

1 State of Arkansas  
2 80th General Assembly  
3 Regular Session, 1995

# A Bill

HOUSE BILL 1423

4 By: Representatives Schexnayder, Newman, D. Wood, Thomas, Argue, Ferrell,  
5 Sheppard, Pappas, Flanagan, Wilkins, Dietz, Dawson, Thicksten, Lancaster,  
6 Horn, Jordan, Wallis, Cash, Ammons, Cunningham, Roberts, Angel, Owens,  
7 Choate, Bisbee, Brown, Watts, Wyrick, Townsend, Goodwin, Hogue, T. Smith,  
8 Lavery, Purdom, Von Gremp, Northcutt, J. Smith, Bennett, McGinnis, Young,  
9 Jones, Capps, Mitchell, Mullenix, Vess, Miller, Calhoun, Simon, Wilkinson,  
10 Harris, McJunkin, Malone, Wren, Hendren, Courtway, Simmons, M. Wilson,  
11 Ferguson, Willems, Johnson, Hill, Critcher, Molinaro, Madison, McKissack,  
12 Hudson, Beatty, K. Wood, Wooldridge, Murphy, Lynn, Hinshaw, Davis, Booker,  
13 Kidd, and Bush

## For An Act To Be Entitled

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15  
16 "AN ACT TO REVISE ARKANSAS TITLE CODE TITLE 7, CONCERNING  
17 THE ARKANSAS ETHICS COMMISSION AND FOR OTHER PURPOSES."

## Subtitle

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19  
20 "AN ACT TO REVISE ARKANSAS TITLE CODE  
21 TITLE 7, CONCERNING THE ARKANSAS ETHICS  
22 COMMISSION."  
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24  
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

26  
27 SECTION 1. Arkansas Code 7-6-217 is amended to read as follows:

28 "§ 7-6-217. Creation of Arkansas Ethics Commission.

29 (a) The Arkansas Ethics Commission shall be composed of five (5)  
30 members, one each appointed by the Governor, Attorney General, Lieutenant  
31 Governor, Speaker of the Arkansas House of Representatives, and President Pro  
32 Tempore of the Arkansas Senate. Members of the commission shall be appointed  
33 for terms of five (5) years. No person may be appointed to serve consecutive  
34 terms on the commission. Provided, that any commissioner who has been  
35 appointed to serve two (2) years or less of an unexpired term shall be

1 eligible for an appointment to a subsequent five-year term. Those  
2 commissioners currently serving shall complete their current term.

3 (b) In making appointments to the commission, the appointing officials  
4 shall insure that at least one (1) member of a minority race, one (1) woman,  
5 and one (1) member of the minority political party, as defined in §  
6 7-1-101(7), serves on the commission. Any person appointed as a member of  
7 the minority political party must have voted in the preferential primaries of  
8 the minority political party in the last two primaries in which he or she has  
9 voted.

10 (c) No member of the commission shall be a federal, state or local  
11 government official or employee, an elected public official, a candidate for  
12 public office, a lobbyist as defined in § 21-8-402(11), or an officer or paid  
13 employee of an organized political party as defined in § 7-1-101(1). During  
14 the entire term of service on the Arkansas Ethics Commission, a commissioner  
15 shall be prohibited from raising funds for, making contributions to,  
16 providing services to, or lending his or her name in support of any candidate  
17 for election to a state, county, municipal, or school board office under the  
18 laws of Arkansas or in support of a ballot issue or issues submitted or  
19 intended to be submitted to the voters of the state of Arkansas, or any of  
20 its political subdivisions, excluding the exercise of the right to vote or  
21 the mere signing of an initiative or referendum petition. Employees of the  
22 commission shall be similarly prohibited.

23 (d) In the event of a vacancy on the commission, a successor shall be  
24 appointed within thirty (30) days to serve the remainder of the unexpired  
25 term, such appointment to be made by the official holding the office  
26 responsible for appointing the predecessor. The commission shall elect its  
27 chairperson.

28 (e) A majority of the membership of the commission shall constitute a  
29 quorum for conducting business. No action shall be taken except by an  
30 affirmative vote of a majority of those present and voting. No sanctions  
31 shall be imposed without the affirmative vote of at least three (3) members  
32 of the commission who are physically present at a commission meeting. The  
33 vote of each member voting on any action shall be a public record.

34 (f) Members of the commission shall serve without compensation, but  
35 shall be entitled to receive reimbursement from the state for actual and

1 reasonable expenses incurred in the performance of their official duties,  
2 including reimbursement for mileage for official travel in connection with  
3 commission business, at the same rate provided by travel and expense  
4 regulations for state employees.

5 (g) The commission shall meet at such times as may be provided by its  
6 rules, or upon call of the chairperson, or upon written request to the  
7 chairperson of any three (3) members.

8 (h) The commission shall have the authority to:

9 (1) Pursuant to the Arkansas Administrative Procedure Act, §§  
10 25-15-201 et seq., promulgate reasonable rules and regulations to implement  
11 and administer the requirements of this subchapter, as well as subchapters 4-  
12 9 of title 21, chapter 8, as amended, and to govern procedures before the  
13 commission, matters of commission operations, and all investigative and  
14 disciplinary procedures and proceedings:

15 (2) Issue advisory opinions and guidelines on the requirements  
16 of this subchapter and the requirements of subchapters 4-9 of title 21,  
17 chapter 8, as amended;

18 (3) Investigate alleged violations of this subchapter and of  
19 subchapters 4-9 of title 21, chapter 8, as amended, and render findings and  
20 disciplinary action thereon;

21 (4) Pursuant to commission investigations, subpoena any person  
22 or the books, records, or other documents being held by any person and take  
23 sworn depositions;

24 (5) Administer oaths and conduct hearings for the purpose of  
25 taking sworn testimony of witnesses appearing before the commission;

26 (6) Hire a staff and retain legal counsel;

27 (7) Approve forms prepared by the Secretary of State pursuant to  
28 this act and subchapters 4-9 of title 21, chapter 8, as amended; and

29 (8) File suit in the Circuit Court of Pulaski County or in the  
30 circuit court of the county wherein the debtor resides, or, pursuant to  
31 A.C.A. 16-17-601 et seq., in the small claims division of any municipal court  
32 in the state of Arkansas, to obtain a judgment for the amount of any fine  
33 imposed pursuant to §7-6-218(b)(4)(B). Said action by the court shall not  
34 involve further judicial review of the commission's actions. The fee  
35 normally charged for the filing of a suit in any of the circuit courts in the

1 state of Arkansas shall be waived on behalf of the Arkansas Ethics  
2 Commission."

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4 SECTION 2. Arkansas Code 7-6-218 is amended to read as follows:

5 "§ 7-6-218. Citizen complaints.

6 (a) Any citizen wishing to file a complaint against a person covered  
7 by this subchapter or by subchapters 4-9 of title 21, chapter 8, as amended,  
8 for an alleged violation of such subchapters may file a complaint with the  
9 Arkansas Ethics Commission.

10 (b)(1) Upon a complaint stating facts constituting an alleged  
11 violation signed under penalty of perjury by any person, the Arkansas Ethics  
12 Commission shall investigate the alleged violation of this subchapter or of  
13 subchapters 4-9 of title 21, chapter 8, as amended. The commission shall  
14 immediately notify any person under investigation of the investigation and of  
15 the nature of the alleged violation. The commission in a document shall  
16 advise the complainant and the accused of the final action taken together  
17 with the reasons for the action, and such document shall be a public record.

18 (2) If after the investigation, the commission finds that  
19 probable cause exists for a finding of a violation, the accused may request a  
20 hearing. The hearing shall be a public hearing.

21 (3) The commission shall keep a record of its investigations,  
22 inquiries, and proceedings. All proceedings, records, and transcripts of any  
23 investigations or inquiries shall be kept confidential by the commission,  
24 unless the accused requests disclosure of documents relating to investigation  
25 of the case, or in case of a hearing under (b)(2) of this section, or in case  
26 of judicial review of a commission decision pursuant to Ark. Code Ann. 25-15-  
27 212. Thirty (30) days after any final adjudication in which the commission  
28 makes a finding of a violation, all records relevant to the investigation and  
29 upon which the commission has based its decision, except working papers of  
30 the commission and its staff, shall be open to public inspection.

31 (4) If the commission finds a violation of this subchapter or of  
32 subchapters 4-9 of title 21, chapter 8, as amended, then the commission shall  
33 do one (1) or more of the following:

34 (A) Issue a public letter of caution or warning or  
35 reprimand;

1 (B) Notwithstanding the provisions of § 7-6-202, § 7-9-  
2 409, § 21-8-403, and § 21-8-903, impose a fine of not less than twenty-five  
3 dollars (\$25) nor more than one thousand dollars (\$1,000) for negligent or  
4 intentional violation of this subchapter, or of subchapters 4-9 of title 21,  
5 chapter 8, as amended. The commission shall adopt rules governing the  
6 imposition of such fines in accordance with the provisions of the  
7 Administrative Procedure Act, A.C.A. §§ 25-15-201 et seq. All monies  
8 received by the commission in payment of fines shall be deposited in the  
9 State Treasury as general revenues; or (C) Report its  
10 finding, along with such information and documents as it deems appropriate,  
11 and make recommendations to the proper law enforcement authorities.

12 (5) The commission shall complete its investigation of a  
13 complaint filed pursuant to this section within one hundred and fifty (150)  
14 days of the filing of the complaint; except that, if a hearing is conducted,  
15 all action on the complaint by the commission shall be completed within one  
16 hundred eighty (180) days.

17 (c) Any final action of the commission under this section shall  
18 constitute an adjudication for purposes of judicial review under § 25-15-  
19 212."

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21 SECTION 3. Arkansas Code 7-4-101(f) is amended to read as follows:

22 "(f) The State Board of Election Commissioners may perform the  
23 following duties:

24 (1) Publish a plain English election handbook which addresses  
25 the do's and dont's for candidates under Arkansas law;

26 (2) Conduct statewide training for election clerks and judges  
27 and county election commissioners;

28 (3) Monitor all election law-related legislation;

29 (4) Conduct investigations of citizen complaints and issue  
30 advisory opinions regarding violations of election laws, except as to Ark.  
31 Code Ann. 7-1-103(1) through (4), (6), (7) and (8), or except for any matter  
32 relating to campaign finance and disclosure laws, which the Arkansas Ethics  
33 Commission shall have the same power and authority to enforce as is provided  
34 the commission under §§ 7-6-217 and 7-6-218 for the enforcement of campaign  
35 finance laws;

1           (5) To develop procedures for receiving citizen complaints which  
2 are referred to in subdivision (f)(4);

3           (6) Establish guidelines for and monitor the qualifications of  
4 all election officials; and

5           (7) Formulate, adopt, and promulgate all necessary rules and  
6 regulations to assure even and consistent application of fair and orderly  
7 election procedures."

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9           SECTION 4. All provisions of this act of a general and permanent  
10 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
11 Code Revision Commission shall incorporate the same in the Code.

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13           SECTION 5. If any provision of this act or the application thereof to  
14 any person or circumstance is held invalid, such invalidity shall not affect  
15 other provisions or applications of the act which can be given effect without  
16 the invalid provision or application, and to this end the provisions of this  
17 act are declared to be severable.

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19           SECTION 6. All laws and parts of laws in conflict with this act are  
20 hereby repealed.

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22           SECTION 7. EMERGENCY. It is hereby found and determined by the  
23 General Assembly that there now exists a vacancy on the Ethics Commission due  
24 to a decision by the Arkansas Supreme Court that invalidated the Chief  
25 Justice\_s appointment of a member of the commission; that this vacancy should  
26 be filled as soon as possible; and that this act establishes the mechanism  
27 for filling that vacancy and therefore should be placed into effect  
28 immediately. Therefore, an emergency is hereby declared to exist and this  
29 act being necessary for the immediate preservation of the public peace,  
30 health and safety shall be in full force and effect from and after its  
31 passage and approval.

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*/s/Rep. Schexnayder, et al*

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