

# ARKANSAS REGISTER

## Proposed Rule Cover Sheet



Secretary of State  
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Little Rock, Arkansas 72201-1094  
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Name of Department \_\_\_\_\_

Agency or Division Name \_\_\_\_\_

Other Subdivision or Department, If Applicable \_\_\_\_\_

Previous Agency Name, If Applicable \_\_\_\_\_

Contact Person \_\_\_\_\_

Contact E-mail \_\_\_\_\_

Contact Phone \_\_\_\_\_

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Name of Rule \_\_\_\_\_

Newspaper Name \_\_\_\_\_

Date of Publishing \_\_\_\_\_

Final Date for Public Comment \_\_\_\_\_

Location and Time of Public Meeting \_\_\_\_\_



## **REQUEST FOR GOVERNOR'S APPROVAL OF PROPOSED RULES**

Please submit this form and all required documents in the checklist as a single pdf document. Failure to comply will result in the rule being denied.

Rules identified as mandatory promulgations in Form 2021A must be submitted to the Governor's Office for approval no later than December 31, 2021.

**Cabinet Department:** Independent Non-Cabinet Level Department

**Division/Commission/Board/Agency:** State Board of Election Commissioners

**Rule Number:** \_\_\_\_ **Short Title of Rule:** Rules of Practice and Procedure

**New Rule:** ☐ Yes ☒ No **Rule Amendment:** ☒ Yes ☐ No **Rule Repeal:** ☐ Yes ☒ No

**Proposed Effective Date:** January 25, 2021 **Date Rule Submitted:** October 12, 2021

**Emergency Rule:** ☐ Yes ☒ No **Expedited Request:** ☐ Yes ☒ No **Reason:** \_\_\_\_\_

**Drafted in Code of Rules Format** ☐ Yes ☒ No **If not, explain:** The new provisions of the rule are principally drafted in the format of the Code; however, the BLR advised not to preemptively modify the existing rules into the new format but rather allow their process to update the format of the existing provision. The SBEC has followed this advice.

**Please explain the need for an Emergency/Expedited Rule:** \_\_\_\_\_

\_\_\_\_\_

### **AUTHORITY TO PROMULGATE**

**State Mandate:** ☒ Yes ☐ No **Federal Mandate:** ☐ Yes ☒ No **Act No.:** \_\_\_\_\_

**Statutory Authority to Promulgate the Rule:** A.C.A. §7-4-101(f)(16) (polling site closure appeal process); A.C.A. §25-15-203 (requires rules of procedure for processing of matters before the Board); A.C.A. §7-4-101(f)(5) (authorizes the SBEC to promulgate rules for "fair and orderly election procedures.")

**Department/Agency Legislation from Legislative Session:** ☐ Yes ☒ No **Act No.:** \_\_\_\_\_

**House Sponsor:** \_\_\_\_\_ **Senate Sponsor:** \_\_\_\_\_

**Cabinet Review:** ☐ Yes ☒ No **Secretary's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

\_\_\_\_\_

## **RULE SUMMARY**

**Purpose of Rule:** To provide procedures for the processes of appealing the closure of a polling site to the State Board of Election Commissioners and to provide procedures for considering the sufficiency of ballot titles and popular names of a statewide initiatives or referendum.

**Reason for Creating or Amending the Rule:** With respect to the polling site closure appeal, the rule is designed to provide a clear process by which the appeals is considered and to give the SBEC a clear standard of review to apply. With respect to the review of ballot language, the rule is designed to bring additional structure to the process and to remedy issues which were encountered during the review of ballot language prior to the 2020 General Election.

**How does the Rule deviate from the Act:** With respect to the polling site closure appeal, Act 1063 of 2021, the rule provides the following provision which are not addressed in the Act. The CBEC whose actions are being appealed are provided notice and an opportunity to respond. The rule provides that the SBEC has the discretion to hear testimony on the appeal or to decide the question on the basis of the written statements. The rule defines the process of dismissing an appeal that clearly fails to meet the statutory requirements. The rule clarifies what actions of the CBEC are and are not subject to appeal under the Act. Most importantly, the rule provides the standard of review for an appeal under the Act.

With respect to Act 376 of 2019, the rule provides the following provision which are not addressed in the Act. The rule provides the process and deadlines for the SBEC staff to provide documents to the SBEC and other parties. The rule provides structure to the process of third parties filing arguments supporting or opposing the certification of ballot language. The rule also provides structure to the process of considering the certification of ballot language in a public meeting.

**Rule Based on a Rule From Different Jurisdictions:** ☐ Yes ☒ No **Jurisdictions:** \_\_\_\_\_

**Short Summary of New Rule or Rule Changes:** (explain in greater detail in your executive summary)

The rule provides structure to the process by which the SBEC considers the appeal of a polling site closure under Act 1063 of 2021 and considers the certification of ballot language under Ark. Const. Art. 5 §1 as implemented in Act 376 of 2019.

**Applicable Federal Regulations:** ☐ Yes ☒ No **C.F.R. No:** \_\_\_\_\_

**Proposed Rule the Least Restrictive Alternative:** ☒ Yes ☐ No. **If not, why?** \_\_\_\_\_

**Does it Mirror Federal Regulations or Impose Additional Requirements:** ☐ Yes ☒ No

**Explain:** \_\_\_\_\_

**Note:** In addition to these explanations, the Department/Agency seeking to promulgate this rule shall submit the attached executive summary. Failure to include the summary will result in the rule being denied.

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**CONTROVERSY**

**Rule Controversial:** ☐ Yes ☒ No    **Act Controversial in Legislative Session:** ☐ Yes ☒ No

**Known Interested Parties:** Local Election Officials, Voters, persons or entities interested in sponsoring or opposing an initiative or referendum

**Comments Made at Legislative Session:** The House sponsor, Rep Ladyman, articulated objections to a polling site closure in his county and wished to limit the power of the CBEC to reduce the number of polls. Other comments made on this bill were unrelated to the subject matter of this rule.

**Public Hearing:** ☒ Yes ☐ No    **Expect public comment from:** The SBEC's practice is to always schedule a public hearing. Whether there will be any public comment on either issue is unknown at this time.

**FINANCIAL IMPACT**

**Financial Impact:** ☐ Yes ☒ No    **Total Impact:** FY2020: \_\_\_\_\_ FY2021: \_\_\_\_\_

**Impact Mitigated by Federal Funding:** ☐ Yes ☐ No    FY2020: \_\_\_\_\_ FY2021: \_\_\_\_\_

**Reasons for Financial Impact:** \_\_\_\_\_

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**FINAL CHECKLIST**

Please note that the Governor's office will not begin the approval process of the foregoing rule if any of the following applicable documents are not enclosed in the order listed in a single PDF file.

- ☐ Rule Request Form
- ☐ Executive Summary
- ☐ Mark-Up Version of the Proposed Rule
- ☐ Clean Version of the Proposed Rule
- ☐ BLR Questionnaire
- ☐ BLR Financial Impact Statement
- ☐ Copy of Act or Regulation

# STATE BOARD OF ELECTION COMMISSIONERS

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

Secretary of State  
John Thurston  
Chairman

Sharon Brooks  
Jamie Clemmer  
Bilenda Harris-Ritter  
William Luther  
Wendy Brandon  
J. Harmon Smith  
Commissioners



Daniel J. Shults  
Director

Chris Madison  
Legal Counsel

Jon Davidson  
Educational Services Manager

Tena Arnold  
Business Operations Manager

## Executive Summary of the 2021 Proposed Amendment to the RULES OF PRACTICE AND PROCEDURE

The State Board of Election Commissioners met on September 29, 2021 and approved changes to the “Rules of Practice and Procedure.” This proposed amendment is being promulgated to incorporate two areas into the SBEC’s procedure rule that has been promulgated to satisfy the requirements of the APA under A.C.A. §25-15-203.

### **PURPOSE**

The first portion of these changes is required by Act 1063 of 2021 in order to establish the administrative process for implementing the appeal of a polling site closure. This Act provides that a registered voter may appeal the reduction in the total number of polls by a county election commission prior to a primary or general election. The second portion of the Rule added provisions governing the process of reviewing ballot titles and popular names. This responsibility was given to the SBEC by Act 376 of 2019 which interpreted Article 5 §1 of the constitution and requires the SBEC to determine whether ballot titles and popular names are misleading or are worded in such a way that a vote yields the opposite outcome from the voter’s intent.

### **BACKGROUND**

The portion of the rule dealing with the appeal of polling site closures is designed to implement a process that was developed as a compromise with the sponsor of Act 1063. The bill, as originally filed, would have required the SBEC to review all polling site closures and the staff worked with the sponsor to develop an appeals process in place of the automatic review. The final Act left some of the procedural details and the standard of review to be developed in rule. The portion of the rule dealing with ballot language is included based on the SBEC’s experience in implementing Act 376 of 2019 prior to the 2020 General Election and finding the process in need of more structure than the Act or the constitution provided.

### **SUMMARY OF KEY CHANGES**

In §1108, the rule establishes the procedural requirements for filing an appeal requiring the appellant to include his or her name, address, phone number/email (if available), and that the appellant attest to a statement of facts and circumstance which form the basis of the appeal under oath. The section also addresses the deadline to file and requires electronic submissions including a facsimile of the appellant’s signature.

In §1109, the rule establishes the action required of the SBEC and the SBEC Director when an appeal is filed as well as setting up a process for dismissing facially deficient appeals without requiring a meeting of the SBEC. One of the key elements added to the process in rule is the requirement that the CBEC whose actions are being appealed to be notified of the appeal and have the opportunity to respond.

In §1110, the rule establishes the standard of review for an appeal requiring that the county's decision be upheld unless the closure is unlawful or causes an undue burden on the ability of voters to access the polls on election day. The section also establishes a set of 10 factors which the board must consider in making this determination.

In §1111, the rule addresses the applicability of this process. The provision stating that the appeal process does not apply to an emergency polling site change is based on an analysis and interpretation of the Act. Staff noted to the SBEC that, if unlawful polling site changes are alleged, they can be addressed through other mechanisms even if they are untimely for the appeal process.

In §1112, the rule establishes the action required of the SBEC and the SBEC Director when a proposed ballot title and popular name are received from the Secretary of State under A.C.A. § 7-9-111(i)(1). The key provision put in place under this section is the process by which the sponsors receive notice of the SBEC's consideration of the provisions and how information is provided to the SBEC and the sponsors.

In §1113, the rule establishes the process by which the sponsor and other outside parties may submit documents advocating for or opposing the certification of a ballot title or popular name. Key provisions of this section include: the sponsor must file its brief within three business days of filing the petition, other third parties must file within 7 days, and the sponsor is entitled to reply to the third-party briefs within 12 days. There are also form and page count provisions established for all briefs except the sponsor's reply brief. A brief must satisfy the requirements of the rule to be submitted to the SBEC.

In §1114, the rule establishes provisions governing the conduct of the meeting in which the certification of the ballot title and popular name are considered. This section provides that if public testimony is heard, the sponsor shall be allowed speak first followed by alternating testimony against and in favor of certification in the order the speakers sign up to speak. The section also provides that the SBEC may limit the time of testimony it hears and may end public testimony by a two-thirds vote of the members present.

One additional change was made by deleting a sentence from §1105 which described the proper use of the declaratory order process. This policy statement has proven to add more confusion than clarity to the declaratory order process.

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Agency #108.00

# **RULES OF PRACTICE AND PROCEDURE**

(Effective December 29, 2015; Revised **January 25, 2022**)



**STATE BOARD OF ELECTION COMMISSIONERS**  
501 Woodlane, Suite 122 South  
Little Rock, Arkansas 72201  
(501) 682-1834 or (800) 411-6996

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## 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.

## § 1101 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.



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- (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. § 7-4-101(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.

## **§ 1102 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;

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- 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.

## **§ 1103 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.

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- (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.

## **§ 1104 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.

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## **§ 1105 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 petition must describe the potential impact of statutes, rules or orders upon the petitioner's interests. [A.C.A. § 25-15-202]

## **§ 1106 Petition for a Declaratory Order**

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.

## **§ 1107 Declaratory 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, either 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.

## **§ 1108 Filing an Appeal of a Polling Site Closure**

(a) The process to appeal the closure of a poll under A.C.A. § 7-5-101(d)(4) is begun by filing a document that provides the following information:

- (1) The Appellant's name,
- (2) The Appellant's address,
- (3) The Appellant's telephone number or email address if available,
- (4) A signature attesting to the truthfulness of the statements in the appeal under penalty of perjury, and
- (5) A complete statement of the facts and circumstances which form the basis of this appeal, including;

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- a. the location or name of the poll(s) which have been closed;
- b. whether any poll(s) were designated to replace the polls which were closed (if known);
- c. the reason this closure is adverse to the election process;
- d. whether the appellant is an eligible voter in the county; and
- e. any additional information the appellant believes is relevant to the appeal.

(b) An appeal must arrive in the office of the SBEC by the close of business on the seventh (7) calendar day from the date on which the county board of election commissioners acted to close the poll or polls which are the subject of the appeal. If the seventh day falls on a weekend, a state holiday, or a day that state offices in Pulaski County are closed, the appeal shall be timely if received by the close of business on the next business day the office of the SBEC is open.

(c) The appeal must be in writing and may be filed in person, submitted by mail or common carrier, or submitted electronically. If submitted electronically, the appellant must include a facsimile of the appellant's original wet signature on the document.

## **§ 1109 Processing an Appeal of a Polling Site Closure**

(a) When an appeal is filed under A.C.A. § 7-5-101(d)(4) the Director shall:

- (1) Promptly review the appeal;
- (2) Notify the county board of election commissioners that the appeal has been filed and provide an opportunity to respond to the appeal in writing;
- (3) Conduct a review of the poll assignments of the county at issue in the appeal;
- (4) Provide the appeal and a report analyzing the appeal to the State Board of Election Commissioners;
- (5) Notify the appellant and the county board of election commissioners when a meeting to consider the appeal has been scheduled; and
- (6) Provide a draft order to the State Board of Election Commissioners.

(b) When an appeal under A.C.A. § 7-5-101(d)(4) is filed, the State Board of Election Commissioners shall:

- (1) Hold a public meeting no less than 30 days prior to the date of the election at issue to consider the appeal;
- (2) Consider the information provided in the appeal, any response from the county board of election commissions, and the information provided by staff;
- (3) Determine whether the closure of each poll which are the subjects of the appeal is permissible; and
- (4) Issue an order;
  - a. Upholding each poll closure at issue in the appeal;
  - b. Prohibiting each poll closure at issue in the appeal; or
  - c. Dismissing the appeal as procedurally deficient.

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(c) The State Board of Election Commissioners may hear testimony by the appellant and by the county board of election commissioners or may reach a determination on the basis of the written statement of the appellant, the county board of election commissioners, and the information provided by Staff.

(d) The State Board of Election Commissioners may also hear public comment if it believes that the information would be helpful.

(e) The State Board of Election Commissioners may limit the time of any testimony it hears.

(f) If an appeal is filed which clearly fails to meet the requirements of A.C.A. § 7-5-101(d)(4) and the rules governing these appeals, the staff shall contact the appellant, using whatever contact information is provided, inform the appellant of the deficiency, and assist the appellant in filing a modified application.

(g) An appeal which is filed that is omitting any of the following information shall be considered deficient as a matter of law:

- (1) The Appellant's name;
- (2) The Appellant's signature attesting to the truthfulness of the statements in the appeal under penalty of perjury; and
- (3) A statement of the facts and circumstances which identify the location of the poll(s) which have been closed.
- (4) The appeal was untimely under this rule.

(h) An appeal which is found deficient as a matter of law may be dismissed without a meeting of the SBEC if;

- (1) The SBEC attempts to notify the appellant of the deficiency using the information provided by the appeal; and
- (2) The applicant fails to provide the missing information;
  - A. Within seven (7) days of the act of the CBEC to close the poll, or
  - B. Within seven (7) days of receiving the appeal if the date the CBEC acted to close the poll(s) in question is unknown.
- (3) The appeal is received less than 53 days prior to the date of the election shall be considered deficient as a matter of law and may be dismissed without a prior attempting to contact the appellant due to the appellant's failure to file the appeal within 7 days of the last day for the CBEC to make changes to the location of polling sites.

(i) To dismiss an appeal which is deficient as a matter of law, the director of the SBEC shall direct a letter to the appellant explaining why this appeal was deficient and eligible for dismissal. This letter, and a copy of the appeal, shall also be sent to the members of the State Board of Election Commissioners and the county board of election commissioners for the county at issue.

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## **§ 1110 Standard of Review in an Appeal of a Polling Site Closure**

(a) The State Board of Election Commissioners shall consider the following when determining whether a polling site closure subject to the appeal is permissible:

- (1) Whether the closure of the poll forces voters to travel an unreasonable distance in order to cast a ballot on election day;
- (2) The capacity of remaining polling locations to accommodate voters;
- (3) The number of voters who utilized a poll in prior elections;
- (4) The availability of vote centers and early voting in the county;
- (5) The relative distribution of the population across the county;
- (6) Whether the polling location in question meets or can be modified to meet the requirements of a poll under state and federal law;
- (7) The expense of operating the poll or of modifying the poll in order to make a poll satisfy the requirements of state and federal law;
- (8) The availability of the poll in question;
- (9) Whether the closure constitutes a violation of state or federal law; and
- (10) The number of poll workers available at the time poll worker appointments were made.

(b) The State Board of Election Commissioners shall uphold the actions of the county board of election commissioners unless, by a majority vote, it finds that the closure of one or more polls causes an undue burden on the ability of voters to access the polls on election day or constitutes a violation of law.

(c) If more than one poll was at issue in the appeal, the State Board of Election Commissioners shall consider each poll at issue and may prohibit some closures while upholding other closures.

## **§ 1111 Applicability of the polling site appeal process**

(a) An appeal of a polling site closure may only be made for polling site closures in a preferential primary or general election under A.C.A. § 7-5-101(d)(4).

(b) A vote center is a location selected by the CBEC where votes are cast and is within the definition of a polling site under A.C.A. § 7-1-101(28) and is subject to appeal under this rule.

(c) Changes made to early voting locations in a county are not subject to review under this rule.

(d) Under A.C.A. § 7-5-101(d)(4), the SBEC is required to resolve any appeal no less than 30 days prior to an election; therefore, emergency polling site changes are not subject to review by the SBEC.

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## § 1112 Review of a Statewide Ballot Title and Popular Name

(a) Pursuant to Article 5 §1 as implemented in Act 376 of 2019, the State Board of Election Commissioners is required to review the ballot title and popular name of a proposed statewide ballot measure.

(b) Upon receipt of a proposed ballot title and popular name the SBEC Director shall:

- (1) Forward the information received from the Secretary of State to the membership of the State Board of Election Commissioner within one (1) business day;
- (2) Analyze the text of the ballot title and popular name;
- (3) Provide a report to the SBEC which analysis issues identified by staff that may impact whether the SBEC may certify the ballot title or popular name;
- (4) Assist any members with questions or research which is requested of staff regarding the certification of a ballot title and popular name.
  - A. In the event that a member believes a ballot title may not be eligible for certification, the member may request the staff draft a proposed explanation of non-certification for consideration by the SBEC in the certification meeting.
  - B. Documents drafted for a member under this provision shall not be circulated to other members prior to the public meeting.
- (5) Send written notification to the petition sponsor on file with the Secretary of State's office notifying the sponsor of the date and time of the meeting in which certification will be considered.
  - A. Notification must be sent to the physical address of the sponsor and to any email address which was provided when the petition was filed with the Secretary of State.
  - B. Notice should be sent as soon as possible but not less than five (5) business days prior to the date of the meeting.

(c) Upon receipt of a proposed ballot title and popular name the SBEC shall:

- (1) Hold a public meeting no less than 29 days from the date the Secretary of State certifies the proposed ballot title and popular name to the SBEC staff.
- (2) Conduct deliberations regarding the sufficiency of the ballot title and popular name under A.C.A. § 7-9-111(i)(3) and vote whether to certify the ballot title and popular name.
- (3) If the ballot title is not certified, the SBEC shall:
  - A. Adopted a motion describing the reasons that the ballot title and popular name were not certified which is sufficiently detailed to allow the Director to provide the sponsor a written statement explaining why the ballot title and popular name were not certified; or
  - B. Adopted a written statement explaining why the ballot title and popular name were not certified.

(d) Within one (1) business day of the public meeting in which the SBEC determines whether to certify a ballot title or popular name the SBEC Director shall:

- (1) Provide to the sponsor of the ballot title and popular name:



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- A. written notification to the sponsor regarding whether the ballot title and popular name were certified to the Secretary of State; and
  - B. In the event a ballot title was not certified, provide a written statement explaining why the ballot title and popular name were not certified.
- (2) Provide the Secretary of State:
- A. A statement of certification for a ballot title and popular name approved by the SBEC including the text of the language reviewed; or
  - B. Notification that the ballot title and popular name were not certified.

## **§ 1113 Outside Advocacy Regarding a Statewide Ballot Title and Popular Name**

(a) The determination regarding whether to certify a ballot title and popular name under Article 5 §1 as implemented in Act 376 of 2019 is an administrative determination for the State Board of Election Commissioners and should not be considered an adversarial process.

(b) Interested third parties may file briefs in support or opposition of certification; however, the State Board of Election Commissioners is not obligated to review or respond any filings made by third parties. If a brief is filed with the Director which satisfies the requirements of this rule, the brief shall be forwarded to the members of the State Board of Election Commissioners within one (1) business day of being filed.

(c) The sponsor of the petition may file a brief analyzing why the language filed satisfies the requirements of A.C.A. § 7-9-111(i). This brief shall:

- (1) Be filed with the State Board of Election Commissioners within three (3) business day of the filing of the petition with the Secretary of State;
- (2) Be accompanied by the full text of the ballot title and popular name in an electronic format which can be imported into a word processor;
- (3) Utilizes standard 12-point typeface or a 10-point typeface in footnotes;
- (4) Utilize a in a Century font; and
- (5) Not exceed twenty (20) pages.

(d) Other interested third parties may file amicus tabula legatourm briefs with the State Board of Election Commissioners.

- (1) In order to be reviewed by the State Board of Election Commissioners, these briefs shall be filed:
  - A. Be filed by a registered voter in the State of Arkansas;
  - B. Be filed within seven (7) days of the date the petition being filed with the Secretary of State;
  - C. Utilizes standard 12-point typeface or a 10-point typeface in footnotes;
  - D. Utilize a in a Century font; and
  - E. Not exceed twenty (20) pages.

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(2) Any brief filed after the deadline will not be forwarded to the State Board of Election Commissioners

(e) The sponsor of the petition may file one responsive brief addressing all amicus brief within twelve (12) days of the petition being filed with the Secretary of State.

## **§ 1114 Consideration of a Ballot Title and Popular Name in a Public Meeting**

(a) The State Board of Election Commissioners shall conduct deliberations in a public meeting regarding the sufficiency of the ballot title and popular name under A.C.A. § 7-9-111(i)(3) and vote whether to certify the ballot title and popular name.

(b) The State Board of Election Commissioners may hear testimony by the sponsor and by other third parties.

(c) If the State Board of Election Commissioners allows public testimony, this testimony shall be conducted pursuant to the following provisions:

(1) All persons testifying in this matter shall be placed under oath;

(2) The sponsor or the sponsor's designee shall be allowed to testify in favor of certification

(3) Other interested third parties who sign up to speak in favor or in opposition for certification may be permitted to testify.

(4) Additional testimony shall be offered in the order the person signed up to testify alternating testimony in favor or in opposition for certification.

(d) The State Board of Election Commissioners may limit the time of any testimony it hears.

(e) The State Board of Election Commissioners may end public testimony if by a two-thirds vote of the member present, the Board determines that additional testimony would be redundant or would not assist the member in determining whether the ballot title and popular name should be certified.

(f) The determination of whether to adopt a motion to certify or to decline to certify the ballot title and popular name being considered shall be made by an affirmative vote of at least four members.

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Agency #108.00

# **RULES OF PRACTICE AND PROCEDURE**

(Effective December 29, 2015; Revised January 25, 2022)



**STATE BOARD OF ELECTION COMMISSIONERS**  
501 Woodlane, Suite 122 South 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~~ 1101 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. § 7-4-101(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~~ 1102 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~~ 1103 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~~ 1104 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~~ 1105 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~~ 1106 Petition for a Declaratory Order**

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~~ 1107 Declaratory 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, either 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.

#### **§ 1108 Filing an Appeal of a Polling Site Closure**

(a) The process to appeal the closure of a poll under A.C.A. § 7-5-101(d)(4) is begun by filing a document that provides the following information:

- (1) The Appellant's name,
- (2) The Appellant's address,
- (3) The Appellant's telephone number or email address if available,
- (4) A signature attesting to the truthfulness of the statements in the appeal under penalty of perjury, and



- (5) A complete statement of the facts and circumstances which form the basis of this appeal, including:
- a. the location or name of the poll(s) which have been closed;
  - b. whether any poll(s) were designated to replace the polls which were closed (if known);
  - c. the reason this closure is adverse to the election process;
  - d. whether the appellant is an eligible voter in the county; and
  - e. any additional information the appellant believes is relevant to the appeal.

(b) An appeal must arrive in the office of the SBEC by the close of business on the seventh (7) calendar day from the date on which the county board of election commissioners acted to close the poll or polls which are the subject of the appeal. If the seventh day falls on a weekend, a state holiday, or a day that state offices in Pulaski County are closed, the appeal shall be timely if received by the close of business on the next business day the office of the SBEC is open.

(c) The appeal must be in writing and may be filed in person, submitted by mail or common carrier, or submitted electronically. If submitted electronically, the appellant must include a facsimile of the appellant's original wet signature on the document.

### **§ 1109 Processing an Appeal of a Polling Site Closure**

(a) When an appeal is filed under A.C.A. § 7-5-101(d)(4) the Director shall:

- (1) Promptly review the appeal;
- (2) Notify the county board of election commissioners that the appeal has been filed and provide an opportunity to respond to the appeal in writing;
- (3) Conduct a review of the poll assignments of the county at issue in the appeal;
- (4) Provide the appeal and a report analyzing the appeal to the State Board of Election Commissioners;
- (5) Notify the appellant and the county board of election commissioners when a meeting to consider the appeal has been scheduled; and
- (6) Provide a draft order to the State Board of Election Commissioners.

(b) When an appeal under A.C.A. § 7-5-101(d)(4) is filed, the State Board of Election Commissioners shall:

- (1) Hold a public meeting no less than 30 days prior to the date of the election at issue to consider the appeal;
- (2) Consider the information provided in the appeal, any response from the county board of election commissions, and the information provided by staff;
- (3) Determine whether the closure of each poll which are the subjects of the appeal is permissible; and
- (4) Issue an order;
  - a. Upholding each poll closure at issue in the appeal;
  - b. Prohibiting each poll closure at issue in the appeal; or

c. Dismissing the appeal as procedurally deficient.

(c) The State Board of Election Commissioners may hear testimony by the appellant and by the county board of election commissioners or may reach a determination on the basis of the written statement of the appellant, the county board of election commissioners, and the information provided by Staff.

(d) The State Board of Election Commissioners may also hear public comment if it believes that the information would be helpful.

(e) The State Board of Election Commissioners may limit the time of any testimony it hears.

(f) If an appeal is filed which clearly fails to meet the requirements of A.C.A. § 7-5-101(d)(4) and the rules governing these appeals, the staff shall contact the appellant, using whatever contact information is provided, inform the appellant of the deficiency, and assist the appellant in filing a modified application.

(g) An appeal which is filed that is omitting any of the following information shall be considered deficient as a matter of law:

- (1) The Appellant's name;
- (2) The Appellant's signature attesting to the truthfulness of the statements in the appeal under penalty of perjury; and
- (3) A statement of the facts and circumstances which identify the location of the poll(s) which have been closed.
- (4) The appeal was untimely under this rule.

(h) An appeal which is found deficient as a matter of law may be dismissed without a meeting of the SBEC if;

- (1) The SBEC attempts to notify the appellant of the deficiency using the information provided by the appeal; and
- (2) The applicant fails to provide the missing information;
  - A. Within seven (7) days of the act of the CBEC to close the poll, or
  - B. Within seven (7) days of receiving the appeal if the date the CBEC acted to close the poll(s) in question is unknown.
- (3) The appeal is received less than 53 days prior to the date of the election shall be considered deficient as a matter of law and may be dismissed without a prior attempting to contact the appellant due to the appellant's failure to file the appeal within 7 days of the last day for the CBEC to make changes to the location of polling sites.

(i) To dismiss an appeal which is deficient as a matter of law, the director of the SBEC shall direct a letter to the appellant explaining why this appeal was deficient and eligible for dismissal. This letter, and a copy of the appeal, shall also be sent to the members of the State Board of Election Commissioners and the county board of election commissioners for the county at issue.

### **§ 1110 Standard of Review in an Appeal of a Polling Site Closure**

(a) The State Board of Election Commissioners shall consider the following when determining whether a polling site closure subject to the appeal is permissible:

- (1) Whether the closure of the poll forces voters to travel an unreasonable distance in order to cast a ballot on election day;
- (2) The capacity of remaining polling locations to accommodate voters;
- (3) The number of voters who utilized a poll in prior elections;
- (4) The availability of vote centers and early voting in the county;
- (5) The relative distribution of the population across the county;
- (6) Whether the polling location in question meets or can be modified to meet the requirements of a poll under state and federal law;
- (7) The expense of operating the poll or of modifying the poll in order to make a poll satisfy the requirements of state and federal law;
- (8) The availability of the poll in question;
- (9) Whether the closure constitutes a violation of state or federal law; and
- (10) The number of poll workers available at the time poll worker appointments were made.

(b) The State Board of Election Commissioners shall uphold the actions of the county board of election commissioners unless, by a majority vote, it finds that the closure of one or more polls causes an undue burden on the ability of voters to access the polls on election day or constitutes a violation of law.

(c) If more than one poll was at issue in the appeal, the State Board of Election Commissioners shall consider each poll at issue and may prohibit some closures while upholding other closures.

### **§ 1111 Applicability of the polling site appeal process**

(a) An appeal of a polling site closure may only be made for polling site closures in a preferential primary or general election under A.C.A. § 7-5-101(d)(4).

(b) A vote center is a location selected by the CBEC where votes are cast and is within the definition of a polling site under A.C.A. § 7-1-101(28) and is subject to appeal under this rule.

(c) Changes made to early voting locations in a county are not subject to review under this rule.

(d) Under A.C.A. § 7-5-101(d)(4), the SBEC is required to resolve any appeal no less than 30 days prior to an election; therefore, emergency polling site changes are not subject to review by the SBEC.

### **§ 1112 Review of a Statewide Ballot Title and Popular Name**

(a) Pursuant to Article 5 §1 as implemented in Act 376 of 2019, the State Board of Election Commissioners is required to review the ballot title and popular name of a proposed statewide ballot measure.

(b) Upon receipt of a proposed ballot title and popular name the SBEC Director shall:

- (1) Forward the information received from the Secretary of State to the membership of the State Board of Election Commissioner within one (1) business day;
- (2) Analyze the text of the ballot title and popular name;
- (3) Provide a report to the SBEC which analysis issues identified by staff that may impact whether the SBEC may certify the ballot title or popular name;
- (4) Assist any members with questions or research which is requested of staff regarding the certification of a ballot title and popular name.
  - A. In the event that a member believes a ballot title may not be eligible for certification, the member may request the staff draft a proposed explanation of non-certification for consideration by the SBEC in the certification meeting.
  - B. Documents drafted for a member under this provision shall not be circulated to other members prior to the public meeting.
- (5) Send written notification to the petition sponsor on file with the Secretary of State's office notifying the sponsor of the date and time of the meeting in which certification will be considered.
  - A. Notification must be sent to the physical address of the sponsor and to any email address which was provided when the petition was filed with the Secretary of State.
  - B. Notice should be sent as soon as possible but not less than five (5) business days prior to the date of the meeting.

(c) Upon receipt of a proposed ballot title and popular name the SBEC shall:

- (1) Hold a public meeting no less than 29 days from the date the Secretary of State certifies the proposed ballot title and popular name to the SBEC staff.
- (2) Conduct deliberations regarding the sufficiency of the ballot title and popular name under A.C.A. § 7-9-111(i)(3) and vote whether to certify the ballot title and popular name.
- (3) If the ballot title is not certified, the SBEC shall:
  - A. Adopted a motion describing the reasons that the ballot title and popular name were not certified which is sufficiently detailed to allow the Director to provide the sponsor a written statement explaining why the ballot title and popular name were not certified; or
  - B. Adopted a written statement explaining why the ballot title and popular name were not certified.

(d) Within one (1) business day of the public meeting in which the SBEC determines whether to certify a ballot title or popular name the SBEC Director shall:

- (1) Provide to the sponsor of the ballot title and popular name:
  - A. written notification to the sponsor regarding whether the ballot title and popular name were certified to the Secretary of State; and
  - B. In the event a ballot title was not certified, provide a written statement explaining why the ballot title and popular name were not certified.
- (2) Provide the Secretary of State:
  - A. A statement of certification for a ballot title and popular name approved by the SBEC including the text of the language reviewed; or
  - B. Notification that the ballot title and popular name were not certified.

### **§ 1113 Outside Advocacy Regarding a Statewide Ballot Title and Popular Name**

(a) The determination regarding whether to certify a ballot title and popular name under Article 5 §1 as implemented in Act 376 of 2019 is an administrative determination for the State Board of Election Commissioners and should not be considered an adversarial process.

(b) Interested third parties may file briefs in support or opposition of certification; however, the State Board of Election Commissioners is not obligated to review or respond any filings made by third parties. If a brief is filed with the Director which satisfies the requirements of this rule, the brief shall be forwarded to the members of the State Board of Election Commissioners within one (1) business day of being filed.

(c) The sponsor of the petition may file a brief analyzing why the language filed satisfies the requirements of A.C.A. § 7-9-111(i). This brief shall:

- (1) Be filed with the State Board of Election Commissioners within three (3) business day of the filing of the petition with the Secretary of State;
- (2) Be accompanied by the full text of the ballot title and popular name in an electronic format which can be imported into a word processor;
- (3) Utilizes standard 12-point typeface or a 10-point typeface in footnotes;
- (4) Utilize a in a Century font; and
- (5) Not exceed twenty (20) pages.

(d) Other interested third parties may file amicus tabula legatourm briefs with the State Board of Election Commissioners.

- (1) In order to be reviewed by the State Board of Election Commissioners, these briefs shall be filed:
  - A. Be filed by a registered voter in the State of Arkansas;
  - B. Be filed within seven (7) days of the date the petition being filed with the Secretary of State;
  - C. Utilizes standard 12-point typeface or a 10-point typeface in footnotes;
  - D. Utilize a in a Century font; and

E. Not exceed twenty (20) pages.

(2) Any brief filed after the deadline will not be forwarded to the State Board of Election Commissioners

(e) The sponsor of the petition may file one responsive brief addressing all amicus brief within twelve (12) days or the petition being filed with the Secretary of State.

### **§ 1114 Consideration of a Ballot Title and Popular Name in a Public Meeting**

(a) The State Board of Election Commissioners shall conduct deliberations in a public meeting regarding the sufficiency of the ballot title and popular name under A.C.A. § 7-9-111(i)(3) and vote whether to certify the ballot title and popular name.

(b) The State Board of Election Commissioners may hear testimony by the sponsor and by other third parties.

(c) If the State Board of Election Commissioners allows public testimony, this testimony shall be conducted pursuant to the following provisions:

(1) All persons testifying in this matter shall be placed under oath;

(2) The sponsor or the sponsor's designee shall be allowed to testify in favor of certification

(3) Other interested third parties who sign up to speak in favor or in opposition for certification may be permitted to testify.

(4) Additional testimony shall be offered in the order the person signed up to testify alternating testimony in favor or in opposition for certification.

(d) The State Board of Election Commissioners may limit the time of any testimony it hears.

(e) The State Board of Election Commissioners may end public testimony if by a two-thirds vote of the member present, the Board determines that additional testimony would be redundant or would not assist the member in determining whether the ballot title and popular name should be certified.

(f) The determination of whether to adopt a motion to certify or to decline to certify the ballot title and popular name being considered shall be made by an affirmative vote of at least four members.

State of Arkansas As Engrossed: H4/1/21 S4/22/21

93rd General Assembly

Regular Session, 2021

# A Bill

HOUSE BILL 1615

By: Representative Ladyman

By: Senator K. Hammer

## For An Act To Be Entitled

AN ACT TO AMEND ELECTION PROCEDURES; TO AMEND THE  
REQUIREMENTS FOR ELECTION OFFICIALS; TO AMEND THE  
LOCATION OF POLLING PLACES; TO AMEND THE LAW  
CONCERNING THE INFORMATION CONTAINED IN THE VOTER  
REGISTRATION LIST; AND FOR OTHER PURPOSES.

## Subtitle

TO AMEND ELECTION PROCEDURES; TO AMEND  
THE REQUIREMENTS FOR ELECTION OFFICIALS;  
TO AMEND THE LOCATION OF POLLING PLACES;  
AND TO AMEND THE LAW CONCERNING THE  
INFORMATION CONTAINED IN THE VOTER  
REGISTRATION LIST.

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

*SECTION 1. Arkansas Code § 7-4-101(f), concerning the members,  
officers, meetings, and duties of the State Board of Election Commissioners,  
is amended to add additional subdivisions to read as follows:*

(15) Consider an appeal filed to challenge a reduction in the  
number of polling sites in a county by a county board of election  
commissioners under § 7-5-101; and

(16) Formulate, adopt, and promulgate rules for governing the  
appeal of a county board of election commissioners' reduction in the number  
of polling sites in a county under § 7-5-101.



1       SECTION 2. Arkansas Code § 7-4-109(a), concerning qualifications of  
2       state and county commissioners, election officials, poll workers, and  
3       certified election monitors, is amended to add an additional subdivision to  
4       read as follows:

5               (4) A person shall be eligible to serve as an election official  
6       if the person is married to or related within the second degree of  
7       consanguinity to a candidate running for office in the election who is  
8       unopposed and the person is appointed to serve as an election official at a  
9       polling place or vote center designated to serve a geographic area with a  
10       population of less than one thousand (1,000) qualified electors.

11  
12       SECTION 3. Arkansas Code § 7-5-101(a), concerning the establishment  
13       and alteration of precinct boundaries, polling sites, and vote centers, is  
14       amended to read as follows:

15       (a)(1) The county board of election commissioners shall:

16               (A) Establish election precincts; and

17               (B)(i) Designate a polling site for each precinct.

18                       (ii) A polling site may serve two (2) or more  
19       precincts, including parts of precincts.

20       (2) Except as provided in § 6-14-106, the designation of polling  
21       sites shall be by a unanimous vote of the members of the county board of  
22       election commissioners present.

23  
24       SECTION 4. Arkansas Code § 7-5-101(d)(2), concerning the establishment  
25       and alteration of precinct boundaries, polling sites, and vote centers, is  
26       amended to read as follows:

27       (2)(A) The county board of election commissioners shall not change a  
28       polling site for any precinct less than ~~thirty (30)~~ sixty (60) days before ~~an~~  
29       a preferential primary election or general election, except in the event of  
30       an emergency.

31               (B) The county board of election commissioners shall not  
32       change a polling site for any precinct less than thirty (30) days before an  
33       election other than a preferential primary or general election, except in the  
34       event of an emergency.

35  
36       SECTION 5. Arkansas Code § 7-5-101(d), concerning the establishment



1 and alteration of precinct boundaries, polling sites, and vote centers, is  
2 amended to add an additional subdivision to read as follows:

3 (4)(A) If the county board of election commissioners reduces the  
4 total number of polling sites available in the county in a preferential  
5 primary election or a general election, a qualified elector of the county may  
6 appeal the decision to close the polling site that adversely affects the  
7 qualified elector's ability to cast a ballot to the State Board of Election  
8 Commissioners.

9 (B) An appeal made to the State Board of Election  
10 Commissioners shall:

11 (i) Be filed in writing within seven (7) days of the  
12 vote of the county board of election commissioners to reduce the number of  
13 polling sites available in the county;

14 (ii) Describe clearly the polling site that was  
15 closed;

16 (iii) Describe the reason the closure of the polling  
17 site in question adversely affects the election process; and

18 (iv) Be signed by the appellant under penalty of  
19 perjury.

20 (C) When a timely and sufficient appeal is filed under  
21 this subsection, the State Board of Election Commissioners shall determine if  
22 the reduction in polling sites is permissible in a timely fashion and shall  
23 issue an order resolving the appeal no less than thirty (30) days before the  
24 date of the election.

25 (D) An order by the State Board of Election Commissioners  
26 prohibiting a reduction in polling sites under this subsection shall be  
27 effective for the remainder of the term of the county board of election  
28 commissioners whose actions were appealed.

29  
30 SECTION 6. Arkansas Code § 7-5-107 is amended to read as follows:

31 7-5-107. Use of voter registration lists by poll workers.

32 (a)(1) In any election conducted in this state, precinct voter  
33 registration lists shall be used by poll workers in each polling place.

34 (2)(A) An electronic poll book may be used by poll workers in  
35 each polling place.

36 (B) The functions of an electronic poll book may include

1 without limitation:

- 2 (i) Voter lookup;
- 3 (ii) Voter verification;
- 4 (iii) Voter identification;
- 5 (iv) Precinct assignment;
- 6 (v) Ballot assignment;
- 7 (vi) Recording when a voter presents himself or
- 8 herself to an election official and requests a ballot; ~~and~~
- 9 (vii) Redirecting voters to the correct polling
- 10 site; and
- 11 (viii) Determining if a voter has requested an
- 12 absentee ballot.

13 (b) Precinct voter registration lists shall contain the name, address  
14 including zip code, and date of birth of each registered voter within the  
15 precinct, including those who have been designated inactive, the precinct  
16 number and county wherein the precinct is located, the name and date of the  
17 election, and a space for the voter's signature.

18 (c) The following shall be printed at the top of each page of the  
19 precinct voter registration list:

20 "IF YOU SIGN THIS FORM AND YOU ARE NOT A LAWFULLY REGISTERED VOTER OR IF YOU  
21 HAVE SUBMITTED AN ABSENTEE BALLOT FOR THIS ELECTION, YOU ARE MAKING A FALSE  
22 STATEMENT AND MAY BE COMMITTING PERJURY. PERJURY IS PUNISHABLE BY UP TO A  
23 \$10,000 FINE AND UP TO 10 YEARS IMPRISONMENT."  
24

25 SECTION 7. Arkansas Code § 7-5-305(a)(11), concerning requirements to  
26 vote and duties of poll workers, is amended to read as follows:

27 (11)(A) Verify if a person requested an absentee ballot  
28 according to the precinct voter registration list; and

29 (B) Permit the person to cast a provisional ballot if the  
30 person received an absentee ballot according to the precinct voter  
31 registration list.  
32

33 SECTION 8. Arkansas Code § 7-5-418(c), concerning early voting  
34 procedures, is amended to add an additional subdivision to read as follows:

35 (6)(A) Verify if a person requested an absentee ballot according  
36 to the precinct voter registration list; and

1                   (B) Permit a person to cast a provisional ballot if the  
2 person received an absentee ballot according to the precinct voter  
3 registration list.

4  
5                   */s/Ladyman*  
6

7  
8                   **APPROVED: 4/30/21**  
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State of Arkansas

As Engrossed: S2/20/19

92nd General Assembly

# A Bill

Regular Session, 2019

SENATE BILL 346

By: Senator M. Pitsch

By: Representative Vaught

## For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS LAW CONCERNING THE  
PROCEDURES FOR PETITIONS AND REFERRED CONSTITUTIONAL  
AMENDMENTS; TO DECLARE AN EMERGENCY; AND FOR OTHER  
PURPOSES.

## Subtitle

TO AMEND ARKANSAS LAW CONCERNING THE  
PROCEDURES FOR PETITIONS AND REFERRED  
CONSTITUTIONAL AMENDMENTS; AND TO DECLARE  
AN EMERGENCY.

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

SECTION 1. Arkansas Code § 5-55-601(c), concerning the penalty for  
petition fraud, is amended to read as follows:

(c) Petition fraud is a ~~Class A misdemeanor~~ Class D felony.

SECTION 2. Arkansas Code § 7-4-101(f), concerning the authority of the  
State Board of Election Commissioners, is amended to add an additional  
subdivision to read as follows:

(12) Consider the certification of the ballot title and popular name  
submitted on a statewide initiative petition or statewide referendum petition  
under § 7-9-111.

SECTION 3. Arkansas Code § 7-9-103(b), concerning the signing of  
petitions, is amended to read as follows:



1 (b) A person commits a Class A misdemeanor if the person knowingly:

2 (1) Signs a name other than his or her own name to a petition;

3 (2) Signs his or her name more than one (1) time to a petition;

4 ~~or~~

5 (3) Signs a petition when he or she is not legally entitled to  
6 sign the petition;

7 (4) Prints a name, address, or birth date other than his or her  
8 own on a petition unless the signer requires assistance due to disability and  
9 the person complies with this section; or

10 (5) Prints the date of signing for another person unless the  
11 signer requires assistance due to disability and the person complies with  
12 this section.

13  
14 SECTION 4. Arkansas Code § 7-9-103(d), concerning the signing of  
15 petitions, is amended to read as follows:

16 (d) When the official charged with verifying the signatures has  
17 reasonable grounds to believe that one (1) or more signatures on a petition  
18 is forged, ~~excluding signatures apparently signed by one (1) spouse for~~  
19 ~~another~~, the official shall report the suspected forgery and basis for  
20 suspecting forgery to:

21 (1) The Department of Arkansas State Police, in the case of a  
22 statewide petition; or

23 (2) The prosecuting attorney of the county, in the case of a  
24 local petition.

25  
26 SECTION 5. Arkansas Code § 7-9-104(b)-(d), concerning the form of  
27 initiative petitions, are amended to read as follows:

28 ~~(b) The information provided by the person on the petition may be used~~  
29 ~~as evidence of the validity or invalidity of the signature. However, if a~~  
30 ~~signature of a registered voter on the petition is sufficient to verify the~~  
31 ~~voter's name, then it shall not be adjudged invalid for failure to sign the~~  
32 ~~name or write the residence and city or town of residence exactly as it~~  
33 ~~appears on voter registration records, for failure to print the name in the~~  
34 ~~space provided, for failure to provide the correct date of birth, nor for~~  
35 ~~failure to provide the correct date of signing the petition, all the~~  
36 ~~information being an aid to verification rather than a mandatory requirement~~

1 ~~to perfect the validity of the signature.~~

2 ~~(e)~~(b) No additional sheets of voter signatures shall be attached to  
3 any petition unless the sheets contain the full language of the petition.

4 ~~(d)~~(c)(1) The signature section of the petition shall be formatted and  
5 shall contain the number of signature lines prescribed by the Secretary of  
6 State.

7 (2) Before the circulation of a statewide petition for  
8 signatures, the sponsor shall file a printed petition part with the Secretary  
9 of State in the exact form that will be used for obtaining signatures.

10  
11 SECTION 6. Arkansas Code § 7-9-107 is amended to read as follows:

12 7-9-107. ~~Approval of ballot titles and popular names of petitions~~  
13 ~~prior to circulation~~ Publication Filing of original draft before  
14 circulation.

15 (a) Before any initiative petition or referendum petition ordering a  
16 vote upon any amendment or act shall be circulated for obtaining signatures  
17 of petitioners, the sponsors shall ~~submit~~ file the original draft ~~to the~~  
18 ~~Attorney General, with a proposed legislative or ballot title and popular~~  
19 ~~name~~ with the Secretary of State.

20 (b) The original draft shall include:

21 (1) The full text of the proposed measure;

22 (2) A ballot title for the proposed measure; and

23 (3) A popular name for the proposed measure.

24 (c) The Secretary of State shall return to the sponsor a file-marked  
25 copy of the original draft that shall serve as evidence that the original  
26 draft was filed in compliance with this section.

27 (d) The sponsor may begin circulating an initiative petition or  
28 referendum petition upon receipt of the file-marked copy under subsection (c)  
29 of this section.

30 ~~(b) Within ten (10) days, the Attorney General shall approve and~~  
31 ~~certify or shall substitute and certify a more suitable and correct ballot~~  
32 ~~title and popular name for each amendment or act. The ballot title so~~  
33 ~~submitted or supplied by the Attorney General shall briefly and concisely~~  
34 ~~state the purpose of the proposed measure.~~

35 ~~(c) If, as a result of his or her review of the ballot title and~~  
36 ~~popular name of a proposed initiated act or a proposed amendment to the~~

~~Arkansas Constitution, the Attorney General determines that the ballot title, or the nature of the issue, is presented in such manner that the ballot title would be misleading or designed in such manner that a vote "FOR" the issue would be a vote against the matter or viewpoint that the voter believes himself or herself casting a vote for, or, conversely, that a vote "AGAINST" an issue would be a vote for a viewpoint that the voter is against, the Attorney General may reject the entire ballot title, popular name, and petition and state his or her reasons therefor and instruct the petitioners to redesign the proposed measure and the ballot title and popular name in a manner that would not be misleading.~~

~~(d) If the Attorney General refuses to act or if the sponsors feel aggrieved at the Attorney General's acts in such premises, the sponsors may, by petition, apply to the Supreme Court for proper relief.~~

SECTION 7. Arkansas Code § 7-9-109(a), concerning the verification of petitions containing signatures, is amended to read as follows:

(a) Each petition containing signatures shall be verified in substantially the following form by the canvasser's affidavit thereon as a part thereof:

"State of Arkansas

County of \_\_\_\_\_

I, (print name of canvasser), being duly sworn, state that each of the foregoing persons signed his or her own name to this sheet of the petition in my presence. To the best of my knowledge and belief, each signature is genuine and each signer is a registered voter of the State of Arkansas, \_\_\_\_\_ County, or City or Incorporated Town

of \_\_\_\_\_. At all times during the circulation of this signature sheet, an exact copy of the popular name, ballot title, and text was attached to the signature sheet. My current residence address is correctly stated below.

Signature \_\_\_\_\_

~~Residence~~ Current residence \_\_\_\_\_

Indicate one: \_\_\_ Paid Canvasser \_\_\_ Volunteer/Unpaid Canvasser

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

Signature \_\_\_\_\_

Clerk, Notary, Judge, or J.P.

1 Seal \_\_\_\_\_ ”.

2  
3 SECTION 8. Arkansas Code § 7-9-110(a), concerning the designation of  
4 the popular name, is amended to read as follows:

5 (a) The popular name of each state measure shall be ~~designated as~~  
6 ~~provided in the popular name provided by the sponsor under § 7-9-107, and the~~  
7 number of the measure on the ballot shall be designated as provided in § 7-9-  
8 116.

9  
10 SECTION 9. Arkansas Code § 7-9-111 is amended to read as follows:

11 7-9-111. Determination of sufficiency of petition – Corrections.

12 (a)~~(1)~~ The Secretary of State shall ascertain and declare the  
13 sufficiency or insufficiency of the signatures submitted on each statewide  
14 initiative petition and each statewide referendum petition within thirty (30)  
15 days after it is filed.

16 ~~(2)~~(b) The Secretary of State may contract with the various county  
17 clerks for their assistance in verifying the signatures on petitions. The  
18 county clerk shall return the petitions to the Secretary of State within ten  
19 (10) days.

20 ~~(b) In considering the sufficiency of the initiative and referendum~~  
21 ~~petitions, if it is made to appear beyond a reasonable doubt that twenty~~  
22 ~~percent (20%) or more of the signatures on any one (1) part thereof are~~  
23 ~~fictitious, forged, or otherwise clouded or that the challenged petitioners~~  
24 ~~were ineligible to sign the petition, which fact was known or could have been~~  
25 ~~ascertained by the exercise of reasonable diligence on the part of the~~  
26 ~~canvasser, then the Secretary of State shall require the sponsors to assume~~  
27 ~~the burden of proving that all other signatures appearing on the part are~~  
28 ~~genuine and that the signers are qualified electors and are in all other~~  
29 ~~respects entitled to sign the petition. If the sponsors refuse or fail to~~  
30 ~~assume and meet the burden, then the Secretary of State shall reject the part~~  
31 ~~and shall not count as petitioners any of the names appearing thereon.~~

32 (c) If the statewide initiative petition or statewide referendum  
33 petition is found to be sufficient, the Secretary of State shall certify and  
34 record the finding ~~and do~~ and perform such other duties relating thereto as  
35 are required by law.

36 (d)(1) If the ~~petition is~~ signatures submitted on a statewide



1 initiative petition or statewide referendum petition are found to be  
2 insufficient, the Secretary of State shall forthwith notify the sponsors in  
3 writing, through their designated agent, and shall set forth his or her  
4 reasons for so finding. When the notice is delivered, the sponsors shall have  
5 thirty (30) days in which to do any or all of the following:

6 (A) Solicit and obtain additional signatures; or

7 (B) Submit proof to show that the rejected signatures or  
8 some of them are good and should be counted; ~~or~~

9 ~~(C) Make the petition more definite and certain.~~

10 (2) Any amendments and corrections shall not materially change  
11 the purpose and effect of the statewide initiative petition or statewide  
12 referendum petition. No change shall be made in the measure, ~~except to~~  
13 ~~correct apparent typographical errors or omissions.~~

14 (3) The Secretary of State shall ascertain and declare the  
15 sufficiency or insufficiency of additional signatures submitted by the  
16 sponsors under this subsection within thirty (30) days of the filing of the  
17 supplemental petitions.

18 (e)(1) To assist the Secretary of State in ascertaining the  
19 sufficiency or insufficiency of each statewide initiative petition and each  
20 statewide referendum petition, all county clerks shall furnish at cost to the  
21 Secretary of State a single alphabetical list of all registered voters in  
22 their respective counties. The list shall be provided at least four (4)  
23 months before the election, and an updated list shall be provided at cost by  
24 September 1 in the year of the election. The list shall include the date of  
25 birth of each registered voter.

26 (2) The State Board of Election Commissioners, upon the request  
27 of the county clerk, may grant a waiver from this provision if the state  
28 board determines that the county clerk is unable to provide the list within  
29 the time required.

30 (f)(1) A person filing statewide initiative petitions or statewide  
31 referendum petitions with the Secretary of State shall bundle the petitions  
32 by county and shall file an affidavit stating the number of petitions and the  
33 total number of signatures being filed.

34 (2) If signatures were obtained by paid canvassers, the person  
35 filing the petitions under this subsection shall also submit the following:

36 (A) A statement identifying the paid canvassers by name;

1 and

2 (B) A statement signed by the sponsor indicating that the  
3 sponsor:

4 (i) Provided a copy of the most recent edition of  
5 the Secretary of State's initiatives and referenda handbook to each paid  
6 canvasser before the paid canvasser solicited signatures; and

7 (ii) Explained the requirements under Arkansas law  
8 for obtaining signatures on an initiative or referendum petition to each paid  
9 canvasser before the paid canvasser solicited signatures.

10 (g) All county initiative and referendum elections shall be held in  
11 accordance with the provisions of § 14-14-917.

12 (h) Municipal referendum petition measures shall be submitted to the  
13 electors at a regular general election unless the petition expressly calls  
14 for a special election. If the date set by the petition does not allow  
15 sufficient time to comply with election procedures, then the city or town  
16 council shall fix the date for any special election on the referendum  
17 measure. The date of any special election shall be set in accordance with §  
18 7-11-201 et seq. but in no event more than one hundred twenty (120) calendar  
19 days after the date of certification of sufficiency by the municipal clerk.

20 (i)(1) When a statewide initiative petition or statewide referendum  
21 petition is submitted to the Secretary of State for determination of the  
22 sufficiency of the signatures, the Secretary of State shall submit the ballot  
23 title and popular name of the proposed measure to the State Board of Election  
24 Commissioners for certification as required by Arkansas Constitution, Article  
25 5, § 1.

26 (2) The State Board of Election Commissioners shall determine  
27 whether to certify the ballot title and popular name submitted for a proposed  
28 measure within thirty (30) days after the ballot title and popular name are  
29 submitted by the Secretary of State under subdivision (i)(1) of this section.

30 (3) If the State Board of Election Commissioners determines that  
31 the ballot title and popular name, and the nature of the issue, is presented  
32 in a manner that is not misleading and not designed in such manner that a  
33 vote "FOR" the issue would be a vote against the matter or viewpoint that the  
34 voter believes himself or herself casting a vote for, or, conversely, that a  
35 vote "AGAINST" an issue would be a vote for a viewpoint that the voter is  
36 against, the ballot title and popular name of the statewide initiative

petition or statewide referendum petition shall be certified to the Secretary of State to be placed upon the ballot if the signatures on the statewide initiative petition or statewide referendum petition are determined to be sufficient.

(4)(A) If the State Board of Election Commissioners determines that the ballot title or popular name, or the nature of the issue, is presented in such a manner that the ballot title or popular name would be misleading or designed in such manner that a vote "FOR" the issue would be a vote against the matter or viewpoint that the voter believes himself or herself casting a vote for, or, conversely, that a vote "AGAINST" an issue would be a vote for a viewpoint that the voter is against, the State Board of Election Commissioners shall:

(i) Not certify the ballot title and popular name;

(ii)(a) Notify the sponsors in writing, through their designated agent, that the ballot title and popular name were not certified and set forth its reasons for so finding.

(b) If the ballot title and popular name are not certified, the sponsor shall not submit a redesigned ballot title or popular name to the State Board of Election Commissioners; and

(iii) Notify the Secretary of State that the ballot title and popular name were not certified.

(B) If the ballot title and popular name are not certified under subdivision (i)(4)(A) of this section, the Secretary of State shall declare the proposed measure insufficient for inclusion on the ballot for the election at which the statewide initiative petition or statewide referendum petition would be considered.

SECTION 10. Arkansas Code § 7-9-112 is amended to read as follows:

~~7-9-112. Failure to act on petition—Mandamus—Injunction~~ Right of review.

~~(a) If the Secretary of State does not examine and certify an initiative or referendum petition within the time prescribed in § 7-9-111, the sponsors may apply to the Supreme Court for appropriate relief~~ If the Secretary of State determines that the signatures submitted on a statewide initiative petition or statewide referendum petition are insufficient or the State Board of Election Commissioners does not certify the ballot tile or

1 popular name of a proposed measure resulting in the Secretary of State  
2 finding the proposed measure insufficient, the following persons may petition  
3 the Supreme Court to determine if the signatures submitted on the statewide  
4 initiative petition or statewide referendum petition are sufficient or if the  
5 ballot title or popular name of the proposed measure should be certified:

6 (1) The sponsor of the statewide initiative petition or  
7 statewide referendum petition; or

8 (2) A registered voter.

9 (b) ~~If the Supreme Court decides that the petition is legally~~  
10 ~~sufficient, it shall order the Secretary of State to certify the sufficiency~~  
11 ~~for placing the initiated or referred measure on the election ballot. The~~  
12 Supreme Court shall act expeditiously to review the sufficiency of the  
13 signatures or the certification of the ballot title or popular name in a  
14 timely manner and shall make every effort to reach a decision in advance of  
15 the election at which the proposed measure would be considered.

16 (c)(1)(A) If the Supreme Court decides that the signatures submitted  
17 on a statewide initiative petition or statewide referendum petition are  
18 sufficient, the Supreme Court shall order the Secretary of State to certify  
19 the sufficiency for placing the proposed measure on the election ballot if  
20 the ballot title and popular name are sufficient.

21 (B) If the Supreme Court decides that the ballot title and  
22 popular name should be certified, the Supreme Court shall order the State  
23 Board of Election Commissioners to certify the ballot title and popular name  
24 to the Secretary of State, who shall declare the proposed measure sufficient  
25 to be placed upon the ballot if the signatures on the statewide initiative  
26 petition or statewide referendum petition are sufficient.

27 (2) On a proper showing that ~~any petition is not sufficient~~ the  
28 signatures are not sufficient or the ballot title or popular name should not  
29 be certified, the Supreme Court may enjoin the Secretary of State from  
30 certifying its sufficiency and may also enjoin the various election boards  
31 from allowing the ballot title thereof to be printed on the ballots and  
32 certifying votes cast on the proposal the proposed measure for inclusion on  
33 the ballot for the election at which the proposed measure would be considered  
34 or, in the event that the proposed measure will appear on the election  
35 ballot, from canvassing and certifying the vote on the proposed measure.

36

SECTION 11. Arkansas Code § 7-9-126 is amended to read as follows:

7-9-126. Count of signatures.

(a) Upon the initial filing of an initiative petition or referendum petition, the official charged with verifying the signatures shall:

(1) Perform an initial count of the signatures; and

(2) Determine whether the petition contains, on its face and before verification of the signatures of registered voters, the designated number of signatures required by the Arkansas Constitution and statutory law in order to certify the measure for the election ballot.

(b) A petition part and all signatures appearing on the petition part shall not be counted for any purpose by the official charged with verifying the signatures, including the initial count of signatures, if one (1) or more of the following is true:

(1) The petition is not an original petition, including without limitation a petition that is photocopied or is a facsimile transmission;

(2) The petition does not conform to the original draft filed under § 7-9-107;

~~(2)(3)~~ (3) The petition lacks the signature, printed name, and residence address of the canvasser or is signed by more than one (1) canvasser;

~~(3)(A)(4)(A)~~ (A) The canvasser is a paid canvasser whose name and the information required under § 7-9-601 were not submitted or updated by the sponsor to the Secretary of State before the petitioner signed the petition.

(B) A canvasser is a paid canvasser if he or she is paid money or anything of value for soliciting signatures before or after the signatures are obtained;

~~(4)(5)~~ (5) The canvasser verification ~~is~~:

(A) not Is not notarized~~;~~;

(B) is-notarized Is notarized by more than one (1) notary~~;~~;

(C) or-lacks Lacks a notary signature or a notary seal; or

(D) Lacks a legible notary signature or a legible notary seal;

~~(5)(6)~~ (6) The canvasser verification is dated earlier than the date on which a petitioner signed the petition;

~~(6)(7)~~ (7) The petition fails to comply with § 7-9-104 or § 7-9-105,

1 including the lack of the exact popular name or ballot title ~~approved by the~~  
2 ~~Attorney General~~ for a statewide initiative, a discrepancy in the text of the  
3 initiated or referred measure, or the lack of an enacting clause in a  
4 statewide petition for an initiated act; or

5 ~~(7)~~(8) The petition part has a material defect that, on its  
6 face, renders the petition part invalid.

7 (c) The following signatures shall not be counted for any purpose by  
8 the official charged with verifying the signatures, including the initial  
9 count of signatures:

10 (1) A signature that is not an original signature;

11 (2) A signature that is obviously not that of the purported  
12 petitioner;

13 (3) A signature that is illegible; ~~and~~

14 (4) A signature that is not accompanied by ~~no~~ personally  
15 identifying information;

16 ~~(4)~~(5) A signature for which the corresponding printed name,  
17 address, ~~or~~ birth date, or date of signing is written by someone other than  
18 the signer except under circumstances of disability of the signer; ~~and~~

19 (6) A signature obtained before the filing of the original draft  
20 for circulation under § 7-9-107; and

21 ~~(5)~~(7) A signature that has any other material defect that, on  
22 its face, renders the signature invalid.

23 (d) If the initial count of signatures under this section is less than  
24 the designated number of signatures required by the Arkansas Constitution and  
25 statutory law in order to certify the measure for the ballot and the deadline  
26 for filing petitions has passed, the official charged with verifying the  
27 signatures shall declare the petition insufficient and shall not accept and  
28 file any additional signatures to cure the insufficiency of the petition on  
29 its face.

30  
31 SECTION 12. Arkansas Code Title 7, Chapter 9, Subchapter 2, is amended  
32 to add an additional section to read as follows:

33 7-9-205. Challenges to constitutional amendments proposed by the  
34 General Assembly.

35 If the General Assembly passes a joint resolution proposing an  
36 amendment to the Arkansas Constitution, a qualified elector may file an

1 action in a court of competent jurisdiction at any time after the passage of  
2 the joint resolution challenging the sufficiency of the joint resolution,  
3 including without limitation the:

- 4 (1) Text of the proposed amendment;  
5 (2) Ballot title of the proposed amendment; and  
6 (3) Popular name of the proposed amendment.  
7

8 SECTION 13. Arkansas Code § 7-9-601 is amended to read as follows:

9 7-9-601. Hiring and training of paid canvassers – Definition.

10 (a)(1) A person shall not provide money or anything of value to  
11 another person for obtaining signatures on a statewide initiative petition or  
12 statewide referendum petition unless the person receiving the money or item  
13 of value meets the requirements of this section.

14 (2) Before a signature is solicited by a paid canvasser the  
15 sponsor shall:

16 (A) Provide the paid canvasser with a copy of the most  
17 recent edition of the Secretary of State's initiatives and referenda  
18 handbook;

19 (B) Explain the Arkansas law applicable to obtaining  
20 signatures on an initiative or referendum petition to the canvasser; ~~and~~

21 (C)(i) Provide a complete list of all paid canvassers'  
22 names and current residential addresses to the Secretary of State.

23 (ii) If additional paid canvassers agree to solicit  
24 signatures on behalf of a sponsor after the complete list is provided, the  
25 sponsor shall provide an updated list of all paid canvassers' names and  
26 current residential addresses to the Secretary of State; and

27 (D) Submit to the Secretary of State a copy of the signed  
28 statement provided by the paid canvasser under subdivision (d)(3) of this  
29 section.

30 (3) Upon filing the petition with the Secretary of State, the  
31 sponsor shall submit to the Secretary of State a:

32 (A) Final list of the names and current residential  
33 addresses of each paid canvasser; and

34 (B) Signature card for each paid canvasser.

35 (b)(1) To verify that there are no criminal offenses on record, a  
36 sponsor shall obtain, at its cost, from the Department of Arkansas State

1 Police, a current state and federal criminal record search on every paid  
2 canvasser to be registered with the Secretary of State.

3 (2) The criminal record search shall be obtained within thirty  
4 (30) days before the date that the paid canvasser begins collecting  
5 signatures.

6 (3) Upon submission of its list of paid canvassers to the  
7 Secretary of State, the sponsor shall certify to the Secretary of State that  
8 each paid canvasser in its employ has passed a criminal background check in  
9 accordance with this section.

10 (4) A willful violation of this section by a sponsor or paid  
11 canvasser constitutes a Class A misdemeanor.

12 ~~(5) Signatures incorrectly obtained or submitted under this~~  
13 ~~section shall not be counted by the Secretary of State.~~

14 (c) As used in this section, "paid canvasser" means a person who is  
15 paid or with whom there is an agreement to pay money or anything of value  
16 before or after a signature on an initiative or referendum petition is  
17 solicited in exchange for soliciting or obtaining a signature on a petition.

18 (d) Before obtaining a signature on an initiative or referendum  
19 petition as a paid canvasser, the prospective canvasser shall submit in  
20 person or by mail to the sponsor:

21 (1) The full name and any assumed name of the person;

22 (2) The current residence address of the person and the person's  
23 permanent domicile address if the person's permanent domicile address is  
24 different from the person's current residence address;

25 (3) A signed statement taken under oath or solemn affirmation  
26 stating that the person has not pleaded guilty or nolo contendere to or been  
27 found guilty of a criminal felony offense or a violation of the election  
28 laws, fraud, forgery, or identification theft in any state of the United  
29 States, the District of Columbia, Puerto Rico, Guam, or any other United  
30 States protectorate;

31 (4) A signed statement that the person has read and understands  
32 the Arkansas law applicable to obtaining signatures on an initiative or  
33 referendum petition; and

34 (5) A signed statement that the person has been provided a copy  
35 of the most recent edition of the Secretary of State's initiatives and  
36 referenda handbook by the sponsor.



1 (e) A sponsor shall maintain the information required under this  
2 section for each paid canvasser for three (3) years after the general  
3 election.

4 (f) Signatures incorrectly obtained or submitted under this section  
5 shall not be counted by the Secretary of State for any purpose.

6  
7 SECTION 14. EMERGENCY CLAUSE. It is found and determined by the  
8 General Assembly of the State of Arkansas that this act amends the process  
9 for circulating initiative petitions and referendum petitions; and that the  
10 provisions of this act should become effective immediately so that its  
11 provisions apply to all petitions circulated after the passage of the act to  
12 avoid confusion in petition circulation. Therefore, an emergency is declared  
13 to exist, and this act being immediately necessary for the preservation of  
14 the public peace, health, and safety shall become effective on:

15 (1) The date of its approval by the Governor;

16 (2) If the bill is neither approved nor vetoed by the Governor,  
17 the expiration of the period of time during which the Governor may veto the  
18 bill; or

19 (3) If the bill is vetoed by the Governor and the veto is  
20 overridden, the date the last house overrides the veto.

21  
22  
23 /s/M. Pitsch

24  
25  
26 APPROVED: 3/8/19



## STATE BOARD OF ELECTION COMMISSIONERS

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

### **M E M O R A N D U M**

TO: Office of the Governor  
FROM: Daniel Shults, SBEC Director  
DATE: October 12, 2021  
SUBJECT: Excerpt from Ark. Const. art. V, § 1

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#### *THE PETITION*

**Title.** At the time of filing petitions the exact title to be used on the ballot shall by the petitioners be submitted with the petition, and on state-wide measures, shall be submitted to the State Board of Election Commissioners, who shall certify such title to the Secretary of State, to be placed upon the ballot; on county and municipal measures such title shall be submitted to the county election board and shall by said board be placed upon the ballot in such county or municipal election.

Ark. Const. art. V, § 1

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

**DEPARTMENT/AGENCY**      State Board of Election Commissioners

**DIVISION**      N/A

**DIVISION DIRECTOR**      Daniel J. Shults

**CONTACT PERSON**      Richard Chris Madison

**ADDRESS**      501 Woodlane St. Ste. 122S, Little Rock, AR 72201

**PHONE NO.**      501-682-1447      **FAX NO.**      501-682-1782

**E-MAIL**      Chris.madison@arkansas.gov

**NAME OF PRESENTER AT COMMITTEE MEETING**      Daniel J. Shults, Director

**PRESENTER E-MAIL**      Daniel.Shults@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:

Jessica C. Sutton  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
One Capitol Mall, 5<sup>th</sup> Floor  
Little Rock, AR 72201

\*\*\*\*\*

1. What is the short title of this rule?      Rules of Practice and Procedure

This amendment provides procedures for the appeal of a polling site closure under Act 1063 of 2021 and procedures for the certification of ballot titles and popular names under Act 376 of 2019.

2. What is the subject of the proposed rule?

3. Is this rule required to comply with a federal statute, rule, or regulation?      Yes      No **X**  
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 **X**

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 **X**  
If yes, please provide a brief summary explaining the regulation.

While this is technically an amendment, the procedures are entirely new provisions governing processes which were not previously addressed by the rule. The first of these are the procedures for the appeal of reduction of the total number of polling site by a county election commission. The second is the process by which the SBEC considers the sufficiency of statewide ballot titles and popular names.

Does this repeal an existing rule?      Yes      No **X**  
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 **X**      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."**

See attached.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.

Each agency is required under the APA to have a rule establishing the procedures for that agency's processes. A.C.A. 25-15-203. In addition, Act 1063 of 2021 explicitly provides for the promulgation of rules governing the appeal process established under that Act. A.C.A. 7-4-101(f)(16). Furthermore, the SBEC has been given the authority to promulgate all necessary rules for "fair and orderly election procedures." A.C.A. 7-4-101(f)(5).

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

Act 1063 of 2021 established an entirely new process by which a voter may appeal the reduction of the total number of polling sites on election day to the State Board of Election Commissioners. This rule is necessary in order to provide for the procedures which govern how the SBEC implements this appeal process. The rule is also necessary in order to establish the standard of review which the SBEC will use to determine whether a polling site closure appealed under this rule is permissible.

The final three sections of this rule are being promulgated following the SBEC implementing Act 376 of 2019 prior to the 2020 General Election and concluding that additional rules were necessary to govern the process by which the SBEC determines the sufficiency of statewide ballot language. Particular issues which were identified as needing a clear rule include: the timing and mode of notice to initiative and referendum sponsors regarding the actions of the SBEC; the process by which the sponsor or other third parties may file arguments with the SBEC; and the process by which the meeting to consider the sufficiency of ballot language is to be conducted.

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](http://www.Arkansas.gov/sbec)

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

Date: February 7, 2022

Time: 1:30 p.m.

Place: Timberlands Conference room, 501 Woodlane  
Street, Ste. GS-05, Little Rock, Arkansas 72201

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

4:30 p.m. on February 22, 2022

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

April 25, 2022

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 Exhibit A - Copy of Notice and Exhibit B - Email confirmation of publication dates.

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

See attached Exhibit C- Email transmitting Documents to SOS for publication. See attached Exhibit D – transmittal to Arkansas State Library.

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.

None

## **FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** State Board of Election Commissioners

**DIVISION** N/A

**PERSON COMPLETING THIS STATEMENT** Daniel J. Shults, Director

**TELEPHONE** 501-682-1834 **FAX** 501-682-1782 **EMAIL:** Daniel.shults@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

- |   |              |             |
|---|--------------|-------------|
| 1. Does this proposed, amended, or repealed rule have a financial impact?   | Yes          | No <b>X</b> |
| 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 <b>X</b> | 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 <b>X</b> | 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	<u>\$0.00</u>
Federal Funds	<u>\$0.00</u>
Cash Funds	<u>\$0.00</u>
Special Revenue	<u>\$0.00</u>
Other (Identify)	<u>\$0.00</u>
 Total	 <u>\$0.00</u>

**Next Fiscal Year**

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

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

**Current Fiscal Year**

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

**Next Fiscal Year**

General Revenue	<u>\$0.00</u>
Federal Funds	<u>\$0.00</u>
Cash Funds	<u>\$0.00</u>
Special Revenue	<u>\$0.00</u>
Other (Identify)	<u>\$0.00</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

**Next Fiscal Year**

\$ \$0.00

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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

**Next Fiscal Year**

\$ \$0.00

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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 **X**

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.