

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: H3/19/15

A Bill

HOUSE BILL 1865

5 By: Representative Lemons
6

For An Act To Be Entitled

8 AN ACT TO CREATE THE ELECTION COMMISSIONS INTEGRITY
9 ACT; TO AMEND THE LAW CONCERNING COUNTY BOARDS OF
10 ELECTION COMMISSIONERS; TO APPLY UNIFORM STANDARDS
11 FOR ALL ELECTION COMMISSIONERS; TO CLARIFY THE
12 ACCEPTABLE PERMISSIBLE POLITICAL ACTIVITY OF AN
13 ELECTION COMMISSIONER; TO STRENGTHEN THE COMPLAINT
14 PROCEDURE WITH AND DISCIPLINARY AUTHORITY OF THE
15 STATE BOARD OF ELECTION COMMISSIONERS; AND FOR OTHER
16 PURPOSES.

Subtitle

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18
19 THE ELECTION COMMISSIONS INTEGRITY ACT.
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22

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

25 SECTION 1. Arkansas Code § 7-4-109 is amended to read as follows:

26 7-4-109. Qualifications of state and county commissioners, election
27 officials, poll workers, and certified election monitors.

28 (a)(1) A member of the State Board of Election Commissioners, a county
29 election commissioner, and an election official shall be a qualified elector
30 of this state, able to read and write the English language, and shall not
31 have been found guilty or pleaded guilty or nolo contendere to the violation
32 of an election law of this state.

33 (2) An election official, as defined in § 7-1-101, shall not be a
34 candidate for an office to be filled at an election while serving as an
35 election official.

36 (3) A member of the county board of election commissioners shall



1 not be disqualified from serving as a member of the county board by the
 2 appearance on the ballot as a candidate for a position in his or her
 3 political party.

4 (b)(1) A member of a county board shall be a resident of the county in
 5 which he or she serves at the time of his or her appointment or election.

6 (2)(A) An election official shall be a resident of the precinct
 7 in which he or she serves at the time of his or her appointment.

8 (B) However, if at the time of posting election officials
 9 the county board votes unanimously and certifies to the county clerk that it
 10 is impossible to obtain a qualified election official from any precinct in
 11 the county, another qualified citizen of the county may be designated to
 12 serve in the precinct.

13 (c)(1) A person who is a paid employee of a political party or of a
 14 candidate for office on that county's ballot shall not be a member of a
 15 county board or an election official.

16 (2)(A) Except as provided in subdivision (c)(2)(B)(ii) of this
 17 section, a person serving on the state board or county board shall not
 18 participate:

19 (i) Participate in the campaign of a any candidate
 20 listed on ~~that county's a~~ ballot ~~or of a write-in candidate seeking election~~
 21 ~~in that county~~ that falls under their jurisdiction or authority; or

22 (ii) Advocate for or against any issue to be
 23 placed on a ballot that falls under their jurisdiction or authority.

24 (B)(i) A member of the state board or county board shall not:

25 (a) Manage a campaign;

26 (b) Perform labor for a campaign or issue;

27 (c) Solicit on behalf of a candidate,
 28 campaign, or issue;

29 (d) Pass out or place handbills, signs, or
 30 other literature concerning a campaign or issue;

31 (e) Assist a campaign at a rally or parade; or

32 (f) Display candidate or issue placards or
 33 signs on an automobile.

34 (ii) A member of the state board or county board may
 35 make:

36 (a) Make a financial contribution to a

1 candidate;

2 (b) Attend a political party's state,
3 district, or county meeting where a candidate or issue advocate speaks as a
4 member of the audience; or

5 (c) Participate in a political party
6 convention.

7 (3) A person employed with a company that has a business dealing,
8 contract, or pending contract with a county board to which he or she seeks
9 appointment shall not be a candidate for the county board.

10 (d) A person shall not serve as an election official if:

11 (1) The person is married to or related within the second degree
12 of consanguinity to a candidate running for office in the election; and

13 (2) Another person makes an objection to his or her service to
14 the county board within ten (10) calendar days after posting the list of
15 officials.

16 (e)(1) Prior to the regularly scheduled preferential primary election,
17 ~~each of the following, each member of the county board of election~~
18 ~~commissioners, poll worker, and certified election monitor~~ shall attend
19 election training coordinated by the state board;

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

22 (B) A county clerk;

23 (C) A deputy county clerk, employee of the county clerk,
24 or other worker that will assist with early voting; and

25 (D) A certified election monitor.

26 (2) The state board shall determine the method and amount of
27 compensation for attending the training.

28

29 SECTION 2. Arkansas Code § 7-4-118 is repealed:

30 ~~7-4-118. Complaints of election law violations.~~

31 ~~(a)(1) The State Board of Election Commissioners may investigate~~
32 ~~alleged violations, render findings, and impose disciplinary action according~~
33 ~~to this subchapter for violations of election and voter registration laws,~~
34 ~~except:~~

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

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

4 ~~(2) For purposes of subdivision (a)(1) of this section, the board~~
5 ~~may file a complaint.~~

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

9 ~~(4) A complaint must clearly state the alleged election~~
10 ~~irregularity or illegality, when and where the alleged activity occurred, the~~
11 ~~supporting facts surrounding the allegations, and the desired resolution.~~

12 ~~(5) A complaint must be signed by the complainant under penalty~~
13 ~~of perjury.~~

14 ~~(6)(A) Filing a frivolous complaint is considered a violation of~~
15 ~~this subchapter.~~

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

18 ~~(b)(1) Upon receipt by the board of a written complaint signed under~~
19 ~~penalty of perjury stating facts constituting an alleged violation of~~
20 ~~election or voter registration laws under its jurisdiction, the board shall~~
21 ~~proceed to investigate the alleged violation.~~

22 ~~(2) The board may determine that:~~

23 ~~(A) The complaint can be disposed of through documentary~~
24 ~~submissions; or~~

25 ~~(B) Further investigation is necessary.~~

26 ~~(3) The board may forward the complaint, along with the~~
27 ~~information and documentation as deemed appropriate, to the proper authority.~~

28 ~~(4)(A) If the board determines that an investigation is~~
29 ~~necessary, the board shall provide a copy of the complaint with instructions~~
30 ~~regarding the opportunity to respond to the complaint to the party against~~
31 ~~whom the complaint is lodged.~~

32 ~~(B) The board may administer oaths for the purpose of~~
33 ~~taking sworn statements from any person thought to have knowledge of any~~
34 ~~facts pertaining to the complaint.~~

35 ~~(C) The board may request the party against whom the~~
36 ~~complaint is lodged to answer allegations in writing, produce relevant~~

1 ~~evidence, or appear in person before the board.~~

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

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

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

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

12 ~~(d) If the board finds a violation of election or voter registration~~
13 ~~laws under its jurisdiction, then the board may do one (1) or more of the~~
14 ~~following:~~

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

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

19 ~~(3) Report its findings, along with the information and documents~~
20 ~~as it deems appropriate, and make recommendations to the proper law~~
21 ~~enforcement authorities; or~~

22 ~~(4) Assess costs for the investigation and hearing.~~

23 ~~(e)(1) The board shall adopt rules governing the imposition of the~~
24 ~~finest in accordance with the provisions of the Arkansas Administrative~~
25 ~~Procedure Act, § 25-15-201 et seq.~~

26 ~~(2)(A) The board may file suit in the Pulaski County Circuit~~
27 ~~Court or in the circuit court of the county in which the debtor resides or in~~
28 ~~the small claims division of any district court in the State of Arkansas to~~
29 ~~obtain a judgment for the amount of any fine imposed according to its~~
30 ~~authority.~~

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

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

36 ~~(3) All moneys received by the board in payment of fines shall be~~

1 ~~deposited into the State Treasury as general revenues.~~

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

5 ~~(2) However, if a hearing under subsection (e) of this section is~~
6 ~~conducted, all action on the complaint by the board shall be completed within~~
7 ~~two hundred forty (240) days.~~

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

10 ~~(g)(1) The board shall keep a record of all inquiries, investigations,~~
11 ~~and proceedings.~~

12 ~~(2) Records relating to investigations by the board are exempt~~
13 ~~from the Freedom of Information Act of 1967, § 25-19-101 et seq., until a~~
14 ~~hearing is set or the investigation by the Director of the Board of Election~~
15 ~~Commissioners is closed.~~

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

19
20 SECTION 3. Arkansas Code Title 7, Chapter 4, Subchapter 1, is amended
21 to add an additional section to read as follows:

22 7-4-120. Complaints of election law violations.

23 (a)(1) Except as provided in subdivision (a)(2) of this section, the
24 State Board of Election Commissioners may investigate alleged violations,
25 render findings, and impose sanctions according to this subchapter for
26 violations of election and voter registration laws.

27 (2) The State Board of Election Commissioners shall not
28 investigate alleged violations, render findings, or impose sanctions
29 concerning violations of:

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

31 or

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

35 (b)(1) The State Board of Election Commissioners may file a complaint
36 under this section.

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

3 (A) An alleged violation of the voter registration laws;

4 (B) An alleged violation of the election laws;

5 (C) The election associated with the complaint;

6 (D) A meeting of the county board of election
7 commissioners; or

8 (E) The filing of the minutes of a meeting of the county
9 board of election commissioners;

10 (3) A complaint shall be signed by the complainant under penalty
11 of perjury.

12 (4)(A) A complaint shall clearly:

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

15 (ii) State when the alleged violation occurred; and

16 (iii) State the location of the alleged violation.

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

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

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

23 (b) The complainant may file the additional
24 information within seven (7) days from dispatch of the notice.

25 (5)(A) If a complaint does not meet the requirements of this
26 section, the complaint shall be dismissed.

27 (B) If a complaint is dismissed the State Board of
28 Election Commissioners shall notify the complainant of the:

29 (i) Fact of dismissal; and

30 (ii) Reasons for dismissal with citations to the
31 legal support for the dismissal.

32 (6)(A) A person shall not file a frivolous complaint.

33 (B) If the State Board of Election Commissioners dismisses
34 a complaint, the person who was the subject of the complaint and
35 investigation may request in writing that the board make a finding as to
36 whether the complaint was frivolously filed and issue sanctions.

1 (7)(A) If a complaint is filed as required by this section, the
2 State Board of Election Commissioners shall investigate the alleged
3 violation.

4 (B) Immediately upon beginning an investigation under this
5 section, the State Board of Election Commissioners shall notify the person
6 under investigation of the fact of the investigation and the nature of the
7 investigation.

8 (C) If at the conclusion of the investigation, the State
9 Board of Election Commissioners finds that there is probable cause to believe
10 there has been a violation of the voter registration laws or election laws,
11 the party that is the subject of the complaint may request a public hearing.

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

14 (2) Except as provided in subdivisions (c)(3) and (5) of this
15 section, records under this section are exempt from disclosure under the
16 Freedom of Information Act of 1967, § 25-19-101 et seq. until:

17 (A) A hearing by the State Board of Election Commissioners
18 is set; or

19 (B) The investigation by the State Board of Election
20 Commissioners is closed by the State Board of Election Commissioners.

21 (3) The State Board of Election Commissioners may disclose,
22 through its members or staff, otherwise confidential information to proper
23 law enforcement officers, agencies, and other entities as is necessary to
24 conduct the investigation under this section.

25 (4) Notes, working papers, and internal correspondence of the
26 State Board of Election Commissioners related to complaints, investigations,
27 and sanctions under this section are exempt from disclosure under the Freedom
28 of Information Act of 1967, § 25-19-101 et seq.

29 (5) Except those documents that are exempt under subdivision
30 (c)(4) of this section, the records of the investigation upon which the State
31 Board of Election Commissioners has based its findings shall be opened to
32 public inspection thirty (30) days after the final adjudication in which the
33 State Board of Election Commissioners makes a finding of a violation.

34 (d)(1) If the State Board of Election Commissioners determines that
35 the complaint can be addressed through documentary submissions and without a
36 formal investigation, the State Board of Election Commissioners may address

1 the complaint with documentary submissions.

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

5 (A) A copy of the complaint; and

6 (B) Instructions for filing a response.

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

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

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

13 (C) Subpoena any person or the books, records, or other
14 documents relevant to the investigation or inquiry.

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

16 (A) Provide the person subpoenaed with reasonable notice
17 of the subpoena and an opportunity to respond; and

18 (B) Advise the complainant and the person who is the
19 subject of the complaint in writing of the final action of the State Board of
20 Election Commissioners.

21 (5)(A) Except as provided by subdivision (d)(5)(B) of this
22 section, the State Board of Election Commissioners shall complete its
23 investigation under this section within seventy-five (75) days of the
24 decision to begin and investigation.

25 (B) If extenuating circumstances delay the investigation,
26 the investigation may be extended for an additional forty-five (45) days by
27 majority vote of the State Board of Election Commissioners.

28 (e) If the State Board of Election Commissioners finds a violation of
29 this subchapter, the board may:

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

31 (2) Direct a county board of election commissioners to correct a
32 violation of election law or an incorrect procedural action;

33 (3) Impose a fine of no less than twenty-five dollars (\$25.00)
34 and no more than one thousand dollars (\$1,000) for a negligent, knowing,
35 intentional violation of this subchapter;

36 (4) Direct the county political committee to remove and replace

1 a member of a county board of election commissioners who commits an
2 intentional violation of the election laws;

3 (5) Prohibit a county board of election commissioners from
4 designating a person who commits an intentional violation of the election
5 laws from serving as an election official;

6 (6) Report the information obtained in the investigation and the
7 findings and determinations of the State Board of Election Commissioners to
8 the appropriate law enforcement authorities; and

9 (7) Order the costs of the investigation and hearing be paid by
10 the offending party.

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

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

14 (2) Final action taken and sanctions issued by the State Board
15 of Election Commissioners; and

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

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

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

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

25 (A) Pulaski County Circuit Court;

26 (B) Circuit court of the county in which the person
27 resides; or

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

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

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

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

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

4 (j) A final action of the State Board of Election Commissioners under
5 this section is an adjudication for purposes of judicial review under § 25-
6 15-212.

7 (k) As used in this section:

8 (1) "Election laws" means the Arkansas statutes concerning
9 elections conducted by county boards of election commissioners and the rules
10 promulgated by the State Board of Election Commissioners under § 7-4-101
11 concerning elections conducted by county boards of election commissioners;

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

14 (3) "Voter registration laws" means those laws under Arkansas
15 Constitution, Amendment 51 and the rules promulgated pursuant to Arkansas
16 Constitution, Amendment 51.

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