

**RULES
OF PRACTICE AND PROCEDURE**
(Effective)



**STATE BOARD OF ELECTION COMMISSIONERS
501 Woodlane, Suite 401N
Little Rock, Arkansas 72201
(501) 682-1834 or (800) 411-6996**

Scope of Rules

These rules set forth a general description of the State Board of Election Commissioners stating the general course and method of the board's operations and the nature and requirements of the board's formal and informal procedures pursuant to A.C.A. § 25-15-203.

These rules also set forth the procedure for the filing and disposition of petitions for declaratory orders as to the applicability of any rule, statute, or order enforced by the board pursuant to A.C.A. § 25-15-206. These rules are in addition to and not a substitute for the laws of the State of Arkansas.

§ 1100 Board Organization

- (1) The State Board of Election Commissioners is an agency of the state government composed of seven appointed commissioners and a staff. The entities who appoint board members, the qualifications of board members, the terms of board members, and other duties and responsibilities of the board are set out in A.C.A. § 7-4-101.
- (2) The legislature has empowered the board to enforce election laws and voter registration laws, and has delegated to the board the authority to promulgate rules to assure even and consistent application of voter registration laws and fair and orderly election procedures. The board also develops resources to educate and assist candidates and county election administrators, develops specialized training programs, conducts and coordinates statewide training of county election commissioners and election officials, monitors compliance by local election authorities with federal and state election laws, investigates complaints of alleged election misconduct and election law violations, and distributes funds to the counties for state-supported political party primary elections, nonpartisan general elections, special primary elections, and statewide special elections.
- (3) The Secretary of State is the chair and secretary of the board. The chair or a person designated by the chair conducts meetings of the board. The chair's designee is the chair's proxy and counts toward a quorum to conduct business and may vote in the meeting. [A.C.A. § 7-4-101 (e)(4)]
- (4) The board may form such committees or subcommittees as it deems necessary and/or appropriate to accomplish its legal aims and statutory purposes. The board may appoint one or more of its members to an unofficial committee or subcommittee and may invite non-board members to participate as unofficial committee or subcommittee members.
- (5) At any meeting of the board, four (4) members constitute a quorum whether in person or by electronic or telephonic means.

- (6) A majority of the members of the board present shall vote on any matter before the board for any decision of the board to become effective. However, no sanctions for violations of election laws or voter registration laws may be imposed without the affirmative vote of at least four members. A.C.A. § 7-5-401(e)(3)
- (7) The following matters shall be by motion, followed by a second, in order for a vote of the board to be valid:
 - a. All matters requiring affirmative action by the full board or one of its members;
 - b. All decisions on public positions taken by the full board;
 - c. All decisions on declaratory orders; and
 - d. All decisions regarding findings of fact and conclusions of law or other actions regarding a person accused of violating the board's regulations or laws under the board's jurisdiction.
- (8) The board may by majority vote delegate the execution of any official duty or action to its chair, one of the other members, or the director.
- (9) A vacancy on the board shall not impair the right of the board to exercise its statutory powers and authority, subject to the requirement that a quorum be present and participating before any action of the board shall be considered valid.

§ 1101 Staff Organization

- (1) The board may employ a director who may hire a staff. The director or other members of the staff may act as spokesmen for the board, receive correspondence and correspond on behalf of the board, provide legal and other research for the board, investigate allegations of violations of election laws under the board's jurisdiction, and perform other functions deemed appropriate by the board. The director serves at the will and the pleasure of the board.
- (2) The director shall ensure that the chair is advised of the progress and conduct of the employees and operation of the board office.
- (3) The director shall operate the board's office. The director's duties shall include, without limitation, the following:
 - a. General administration of the office and staff;

- b. Managing the appropriated budget of the board;
- c. Maintenance of the board's files and records as the custodian of those records;
- d. Preparing reports, studies, policy statements, legal interpretations, proposed rules, training materials, reimbursements of county election expenses and other matters required by the board;
- e. Receiving and responding to correspondence on behalf of the board on matters relating to official board business;
- f. Managing travel, logistics, expenses, and reimbursement for members and staff and scheduling seminars and training by or for the board.
- g. Ensuring that the board office and its employees reflect good character, comply with the law, and carry out other duties as may, from time to time, be enumerated by the board.

(4) Employees of the office (the staff) are the responsibility of the director in matters common to an employer/employee relationship, and the director shall be responsible to the board for the actions of staff.

§ 1102 Meeting Times and Sites

(1) Meetings shall be called as needed by the chair or upon written request to the chair of at least four (4) members of the board. [A.C.A. § 7-4-101(e)]

The director shall notify all members of the date, time and place of the meeting.

(2) A written request by four members for a meeting:

- a. Shall state the date of the meeting;
- b. Shall state the items to be taken up at the meeting;
- c. Shall be delivered to the chair, the director and all other members; and
- d. May be delivered as a separate email from each member requesting the meeting, or as a letter or letters signed by one or more of the members requesting the meeting.

Letters may be delivered by hand, by first class mail through the United States Post Office or by commercial mail service.

Upon receipt of the written request, the director shall notify all members of the date, time and place of the meeting and prepare an agenda in consultation with the chair for the meeting that includes the items in the written request.

(3) Notice of the date, time and place of all meetings shall be furnished to anyone who requests the information and to the news media located in the county in which the meeting is to be held and those located elsewhere that cover meetings of the board and have requested to be so notified.

- (4) Notice of meetings shall be provided to the news media and others who request notice at least forty-eight (48) hours prior to the scheduled meeting, or as soon as possible after the meeting is called if it is called within forty-eight (48) hours of the scheduled meeting. No meeting shall be held until at least two hours after the news media has been notified of the date, time and place of the meeting.
- (5) The board may vary its meeting site to accommodate its needs and accomplish its purposes.
- (6) The director shall prepare a proposed agenda for each meeting with the consent of the chair. The proposed agenda shall be distributed to the commission members prior to any such meeting. Agenda items may be added during meetings by a majority vote of the board.

§ 1103 Meeting Procedures

- (1) All meetings of the board shall be governed by Roberts Rules of Order, except as may be modified by a majority of the board or by rule.
- (2) Any member who has an actual conflict of interest in any proceeding before the board shall recuse voluntarily from any involvement in the matter. If four members determine that a member has a conflict, they may, by affirmative vote, disqualify said member from participation in the matter.
- (3) All meetings of the board shall be open to the public. All records generated or accepted by the board and its staff shall be open to public inspection, except for:
 - a. Matters which are parts of a complaint record while the record is exempt from disclosure under Ark. Code Ann. § 7-4-120(c)(2); and
 - b. The advice and opinions of the board's attorneys on matters which may be considered to have occurred in the attorney-client relationship.

§ 1104 Declaratory Orders Defined

A declaratory order is a means of resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules or orders over which the State Board of Election Commissioners has authority. A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules or orders may apply to the petitioner's particular circumstances. A declaratory order is not the proper means for determining the conduct of another person or for obtaining a policy statement of general applicability from the board. A petition must describe the potential impact of statutes, rules or orders upon the petitioner's interests. *A.C.A. § 25-15-202*

§ 1105 Petition

The process to obtain a declaratory order is begun by filing a petition that provides the name, address, telephone number, and signature of the person requesting the order, and a complete statement of the facts and circumstances applicable to that person, including the statutes, rules or orders for which clarification is sought. The petitioner may request a hearing in the petition.

§ 1106 Order

- (1) Staff shall promptly draft an order. A draft order prepared by staff is unofficial until it has received the affirmative vote of a majority of a quorum of the Board. The Board may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts.
- (2) No declaratory order shall be valid, official or have any effect unless it has been approved by a majority vote of a quorum of the Board. The board may alter, amend or strike any portion of the draft order, or may table a draft order for consideration in a future meeting or request that it be rewritten to comply with the commission's directives. The Board will render a final order within 90 days of filing the petition, denying the petition or issuing a declaratory order. The board may reconsider, withdraw or amend prior orders on its own motion or by petition of a citizen, on a majority vote of a quorum of the Board.

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY State Board of Election Commissioners

DIVISION _____

DIVISION DIRECTOR Justin Clay

CONTACT PERSON Justin Clay

ADDRESS 501 Woodlane, Suite 401N, Little Rock, AR 72201

PHONE NO. 501-682-1834 FAX NO. 501-682-1782 E-MAIL clay.sbec@sos.arkansas.gov

NAME OF PRESENTER AT COMMITTEE MEETING Justin Clay

PRESENTER E-MAIL clay.sbec@sos.arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? Rules of Practice and Procedure 108.00.11
2. What is the subject of the proposed rule? General procedures agency operations and issuance of declaratory orders
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☐ No ☒
If yes, please provide the federal rule, regulation, and/or statute citation. _____
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes ☐ No ☒
If yes, what is the effective date of the emergency rule? N/A
- When does the emergency rule expire? N/A

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes ☐

No ☐

5. Is this a new rule? Yes ☒ No ☐

If yes, please provide a brief summary explaining the regulation. This rule sets forth a general description of the State Board of Election Commissioners, stating the general course and method of the board's operations and the nature and requirements of the board's formal and informal procedures pursuant to A.C.A. § 25-15-203. This rule also sets forth the procedure for the filing and prompt disposition of petitions for declaratory orders as to the applicability of any rule, statute, or order enforced by the board pursuant to A.C.A. § 25-15-206.

Does this repeal an existing rule? Yes ☐ No ☒

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. N/A

Is this an amendment to an existing rule?

Yes ☐

No ☒

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. 25-15-203 and 25-15-206

7. What is the purpose of this proposed rule? Why is it necessary? This rule, as required by statute, sets forth a general description of the State Board of Election Commissioners, stating the general course and method of the board's operations and the nature and requirements of the board's formal and informal procedures pursuant to A.C.A. § 25-15-203. This rule also, as required by statute sets forth the procedure for the filing and prompt disposition of petitions for declaratory orders as to the applicability of any rule, statute, or order enforced by the board pursuant to A.C.A. § 25-15-206.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.arkansas.gov/sbec

9. Will a public hearing be held on this proposed rule? Yes ☐ No ☒

If yes, please complete the following:

Date: N/A

Time: N/A

Place: N/A

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

August 10, 2015

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

October 4, 2015

12. Do you expect this rule to be controversial? Yes ☐ No ☒
If yes, please explain. _____

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules?
Please provide their position (for or against) if known.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT State Board of Election Commissioners

DIVISION _____

PERSON COMPLETING THIS STATEMENT Justin Clay

TELEPHONE NO. 501-682-1834 **FAX NO.** 501-682-1782 **EMAIL:** clay.sbec@sos.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rules of Practice and Procedure 108.00.11

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;
 N/A
- (b) The reason for adoption of the more costly rule;
 N/A
- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;
 N/A
- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.
 N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue	<u>N/A</u>
Federal Funds	<u>N/A</u>
Cash Funds	<u>N/A</u>
Special Revenue	<u>N/A</u>
Other (Identify)	<u>N/A</u>

Next Fiscal Year

General Revenue	<u>N/A</u>
Federal Funds	<u>N/A</u>
Cash Funds	<u>N/A</u>
Special Revenue	<u>N/A</u>
Other (Identify)	<u>N/A</u>

Total 0.00

Total 0.00

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue	<u>N/A</u>
Federal Funds	<u>N/A</u>
Cash Funds	<u>N/A</u>
Special Revenue	<u>N/A</u>
Other (Identify)	<u>N/A</u>
Total	<u>0.00</u>

Next Fiscal Year

General Revenue	<u>N/A</u>
Federal Funds	<u>N/A</u>
Cash Funds	<u>N/A</u>
Special Revenue	<u>N/A</u>
Other (Identify)	<u>N/A</u>
Total	<u>0.00</u>

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ 0.00

N/A

Next Fiscal Year

\$ 0.00

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 0.00

N/A

Next Fiscal Year

\$ 0.00

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and

- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.