

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department State Board of Election Commissioners

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person Chris Madison

Contact E-mail Chris.Madison@Arkansas.gov

Contact Phone 501-682-1447

Name of Rule Rules for County Election Commissioners Training

Newspaper Name Arkansas Democrate Gazzette

Date of Publishing April 17, 18, and 19 of 2020

Final Date for Public Comment May 18, 2020 at 4:30 p.m.

Location and Time of Public Meeting If necessary, May 27, 2020 at 1:30 p.m.

DRAFT – MARK UP

Agency #108.00

**RULES
FOR
COUNTY ELECTION COMMISSIONERS
TRAINING**

(Effective December 1, 2005; Revised ~~December 29, 2015~~)



State Board of Election Commissioners
501 Woodlane, Suite 401N
Little Rock, AR 72201
(501) 682-1834 or (800) 411-6996
www.arkansas.gov/sbec

TABLE OF CONTENTS

Scope of Rules3

§700 Definitions3

§701 Qualifications of a Member of the County Board of Election Commissioners3

§702 Required Training4

| §703 Compensation[45](#)

§704 Noncompliance5

§705 Training Materials5

Scope of Rules

These rules will set forth the procedures for training members of the county boards of election commissioners in the 75 counties in the State. These rules are in addition to² and not a substitute for³ the laws of the State of Arkansas.

§700 Definitions

- (a) County Board of Election Commissioners - the three-member board in each of the 75 counties in this State responsible for conducting all elections within their respective county, including two members elected by the county committee of the majority party and one member elected by the county committee of the minority party or persons appointed by the state chair of either the majority or minority party to fill a vacancy in that party's position.¹
- (b) Candidate – for the purpose of these rules, any individual who has knowingly and willingly taken affirmative action, including solicitation of funds, for the purpose of seeking nomination for or election to any public office.²
- (c) Election Official - a person who is a member of the county board of election commissioners, a person who performs election coordinator duties, a person who is a poll worker designated by a county board of election commissioners to be an election clerk, election judge, or election sheriff, or a deputy county clerk or a person assigned by a county clerk to conduct early voting.³
- (d) Primary Election - any election held to select the nominees of a political party for election at any general or special election in this state.⁴

§701 Qualifications of a Member of the County Board of Election Commissioners

The qualifications⁵ of a member of the county board of election commissioners as determined by the General Assembly⁶ are as follows:

- 1) Must be a qualified elector of this state;
- 2) Must be able to read and write the English language;
- 3) Must be a resident of the county in which he or she serves at the time of his or her appointment or election;
- 4) Must not have been found guilty or pled guilty or nolo contendere to the violation of any election law of this state;
- 5) Must not be a paid employee of any political party;

¹ A.C.A. § 7-4-102(a)

² A.C.A. § 7-6-201(2)

³ A.C.A. § 7-1-101 as amended by Act 1042 of 2015

⁴ A.C.A. § 7-1-101

⁵ A.C.A. § 7-4-109 as amended by Act 1253 of 2015

⁶ Art 3, § 10 of the Arkansas Constitution, as amended by Amendment 85

- 6) Must not be a paid employee of any person running for any office on the county's ballot;
- 7) Must not participate in the campaign of any candidate listed on a ballot or of a write-in candidate seeking election in that county that falls under their jurisdiction or authority;
- 8) Must not manage a campaign;
- 9) Must not perform labor for a campaign;
- 10) Must not solicit on behalf of a candidate or campaign;
- 11) Must not pass out handbills, signs, or other literature concerning a candidate's campaign;
- 12) Must not assist a candidate's campaign at a rally or parade;
- 13) Must not display candidate placards or signs on an automobile;
- 14) Must not be employed with a company that has any business dealings, contracts, or pending contracts with the county board of election commissioners at the time of his or her appointment to the county board;
- 15) Must not be a candidate for any office to be filled at an election while serving on the county board, except for appearing on the ballot as a candidate for a position in his or her political party; and
- 16) Must not be a chairman or secretary of a county political party;
- 17) Must not be married to or related within the second degree of consanguinity to any candidate running for office in the current election if objection to the service is made to the county board of election commissioners within ten (10) calendar days after the posting of the list of officials; and;
- 18) Must not be the spouse of a chairman of a county political party or the spouse of another county board of election commissioner if objection to the service is made to the county board of election commissioners within ten (10) calendar days after the posting of the list of officials.

Formatted: Not Highlight

If an objection filed against married members of the county election commission the objection can only be filed against one of the two married individuals.

Formatted: Not Highlight

A member of the county board may make a financial contribution to a candidate, attend a political party's state, district, or county meeting where a candidate or issue advocate speaks as a member of the audience, or participate in a political party convention.⁷

§702 Required Training

Each member of the county boards of election commissioners shall attend either a comprehensive training program conducted by the State Board of Election Commissioners before the regularly scheduled preferential primary election or an advanced training program conducted by the State Board of Election Commissioners after each regular legislative session. Advanced training will be made available if the Director of the State Board determines that, based on the amount of changes in law and procedure from the previous election cycle, an advanced training program is appropriate for experienced county commissioners. Advanced trainings are to only be utilized for commissioners who are unable to attend the comprehensive training and may be conducted remotely. Advanced trainings may not necessarily include a detailed review of all basic laws and

⁷ A.C.A. § 7-4-109(c)(2)(B)(ii) as amended by Act 1253 of 2015

procedures which are unchanged from the previous two election cycles but will address all aspects of the duties of an election commissioner.⁸

Any member of a county board of election commissioners who has not served on the commission during the previous two (2) preferential primary and general elections and previously attended the comprehensive training program conducted by the State Board of Election Commissioners must attend the comprehensive training program.

A member of a county board of election commissioners shall attend additional interim training if deemed necessary and appropriate by the State Board.

§703 Compensation

Upon completion of training conducted by the State Board of Election ~~Commissioners:~~
~~Each Commissioner, each~~ county election commissioner attending the training is eligible to receive ~~\$100, plus~~ mileage reimbursement at the rate established for state employees by state travel regulations;⁹ ~~and~~

Any election commissioner who is trained under this section and who remains in office until the certification of the preferential primary election results shall be eligible to receive \$100 in compensation for attending training.

~~1-) Election commissioner training All compensation and -compensation will be paid reimbursement paid under this section by the State Board to the County shall be paid to the County~~ Treasurer upon receipt from the county of the reporting form approved and provided by the State Board to the county for that purpose.

Attendance by county election coordinators is optional, and compensation for attending training will not be provided by the State Board.

§704 Noncompliance

The State Board may withhold funding for county election commissioner training attendance from any county that fails to comply with the rules and guidelines developed by the State Board for the administration of election commissioner training, until all requirements are met to the satisfaction of the State Board.¹⁰

§705 Training Materials

⁸ A.C.A. § 7-4-109(e)(1)

⁹ A.C.A. § 7-4-109(e)(2)

¹⁰ A.C.A. § 7-7-201(b)(3)

The State Board of Election Commissioners will provide training materials to each county election commissioner attending training.

DRAFT

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

DEPARTMENT/AGENCY State Board of Election Commissioners
DIVISION _____
DIVISION DIRECTOR Daniel Shults
CONTACT PERSON Chris Madison
ADDRESS 501 N. Woodlane Street, Ste. 122S, Little Rock, AR 72201
PHONE NO. 501-682-1834 **FAX NO.** 501-682-1782 **E-MAIL** chris.madison@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Chris Madison
PRESENTER E-MAIL SAA

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:

Jessica C. Sutton
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 for County Election Commissioners Training

Comply with changes in Law, and clarification of
Advanced Training terminology and limitations on
reimbursement by State Board for county election

2. What is the subject of the proposed rule? commissioners

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?

When does the emergency rule expire? _____

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. _____

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. _____

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.

§ 7-4-101(f)(3) & (f)(11).

7. What is the purpose of this proposed rule? Why is it necessary?

The SBEC is proposing this amendment in order to bring this existing rule in to line with statutory changes made by the 2019 General Assembly. The amendment also clarifies the application of existing law and makes some minor policy changes.

First, the amendment incorporates changes in law regarding the qualifications of a county election commissioner into the rule. Under Act 258 of 2019, any person has the power to disqualify a commissioner who is the spouse of another county board of election commission member or is a chairman or spouse of the chairman of a county political party if that person files an objection within 10 days of the posting of the required notice identifying election officials. Given the unique problems created by the possibility of two spouses serving on the CBEC under this law, the rule also clarifies that if one spouse were to be disqualified, the second spouse is not subject to disqualification.

Second, the amendment incorporates changes in law which prohibit a person serving as a county election commissioner if they are the chairman or secretary of a county political party. See, Act 966 of 2019.

Third, the amendment provides a definition for the Advanced Training Program and sets limitations on when a county election commissioner is able to satisfy his or her obligation to receive SBEC training remotely while preserving this concept for experienced personnel under limited circumstances. This concept is ill-defined under the existing rule and the amendment more clearly establishes when and how the State Board may provide advanced training, and who is eligible to participate in such a program.

Lastly, the amendment addresses compensation to county election commissioners who attend State Board training sessions. The amendment requires commissioners seeking compensation for state

training to remain in office through the certification of the preferential primary before being eligible for the \$100 compensation by the State Board. Previously, the State Board has paid commissioners for state required training, only to have that commissioner resign from office before their first election. Thus, the payment was going to pay for training that neither the County nor the State were benefiting from and the process had to be repeated with a new commissioner. This rule amendment limits payments to election officials who receive the required training and work as a commissioner through the certification of the preferential primary election.

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/rules

9. Will a public hearing be held on this proposed rule? Yes ☐ No ☒
If yes, please complete the following:

Unless 25 people, governmental agency or subdivision, or an association with at least 25 members requests an oral hearing. If so, then:

Date: If requested, May 27, 2020
Time: 1:30 p.m.
Place: 501 Woodlane St., Ste. 122S Little Rock, AR 72201

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
May 18, 2020
11. What is the proposed effective date of this proposed rule? (Must provide a date.)
August 1, 2020

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice.

See attached Notice and Email with Arkansas Democrat Gazette.

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e).

See attached Email and Form of submittal to Secretary of State

14. 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.

State board is unaware of any groups or associations that may comment on this rule amendment.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT State Board of Election Commissioners

DIVISION _____

PERSON COMPLETING THIS STATEMENT Chris Madison

TELEPHONE 501-682-1447 **FAX** 501-682-1782 **EMAIL:** Chris.madison@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 for County Election Commissioners Training

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;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

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	_____
Federal Funds	_____
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	_____

Next Fiscal Year

General Revenue	_____
Federal Funds	_____
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	_____

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

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

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

Next Fiscal Year

\$ \$0

-
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

\$ \$-500 to -\$1000

Next Fiscal Year

\$ \$0

The change will ensure that a county election commissioner who is trained for the Preferential Primary but resigns prior to the Primary will not be given a stipend for attending training. This will save the State of Arkansas \$100 for each commissioner who leaves office between training and serving as a commissioner. Based on past elections, it is anticipated that between five and ten commissioners fall into this category every election cycle.

-
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.

STATE BOARD OF ELECTION COMMISSIONERS

501 Woodlane Street, Suite 122S
Little Rock, Arkansas 72201
(501) 682-1834 or (800) 411-6996

Secretary of State
John Thurston
Chairman

Sharon Brooks
Bilenda Harris-Ritter
William Luther
Charles Roberts
James Sharp
J. Harmon Smith
Commissioners



Daniel J. Shults
Director

Chris Madison
Legal Counsel

Jon Davidson
Educational Services Manager

Tena Arnold
Business Operations Manager

Summary of the 2019/2020 Amendment to the RULES FOR COUNTY ELECTION COMMISSIONERS TRAINING

The State Board of Election Commissioners met on August 19, 2019 and approved changes to the “Rules for County Election Commissioners Training.”

The primary purpose of the changes are to bring the rule into compliance with changes in Arkansas law made in the 2019 General Assembly. One such change is the new prohibition against a CBEC member serving as the chair or secretary of a county political party. Act 966 of 2019. The legislature also enacted a provision that allows any person to disqualify a county election commissioner who is the spouse of another county election commissioner, or is the chairman or spouse of a chairman of a county political party, from serving as an election official if an objection is filed within 10 days of posting the list of election officials. Act 258 of 2019. The amendment establishes a new provision to ensure that, in the event two spouses serve on the CBEC together, only one can be disqualified by objection under Act 258 of 2019. This change is necessary to ensure the CBEC maintains a quorum to conduct the election.

Because the rule is being revisited, the SBEC took the opportunity to clarify the currently existing concept of an “Advanced Training.” The amendment provides an explanation of what an Advanced Training is, establishing limits on when an Advanced Training may be offered, and adds further restrictions on who is eligible to attend such a training. This preserves the concept of an Advanced Training which is useful when an experienced commissioner is unable to attend SBEC training in a timely manner. The SBEC has used this in the past to train experienced CBEC members when a special election is called prior to the primary. This clarification continues allowing experienced officials to receive training remotely under limited circumstances and when appropriate. It ensures officials are eligible to conduct the election in a timely manner and saves state resources. Further, the clarification continues ensuring a legal preference for in-person trainings, which are generally more effective.

The SBEC has made one policy change in this amendment. Under the existing rule, county election commissioners are eligible to receive one hundred dollars (\$100) for attending commissioner training. In the past, the SBEC has had several commissioners who were trained and then resigned from the commission prior to serving in an election. This has the double negative impact of requiring the SBEC to offer individual or very small group trainings to the replacement commissioners on a compressed timeline and then to pay the replacement commissioners a second stipend for their training. This amendment would allow county commissioners to be reimbursed for their mileage immediately upon attending training, but it would require the commissioners to actually serve until the preferential primary in order to receive the additional one hundred dollars (\$100) in compensation. The goal of the policy change is to both limit unnecessary expenditures and encourage newly appointed commissioners to remain in office through at least one major election.