A. § 7-4-120(e)(3), 7-4-120(d)(1) as amended by act 1253 of 2015

¹¹— A.C.A. § 7-4-120(b)(4) as amended by act 1253 of 2015

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~~A.~~ (a) Notice to Respondent - Upon determination that a complaint should be investigated, either through a formal investigation or through documentary submissions, the director shall notify the respondent of the complaint, the investigation, and the nature of the investigation. ~~and~~ The Director shall provide a copy of the complaint or pertinent parts of the complaint to the respondent, along with instructions regarding the opportunity to respond to the complaint.¹²

(b) Investigation through Documentary Submissions

(1) The director may request documents from the identified respondents, third parties, or from sources with documents that are otherwise publicly available to determine the facts either supporting or disproving the allegations of the complaint. Investigations through documentary submission may also include informal communications or interviews with relevant parties including a respondent.

(2) An investigation based upon documentary submissions may transition into a formal investigation if the Director determines that a formal investigation is necessary to obtain sufficient information to resolve the complaint.

(c) Formal Investigation

(1) In a formal investigation the director shall submit interrogatories to the respondent and may take additional investigative action utilizing subpoenas or testimony obtained under oath.

(2) Interrogatory questions may request the respondent or another person to provide written statements bearing on the facts, circumstances, or information relevant to the investigation.

(3) The Director may also ask the respondent or another person to produce relevant evidence, or to appear to answer questions in person during an interview or deposition.

(4) Written responses to interrogatory questions shall be answered under penalty of perjury.

(5) As part of a formal investigation, the director or his or her designee may interview any respondent, complainant, witness, or other third party, or may take the formal deposition of any respondent, complainant, witness, or other third party. Oral statements by respondents taken during a formal investigation will be provided under oath administered by the director or his or her designee, or in the case of a deposition, by a certified court reporter.

(6) The director or his or her designee may subpoena any document or record that may be relevant to the allegations of the complaint. The director may gather and use as part of the investigation any document or record that may be relevant to the allegations of the Complaint.

~~B.~~ (d) Director's Investigation Report

¹² A.C.A. §§ 7-4-120(b)(6)(B); 7-4-120(d)(2) as amended by act 1253 of 2015

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(1) Upon completing an investigation, the director shall prepare a report of the investigation for submission to the State Board. The report may include a recommendation by the director that the complaint be dismissed, ~~addressed through documentary submissions without statutory sanctions~~, that a letter of instruction be issued, that the complaint be forwarded to the proper authority, or that the State Board meet to consider issuing an Offer of Settlement including a statutory sanction.

(2) After receipt of the director's report, the director's recommendation shall be considered to be adopted by the State Board on the ~~seventh~~ fifth (5) business day after the date that the director's determination was sent by email unless, before the ~~seventh~~ fifth (5) business day, any commissioner requests that the State Board further consider the complaint at a meeting of the board. Upon further consideration, the State Board may either further investigate the complaint or:

- ~~1. Find that probable cause of an election law violation exists;~~
- ~~2. Determine that the complaint be dismissed;~~
- ~~3. Issue a letter of instruction;~~
- ~~4. Refer the complaint to the proper authority; or~~¹³
- ~~5. Take other appropriate action.~~

(A) Determine that the complaint be dismissed;

(B) Issue a letter of instruction;

(C) Refer the complaint to the proper authority;

(D) Direct the director to further investigate the complaint;

(E) Find that probable cause of an election or voter registration law violation exists, based upon the investigation report and its findings; or

(F) Take other appropriate action.

C. (e) Offer of Settlement

(a) If the State Board finds that probable cause exists for a finding of a violation, the board shall issue a written Offer of Settlement to the respondent, stating its findings and the proposed sanctions. The respondent may accept the State Board's Offer of Settlement in writing within ten calendar days of the issuance of the Offer. If the Offer is not accepted, the State Board may call for a full public hearing.¹⁴ The offer may state that the hearing is set as of the tenth calendar day after the offer was issued if the offer is not accepted.

(b) If the State Board does not find probable cause, it shall dismiss the complaint. The State Board may issue a letter of instruction when the complaint and other evidence indicate that such a letter is necessary and proper. Also, the State Board may refer the complaint and any evidence in its possession related to the complaint to the proper authority.

¹³ A.C.A. § 7-4-120(d)(1) as amended by act 1253 of 2015

¹⁴ A.C.A. § 7-4-120(b)(6)(C) as amended by act 1253 of 2015

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§ ~~606~~ 607 Oaths and Subpoenas

- (a) The State Board, its director, or the director's designee may administer oaths for the purpose of taking sworn statements from any person thought to have knowledge of any facts pertaining to the complaint.¹⁵
- (b) The State Board, its director, or the director's designee may request that the respondent answer allegations in writing, produce relevant evidence, or appear in person before the board.¹⁶
- (c) The State Board, its director, or the director's designee may subpoena any person, books, records, or other documents relevant to the complaint investigation by the board.¹⁷
- (d) The State Board, its director, or the director's designee shall provide the subject of the subpoena with reasonable notice of the subpoena and an opportunity to respond.¹⁸
- (e)(1) The State Board, its director, or the director's designee may subpoena any person, book, or record for testimony or presentation at any public hearing called by the State Board.
- (2) Respondents may request the director of the State Board to issue a subpoena on his or her behalf for any witness, book, or other document relevant to the issues identified in the notice of hearing.
- (A) Respondent must make his or her request to the director for a subpoena no less than five business days before a public hearing identified in the notice of hearing.
- (B) Respondent must provide:
- (i) the full name,
 - (ii) address, and
 - (iii) any additional contact information the respondent may possess and is necessary for the issuance of a subpoena by the director on behalf of that respondent.
- (C) Respondent or his or her counsel shall be responsible for ensuring service of any subpoena prepared by the director at respondent or his or her counsel's request.
- (D) A Respondent or his or her counsel may not issue their own subpoena, as only the State Board, its director, or the director's designee has the authority to issue a subpoena as part of this complaint process.

§ ~~607~~ 608 Public Hearing

¹⁵ ~~A.C.A. § 7-4-120(d)(3)(A) as amended by act 1253 of 2015~~

¹⁶ ~~A.C.A. § 7-4-120(d)(3)(B) as amended by act 1253 of 2015~~

¹⁷ ~~A.C.A. § 7-4-120(d)(3)(C) as amended by act 1253 of 2015~~

¹⁸ ~~A.C.A. § 7-4-120(d)(4)(A) as amended by act 1253 of 2015~~

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- (a) If an Offer of Settlement is rejected and the State Board sets a public hearing is called, the director shall notify the respondent and the complainant in writing of the date, time, and place of the meeting at which the complaint will be considered.
- (b) The notice shall ~~also~~ include a statement of the legal authority and jurisdiction under which the hearing is to be held and a short and plain statement of the matters of fact and law asserted. The respondent may attend in person or by counsel, and have the right to representation by counsel in all matters related to the complaint.
- (c) The respondent may attend in person or by counsel. The respondent has,~~and have~~ the right to representation by counsel in all matters related to the complaint. The respondent may offer testimony and present tangible evidence in connection with the complaint. The complainant also has the right to attend the public hearing and be represented by counsel, but the complainant shall not be responsible for presenting any evidence. Such responsibility lies with staff of the State Board.
- (d) If a respondent fails to appear after proper service of notice, the State Board may proceed with the public hearing and render a decision in the absence of the respondent.
- (e) Any attorney representing a respondent or complainant shall file a notice of appearance as soon as possible. Service on counsel of record is equivalent of service on the person represented.
- (f) Either the State Board, the chair of the board, a board member designated by the chair, or a hearing officer designated by the board shall preside at the hearing. A member of the staff shall appear at the hearing to present evidence of the asserted violation of election or voter registration law by the respondent.
- (g) Matters before the State Board for hearing that are similar in issues of fact or law or have identical parties may be consolidated if the board finds that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings and not unduly prejudice the rights of a respondent.
- (h) All requests for relief must be made in writing by motion filed with the State Board stating the action requested and the grounds relied upon. The presiding officer may conduct hearings on the motion and enter such orders as he/she deems necessary to address issues raised by the motion. However, the presiding officer will not issue dispositive orders.
- (i) The presiding officer presides at the hearing and may rule on motions, require briefs, and issue such orders as will ensure the orderly conduct of the proceedings. However, any presiding officer other than the State Board shall not enter a dispositive order.
- (j) The respondent has the right to participate or to be represented by counsel in all hearings or pre-hearing conferences related to the case. The respondent or respondent's counsel,~~and~~ has the right to introduce evidence of material fact, cross-examine witnesses as necessary for a full

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and true disclosure of the facts, present evidence in rebuttal, and, upon request by the presiding officer, may submit briefs and engage in oral argument.

(k) The hearing will be conducted in the following manner:

(1-) The hearing officer will give an opening statement, briefly describing the nature of the proceedings;

(2-) The staff and respondent will be given the opportunity to present opening statements;

(3-) The staff and the respondent will present their cases in the sequence decided by the presiding officer;

(4-) Each witness must be sworn or affirmed by the presiding officer or the court reporter, ~~and~~ be subject to examination or cross-examination and questioning by the State Board; -

(5) The presiding officer may limit questioning in a manner consistent with the law; ~~-and~~

(5- 6) At the close of evidence, staff and respondent may present final arguments.

(l) The presiding officer shall rule on the admissibility of evidence and may, when appropriate, take official notice of facts in accordance with applicable laws.

(m) Stipulation of facts is encouraged and the State Board may ~~make a decision~~ decide the issue or issues based on stipulated facts.

(n) Evidence in the proceeding must be confined to the issues set forth in the notice of the hearing sent to the respondent unless the respondent and staff waive the right to such notice or the presiding officer determines that good cause justifies expansion of the issues. Either the respondent or staff may be granted a continuance to allow for time to prepare for ~~the~~ any additional issues.

(o) When the respondent and staff seek admission of an exhibit, nine copies of the exhibit must be provided. Each party must be allowed to examine the exhibit prior to the ruling on its admission. All exhibits admitted into evidence must be marked and entered into the record.

(p) The respondent or staff may object to specific evidence or may request limits on the scope of the examination or cross-examination of a witness. The objection, the ruling on the objection and the reasons for the ruling will be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve the ruling until the written decision.

(q) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony will briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and included in the record.

(r) Irrelevant, immaterial, and unduly repetitive evidence will be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs.

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- (s) The State Board shall be responsible for recording the testimony heard at the hearing. Upon filing a petition for judicial review, the State Board will provide a verbatim transcript of testimony taken before the agency.
- (t) The decision of the State Board shall be reduced to a final order ~~signed~~ adopted by the ~~chair of the board,~~ State Board containing written findings of fact and conclusions of law stated separately. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. A copy of the final order shall be served on the respondent along with any order by the State Board. The State Board shall also provide a copy of the findings and order to the complainant.

§ ~~608~~ 609 Imposition of Fines and Other Sanctions

- (a) If the State Board finds a violation of election or voter registration laws under its jurisdiction, then the board may render one (1) or more of the following sanctions:
- (1) Issue a public letter of caution, warning, or reprimand;
 - (2) Impose a fine of not less than twenty-five dollars (\$25) nor more than one thousand dollars (\$1,000) for each negligent, knowing or intentional violation;
 - (3) Issue conditional directives that corrective actions be taken which, if not satisfied based on the terms of that directive, will result in additional sanctions;
 - (4) Decertify a county election official;
 - (5) Institute the direct administration of the county's election pursuant to Ark. Code Ann. §7-4-120(e)(6);
 - ~~(3-6)~~ Report its findings and other evidence to the proper law enforcement authorities along with recommendations; ~~and or~~
 - ~~(4-7)~~ Order payment of the costs for the investigation and hearing.¹⁹
- (b) The State Board may issue one or more of the above sanctions for a violation of election or voter registration laws within the State Board's jurisdiction.²⁰
- (c) In lieu of, or in addition to, imposing the statutory sanctions set out above, the State Board may issue a letter of instruction or refer the complaint and related evidence to the proper authority when the board determines that the circumstances warrant.
- (d) In determining the imposition of fines upon a finding of a violation, the State Board may consider all surrounding circumstances including, but not limited to, the seriousness of the violation, whether the violation was intentional or negligent, whether the respondent demonstrated good faith by consulting the State Board staff or the local county board of election commissioners, whether the violation was isolated or part of a pattern, and whether the respondent showed good cause for the violation.
- (e) For violators who have not previously received a statutory sanction, fines will range from not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for each negligent

¹⁹ A.C.A. § 7-4-120(e)(1-4) as amended by act 247 of 2017

²⁰ A.C.A. § 7-4-120(e)(5) as amended by act 1253 of 2015

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or intentional violation. Fines for violators who have previously received a statutory sanction will range from not less than one hundred dollars (\$ 100) nor more than one thousand dollars (\$1,000) and will be determined on a case-by-case basis depending upon the nature and degree of the negligent or intentional violation.²¹

(f) In the event a fine is not paid by the specified time, the State Board may file suit in the Pulaski County Circuit Court or in the circuit court or the small claims division of the appropriate district court of the county in which the debtor resides to obtain a judgment for ~~the amount of~~ any fine imposed according to its authority.²²

(g) The fee normally charged for the filing of a suit in any of the circuit or district courts in the State of Arkansas shall be waived on behalf of the State Board.²³

(h) All moneys received by the State Board in payment of fines shall be deposited in the State Treasury as general revenues.²⁴

§ ~~609~~ 610 Final Determination

(a) The State Board shall complete its investigation of a complaint filed according to Arkansas Code Annotated § 7-4-120 and take final action within one hundred eighty (180) days of the filing of the complaint, except if a public hearing is conducted then all action on the complaint by the board shall be completed within two hundred forty (240) days.²⁵

(b) The State Board shall advise ~~in writing~~ the complainant and the respondent in writing of the finding of the board, final action taken, including sanctions, if any, and the reasons for the finding, final action, and sanctions, if any.²⁶

(c) Any final action of the State Board shall constitute an adjudication for purposes of judicial review under Arkansas Code Annotated § 25-15-212.

§ ~~610~~ 611 Records

(a) The State Board shall keep a record of all inquiries, investigations, and proceedings.²⁷

(b) Records relating to investigations by the State Board are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., until a hearing is set or the director's investigation is closed.²⁸

²¹ A.C.A. § 7-4-120(h)(1) as amended by act 1253 of 2015

²² A.C.A. § 7-4-120(h)(2) as amended by act 1253 of 2015

²³ A.C.A. § 7-4-120(h)(3) as amended by act 1253 of 2015

²⁴ A.C.A. § 7-4-120(h)(4) as amended by act 1253 of 2015

²⁵ A.C.A. § 7-4-120(i) as amended by act 1253 of 2015

²⁶ A.C.A. § 7-4-120(f) as amended by act 1253 of 2015

²⁷ A.C.A. § 7-4-120(g) as amended by act 1253 of 2015

²⁸ A.C.A. § 7-4-120(e)(2) as amended by act 1253 of 2015

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(c) The State Board may disclose, through its members or staff, otherwise confidential information to proper law enforcement officials, agencies, and bodies as may be required to conduct its investigation.²⁹

§ 612 Corrective Action

(a) A statutory sanction imposed by the State Board of Election Commissioners which includes instituting a corrective action shall be governed by the following provisions:

(1) A corrective action may require a respondent to comply with any election or voter registration law;

(2) A corrective action may require the respondent to take steps, which are reasonably calculated, to ensure the future compliance with election or voter registration laws;

(3)(A) The State Board of Election Commissioners may make an Offer of Settlement for a complaint contingent on the implementation of corrective actions so long as:

(i) The corrective action is within the authority and ability of the respondent to implement within the 180 days of the date the complaint was filed;

(ii) The offer defines the sanctions that will be imposed if the respondent fails to satisfy the requirements of the offer; and

(iii) The offer provides clear requirements which the respondent must satisfy and clear instructions explaining how the respondent is required to certify the satisfaction of the offer to implement corrective action to the SBEC.

(B) In the event a contingent offer is made to a member of the County Board of Election Commissioners which requires an act of the county board of election commissioners as a body, an individual member will have satisfied their obligation to accept the offer by voting consistent with the corrective action or making a motion to implement the correction action regardless of whether the motion in question is adopted or fails for want of a second.

(C) If the SBEC makes an offer pursuant to §611(a)(3), the complaint shall have the lesser of 180 days from the date the complaint was filed or 30 days from the date the offer was made to comply with the requirements of the offer. The failure to comply with the requirements of the offer shall constitute a rejection of the offer and results in the complaint being set for an administrative hearing at a date and time to be determined by the State Board.

²⁹ A.C.A. § 7-4-120(c)(3) as amended by act 1253 of 2015

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(4) The SBEC may issue a directive to a county to implement corrective action which is not contingent on acceptance, but which includes a warning of the sanction which the SBEC will consider appropriate should a future complaint come before the Board alleging the issues addressed by the corrective action.

(b) The failure to implement the corrective action prescribed by an offer made by the State Board under this rule shall not be considered evidence of the truthfulness of the underlying allegation should an administrative hearing be held for that complaint.

§ 613 Decertification of a County Election Official

(a) In the event that the State Board of Election Commissioners resolves a complaint with the decertification of an election official under A.C.A. § 7-4-120(e)(5), the implementation of this sanction shall be governed by the following provisions:

(1) The board may only decertify an election official who is a respondent in the complaint being considered.

(2) An offer of settlement or a sanction imposed following a hearing may include a term of years for which the decertification will remain in effect within the following range:

(A) Not less than two (2) federal election cycles; and

(B) Not more than seven (7) federal election cycles.

(3) An offer of settlement or a sanction imposed following a hearing may include a permanent decertification as an election official in the State of Arkansas if the State Board makes the additional findings that the violation of election or voter registration law was:

(A) Intentional;

(B) Severe in nature; and

(C) Was of a nature that undermines the public confidence in the integrity of the election process.

(4) Notice of decertification shall be directed to the respondent or respondents and shall also be sent to the following person if those persons are not respondents:

(A) The county board of election commissioners; and

(B) The county clerk;

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(b) Pursuant to the governing provision of state law, the county clerk is not an election official for the purposes of this rule and is not subject to decertification.

§ 614 Direct Administration of a County Election

(a) In the event that the State Board of Election Commissioners issues an order to take over and conduct the direct administration of a county's election under A.C.A. 7-4-120(e)(6), the implementation of this sanction shall be governed by the following provisions:

(1) The State Board of Election Commissioners may take over and conduct the administration of the county's election in its entirety or may take over and conduct the responsibilities of a person or entity which is the subject of the complaint.

(2) An order issued under A.C.A. 7-4-120(e)(6) shall be directed to the respondent or respondents and shall also be sent to the following persons if those persons are not respondents:

(A) The county board of election commissioners;

(B) The county clerk;

(C) The county judge; and

(D) The county prosecuting attorney.

(3) The State Board of Election Commissioners shall continue to conduct the direct administration of a county's election until the State Board votes to terminate the direct administration of the County's Election but no longer than two federal election cycles including the cycle in which the administration began.

(b) Upon assuming the election related duties of the county board of election commissioners or the county clerk, the State Board of Election Commissioners shall:

(1) Appoint a person certified by the State Board of Election Commissioners as an election coordinator to conduct the administrative functions of the election which the State Board has assumed including, but not limited to:

(A) Conducting ballot draw;

(B) Preparing ballots and voting equipment;

(C) Conducting logic and accuracy testing;

(D) Publishing or ensuring all required notices are posted;

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(E) Selecting and training election officials required to conduct the election;

(F) Receiving and reporting preliminary and unofficial election night results; and

(G) Any responsibility of the county clerk which is assumed by the State Board:

(i) including any receptibilities related to the election; but

(ii) excluding any responsibility related to voter registration other than compiling the precinct voter registration list based on the records kept by the county clerk.

(2) Fulfill the following deliberative functions of the election which the State Board has assumed through a county election administration committee including, but not limited to:

(A) Fulfilling the role of the county election commission regarding the canvassing and counting of absentee ballots;

(B) Fulfilling the role of the county election commission regarding the review of provisional ballots;

(C) Overseeing the canvasses and counts the ballots cast in the election; and

(D) Certifying the results of the election pursuant to the requirements of State Law;

(E) Issuing any certificate or other election related document required under state law.

(3) The county election administration committee may be made up of:

(A) the State Board;

(B) A subcommittee of the State Board;

(C) Three qualified voters of the state selected by the State Board; or

(D) A combination three individuals including members of the State Board and other qualified electors of the state.

(c) Following the election, the election coordinator appointed by the State Board shall:

(1) Ensure the return of voting equipment to a secure facility for storage; and

(2) Ensure that ballot boxes and records are appropriately labeled and stored in such a manner that records may be retrieved for any election challenge or post-election audit authorized by the State Board.

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(d) When the SBEC makes an offer of settlement which includes the direct administration of the county board of election commissioners' roll in the election process, all of the members of the county board must accept the offer of settlement for it to be immediately effective.

(1) If one or more members of the county board reject the offer, a hearing must be held to determine whether the state board of election commissioners will directly administer the county's election and to resolve the complaint with respect to the members rejecting the offer of settlement.

(2) A member of the county board who accepts the offer of settlement will not be a respondent in the hearing to determine whether the state board will directly administer the county's election.

(e) Care and custody of the county election equipment rests with the county board of election commissioners or county clerk under A.C.A. 7-5-301(k)-(m) shall temporarily transfer to the state board of election commissioner if the state board directly administers a county's election.

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

HOUSE BILL 1803

5 By: Representatives Lowery, Wing
6 By: Senators K. Hammer, M. Johnson
7

For An Act To Be Entitled

9 AN ACT ESTABLISH THE ARKANSAS BALLOTING INTEGRITY ACT
10 OF 2021; TO AMEND ARKANSAS LAW CONCERNING ELECTION
11 EXPENSE ALLOCATION; TO AMEND THE COMPLAINT PROCESS
12 FOR ELECTION LAW VIOLATIONS; TO AMEND THE AUTHORITY
13 AND DUTIES OF THE STATE BOARD OF ELECTION
14 COMMISSIONERS; AND FOR OTHER PURPOSES.
15

Subtitle

16
17
18 TO ESTABLISH THE ARKANSAS BALLOTING
19 INTEGRITY ACT OF 2021.
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. DO NOT CODIFY. Title.

25 This act shall be known and may be cited as the "Arkansas Balloting
26 Integrity Act of 2021".
27

28 SECTION 2. Arkansas Code § 7-4-120 is amended to read as follows:

29 7-4-120. Complaints of election law violations – Definitions.

30 (a)(1) Except as provided in subdivision (a)(2) of this section, the
31 State Board of Election Commissioners may investigate alleged violations,
32 render findings, institute corrective actions, and impose sanctions according
33 to this subchapter for violations of election and voter registration laws.

34 (2) The State Board of Election Commissioners shall not
35 investigate alleged violations, render findings, or impose sanctions
36 concerning violations of:



1 (A) The provisions of § 7-1-103(a)(1)-(4), (6), and (7);
 2 or

3 (B) Campaign finance and disclosure laws for which the
 4 Arkansas Ethics Commission has the duty and authority to investigate and
 5 sanction under §§ 7-6-217 and 7-6-218.

6 (b)(1) A complaint shall be filed with the State Board of Election
 7 Commissioners in writing ~~within thirty (30) days of~~ no earlier than the date
 8 established by law for the delivery or mailing of absentee ballots to a voter
 9 and no later than thirty (30) days following the certification of an election
 10 by a county board of election commissioners of the following:

11 (A) An alleged violation of the ~~voter registration~~ laws
 12 regarding elections including without limitation:

- 13 (i) Voter registration;
- 14 (ii) Requests for absentee ballots;
- 15 (iii) Delivery of absentee ballots;
- 16 (iv) Casting of ballots;
- 17 (v) Ballot tabulation;
- 18 (vi) Certification of election results;
- 19 (vii) Administration of an election;
- 20 (viii) Election processes; or
- 21 (ix) Conduct of an election; or

22 (B) The election or elections affected or associated with
 23 the complaint~~+~~.

24 (2) A complaint shall be signed by the complainant under penalty
 25 of perjury.

26 (3)(A) A complaint shall clearly:

- 27 (i) Describe the alleged violation, including
 28 without limitation the supporting facts for the violation or incident;
- 29 (ii) State when or the approximate date that the
 30 alleged violation or incident occurred; and
- 31 (iii) State the location or locations of the alleged
 32 violation or incident.

33 (B)(i) The complaint may specify, suggest, or recommend a
 34 desired resolution to the complaint.

35 (ii) If the complaint is timely filed but does not
 36 specify the desired resolution of the complainant:

1 (a) The State Board of Election Commissioners
 2 ~~shall~~ may:

3 (1) ~~notify~~ Notify the complainant that
 4 a desired resolution is not specified;

5 (2) Inform the complainant that other
 6 formal or informal resolutions may be appropriate; and

7 (3) Inform the complainant that the
 8 State Board of Election Commissioners may initiate a lawful resolution,
 9 correction, or remedy as the State Board of Election Commissioners deems
 10 appropriate; and

11 (b) The complainant may file the additional
 12 information within ten (10) days from mailing of the notice.

13 (4)(A) If a complaint does not meet the requirements of this
 14 section, the complainant shall be notified that the complaint may be
 15 corrected by amendment in writing within ten (10) days and that a failure to
 16 make the necessary corrections shall result in the complaint ~~shall be~~ being
 17 dismissed.

18 (B) If a complaint is dismissed because it does not meet
 19 the requirements of this section, the State Board of Election Commissioners
 20 shall notify the complainant of the fact of dismissal.

21 (5) A person shall not file a frivolous complaint.

22 (6)(A) If a complaint is filed as required by this section, the
 23 State Board of Election Commissioners shall investigate the alleged
 24 violation.

25 (B) Immediately upon beginning an investigation under this
 26 section, the State Board of Election Commissioners shall notify the person or
 27 persons under investigation of the fact of the investigation and the nature
 28 of the investigation.

29 (C) If at the conclusion of the investigation, the State
 30 Board of Election Commissioners finds that there is probable cause to believe
 31 there has been a violation of the voter registration laws or election laws,
 32 the State Board of Election Commissioners may set a public hearing.

33 (c)(1) The State Board of Election Commissioners shall maintain a
 34 record of all inquiries, investigations, and proceedings.

35 (2) Except as provided in subdivisions (c)(3) and (4) of this
 36 section, records under this section are exempt from disclosure under the

1 Freedom of Information Act of 1967, § 25-19-101 et seq., until:

2 (A) A hearing by the State Board of Election Commissioners
3 is set; or

4 (B) The investigation by the State Board of Election
5 Commissioners is closed by the State Board of Election Commissioners.

6 (3) The State Board of Election Commissioners ~~may~~ shall
7 disclose, through its members or staff, otherwise confidential information to
8 proper law enforcement officers, agencies, and other entities as is necessary
9 to conduct the investigation under this section.

10 (4) The records of the investigation upon which the State Board
11 of Election Commissioners has based its findings shall be opened to public
12 inspection thirty (30) days after the final adjudication in which the State
13 Board of Election Commissioners makes a final decision.

14 (d)(1) If the State Board of Election Commissioners determines that
15 the complaint can be addressed through documentary submissions and without a
16 formal investigation, the State Board of Election Commissioners may address
17 the complaint with documentary submissions.

18 (2) If the State Board of Election Commissioners determines that
19 an investigation is necessary, the State Board of Election Commissioners
20 shall provide to the person who is the subject of the complaint:

21 (A) A copy of the complaint if a copy has not previously
22 been provided; and

23 (B) Instructions for filing a response.

24 (3) The State Board of Election Commissioners may:

25 (A) Administer oaths for the purpose of taking sworn
26 statements from witnesses in the course of its investigations;

27 (B) Request the person who is the subject of the complaint
28 to answer allegations in writing, produce relevant evidence, or appear in
29 person before the State Board of Election Commissioners; and

30 (C)(i) Subpoena any person or the books, records, or other
31 documents relevant to the investigation or inquiry.

32 (ii) The subpoena may direct any law enforcement
33 officer of the county concerned or the Director of the Division of Arkansas
34 State Police to seize any public record that is withheld.

35 (4) The State Board of Election Commissioners shall:

36 (A) Provide the person subpoenaed with reasonable notice

1 of the subpoena and an opportunity to respond; and

2 (B) Advise the complainant and the person who is the
3 subject of the complaint in writing of the final action of the State Board of
4 Election Commissioners.

5 (e) If the State Board of Election Commissioners finds a violation of
6 the voter registration laws or election laws under its jurisdiction, the
7 State Board of Election Commissioners may:

8 (1) Issue a public letter of caution, warning, ~~or~~ reprimand, or
9 a conditional warning of consequences that shall be imposed if corrective
10 action is not completed;

11 (2) Impose a fine of no less than twenty-five dollars (\$25.00)
12 and no more than one thousand dollars (\$1,000) for a negligent, knowing, or
13 intentional violation;

14 (3) Report the information obtained in the investigation and the
15 findings and determinations of the State Board of Election Commissioners to
16 the appropriate law enforcement authorities;

17 (4) Make expenditures and order ~~Order~~ payment of the costs of
18 the investigation and hearing;

19 (5) Combine any ~~of the~~ two (2) or more of the actions or
20 sanctions authorized under this section.

21 (f) The State Board of Election Commissioners shall advise the
22 complainant and the person who is the subject of the complaint of the:

23 (1) Finding of the State Board of Election Commissioners;

24 (2) Final action taken and sanctions issued by the State Board
25 of Election Commissioners against a person associated with the complaint and
26 a response thereto; and

27 (3) Reasons for the findings, final actions, and sanctions.

28 (g) The State Board of Election Commissioners shall maintain a record
29 of all inquiries, investigations, and proceedings.

30 (h)(1) The State Board of Election Commissioners shall adopt rules
31 concerning the imposition of fines under this section.

32 (2) If a person fails to pay the fines ordered by the State
33 Board of Election Commissioners under this section, the State Board of
34 Election Commissioners may obtain a judgment from a court for the amount of
35 the fine imposed by filing suit in the:

36 (A) Pulaski County Circuit Court;

1 (B) Circuit court of the county in which the person
 2 resides; or

3 (C) Small claims division of a district court.

4 (3) The fee for filing of a suit in a circuit or district court
 5 in this state shall be waived for the State Board of Election Commissioners.

6 (4) All moneys received by the State Board of Election
 7 Commissioners in payment of fines shall be deposited into the State Treasury
 8 as general revenues.

9 (i)(1) The State Board of Election Commissioners shall conclude its
 10 investigation and take its final action under this section within one hundred
 11 eighty (180) days of the filing of a complaint.

12 (2) The State Board of Election Commissioners shall announce its
 13 final action as a final administrative decision.

14 (3) However, if the State Board of Election Commissioners fails
 15 to take its final action within one hundred eighty (180) days, the final
 16 administrative action shall be effective within one hundred eighty (180) days
 17 of the filing of the complaint.

18 ~~(2)(4)~~ (4) If the State Board of Election Commissioners holds a
 19 hearing under this section, the State Board of Election Commissioners shall
 20 conclude all actions under this section within two hundred forty (240) days.

21 (j) A final action of the State Board of Election Commissioners under
 22 this section is an adjudication for purposes of judicial review under § 25-
 23 15-212.

24 (k) As used in this section:

25 (1) "Election laws" means the United States Constitution,
 26 Arkansas Constitution, and the statutes, final court decisions of general
 27 applicability, and rules of the United States and the State of Arkansas
 28 ~~statutes~~ concerning elections conducted by county boards of election
 29 commissioners and the rules promulgated by the State Board of Election
 30 Commissioners under § 7-4-101 concerning elections conducted by county boards
 31 of election commissioners;

32 (2) "Frivolous" means clearly lacking any basis in fact or law;
 33 and

34 (3) "Voter registration laws" means those laws under the United
 35 States Constitution, the Arkansas Constitution, Amendment 51, and the
 36 statutes, final court decisions, and rules promulgated by the United States

1 and the State of Arkansas concerning voter registration laws pursuant to
2 Arkansas Constitution, Amendment 51.

3
4 SECTION 3. Arkansas Code § 7-5-104 is amended to read as follows:

5 7-5-104. Election expenses – Allocation.

6 (a)(1) All expenses of general elections and runoff elections for
7 presidential, congressional, state, district, county, township, or municipal
8 offices in this state shall be paid by the counties in which they are held.

9 (2) However, any city or incorporated town shall reimburse the
10 county board of election commissioners for the expenses of the elections in
11 an amount equal to a figure derived by multiplying fifty percent (50%) of the
12 total cost of each election by a fraction, the numerator of which shall be
13 the number of voters from the city or incorporated town casting ballots in
14 each election prepared by the county board of election commissioners, and the
15 denominator of which shall be the total number of voters casting ballots in
16 each election.

17 (b)(1) Except for the expense of party primary elections under § 7-7-
18 201 et seq., all expenses for special elections, including runoff elections
19 as required by law, for congressional, state, district, county, and township
20 offices shall be paid by the counties in which they are held.

21 (2) All expenses of special elections, including any runoff
22 elections as required by law, for municipal offices shall be paid by the city
23 or incorporated town calling for the elections.

24 (3) All expenses of special elections called by any county for
25 the purpose of referring a question or measure to the voters of the county
26 shall be paid by the county.

27 (4) All expenses of special elections called by any city or
28 incorporated town for the purpose of referring a question or measure to the
29 voters of the city or incorporated town shall be paid by the city or
30 incorporated town.

31 (c)(1) The county board of election commissioners shall determine the
32 expenses necessary to conduct a free, equal, and lawful election in order to
33 comply with the United States Constitution, laws of the United States,
34 Arkansas Constitution, and the laws of the State of Arkansas.

35 (2) The county board of election commissioners shall:

36 (A) Prepare an election budget estimate of the expenses of

1 all anticipated elections for the fiscal year of the county; and

2 (B) Transmit the election budget estimate during the same
 3 time and in the same manner as is required of other county departments and
 4 county elected officials in writing to:

- 5 (i) The county judge;
- 6 (ii) The county judge's designated comptroller or
 7 budget director; or
- 8 (iii) A person as may be directed by the county
 9 judge.

10 (3) The election budget estimate shall include without
 11 limitation the following cost of:

- 12 (A) The salaries and expenses of:
 - 13 (i) Full-time employees with positions relating to
 14 elections; and
 - 15 (ii) Additional permanent, temporary, seasonal, or
 16 part-time employees to include without limitation:
 - 17 (a) Poll workers; and
 - 18 (b) Election officials;
- 19 (B) Equipment;
- 20 (C) Supplies;
- 21 (D) Publication costs;
- 22 (E) Maintenance;
- 23 (F) Utilities;
- 24 (G) Insurance;
- 25 (H) Taxes;
- 26 (I) Other direct expenses to conduct elections during the
 27 calendar year following an appropriation by the quorum court; and
- 28 (J) Indirect expenses of conducting elections during the
 29 calendar year following appropriation by the quorum court.

30 (4) If the county board of election commissioners determines
 31 that an elected county official has made an appropriate determination of
 32 expenses necessary to conduct elections and has previously prepared a budget
 33 estimate of the expenses for all anticipated elections for the fiscal year of
 34 the county, the county board of election commissioners may fulfill its duties
 35 by identifying and requesting line item budget support in the formal budget
 36 and appropriation of the elected county official, by majority vote of the

1 county board of election commissioners, as set forth in its minutes annually.

2 (5) If the county board of election commissioners determines
3 that the expenses necessary to conduct free, equal, and lawful elections can
4 be met through in-kind support from other county departments, agencies, and
5 resources, the county board of election commissioners may accept in-kind
6 support and resources under the terms and conditions as may be acceptable to
7 the county board of election commissioners.

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10 **APPROVED: 4/19/21**
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1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: S4/13/21

A Bill

SENATE BILL 644

5 By: Senator K. Hammer
6 By: Representative Ladyman
7

For An Act To Be Entitled

9 AN ACT CONCERNING THE INVESTIGATION OF VIOLATIONS OF
10 ELECTION LAW; TO ESTABLISH AN ELECTION LAW VIOLATION
11 HOTLINE; TO AMEND THE LAW CONCERNING INVESTIGATIONS
12 BY THE STATE BOARD OF ELECTION COMMISSIONERS; AND FOR
13 OTHER PURPOSES.
14
15

Subtitle

16 CONCERNING THE INVESTIGATION OF
17 VIOLATIONS OF ELECTION LAW; AND TO
18 ESTABLISH AN ELECTION LAW VIOLATION
19 HOTLINE.
20
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 7-1-103(b), concerning miscellaneous
26 misdemeanor offenses and penalties related to violations of election laws, is
27 amended to add an additional subdivision to read as follows:

28 (3) A person convicted of a misdemeanor offense as listed in
29 this section shall be barred from serving as an election official in
30 subsequent elections.
31

32 SECTION 2. Arkansas Code § 7-1-104, concerning miscellaneous felonies
33 and penalties related to violations of election laws, is amended to add an
34 additional subsection to read as follows:

35 (c) A person convicted of a felony as listed in this section shall be
36 barred from serving as an election official in subsequent elections.



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SECTION 3. Arkansas Code § 7-4-120(b), concerning complaints of election law violations, is amended to read as follows:

(b)(1) A complaint:

(A) shall ~~shall~~ be filed with the State Board of Election Commissioners in writing within thirty (30) days of:

~~(A)(i)~~ An alleged violation of the voter registration laws; ~~or~~

~~(B)(ii)~~ The election associated with the complaint;

or

(iii) The alleged election law violation;

~~(2)(B)~~ May be referred to the State Board of Election Commissioners by the Joint Performance Review Committee and is not subject to the thirty (30) day filing requirement under subdivision (b)(1)(A) of this section; and

(C)(i) ~~A complaint shall~~ shall be signed by the complainant under penalty of perjury.

(ii) If a complaint is referred to the State Board of Election Commissioners by the Joint Performance Review Committee under subdivision (b)(1)(B) of this section, the Chair of the Joint Performance Review Committee shall be the complainant.

~~(3)(A)(2)(A)~~ A complaint shall clearly:

(i) Describe the alleged violation, including without limitation the supporting facts for the violation;

(ii) State when the alleged violation occurred; and

(iii) State the location of the alleged violation.

(B)(i) The complaint may specify a desired resolution to the complaint.

(ii) If the complaint is timely filed but does not specify the desired resolution of the complainant:

(a) The State Board of Election Commissioners shall notify the complainant that a desired resolution is not specified; and

(b) The complainant may file the additional information within ten (10) days from mailing of the notice.

(3) If the complaint is referred to the State Board of Election Commissioners by the Joint Performance Review Committee, the complaint shall

1 include:

2 (A) A report of the findings of the Joint Performance
3 Review Committee, including any hearing testimony the Joint Performance
4 Review Committee believes relevant; and

5 (B) The recommendations of the Joint Performance Review
6 Committee that may be submitted to the State Board of Election Commissioners,
7 including without limitation a recommendation:

8 (i) For a letter of reprimand to an election
9 official;

10 (ii) For decertification as an election official in
11 the next election cycle, including all associated primary and runoff
12 elections;

13 (iii) That the State Board of Election Commissioners
14 take over and conduct elections in the county in question if the violation or
15 violations are considered severe by the Joint Performance Review Committee
16 and would threaten a county's ability to conduct an equal, free, and
17 impartial election, or the appearance of an equal, free and impartial
18 election; or

19 (iv) That state turnback funds be withheld from a
20 county when the State Board of Election Commissioners conducts an election on
21 behalf of a county and the county refuses to reimburse the State Board of
22 Election Commissioners for expenses incurred.

23 (4)(A) If a complaint does not meet the requirements of this
24 section, the complaint shall be dismissed.

25 (B) If a complaint is dismissed because it does not meet
26 the requirements of this section, the State Board of Election Commissioners
27 shall notify the complainant of the fact of dismissal.

28 (5) A person shall not file a frivolous complaint.

29 (6)(A) If a complaint is filed as required by this section, the
30 State Board of Election Commissioners shall investigate the alleged
31 violation.

32 (B) Immediately upon beginning an investigation under this
33 section, the State Board of Election Commissioners shall notify the person
34 under investigation of the fact of the investigation and the nature of the
35 investigation.

36 (C) If at the conclusion of the investigation, the State

1 Board of Election Commissioners finds that there is probable cause to believe
2 there has been a violation of the voter registration laws or election laws,
3 the State Board of Election Commissioners may set a public hearing.
4

5 SECTION 4. Arkansas Code § 7-4-120(e), concerning complaints of
6 election law violations, is amended to read as follows:

7 (e) If the State Board of Election Commissioners finds a violation of
8 the voter registration laws or election laws under its jurisdiction, the
9 State Board of Election Commissioners may:

10 (1) Issue a public letter of caution, warning, or reprimand;

11 (2) Impose a fine of no less than twenty-five dollars (\$25.00)
12 and no more than one thousand dollars (\$1,000) for a negligent, knowing, or
13 intentional violation;

14 (3) Report the information obtained in the investigation and the
15 findings and determinations of the State Board of Election Commissioners to
16 the appropriate law enforcement authorities;

17 (4) Order payment of the costs of the investigation and hearing;

18 ~~or~~

19 (5) Decertify an election official from appointment as an
20 election official;

21 (6) Issue an order that the State Board of Election
22 Commissioners shall take over and conduct elections in the county in question
23 if the violation is considered severe by the State Board of Election
24 Commissioners and would threaten either a county's ability to conduct an
25 equal, free, and impartial election, or the appearance of an equal, free and
26 impartial election; or

27 ~~(5)(7)~~ Combine any of the sanctions authorized under this
28 section.
29

30 SECTION 5. Arkansas Code § 7-5-202(c)(1)(F), concerning public notice
31 of elections, is amended to read as follows:

32 (F)(i) General information on federal and state laws
33 regarding prohibitions on acts of fraud and misrepresentation; and

34 (ii) Information about the availability of the
35 Attorney General's election law violation hotline, including without
36 limitation the hotline telephone number of the Attorney General's election

1 law violation hotline established under § 25-16-717;

2

3 SECTION 6. Arkansas Code § 10-3-902, concerning the duties of the
4 Joint Performance Review Committee, is amended to add an additional
5 subdivision to read as follows:

6 (7)(A) Investigate allegations of violations of election law
7 referred by the Attorney General's office.

8 (B) The Joint Performance Review Committee may:

9 (i) Administer oaths for the purpose of taking sworn
10 statements from witnesses in the course of its investigations;

11 (ii) Request a person who is the subject of a
12 complaint to answer allegations in writing, produce relevant evidence, or
13 appear in person before the Joint Performance Review Committee;

14 (iii) Subpoena any person or books, records, or
15 other documents relevant to the investigation or inquiry; and

16 (iv) Hold public hearings on the allegation of a
17 violation of election law.

18 (C) The Joint Performance Review Committee may:

19 (i) Inform a person in writing that an allegation of
20 a violation of election law has been made against him or her;

21 (ii) Provide notice in writing to the person who is
22 the subject of an alleged violation of election law if a hearing will be held
23 on the alleged violation of election law, including the specific date and
24 time of the hearing;

25 (iii) Hold a hearing or schedule multiple hearings
26 to investigate an allegation of a violation of election law;

27 (iv) Provide a person subpoenaed with reasonable
28 notice of the subpoena and an opportunity to respond;

29 (v) Advise the person who is the subject of the
30 alleged violation of election law in writing of the final recommendations of
31 the Joint Performance Review Committee; and

32 (vi) Prepare a report of the findings and
33 recommendations of the Joint Performance Review Committee and submit that
34 report to the State Board of Election Commissioners.

35

36 SECTION 7. Arkansas Code Title 25, Chapter 16, Subchapter 7, is

1 amended to add an additional section to read as follows:

2 25-16-717. Election law violation – Hotline.

3 (a)(1) The Attorney General shall establish and publish procedures to
4 receive complaints concerning violations of election law.

5 (2) The procedures shall include the operation of a toll-free
6 hotline and may include procedures to receive written complaints through the
7 mail, email, or fax.

8 (3) Knowingly filing a false claim of a violation of election
9 law is a Class A misdemeanor punishable under § 7-1-103(c).

10 (b)(1) The Attorney General shall report all complaints received to
11 the Joint Performance Review Committee within forty-five (45) days following
12 the certified election results of a general election.

13 (2) The report may contain preliminary findings by the Attorney
14 General as to the validity of the complaint.

15 (3) The Joint Performance Review Committee may call a meeting
16 within thirty (30) days of receipt of the report for the purpose of
17 investigating election law violations.

18 (c)(1) If the Attorney General receives a complaint and finds it is
19 likely that a violation of election law has occurred, the Attorney General
20 shall forward the complaint to the Joint Performance Review Committee for
21 preliminary investigation and may forward the complaint to the appropriate
22 prosecuting attorney.

23 (2) The prosecuting attorney may deputize the Attorney General
24 to act on the prosecuting attorney’s behalf if the prosecuting attorney has a
25 conflict of interest in the investigation.

26 (3) If the Attorney General is deputized by the prosecuting
27 attorney, the Attorney General may investigate or prosecute the alleged
28 violation of election law.

29
30 /s/K. Hammer
31
32

33 **APPROVED: BECAME LAW ON 4/27/21 WITHOUT THE GOVERNOR’S SIGNATURE.**
34
35
36