

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: H3/12/07

A Bill

HOUSE BILL 2359

5 By: Representative E. Brown
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND PROVISIONS OF ARKANSAS LAW
10 PERTAINING TO THE STATE BOARD OF ELECTION
11 COMMISSIONERS; AND FOR OTHER PURPOSES.
12

Subtitle

14 AN ACT TO AMEND PROVISIONS OF ARKANSAS
15 LAW PERTAINING TO THE STATE BOARD OF
16 ELECTION COMMISSIONERS.
17
18

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

21 SECTION 1. Arkansas Code § 7-4-101 is amended to read as follows:

22 7-4-101. State Board of Election Commissioners - Members - Officers -
23 Meetings.

24 (a) The State Board of Election Commissioners shall be composed of the
25 following seven (7) persons, with at least one (1) from each congressional
26 district:

27 (1) The Secretary of State;

28 (2) One (1) person designated by the chair of the state
29 Democratic Party;

30 (3) One (1) person designated by the chair of the state
31 Republican Party;

32 (4) One (1) person to be chosen by the President Pro Tempore of
33 the Senate;

34 (5) One (1) person to be chosen by the Speaker of the House of
35 Representatives; and

36 (6) Two (2) persons to be chosen by the Governor, one (1) of



1 whom shall be a county clerk and one (1) of whom shall have served for at
2 least three (3) years as a county election commissioner.

3 (b) The Secretary of State shall serve as chair and secretary of the
4 board.

5 (c) Except for the Secretary of State and the county clerk, no member
6 of the board shall be an elected public official.

7 (d)(1) The term on the board of the elected state official shall be
8 concurrent with the term of the public elected official.

9 (2) The county clerk shall hold the office of county clerk when
10 appointed to the board and shall be removed as a member of the board if not
11 in office.

12 (3)(A) Members of the board appointed by the President Pro
13 Tempore of the Senate and the Speaker of the House of Representatives shall
14 be appointed for terms of two (2) years and shall continue to serve until
15 successors have been appointed and taken the official oath.

16 (B) All other appointive members shall be appointed for
17 terms of four (4) years and shall continue to serve until successors have
18 been appointed and taken the official oath.

19 (4) No appointive member shall be appointed to serve more than
20 two (2) consecutive full terms.

21 (5)(A) If a vacancy on the board occurs, a successor shall be
22 appointed within thirty (30) days to serve the remainder of the unexpired
23 term.

24 (B) The appointment shall be made by the official holding
25 the office responsible for appointing the predecessor.

26 (e)(1) The board shall meet as needed upon call of the chair or upon
27 written request to the chair of any four (4) members.

28 (2) A majority of the membership of the board shall constitute a
29 quorum for conducting business.

30 (3) No sanctions shall be imposed without the affirmative vote
31 of at least four (4) members of the board.

32 (4) Meetings of the board may be chaired and conducted by either
33 the chair or a member of the board designated by the chair as acting chair
34 for the meeting.

35 (f) The board shall have the authority to:

36 (1) Publish a candidate's election handbook, in conjunction with

1 the office of the Secretary of State and the Arkansas Ethics Commission,
2 which outlines in a readable and understandable format the legal obligations
3 of a candidate and any other suggestions that might be helpful to a candidate
4 in complying with state election law;

5 (2) Conduct statewide training for election ~~officials~~ officers
6 and county election commissioners;

7 (3) Adopt all necessary rules ~~and regulations~~ regarding training
8 referred to in subdivision (f)(2) of this section and develop procedures for
9 monitoring attendance;

10 (4) Monitor all election law-related legislation;

11 (5) Formulate, adopt, and promulgate all necessary rules ~~and~~
12 ~~regulations~~ to assure even and consistent application of voter registration
13 laws and fair and orderly election procedures;

14 (6)(A) Appoint certified election monitors to any county upon a
15 signed, written request under oath filed with the board and a determination
16 by the board that appointing a monitor is necessary.

17 (B) Certified election monitors shall serve as observers
18 for the purpose of reporting to the board on the conduct of the election.

19 (C) The board may allow for reasonable compensation for
20 election monitors;

21 (7) Assist the county board of election commissioners in the
22 performance of administrative duties of the election process if the board
23 determines that assistance is necessary and appropriate;

24 (8)(A) Formulate, adopt, and promulgate all necessary rules ~~and~~
25 ~~regulations~~ to establish uniform and nondiscriminatory administrative
26 complaint procedures consistent with the requirements of Title IV of the
27 federal Help America Vote Act.

28 (B) The cost of compliance with Title IV of the federal
29 Help America Vote Act shall be paid from the fund established to comply with
30 the federal Help America Vote Act;

31 (9) Investigate alleged violations, render findings, and impose
32 disciplinary action according to § 7-4-118 for violations of election and
33 voter registration laws, except as to § 7-1-103(a)(1)-(4), (6), and (7), and
34 except for any matters relating to campaign finance and disclosure laws which
35 the Arkansas Ethics Commission shall have the power and authority to enforce
36 according to §§ 7-6-217 and 7-6-218;

1 (10) Examine and approve in accordance with §§ 7-5-503 and 7-5-
2 606 the types of voting machines and electronic vote tabulating devices used
3 in any election; and

4 (11) Administer reimbursement of election expenses to counties
5 in accordance with § 7-7-201(a) for primary elections, statewide special
6 elections, and nonpartisan judicial general elections~~+~~.

7 ~~(12) Appoint third members to county boards of election~~
8 ~~commissioners in accordance with § 7-4-102(b); and~~

9 ~~(13) Certify candidate names and titles in accordance with § 7-~~
10 ~~7-305(e).~~

11 (g) The Attorney General shall provide legal assistance to the board
12 in answering questions regarding election laws.

13 (h)(1) The board may appoint a director, who may hire a staff.

14 (2) The director shall serve at the pleasure of the board.

15 (3) The board shall set the personnel policies in accordance
16 with the Regular Salary Procedures and Restrictions Act, § 21-5-101 et seq.,
17 and the Uniform Classification and Compensation Act, § 21-5-201 et seq.

18
19 SECTION 2. Arkansas Code § 7-4-102 is amended to read as follows:

20 7-4-102. County boards of election commissioners - Election of members
21 - Oath.

22 (a)(1) The county chairman of the county committee of the majority
23 party and the county chairman of the county committee of the minority party
24 shall be members of the county board of election commissioners together with
25 one (1) additional or third member ~~to be appointed by the State Board of~~
26 ~~Election Commissioners~~ selected by the county committee of the majority party
27 at the same time as the election of party officers.

28 (2)~~(A)~~ Provided, however, if the county chairman of a county
29 committee of the majority party or the minority party is an elected official
30 or is otherwise ineligible to serve as a member of the county board of
31 election commissioners, he or she shall not serve as a member of the county
32 board, but the county committee shall ~~elect someone~~ select a resident of the
33 county qualified to serve in his or her stead.

34 ~~(B) No elected official who serves as county party~~
35 ~~chairman shall participate as a party officer in providing for or conducting~~
36 ~~a party primary election in which his or her name appears on the ballot as a~~

1 ~~candidate for any office.~~

2 (3) Any county chairman of a county committee of the majority
3 party or the minority party may elect not to serve as a member of the county
4 board, and the county committee shall ~~appoint someone~~ select a resident of
5 the county qualified to serve in his or her stead.

6 ~~(b)(1) The third member for each of the county boards shall be~~
7 ~~appointed by the state board from a list of five (5) names submitted to the~~
8 ~~state board by the county committee of the majority party.~~

9 ~~(2)(A) The nominees shall be certified to the state board by the~~
10 ~~chairman of the county committee of the majority party.~~

11 ~~(B) The third members for each of the county boards shall~~
12 ~~be elected by a majority vote of the state board from the list of five (5)~~
13 ~~nominees submitted.~~

14 ~~(C) The list of five (5) nominees shall be certified and~~
15 ~~submitted to the state board by the majority party county committee chairman~~
16 ~~subsequent to the primary election but at least sixty (60) calendar days~~
17 ~~before any general election for state, district, or county office.~~

18 ~~(D) The third member of each county board shall be elected~~
19 ~~as aforesaid by the state board at least fifty (50) calendar days before any~~
20 ~~general election for state, district, or county office.~~

21 ~~(3) In the event of the failure of any county chairman of the~~
22 ~~county committee of the majority party to submit five (5) names in nomination~~
23 ~~for the third member of the county board within the time herein stipulated,~~
24 ~~the state board shall nominate and elect by majority vote any resident of the~~
25 ~~county as the third member at any time prior to the general election.~~

26 ~~(4) In the event that the identity of the county chairman of the~~
27 ~~county committee of the majority party is in dispute, the state board shall~~
28 ~~nominate and elect by majority vote the third member at any time prior to the~~
29 ~~general election.~~

30 ~~(5) The result of the state board's election for the third~~
31 ~~member shall be final.~~

32 ~~(e)(b) Notification of the election of the third member of the county~~
33 ~~board shall be made in writing, over the signature of the chairman of the~~
34 ~~state board, and the state board shall mail to each of the elected county~~
35 ~~commissioners at his or her last known address a notice of his or her~~
36 ~~election and, in addition, shall mail to the clerks of the county courts a~~

1 ~~certificate of the appointment of the county commissioners~~ The chairperson or
2 secretary of each county committee shall, within ten (10) days of the date of
3 selection to the county board of election commissioners, notify the county
4 clerk in writing of the names and addresses of those selected to serve on the
5 county board.

6 (2) Upon receipt of the notice, the county clerk shall send to
7 each of the county election commissioners, by registered mail, notice to
8 appear before the clerk within thirty (30) days of selection as a county
9 election commissioner to take and subscribe to the oath prescribed by the
10 Arkansas Constitution.

11 (3) The oath shall be filed in the office of the county clerk
12 and a duplicate forwarded to the Secretary of State.

13 ~~(d)(c)~~ Upon receipt of the certificate of the appointment, it shall be
14 the duty of the county clerk to cause to be sent to each of the county
15 commissioners, by registered mail, notice to appear before the clerk at least
16 thirty (30) days prior to the date of the general election to take and
17 subscribe to the oath prescribed by Arkansas Constitution, Article 19, § 20.
18 The oath shall be endorsed upon the certificate, and, when so endorsed, the
19 certificate shall be filed in the office of the county clerk and a duplicate
20 thereof forwarded to the Secretary of State Between January 1 and January 31
21 of each year, the chairperson of the majority party of the county shall file
22 with the county clerk and the Secretary of State a notice setting forth the
23 names of the majority party's designated members of the county board and the
24 chairperson of the minority party shall file with the county clerk and the
25 Secretary of State a notice setting forth the name of the minority party's
26 member of the county board.

27 ~~(e)(d)~~ The county board is deemed to consist of county officials, and
28 its members shall be immune from tort liability pursuant to § 21-9-301.

29
30 SECTION 3. Arkansas Code § 7-4-107(e), concerning duties of the county
31 election commissioner, is amended to read as follows:

32 ~~(e)~~ Fifteen (15) days following any regularly scheduled preferential
33 primary, general, or statewide special election, each county election
34 commissioner shall file an affidavit with the State Board of Election
35 Commissioners in a form approved by the State Board of Election Commissioners
36 to the effect that all duties and responsibilities of the county election

1 ~~commissioner have been complied with.~~

2
3 SECTION 4. Arkansas Code § 7-4-118 is amended to read as follows:

4 7-4-118. Complaints of election law violations.

5 (a)(1) The State Board of Election Commissioners may investigate
6 alleged violations, render findings, and impose disciplinary action according
7 to this subchapter for violations of election and voter registration laws,
8 except:

9 (A) For the provisions in § 7-1-103(a)(1)-(4), (6), and (7); and

10 (B) For any matters relating to campaign finance and
11 disclosure laws that the Arkansas Ethics Commission shall have the power and
12 authority to enforce according to §§ 7-6-217 and 7-6-218.

13 (2) For purposes of subdivision (a)(1), the board may file a
14 complaint.

15 (3) A complaint must be filed with the board in writing within
16 thirty (30) days of ~~the~~ an alleged voter registration violation or the
17 election associated with the complaint.

18 (4) A complaint must clearly state the alleged election
19 irregularity or illegality, when and where the alleged activity occurred, the
20 supporting facts surrounding the allegations, and the desired resolution.

21 (5) A complaint must be signed by the complainant under penalty
22 of perjury.

23 (6)(A) Filing of a frivolous complaint is considered a violation
24 of this subchapter.

25 (B) For purposes of this section, "frivolous" means
26 clearly lacking any basis in fact or law.

27 (b)(1) Upon receipt by the board of a written complaint signed under
28 penalty of perjury stating facts constituting an alleged violation of
29 election or voter registration laws under its jurisdiction ~~signed under~~
30 ~~penalty of perjury~~, the board shall proceed to *investigate* the alleged
31 violation.

32 (2) The board may determine that:

33 (A) The complaint can be disposed of through documentary
34 submissions; or

35 (B) ~~An~~ Further investigation is necessary.

36 (3) The board may forward the complaint, along with the

1 information and documentation as deemed appropriate, to the proper authority.

2 (4)(A) If the board determines that an investigation is
3 necessary, the board shall provide a copy of the complaint with instructions
4 regarding the opportunity to respond to the complaint to the party against
5 whom the complaint is lodged.

6 (B) The board may administer oaths for the purpose of
7 taking sworn statements from any person thought to have knowledge of any
8 facts pertaining to the complaint.

9 (C) The board may request the party against whom the
10 complaint is lodged to answer allegations in writing, produce relevant
11 evidence, or appear in person before the board.

12 (D) The board may subpoena any person or the books,
13 records, or other documents relevant to an inquiry by the board that are
14 being held by any person and take sworn statements.

15 (E) The board shall provide the subject of the subpoena
16 with reasonable notice of the subpoena and an opportunity to respond.

17 (F) The board shall advise in writing the complainant and
18 the party against whom the complaint is lodged of the final action taken.

19 (c) If the board finds that probable cause exists for finding a
20 violation of election or voter registration laws under its jurisdiction, the
21 board may determine that a full public hearing be called.

22 (d) If the board finds a violation of election or voter registration
23 laws under its jurisdiction, then the board may do one (1) or more of the
24 following:

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

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

29 (3) Report its findings, along with the information and
30 documents as it deems appropriate, and make recommendations to the proper law
31 enforcement authorities; or

32 (4) Assess costs for the investigation and hearing.

33 (e)(1) The board shall adopt rules governing the imposition of the
34 fines in accordance with the provisions of the Arkansas Administrative
35 Procedure Act, § 25-15-201 et seq.

36 (2)(A) The board may file suit in the Pulaski County Circuit

1 Court or in the circuit court of the county in which the debtor resides or,
2 according to the Small Claims Procedure Act, § 16-17-601 et seq., in the
3 small claims division of any district court in the State of Arkansas to
4 obtain a judgment for the amount of any fine imposed according to its
5 authority.

6 (B) The action by the court shall not involve further
7 judicial review of the board's actions.

8 (C) The fee normally charged for the filing of a suit in
9 any of the circuit or district courts in the State of Arkansas shall be
10 waived on behalf of the board.

11 (3) All moneys received by the board in payment of fines shall
12 be deposited in the State Treasury as general revenues.

13 (f)(1) The board shall complete its investigation of a complaint filed
14 according to this section and take final action within one hundred eighty
15 (180) days of the filing of the complaint.

16 (2) However, if a hearing under subsection (c) of this section
17 is conducted, all action on the complaint by the board shall be completed
18 within two hundred forty (240) days.

19 (3) Any final action of the board under this section shall
20 constitute an adjudication for purposes of judicial review under § 25-15-212.

21 (g)(1) The board shall keep a record of all inquiries, investigations,
22 and proceedings.

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

26 (3) The board may disclose, through its members or staff,
27 otherwise confidential information to proper law enforcement officials,
28 agencies, and bodies as may be required to conduct its investigation.

29
30 SECTION 5. Arkansas Code § 7-5-707 is amended to read as follows:

31 7-5-707. Vote certification – Affidavit of compliance - Report.

32 (a) For all state and federal elections, the county board of election
33 commissioners shall transmit the certified results for each polling place to
34 the county clerk, who shall immediately transmit the results to the Secretary
35 of State through the Internet website interface provided by the Secretary of
36 State.

1 ~~(a)~~(b) At the time that the county board of election commissioners
2 certifies the vote to the Secretary of State, the county board shall ~~report~~
3 submit to the State Board of Election Commissioners a written report of:

4 (1) ~~The total number of ballots cast~~ The total number of persons
5 who voted in the election;

6 (2) ~~The total number of ballots printed and delivered to the~~
7 ~~polls~~ The total number of early votes cast by voting machine;

8 (3) ~~The total number of provisional ballots that were~~
9 ~~disqualified~~ The total number of votes cast by voting machine on election
10 day;

11 (4) ~~The total number of spoiled ballots~~ The total number of
12 absentee ballots, including without limitation:

13 (A) The total number of non-provisional absentee ballots
14 cast;

15 (B) The total number of provisional absentee ballots cast;

16 (C) The total number of provisional absentee ballots
17 counted;

18 (D) The total number of provisional absentee ballots
19 disqualified;

20 (5) ~~The total number of unused ballots~~ The total number of early
21 votes cast by paper ballot, including without limitation:

22 (A) The total number of non-provisional early paper
23 ballots cast;

24 (B) The total number of provisional early ballots cast;

25 (C) The total number of provisional early ballots counted;

26 (D) The total number of provisional early ballots
27 disqualified; and

28 (6) ~~The number of over votes and under votes cast in each race~~
29 ~~and issue in the election.~~ The total number of paper ballots cast on
30 election day, including without limitation:

31 (A) The total number of non-provisional paper ballots cast
32 on election day;

33 (B) The total number of provisional ballots cast on
34 election day;

35 (C) The total number of provisional election day ballots
36 counted; and

1 (D) The total number of provisional election day ballots
2 disqualified;

3 (7) The total number of spoiled ballots;

4 (8) The total number of unused ballots; and

5 (9) The total number of ballots printed.

6 (c) The county board shall post a copy of the written report submitted
7 to the state board in a public place in the county clerk's office for twenty
8 (20) days and file a copy with the clerk's office.

9 ~~(b)(1) The county board shall transmit the certified results for each~~
10 ~~polling place to the county clerk, who shall immediately transmit the results~~
11 ~~to the Secretary of State through the Internet website interface provided by~~
12 ~~the Secretary of State for all state and federal elections.~~

13 ~~(2)(d) The county board shall transmit the information required~~
14 ~~according to subsection (a) of this section~~ the number of overvotes and
15 undervotes cast in each race and issue in the election to the county clerk,
16 who shall enter and transmit it to the state board through the Secretary of
17 State's Internet website interface.

18 (e) Fifteen (15) days following any regularly scheduled preferential
19 primary election, general election, or statewide special election, each
20 county election commissioner shall file an affidavit, under the signature of
21 all three (3) commissioners or individually, with the State Board of Election
22 Commissioners in a form approved by the state board to the effect that all
23 duties and responsibilities of the county election commissioner have been
24 complied with.

25
26 SECTION 6. Arkansas Code § 7-7-305(c), concerning the printing of
27 election ballots, is amended to read as follows:

28 (c)(1)(A) Any person who shall file for any elective office in this
29 state may use not more than three (3) given names, one (1) of which may be a
30 nickname or any other word used for the purpose of identifying the person to
31 the voters, and may add as a prefix to his or her name the title or an
32 abbreviation of an elective public office the person currently holds.

33 (B) A person may only use the prefix "Judge", "Justice",
34 or "Chief Justice" in an election for a judgeship if the person is currently
35 serving in a judicial position to which the person has been elected.

36 (C) A nickname shall not include a professional or

1 honorary title.

2 (2) The names and titles as proposed to be used by each
3 candidate on the political practice pledge or, if the political practice
4 pledge is not filed by the filing deadline, then the names and titles that
5 appear on the party certificate shall be reviewed no later than one (1)
6 business day after the filing deadline by the ~~State Board of Election~~
7 ~~Commissioners~~ Secretary of State for state and district offices and by the
8 county board of election commissioners for county, township, school, and
9 municipal offices.

10 (3) The name of every candidate shall be printed on the ballot
11 in the form as certified by either the ~~state board~~ Secretary of State or the
12 county board.

13 (4) No candidate shall be permitted to change the form in which
14 his or her name will be printed on the ballot after the deadline for filing
15 the political practices pledge.

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/s/ E. Brown