

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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



Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

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 for County Election Commissioner Training

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

Proposed Effective Date: March 22, 2022 **Date Rule Submitted:** November 24, 2021

Emergency Rule: ☐ Yes ☒ No **Expedited Request:** ☐ Yes ☒ No **Reason:** _____

Drafted in Code of Rules Format ☒ Yes ☐ No **If not, explain:** _____

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)(3) (Authorizes the SBEC to promulgate all necessary rules for the training of election officials.); A.C.A. 7-4-109(e)(2)(D) (Requires the SBEC to promulgate rules governing the training and testing of election officials):

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: The purpose of this rule is to provide procedures for the training, testing, and compensation of county election commissioners in each county.

Reason for Creating or Amending the Rule: This amendment is necessary in order to implement the testing requirement for election commissioners established in Act 1051 of 2021. Pursuant to the Act, the compensation of election officials is contingent on the official's ability to pass a test of essential skills and thereby become certified.

How does the Rule deviate from the Act: In addition to the testing component, this amendment increases the compensation of an election commissioner who attends SBEC training and serves through the certification of the preferential primary election from \$100 to \$300.

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)

This amendment provides for the testing and certification of county election commissioners on a biennial basis prior to the preferential primary. This is in addition to the current training requirement and failure to pass the test only results in the commissioner being denied the cash stipend for attending training. The amendment also increased the training compensation of an election commissioner from \$100 to \$300.

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.

CONTROVERSY

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

Known Interested Parties: Local Election Officials

Comments Made at Legislative Session: The SBEC did not observe any noteworthy comments related to this Act.

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:** 0 **FY2021:** \$45,000

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

Reasons for Financial Impact: The requirements of Act 1051 could have been implemented with no change in the amount of compensation. However, given this rate has remained unchanged since 2005 while the obligation and potential legal liabilities for the failure to correctly implement the election training are ever increasing, the SBEC determined that the increase from \$100 to \$300 was in the best interest of the State of Arkansas. The mechanism through which this interest is most immediately served is that the increase makes the commissioners more likely to take seriously the test established in Act 1051.

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 FOR COUNTY ELECTION COMMISSIONER TRAINING

The State Board of Election Commissioners met on November 3, 2021 and approved changes to the “Rules for County Election Commissioner Training.”

PURPOSE

This amendment is to update the current rule governing county election commissioner training to comply with the testing requirements of Act 1051 of 2021.

BACKGROUND

The SBEC currently trains the county election commissioners for each county prior to the preferential primary every two years. Currently commissioners are compensated for attending the training and remaining in office until the certification of the preferential primary. The lead senate sponsor of Act 1051 determined that it would be beneficial to require those officials tasked with conducting elections to demonstrate competency through a test as a part of this training program.

SUMMARY OF KEY PROVISIONS

The substantive modification made in this amendment is in section §704 of the rule which provides that the election commissioner is required to take a test of essential skills and shall be certified if they pass this test. Pursuant to §705, a commissioner who fails to pass this test is still eligible to serve as an election commissioner but will not receive the compensation for attending the training.

The amendment also increases the compensation for a CBEC member attending training from \$100 to \$300. This is done in large part to provide a meaningful incentive to becoming certified as the failure to pass the test established under Act 1051 does not prohibit commissioners from service. In addition, the \$200 increase in incentives encourage county commissioners to remain in office between the time they are trained and the certification of the primary election. Turnover in this timeframe has been a problem in the past. It also recognizes the indispensable role commissioners are called upon to play and notes that, while the responsibilities of conducting elections covered in the training are ever increasing, the compensation for training has remain unchanged since 2005.

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Agency #108.00

**RULES
FOR
COUNTY ELECTION COMMISSIONERS
TRAINING**

(Effective December 1, 2005; Revised TBD)



State Board of Election Commissioners
501 Woodlane Street – Suite 122 South, Suite 401N
Little Rock, AR 72201
(501) 682-1834 or (800) 411-6996
www.arkansas.gov/sbec

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Scope of Rules

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

~~§700~~ 701 Definitions

- (a) County Board of Election Commissioners - the three-member board in each of the 75 counties in this State responsible for conducting all elections within their respective county, including two members elected by the county committee of the majority party and one member elected by the county committee of the minority party or persons appointed by the state chair of either the majority or minority party to fill a vacancy in that party's position.¹
- (b) Candidate – for the purpose of these rules, any individual who has knowingly and willingly taken affirmative action, including solicitation of funds, for the purpose of seeking nomination for or election to any public office.²
- (c)(1) Election Official - a person who is a member of the county board of election commissioners, a person who performs election coordinator duties, a person who is a poll worker designated by a county board of election commissioners to be an election clerk, election judge, or election sheriff, or a deputy county clerk or a person assigned by a county clerk to conduct early voting.³
 - (2) Election Official - includes a person who serves as:
 - (A) A member of the county board of election commissioners;
 - (B) A person who is appointed by the county board of election commissioners to serve as:
 - (i) an election coordinator;
 - (ii) a person appointed to preform tasks related to the election which require the handling of ballots or other election materials or equipment;
 - (iii) an election clerk;
 - (iv) an election judge;
 - (v) an election sheriff; or
 - (vi) an absentee ballot clerk; or
 - (C) A person assigned by a county clerk to conduct early voting administered by the county clerk.

¹ A.C.A. § 7-4-102(a)

² A.C.A. § 7-6-201(2)

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

- (c) ~~Primary Election~~—any election held to select the nominees of a political party for election at any general or special election in this state.⁴

§~~701~~ 702 Qualifications of a Member of the County Board of Election Commissioners

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

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

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

⁴ A.C.A. § 7-1-101

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

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

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

§702 703 Required Training

- (a) Each member of the county boards of election commissioners shall attend either a comprehensive training program conducted by the State Board of Election Commissioners before the regularly scheduled preferential primary election or an advanced training program conducted by the State Board of Election Commissioners.
- (b) Advanced training will be made available if the Director of the State Board determines that, based on the amount of changes in law and procedure from the previous election cycle, an advanced training program is appropriate for experienced county commissioners. Advanced trainings are to only be utilized for commissioners who are unable to attend the comprehensive training and may be conducted remotely. Advanced trainings may not necessarily include a detailed review of all basic laws and procedures which are unchanged from the previous two election cycles but will address all aspects of the duties of an election commissioner.⁸
- (c) Any member of a county board of election commissioners who has not served on the commission during the previous two (2) preferential primary and general elections and previously attended the comprehensive training program conducted by the State Board of Election Commissioners must attend the comprehensive training program.
- (d) A member of a county board of election commissioners shall attend additional interim training if deemed necessary and appropriate by the State Board.

§704 Examination and Certification of Election Commissioners

- (a) Having attended the instructional portion of the training program, the election commissioner shall take an examination of essential skills developed and administered by the State Board of Election Commissioners.
- (1) The State Board shall issue a certification to each commissioner who attended the instructional program and demonstrated competency in the skills essential for conducting an election through the examination process.
- (2) Certification shall be issued by the State Board to each designated trainee who is certified through the training program.

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

⁸ A.C.A. § 7-4-109(e)(1)

§703 705 Compensation

- (a) Upon completion of training by the State Board of Election Commissioners, each county election commissioner attending the training is eligible to receive mileage reimbursement at the rate established for state employees by state travel regulations⁹
- (b) Any election commissioner who is trained and certified under this section and who remains in office until the certification of the preferential primary election results shall be eligible to receive ~~\$100~~ \$300 in compensation for attending training.
- (c) If the county political party elects a new commissioner following the preferential primary, the commissioner shall be eligible to receive mileage for additional required trainings only but is not eligible to receive additional compensation.
- (d)
 - (1) All compensation and reimbursement paid under this section shall be paid to the County Treasurer and shall include a statement explaining the purpose of the funds and who is entitled to receive the funds under state law.
 - (2) Mileage for training shall be paid upon receipt of the reporting form approved by the State Board and verification that the commissioner was tested.
 - (3) Payment of the \$300 shall be paid upon verification by the Director that the commissioner who attended training remains an election commissioner for the county at the time the preferential primary is certified.

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

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

§704 706 Noncompliance

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

⁹ A.C.A. § 7-4-109(e)(2)

¹⁰ A.C.A. § 7-7-201(b)(3)

~~§705~~ 707 Training Materials

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

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Agency #108.00

**RULES
FOR
COUNTY ELECTION COMMISSIONERS
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(Effective December 1, 2005; Revised TBD)



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Scope of Rules

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§ 701 Definitions

- (a) County Board of Election Commissioners - the three-member board in each of the 75 counties in this State responsible for conducting all elections within their respective county, including two members elected by the county committee of the majority party and one member elected by the county committee of the minority party or persons appointed by the state chair of either the majority or minority party to fill a vacancy in that party's position.¹
- (b) Candidate – for the purpose of these rules, any individual who has knowingly and willingly taken affirmative action, including solicitation of funds, for the purpose of seeking nomination for or election to any public office.²
- (c)(1) Election Official - a person who is a member of the county board of election commissioners, a person who performs election coordinator duties, a person who is a poll worker designated by a county board of election commissioners to be an election clerk, election judge, or election sheriff, or a deputy county clerk or a person assigned by a county clerk to conduct early voting.³
- (2) Election Official - includes a person who serves as:
 - (A) A member of the county board of election commissioners;
 - (B) A person who is appointed by the county board of election commissioners to serve as:
 - (i) an election coordinator;
 - (ii) a person appointed to perform tasks related to the election which require the handling of ballots or other election materials or equipment;
 - (iii) an election clerk;
 - (iv) an election judge;
 - (v) an election sheriff; or
 - (vi) an absentee ballot clerk; or
 - (C) A person assigned by a county clerk to conduct early voting administered by the county clerk.

¹ A.C.A. § 7-4-102(a)

² A.C.A. § 7-6-201(2)

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

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

- (a) The qualifications⁴ of a member of the county board of election commissioners as determined by the General Assembly⁵ are as follows:
- (1) Must be a qualified elector of this state;
 - (2) Must be able to read and write the English language;
 - (3) Must be a resident of the county in which he or she serves at the time of his or her appointment or election;
 - (4) Must not have been found guilty or pled guilty or nolo contendere to the violation of any criminal election law of this state;
 - (5) Must not be a paid employee of any political party;
 - (6) Must not be a paid employee of any person running for any office on the county's ballot;
 - (7) Must not participate in the campaign of any candidate listed on a ballot or of a write-in candidate seeking election in that county that falls under their jurisdiction or authority;
 - (8) Must not manage a campaign;
 - (9) Must not perform labor for a campaign;
 - (10) Must not solicit on behalf of a candidate or campaign;
 - (11) Must not pass out handbills, signs, or other literature concerning a candidate's campaign;
 - (12) Must not assist a candidate's campaign at a rally or parade;
 - (13) Must not display candidate placards or signs on an automobile;
 - (14) Must not be employed with a company that has any business dealings, contracts, or pending contracts with the county board of election commissioners at the time of his or her appointment to the county board;
 - (15) Must not be a candidate for any office to be filled at an election while serving on the county board, except for appearing on the ballot as a candidate for a position in his or her political party;
 - (16) Must not be a chairman or secretary of a county political party;
 - (17) Must not be married to or related within the second degree of consanguinity to any candidate running for office in the current election if objection to the service is made to the county board of election commissioners within ~~ten (10)~~ seven (7) calendar days after the posting of the list of officials; and
 - (18) Must not be the spouse of a chairman of a county political party or the spouse of another county board of election commissioner if objection to the service is made to the county board of election commissioners within ten (10) calendar days after the posting of the list of officials.
- (b) If an objection filed against married members of the county election commission the objection can only be filed against one of the two married individuals.
- (c) A member of the county board may make a financial contribution to a candidate, attend a political party's state, district, or county meeting where a candidate or issue advocate speaks as a member of the audience, or participate in a political party convention.⁶

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

⁵ Art 3, § 10 of the Arkansas Constitution, as amended by Amendment 85

⁶ A.C.A. § 7-4-109(c)(2)(B)(ii) as amended by Act 1253 of 2015

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§ 703 Required Training

- (a) Each member of the county boards of election commissioners shall attend either a comprehensive training program conducted by the State Board of Election Commissioners before the regularly scheduled preferential primary election or an advanced training program conducted by the State Board of Election Commissioners.
- (b) Advanced training will be made available if the Director of the State Board determines that, based on the amount of changes in law and procedure from the previous election cycle, an advanced training program is appropriate for experienced county commissioners. Advanced trainings are to only be utilized for commissioners who are unable to attend the comprehensive training and may be conducted remotely. Advanced trainings may not necessarily include a detailed review of all basic laws and procedures which are unchanged from the previous two election cycles but will address all aspects of the duties of an election commissioner.⁷
- (c) Any member of a county board of election commissioners who has not served on the commission during the previous two (2) preferential primary and general elections and previously attended the comprehensive training program conducted by the State Board of Election Commissioners must attend the comprehensive training program.
- (d) A member of a county board of election commissioners shall attend additional interim training if deemed necessary and appropriate by the State Board.

§ 704 Examination and Certification of Election Commissioners

- (a) Having attended the instructional portion of the training program, the election commissioner shall take an examination of essential skills developed and administered by the State Board of Election Commissioners.
 - (1) The State Board shall issue a certification to each commissioner who attended the instructional program and demonstrated competency in the skills essential for conducting an election through the examination process.
 - (2) Certification shall be issued by the State Board to each designated trainee who is certified through the training program.

⁷ A.C.A. § 7-4-109(e)(1)

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§ 705 Compensation

- (a) Upon completion of training by the State Board of Election Commissioners, each county election commissioner attending the training is eligible to receive mileage reimbursement at the rate established for state employees by state travel regulations⁸
- (b) Any election commissioner who is trained and certified under this section and who remains in office until the certification of the preferential primary election results shall be eligible to receive \$300 in compensation for attending training.
- (c) If the county political party elects a new commissioner following the preferential primary, the commissioner shall be eligible to receive mileage for additional required trainings only but is not eligible to receive additional compensation.
- (d)
 - (1) All compensation and reimbursement paid under this section shall be paid to the County Treasurer and shall include a statement explaining the purpose of the funds and who is entitled to receive the funds under state law.
 - (2) Mileage for training shall be paid upon receipt of the reporting form approved by the State Board and verification that the commissioner was tested.
 - (3) Payment of the \$300 shall be paid upon verification by the Director that the commissioner who attended training remains an election commissioner for the county at the time the preferential primary is certified.
- (e) Attendance by county election coordinators is optional, and compensation for attending training will not be provided by the State Board.

§ 706 Noncompliance

The State Board may withhold funding for county election commissioner training attendance from any county that fails to comply with the rules and guidelines developed by the State Board for the administration of election commissioner training, until all requirements are met to the satisfaction of the State Board.⁹

§ 707 Training Materials

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

⁸ A.C.A. § 7-4-109(e)(2)

⁹ A.C.A. § 7-7-201(b)(3)

State of Arkansas As Engrossed: S4/8/21 S4/15/21 H4/22/21

93rd General Assembly

A Bill

Regular Session, 2021

SENATE BILL 582

By: Senators K. Hammer, M. Johnson

By: Representatives Ladyman, Barker, Beaty Jr., Beck, Bentley, M. Berry, S. Berry, Boyd, Bragg, Brooks, Brown, Carr, Cavanaugh, Christiansen, Cloud, Coleman, C. Cooper, Cozart, Crawford, Dalby, M. Davis, Eaves, Eubanks, Evans, L. Fite, Gazaway, Gonzales, M. Gray, Haak, Hawks, Hollowell, Lowery, Lundstrum, Maddox, McCollum, McGrew, McNair, S. Meeks, Payton, Penzo, Pilkington, Richmond, Rye, B. Smith, S. Smith, Speaks, Vaught, Warren, Watson, Wing, Wooten

For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS LAW CONCERNING COUNTY BOARDS OF ELECTION COMMISSIONERS; TO AMEND HOW COUNTY BOARDS OF ELECTION COMMISSIONERS TAKE THE OATH; TO AMEND ARKANSAS LAW CONCERNING ELECTIONS; TO AMEND THE LAW CONCERNING POLL WORKERS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND ARKANSAS LAW CONCERNING COUNTY BOARDS OF ELECTION COMMISSIONERS; TO AMEND HOW COUNTY BOARDS OF ELECTION COMMISSIONERS TAKE THE OATH; AND TO AMEND ARKANSAS LAW CONCERNING ELECTIONS.

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

SECTION 1. Arkansas Code § 7-4-102(b)(2) and (3), concerning the oath and election of members of county boards of election commissioners, are amended to read as follows:

(2)(A) Upon receipt of the notice, the county clerk shall send to each of the county election commissioners, by registered mail, ~~notice to appear before the clerk~~ within thirty (30) days of selection as a county election commissioner, a notice to take and subscribe to the oath prescribed



1 by the Arkansas Constitution.

2 (B) A county election commissioner shall take the oath
3 before:

4 (1) A justice or judge of the:

5 (i) Supreme Court;

6 (ii) Court of Appeals;

7 (iii) Circuit court;

8 (iv) District court; or

9 (v) County court;

10 (2) The county clerk;

11 (3) The clerk of the circuit court; or

12 (4) A justice of the peace.

13 (3) The oath shall be filed in the office of the county clerk
14 and the county clerk shall forward a duplicate ~~forwarded~~ to the Secretary of
15 State.

16
17 SECTION 2. Arkansas Code § 7-4-109(e)(1)(C) and (D), concerning the
18 qualifications of state and county commissioners, election officials, poll
19 workers, and certified election monitors, are amended to read as follows:

20 (C) A poll worker; ~~and~~

21 (D) A certified election monitor; and

22 (E) A county election coordinator.

23
24 SECTION 3. Arkansas Code § 7-4-109(e)(2), concerning the
25 qualifications of state and county commissioners, election officials, poll
26 workers, and certified election monitors, is amended to read as follows:

27 (2)(A) The State Board of Election Commissioners shall determine
28 the method and amount of compensation for attending the training.

29 (B) A person required to receive the training shall take
30 and pass an examination of essential skills as determined by the State Board
31 of Election Commissioners to receive compensation.

32 (C) A person who passes an examination under subdivision
33 (e)(2)(B) of this section shall receive a certificate of completion.

34 (D) The State Board of Election Commissioners shall
35 promulgate rules under the Administrative Procedures Act, § 25-15-201 et
36 seq., concerning the training requirements, materials, and examination of

1 essential skills.

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

7 (4)(A) A county board of election commissioners by a majority
8 vote shall designate a person to attend the required training as a county
9 election coordinator.

10 (B) The State Board of Election Commissioners shall not
11 provide training or compensation for attending training to a county election
12 coordinator if the county election coordinator has not been designated to
13 take the required training by a county board of election commissioners.

14 (5)(A) The State Board of Election Commissioners shall identify
15 at least one (1) person not employed by a county in any capacity each year,
16 who shall receive the same training as a county election coordinator, and who
17 shall receive compensation for attending training.

18 (B) The person identified by the State Board of Election
19 Commissioners may be a state employee being cross-trained, or a person who is
20 not a state employee that the State Board of Election Commissioners considers
21 qualified to become an acting county election coordinator as a special
22 employee of the State Board of Election Commissioners.

23
24 SECTION 5. Arkansas Code § 7-5-202(a)(2), concerning service as an
25 election official, deputy county clerk, or additional deputy, is amended to
26 read as follows:

27 (2) A person shall not serve as an election official if:

28 (A) The person is:

29 (i) Married to or related within the second degree
30 of consanguinity to a candidate running for office in the election;

31 (ii) The spouse of a member of a county board of
32 election commissioners, except the spouse of a member of a county board of
33 election commissioners may work as a poll worker if no objection is made to
34 his or her service as a poll worker to the county board of election
35 commissioners within ten (10) calendar days after posting the list of
36 officials; or

1 (iii) A county party chair or his or her spouse,
2 except the county party chair or his or her spouse may work as a poll worker
3 if no objection is made to his or her service to the county board of election
4 commissioners within ten (10) calendar days after posting the list of
5 officials; and

6 (B) Another person makes an objection to his or her
7 service to the county board of election commissioners within ten (10)
8 calendar days after posting the list of officials.

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11 /s/K. Hammer
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14 **APPROVED: 4/29/21**
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QUESTIONNAIRE
FOR FILING PROPOSED RULES 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, 5th Floor
Little Rock, AR 72201

- Rules for County Election Commissioners
Training
1. What is the short title of this rule? _____
- This rule is to provide procedures for the
training, testing, and (training related)
compensation to the county election
commissioners in each county.
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.

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."**

This amendment provides for the testing and certification of county election commissioners on a biennial basis prior to the preferential primary. This is in addition to the current training requirement and failure to pass the test only results in the commissioner being denied the cash stipend for attending training. The amendment also increased the training compensation of an election commissioner from \$100 to \$300.

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

A.C.A. §7-4-101(f)(3) (Authorizes the SBEC to promulgate all necessary rules for the training of election officials.); A.C.A. 7-4-109(e)(2)(D) (Requires the SBEC to promulgate rules governing the training and testing of election officials)

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

The purpose of this rule is to provide procedures for the training, testing, and compensation of county election commissioners in each county.

This amendment is necessary in order to implement the testing requirement for election commissioners established in Act 1051 of 2021. Pursuant to the Act, the compensation of election officials is contingent on the official's ability to pass a test of essential skills and thereby become certified.

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

www.Arkansas.gov/sbec

9. Will a public hearing be held on this proposed rule? Yes **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 Procedure for Citizen Complaints Regarding Violations of State Election and Voter Registration Laws

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

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;

Arkansas law places the duty to prepare and conduct every election on the county election commission. These quasi-volunteer officials are responsible for a highly technical and intricately detailed legal process for which they receive one day of mandatory training every two years. Increasing the compensation to attend this training by \$200 is designed to encourage service as a CBEC member and to provide a more meaningful incentive to pass the test.

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

The requirements of Act 1051 could have been implemented with no change in the amount of compensation. However, given this rate has remained unchanged since 2005 while the obligation and potential legal liabilities for the failure to correctly implement the election training are ever increasing, the SBEC determined that the increase from \$100 to \$300 was in the best interest of the State of Arkansas. The mechanism through which this interest is most immediately served is that the increase makes the commissioners more likely to take seriously the test established in Act 1051.

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

The rule is designed to benefit the public welfare by ensuring that each county has qualified and motivated commissioners to conduct the elections for that county. The rule also seeks to make the testing and certification process as effective as possible under the law through monetary incentives.

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

The SBEC is explicitly required to determine the "method and amount" of compensation under

Revised January 2019

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>\$45,000.00</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>\$45,000.00</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

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

\$ \$45,000.00

Next Fiscal Year

\$ \$0.00

The SBEC will pay an additional \$200 to three people in each of the 75 counties once every two years. This totals \$45,000.

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.