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Proposed Rulemaking

Title

Promulgated by:
State Board of Election Commissioners

Title 7. Elections

Chapter III. State Board of Election Commissioners

Subchapter C. Complaints

Part 60. Rules of Procedure for Citizen Complaints Regarding Violations of State Election and Voter Registration Laws

Subpart 1. Generally

7 CAR § 60-101. Scope.

This part sets 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 § 7-4-120.

7 CAR § 60-102. Definitions.

As used in this part:

(1) "Complainant" means any person who files a complaint with the State Board of Election Commissioners, hereinafter referred to as the "board", alleging that a violation of any election or voter registration law under the State Board of Election Commissioners' jurisdiction has occurred;

(2) "Corrective actions" means 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:

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(A) Comply with the requirements of an election or voter registration law;

or

(B) Prevent the violation of an election or voter registration law in the

future;

(3) "County board" means a county board of election commissioners;

(4) "Dismissed" means a resolution to an allegation within a complaint in which the allegation is resolved without the imposition of a statutory sanction;

(5) "Election laws" includes provisions of law from the following sources that concern elections conducted by county boards of election commissioners in conjunction with the county clerk:

(A) The Constitution of the United States;

(B) The Arkansas Constitution;

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

(D) Final court decisions of general applicability in state or federal court;

and

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

(6)(A) "Election official" means a person:

(i) Who is a member of the county board of election commissioners;

(ii) Who performs election coordinator duties;

(iii) Who is a poll worker designated by a county board of election

commissioners to be:

(a) An election clerk;

(b) An election judge;

(c) An election sheriff; or

(d) A deputy county clerk; or

(iv) Assigned by a county clerk to conduct early voting.

(B) "Election official" includes a person:

(i) Who serves as a member of the county board of election

commissioners;

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(ii) Who is appointed by the county board of election commissioners to serve as:

(a) An election coordinator;

(b) A person appointed to perform tasks related to the election that require the handling of:

(1) Ballots; or

(2) Other election materials or equipment;

(c) An election clerk;

(d) An election judge;

(e) An election sheriff; or

(f) An absentee ballot clerk; or

(iii) Assigned by a county clerk to conduct early voting administered by the county clerk;

(7) "Federal election cycle" means the:

(A) Preferential primary;

(B) General primary;

(C) General election; and

(D) General election runoff;

(8) "Frivolous" means clearly lacking any basis in fact or law;

(9) "HAVA" means the federal Help America Vote Act of 2002, Pub. L. No. 107-252, that:

(A) Established the United States Election Assistance Commission to assist in the administration of federal elections; and

(B) Allocated federal funds to states for election administration improvements, including:

(i) Replacing punch card and lever voting machines;

(ii) Improving accessibility for voters with disabilities;

(iii) Implementing a statewide voter registration system;

(iv) Voter and election official training; and

(v) Other improvements;

(10) "Letter of caution" means a written disposition of an allegation against any person that is advisory in nature, clearly giving notice to the respondent that his or her action or lack of action is a violation of law;

(11)(A) "Letter of instruction" means a written disposition of an allegation against an election official or county clerk issued in furtherance of the State Board of Election Commissioners' responsibility to provide training for election officials.

(B) A letter of instruction may be issued when the State Board of Election Commissioners:

- (i) Lacks authority to adjudicate a complaint;
- (ii) Makes no finding that an election law violation occurred; or
- (iii) Determines that a letter of instruction is preferable to a statutory sanction;

(12)(A) "Letter of reprimand" means a written disposition of an allegation against any person that 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.

(B) The reprimand will require the respondent to refrain from engaging in the same activity again.

(C) A reprimand shall be considered more severe than a caution or warning;

(13) "Letter of warning" means a written disposition of an allegation against any person that is condemnatory in nature, expressing:

- (A) Strong disapproval for the respondent's misconduct; and
- (B) The view that the misconduct undermines public confidence in the integrity of the election process;

(14) "Public hearing" means a hearing on a complaint by the State Board of Election Commissioners, open to the public, to adjudicate a complaint;

(15) "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 State Board of Election Commissioners determines that the:

(A) Available information indicates a violation of a criminal law or of a civil law enforced by another agency; and

(B) Allegations either do not fall within the jurisdiction of the State Board of Election Commissioners or further administrative action may damage a future criminal case;

(16) "Respondent" means any person whose actions are asserted, in a complaint filed with the State Board of Election Commissioners, to be in violation of any election or voter registration law under the State Board of Election Commissioners' jurisdiction;

(17) "State board" means the State Board of Election Commissioners;

(18) "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 of Election Commissioners' statutory authority to sanction violations of election and voter registration laws; and

(19) "Voter registration laws" includes provisions of law from the following sources that concern voter registration:

(A) The Constitution of the United States;

(B) The Arkansas Constitution;

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

(D) Final court decisions of general applicability in state or federal court; and

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

7 CAR § 60-103. Who may file.

(a) Any person alleging that a violation of any election or voter registration law under the State Board of Election Commissioners' jurisdiction has occurred may file a complaint.

(b) The board may file a complaint of its own volition.

7 CAR § 60-104. Form of complaint.

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:
 - (A) Incident;
 - (B) Election irregularities; or
 - (C) 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.

7 CAR § 60-105. Filing a complaint.

(a) Except as provided in subsection (b) of this section, a written complaint must be filed:

- (1) No sooner than ~~forty-six (46)~~ forty-nine (49) days prior to the election affected by or associated with the alleged violation of law; and
- (2) No later than ~~thirty (30)~~ forty-nine (49) days after the ~~deadline to certify that~~ election.

(b)(1) The State Board of Election Commissioners may file a complaint within three (3) years of an alleged violation of a criminal law within the jurisdiction of the board or within three (3) years of an unlawful act which is alleged to have caused a certified election result to be inaccurate.

(2)(A) The determination of whether to file a complaint under subdivision (b)(1) of this section is discretionary.

(B) In making this determination, the board shall consider the following factors:

- (i) The severity of the alleged misconduct;

(ii) The perceived credibility of the information indicates a violation of law has occurred;

(iii) The prioritization of available agency resources; and

(iv) The likelihood an investigation will succeed in determining whether a violation of law has occurred.

7 CAR § 60-106. Processing a complaint.

(a) Receipt of complaint.

(1)(A) Upon receipt 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 of the State Board of Election Commissioners.

(B) The director shall determine if the written complaint meets the requirements of a complaint as set forth in 7 CAR §§ 60-104 – 60-105.

(2)(A) If a complaint is filed which alleges a violation of law under the State Board of Election Commissioners' jurisdiction but which otherwise fails to satisfy the procedural requirements for a complaint, the director shall:

(i) Notify the complainant that the complaint is deficient;

(ii) Describe the nature of the deficiency; and

(iii) Inform the complainant that the complaint may be corrected within ten (10) calendar days of this notice being issued.

(B) Failure of the complainant to cure the procedurally deficient complaint within ten (10) calendar days shall result in the complaint being dismissed if the board agrees that the complaint is deficient.

(C) 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.

(D) A complaint filed after the deadline to file a complaint cannot be cured by this process.

(b) Staff report — Sufficient complaint.

(1)(A) If the director determines that 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 board's jurisdiction, then the director shall make a concise report:

- (i) Stating those findings;
- (ii) Analyzing the legal issues raised by the complaint; and
- (iii) Summarizing the complaint, including any additional evidence

known to the director.

(B) 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.

(C) A procedurally and substantively sufficient complaint that alleges an election or voter registration law violation within the jurisdiction of the board shall be investigated.

(2)(A) The director may recommend that the complaint be further investigated through:

- (i) Either documentary submissions; or
- (ii) A formal investigation.

(B) The director shall send a copy of the complaint and the report to each commissioner:

- (i) By email; and
- (ii) If requested in advance by a commissioner, by first class mail.

(C) If the director recommends that the complaint be further investigated, either formally or informally, or referred to the proper authority, such recommendation shall be considered to be adopted by the 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.

(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)(A) The director's determination that the complaint is insufficient shall be considered adopted by the 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 board commissioner requests that the board further consider the complaint at a meeting of the board.

(B) If the board so adopts the director's determination that the complaint is insufficient and fails to meet the requirements of this part, then the director shall notify the complainant that the complaint has been dismissed.

(d)(1) In addition to the steps addressed above, the following action may be recommended by the director or adopted by the board without a recommendation by the director in a meeting of the board regardless of whether the complaint is found to be sufficient.

(2) The board may:

(A) Issue a letter of instruction;

(B) Refer the complaint to the proper authorities; or

(C) Issue a letter of instruction and refer the complaint to the proper authorities.

7 CAR § 60-107. Investigations — Determination of probable cause.

(a) Notice to respondent.

(1) Upon determination that a complaint should be investigated, either through a formal investigation or through documentary submissions, the Director of the State Board of Election Commissioners shall notify the respondent of the:

(A) Complaint;

(B) Investigation; and

(C) Nature of the investigation.

(2) 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.

(b) Investigation through documentary submissions.

(1)(A) 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.

(B) 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)(A) In a formal investigation, the director shall either submit written interrogatories to the respondent, conduct a formal interview with the respondent, or a combination of both written interrogatories and a formal interview with the respondent.

(B) The director may also 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:

(A) Produce relevant evidence; or

(B) 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)(A) As part of a formal investigation, the director or his or her designee may:

(i) Interview any:

- (a)* Respondent;
 - (b)* Complainant;
 - (c)* Witness; or
 - (d)* Other third party; or
 - (ii) Take the formal deposition of any:
 - (a)* Respondent;
 - (b)* Complainant;
 - (c)* Witness; or
 - (d)* Other third party.

(B) Oral statements by respondents taken during a formal investigation will be provided under oath administered:

- (i) By the director or his or her designee; or
- (ii) In the case of a deposition, by a certified court reporter.

(6)(A) The director or his or her designee may subpoena any document or record that may be relevant to the allegations of the complaint.

(B) 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.

(d) Director's investigation report.

(1)(A) Upon completing an investigation, the director shall prepare a report of the investigation for submission to the State Board of Election Commissioners.

(B) The report may include a recommendation by the director that:

- (i) The complaint be dismissed;
- (ii) A letter of instruction be issued;
- (iii) The complaint be forwarded to the proper authorities; or
- (iv) The board meet to consider issuing an offer of settlement,

including a statutory sanction.

(2)(A) After receipt of the director's report, the director's recommendation shall be adopted by the 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.

(B) Upon further consideration, the board may either further investigate the complaint or:

- (i) Determine that the complaint be dismissed;
- (ii) Issue a letter of instruction;
- (iii) Refer the complaint to the proper authorities;
- (iv) Direct the director to further investigate the complaint;
- (v) Find that probable cause of an election or voter registration law violation exists, based upon the investigation report and its findings; or
- (vi) Take other appropriate action.

(e) Offer of settlement.

(1)(A) If the 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.

(B) The respondent may accept the board's offer of settlement in writing within ten (10) calendar days of the issuance of the offer.

(C) If the offer is not accepted, the board may call for a full public hearing.

(D) 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.

(2)(A) If the board does not find probable cause, it shall dismiss the complaint.

(B) The board may issue a letter of instruction when the complaint and other evidence indicate that such a letter is necessary and proper.

(C) Also, the board may refer the complaint and any evidence in its possession related to the complaint to the proper authority.

7 CAR § 60-108. Oaths and subpoenas.

(a) The State Board of Election Commissioners, the Director of the State Board of Election Commissioners, 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.

(b) The board, its director, or the director's designee may request that the respondent:

- (1) Answer allegations in writing;
- (2) Produce relevant evidence; or
- (3) Appear in person before the board.

(c) The 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.

(d) The board, its director, or the director's designee shall provide the subject of the subpoena with:

- (1) Reasonable notice of the subpoena; and
- (2) An opportunity to respond.

(e)(1) The 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 board.

(2)(A) Respondents may request the director of the 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.

(B) Respondent must make his or her request to the director for a subpoena no less than five (5) business days before a public hearing identified in the notice of hearing.

(C) Respondent must provide:

- (i) The full name;
- (ii) The address; and
- (iii) Any additional contact information the respondent may possess

that is necessary for the issuance of a subpoena by the director on behalf of that respondent.

(D) 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.

(E) A respondent or his or her counsel may not issue their own subpoena as only the board, its director, or the director's designee has the authority to issue a subpoena as part of this complaint process.

7 CAR § 60-109. Public hearing.

(a) If an offer of settlement is rejected and the State Board of Election Commissioners sets a public hearing, the Director of the State Board of Election Commissioners 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)(1) The notice shall include a:

(A) Statement of the legal authority and jurisdiction under which the hearing is to be held; and

(B) Short and plain statement of the matters of fact and law asserted.

(2) The respondent may:

(A) Attend in person or by counsel; and

(B) Have the right to representation by counsel in all matters related to the complaint.

(c)(1) The respondent has the right to representation by counsel in all matters related to the complaint.

(2) The respondent may offer testimony and present tangible evidence in connection with the complaint.

(3) 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.

(4) Such responsibility lies with staff of the board.

(d) If a respondent fails to appear after proper service of notice, the board may proceed with the public hearing and render a decision in the absence of the respondent.

(e)(1) Any attorney representing a respondent or complainant shall file a notice of appearance as soon as possible.

(2) Service on counsel of record is the equivalent of service on the person represented.

(f)(1) Either the board, the Chair of the State Board of Election Commissioners, a board member designated by the chair, or a hearing officer designated by the board shall preside at the hearing.

(2) 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 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:

(1) Would promote the just, speedy, and inexpensive resolution of the proceedings; and

(2) Would not unduly prejudice the rights of a respondent.

(h)(1) All requests for relief must be made in writing by motion filed with the board stating the:

(A) Action requested; and

(B) Grounds relied upon.

(2) The presiding officer may:

(A) Conduct hearings on the motion; and

(B) Enter such orders as he or she deems necessary to address issues

raised by the motion.

(3) However, the presiding officer will not issue dispositive orders.

(i)(1) The presiding officer:

(A) Presides at the hearing; and

(B) May:

(i) Rule on motions;

(ii) Require briefs; and

(iii) Issue such orders as will ensure the orderly conduct of the

proceedings.

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(2) A presiding officer shall not enter a dispositive order.

(j)(1) The respondent has the right to participate or to be represented by counsel in all hearings or prehearing conferences related to the case.

(2) The respondent or respondent's counsel:

(A) Has the right to:

(i) Introduce evidence of material fact;

(ii) Cross-examine witnesses as necessary for a full and true disclosure of the facts; and

(iii) Present evidence in rebuttal; and

(B) Upon request by the presiding officer, may:

(i) Submit briefs; and

(ii) 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:

(A) Sworn or affirmed by the presiding officer or the court reporter; and

(B) Subject to examination or cross-examination and questioning by the board;

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

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

(l) The presiding officer:

(1) Shall rule on the admissibility of evidence; and

(2) May, when appropriate, take official notice of facts in accordance with applicable laws.

(m) Stipulation of facts is encouraged, and the board may decide the issue or issues based on stipulated facts.

(n)(1) Evidence in the proceeding must be confined to the issues set forth in the notice of the hearing sent to the respondent unless the:

(A) Respondent and staff waive the right to such notice; or

(B) Presiding officer determines that good cause justifies expansion of the issues.

(2) Either the respondent or staff may be granted a continuance to allow for time to prepare for any additional issues.

(o)(1) When the respondent and staff seek admission of an exhibit, nine (9) copies of the exhibit must be provided.

(2) Each party must be allowed to examine the exhibit prior to the ruling on its admission.

(3) All exhibits admitted into evidence must be:

(A) Marked; and

(B) Entered into the record.

(p)(1) The respondent or staff may:

(A) Object to specific evidence; or

(B) Request limits on the scope of the examination or cross-examination of a witness.

(2) The objection, the ruling on the objection, and the reasons for the ruling will be noted in the record.

(3) The presiding officer may:

(A) Rule on the objection at the time it is made; or

(B) Reserve the ruling until the written decision.

(q)(1) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record.

(2) The party making the offer of proof for excluded oral testimony will:

- (A) Briefly summarize the testimony; or
 - (B) With permission of the presiding officer, present the testimony.
- (3) If the excluded evidence consists of a document or exhibit, it shall be:
- (A) Marked as part of an offer of proof; and
 - (B) Included in the record.
- (r)(1) Irrelevant, immaterial, and unduly repetitive evidence will be excluded.
- (2) 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.
- (s)(1) The board shall be responsible for recording the testimony heard at the hearing.
- (2) Upon filing a petition for judicial review, the board will provide a verbatim transcript of testimony taken before the agency.
- (t)(1) The decision of the board shall be reduced to a final order adopted by the board containing written findings of fact and conclusions of law stated separately.
- (2) Findings of fact shall be based exclusively on:
- (A) The evidence; and
 - (B) Matters officially noticed.
- (3) A copy of the final order shall be served on the respondent along with any order by the board.
- (4) The board shall also provide a copy of the findings and order to the complainant.

7 CAR § 60-110. Imposition of fines and other sanctions.

(a) If the State Board of Election Commissioners finds a violation of election or voter registration laws under its jurisdiction, then the State Board of Election Commissioners may render one (1) or more of the following sanctions:

- (1) Issue a public letter of:
 - (A) Caution;
 - (B) Warning; or

(C) Reprimand;

(2) Impose a fine of not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000) for each negligent, knowing, or intentional violation;

(3) Issue conditional directives that corrective actions be taken that, 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 Arkansas Code § 7-4-120(e)(6);

(6) Report its findings and other evidence to the proper law enforcement authorities along with recommendations; or

(7) Order payment of the costs for the investigation and hearing.

(b) The State Board of Election Commissioners may issue one (1) or more of the above sanctions for a violation of election or voter registration laws within the State Board of Election Commissioners' jurisdiction.

(c) In lieu of or in addition to imposing the statutory sanctions set out above, the State Board of Election Commissioners may issue a letter of instruction or refer the complaint and related evidence to the proper authority when the State Board of Election Commissioners determines that the circumstances warrant.

(d) In determining the imposition of fines upon a finding of a violation, the State Board of Election Commissioners may consider all surrounding circumstances including, but not limited to:

(1) The seriousness of the violation;

(2) Whether the violation was intentional or negligent;

(3) Whether the respondent demonstrated good faith by consulting the staff of

the:

(A) State Board of Election Commissioners; or

(B) Local county board of election commissioners;

(4) Whether the violation was isolated or part of a pattern; and

(5) Whether the respondent showed good cause for the violation.

(e)(1) For violators who have not previously received a statutory sanction, fines will range from not less than twenty-five dollars (\$25.00) to not more than five hundred dollars (\$500) for each negligent or intentional violation.

(2) Fines for violators who have previously received a statutory sanction will:

(A) Range from not less than one hundred dollars (\$100) to not more than one thousand dollars (\$1,000); and

(B) Be determined on a case-by-case basis depending upon the nature and degree of the negligent or intentional violation.

(f) In the event a fine is not paid by the specified time, the State Board of Election Commissioners may file suit in the Pulaski County Circuit Court, 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 any fine imposed according to its authority.

(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 of Election Commissioners.

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

7 CAR § 60-111. Final determination.

(a)(1) Unless a respondent rejects an offer of settlement, the State Board of Election Commissioners shall complete its investigation of a complaint filed according to Arkansas Code § 7-4-120 and take final action within ~~one hundred eighty (180) one hundred eighty-two (182)~~ days of the ~~deadline to file a complaint for the election. filing of the complaint.~~

(2) If an offer of settlement is made and the respondent rejects the offer by failing to communicate an acceptance of the offer within ten (10) calendar days of the day the board transmitted the offer, the board may conduct a hearing and shall take final action within ~~two hundred forty (240) two hundred forty-five (245)~~ days of the ~~deadline to file a complaint for the election. filing of the complaint.~~

(3) An offer of settlement that has not been responded to within ten (10) calendar days may be accepted after the ten-day deadline, but at the discretion of the director so long as such acceptance is made more than ten (10) calendar days before any scheduled public meeting.

(4)(A) A respondent seeking to accept an offer of settlement within ten (10) calendar days before any scheduled public hearing on the matter must be approved by the board.

(B) A respondent seeking to accept an offer of settlement within ten (10) days of a scheduled public hearing shall notify the director of his or her acceptance of the offer.

(C)(i) The director shall notify the board by email of the tendered acceptance by the respondent.

(ii) The director shall recommend either that the tendered offer be rejected and that the matter proceed to the public hearing, or that the board accept the respondent's acceptance of the offer of settlement.

(iii) The recommendation of the director shall be accepted by the board on the fifth business day after the date the director makes his or her recommendation unless an objection is made by a board commissioner.

(D)(i) If a board commissioner objects to the acceptance of the respondent's tendered acceptance within ten (10) days of a scheduled public hearing, the matter shall proceed on the date set for the public hearing.

(ii) At the public hearing, the board shall determine whether to:

(a) Accept the tendered offer of settlement; or

(b) Proceed with the public hearing.

(b) The board shall advise the complainant and the respondent in writing of the:

(1) Finding of the board;

(2) Final action taken, including sanctions, if any; and

(3) Reasons for the finding, final action, and sanctions, if any.

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

7 CAR § 60-112. Records.

(a) The State Board of Election Commissioners shall keep a record of all:

- (1) Inquiries;
- (2) Investigations; and
- (3) Proceedings.

(b) Records relating to investigations by the board are exempt from the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq., until:

- (1) A hearing is set in the case; or
- (2) After the expiration of thirty (30) days following the final adjudication of the case. Director of the State Board of Election Commissioners' investigation is closed.
- (c) Reports prepared and summaries of Reports prepared by State Board appointed Monitors are subject to FOIA and releasable to requestors.

(d) The 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.

7 CAR § 60-113. Corrective action.

(a) A statutory sanction imposed by the State Board of Election Commissioners that 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 that are reasonably calculated to ensure 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 one hundred eighty (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 that 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 State Board of Election Commissioners.

(B) In the event that a contingent offer is made to a member of the county board of election commissioners that 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)(i) If the State Board of Election Commissioners makes an offer pursuant to subdivision (a)(3)(A) of this section, the respondent shall have the lesser of one hundred eighty (180) days from the date the complaint was filed or thirty (30) days from the date the offer was made to comply with the requirements of the offer.

(ii) The failure to comply with the requirements of the offer:

(a) Shall constitute a rejection of the offer; and

(b) Results in the complaint being set for an administrative hearing at a date and time to be determined by the State Board of Election Commissioners; and

(4) The State Board of Election Commissioners may issue a directive to a county to implement corrective action that is not contingent on acceptance, but that includes a warning of the sanction that the State Board of Election Commissioners will consider appropriate should a future complaint come before the State Board of Election Commissioners 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 of Election Commissioners under this section shall not be considered evidence of the truthfulness of the underlying allegation should an administrative hearing be held for that complaint.

7 CAR § 60-114. 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 Arkansas Code § 7-4-120(e)(5), the implementation of this sanction shall be governed by the following provisions:

(1) The State Board of Election Commissioners 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 of Election Commissioners makes the additional findings that the violation of election or voter registration law was:

(A) Intentional;

(B) Severe in nature; and

(C) Of a nature that undermines the public confidence in the integrity of the election process; and

(4) Notice of decertification shall:

(A) Be directed to the respondent or respondents; and

(B) Also be sent to the following person if those persons are not respondents:

(i) The county board of election commissioners; and

(ii) The county clerk.

(b) Pursuant to the governing provision of state law, the county clerk is not:

- (1) An election official for the purposes of this section; and
- (2) Subject to decertification.

7 CAR § 60-115. 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 Arkansas Code § 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 that is the subject of the complaint;

(2) An order issued under Arkansas Code § 7-4-120(e)(6) shall:

(A) Be directed to the respondent or respondents; and

(B) Also be sent to the following persons if those persons are not

respondents:

(i) The county board of election commissioners;

(ii) The county clerk;

(iii) The county judge; and

(iv) The county prosecuting attorney; and

(3) The State Board of Election Commissioners shall continue to conduct the direct administration of a county's election until the State Board of Election Commissioners votes to terminate the direct administration of the county's election, but no longer than two (2) 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 that the State Board of Election Commissioners has assumed, including but not limited to:

- (A) Conducting a ballot draw;
- (B) Preparing ballots and voting equipment;
- (C) Conducting logic and accuracy testing;
- (D) Publishing or ensuring all required notices are posted;
- (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 that is assumed by the State Board of Election Commissioners, including any responsibilities related to the election but 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 that the State Board of Election Commissioners has assumed through a county election administration committee, including but not limited to:

- (A) Fulfilling the role of the county board of election commissioners regarding the canvassing and counting of absentee ballots;
- (B) Fulfilling the role of the county board of election commissioners regarding the review of provisional ballots;
- (C) Overseeing the canvassing and counting of the ballots cast in the election;
- (D) Certifying the results of the election pursuant to the requirements of state law; and
- (E) Issuing any certificate or other election-related document required under state law; and

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

- (A) The State Board of Election Commissioners;

(B) A subcommittee of the State Board of Election Commissioners;

(C) Three (3) qualified voters of the state selected by the State Board of Election Commissioners; or

(D) A combination of three (3) individuals, including:

(i) Members of the State Board of Election Commissioners; and

(ii) Other qualified electors of the state.

(c) Following the election, the election coordinator appointed by the State Board of Election Commissioners shall ensure:

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

(2) 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 of Election Commissioners.

(d)(1) When the State Board of Election Commissioners makes an offer of settlement that includes the direct administration of the county board of election commissioners' role in the election process, all the members of the county board of election commissioners must accept the offer of settlement for it to be immediately effective.

(2) If one (1) or more members of the county board of election commissioners reject the offer, a hearing must be held to:

(A) Determine whether the State Board of Election Commissioners will directly administer the county's election; and

(B) Resolve the complaint with respect to the members rejecting the offer of settlement.

(3) A member of the county board of election commissioners who accepts the offer of settlement will not be a respondent in the hearing to determine whether the State Board of Election Commissioners will directly administer the county's election.

(e) Care and custody of the county election equipment that rests with the county board of election commissioners or county clerk under Arkansas Code §§ 7-5-301(k) – 7-5-301(m) shall temporarily transfer to the State Board of Election Commissioners if the State Board of Election Commissioners directly administers a county's election.

1 State of Arkansas
2 95th General Assembly
3 Regular Session, 2025
4

A Bill

SENATE BILL 291

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

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING COMPLAINTS OF
10 ELECTION LAW VIOLATIONS; TO AMEND THE DEADLINES FOR
11 COMPLAINTS OF ELECTION LAW VIOLATIONS; AND FOR OTHER
12 PURPOSES.
13
14

Subtitle

15
16 TO AMEND THE LAW CONCERNING COMPLAINTS
17 OF ELECTION LAW VIOLATIONS; AND TO AMEND
18 THE DEADLINES FOR COMPLAINTS OF ELECTION
19 LAW VIOLATIONS.
20

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

23 SECTION 1. Arkansas Code § 7-4-120(b)(1)(A), concerning complaints of
24 election law violations filed with the State Board of Election Commissioners,
25 is amended to read as follows:

26 (b)(1)(A) A complaint shall be filed with the State Board of Election
27 Commissioners in writing no earlier than ~~the date established by law for the~~
28 ~~delivery or mailing of absentee ballots to a voter and no later than thirty~~
29 ~~(30) days following the deadline to certify an election by a county board of~~
30 election commissioners forty-nine (49) days prior to the date of the election
31 and no later than forty-nine (49) days following the date of the election of
32 the following:

33 (i) An alleged violation of the laws regarding
34 elections including without limitation:

35 (a) Voter registration;

36 (b) Requests for absentee ballots;



- 1 (c) Delivery of absentee ballots;
- 2 (d) Casting of ballots;
- 3 (e) Ballot tabulation;
- 4 (f) Certification of election results;
- 5 (g) Administration of an election;
- 6 (h) Election processes; or
- 7 (i) Conduct of an election; or
- 8 (ii) The election or elections affected or
- 9 associated with the complaint.

10
 11 SECTION 2. Arkansas Code § 7-4-120(b)(1)(B), concerning the contents
 12 of a complaint of election laws filed with the State Board of Election
 13 Commissioners, is amended to read as follows:

14 (B) A complaint may be referred to the State Board of
 15 Election Commissioners by the Joint Performance Review Committee and is not
 16 subject to the ~~thirty (30) day~~ filing requirement under this subdivision
 17 (b)(1).

18
 19 SECTION 3. Arkansas Code § 7-4-120(c)(2)-(4), concerning complaints of
 20 election law violations filed with the State Board of Election Commissioners,
 21 are amended to read as follows:

22 (2) Except as provided in subdivisions (c)(3) and (4) of this
 23 section, records under this section are exempt from disclosure under the
 24 Freedom of Information Act of 1967, § 25-19-101 et seq., until:

25 (A) ~~A hearing by the State Board of Election Commissioners~~
 26 is set Thirty (30) days after the final adjudication at which the State Board
 27 of Election Commissioners makes a final decision, at which point the records
 28 of the investigation upon which the State Board of Election Commissioners has
 29 based its findings shall be opened to public inspection; or

30 (B) ~~The investigation by the State Board of Election~~
 31 ~~Commissioners is closed by the State Board of Election Commissioners~~ A public
 32 hearing before the State Board of Election Commissioners is set.

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

1 (4) ~~The records of the investigation upon which the State Board~~
2 ~~of Election Commissioners has based its findings shall be opened to public~~
3 ~~inspection thirty (30) days after the final adjudication in which the State~~
4 ~~Board of Election Commissioners makes a final decision~~ Election monitor
5 reports generated by a state election monitor are not subject to the
6 exemptions under this subsection.

7
8 SECTION 4. Arkansas Code § 7-4-120(i)(1), concerning complaints of
9 election law violations filed with the State Board of Election Commissioners,
10 is amended to read as follows:

11 (i)(1) The State Board of Election Commissioners shall conclude its
12 investigation and take its final action under this section within ~~one hundred~~
13 ~~eighty (180)~~ one hundred eighty-two (182) days of the ~~filing of a complaint~~
14 final deadline to file a complaint for the election.

15
16 SECTION 5. Arkansas Code § 7-4-120(i)(3) and (4), concerning
17 complaints of election law violations filed with the State Board of Election
18 Commissioners, are amended to read as follows:

19 (3) ~~However, if~~ If the State Board of Election Commissioners
20 fails to take its final action within ~~one hundred eighty (180)~~ one hundred
21 eighty-two (182) days following the deadline to file a complaint, the final
22 administrative action shall be effective within ~~one hundred eighty (180)~~ one
23 hundred eighty-two (182) days ~~of the filing of the complaint~~ following the
24 deadline to file a complaint.

25 (4) If the State Board of Election Commissioners makes its offer
26 of settlement and the offer is rejected under this section, the State Board
27 of Election Commissioners may conduct a hearing and shall take final action
28 under this section within ~~two hundred forty (240)~~ two hundred forty-five
29 (245) days.

30
31 SECTION 6. Arkansas Code § 7-4-124(f), concerning an election
32 integrity review conducted by the State Board of Election Commissioners, is
33 amended to read as follows:

34 (f) If a county official refuses to provide records requested to
35 conduct a review under this section, the board may consider the failure to
36 provide documents as an indication that a criminal election law violation has

1 occurred authorizing the filing of a complaint under § 7-4-120 more than
2 ~~thirty (30)~~ forty-nine (49) days after ~~the deadline to certify~~ the election.

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5 **APPROVED: 3/12/25**
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