

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State

John Thurston

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Little Rock, Arkansas 72201 -1094

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Name of Department State Board of Election Commissioners

Agency or Division Name N/A/

Other Subdivision or Department, If Applicable N/A

Previous Agency Name, If Applicable N/A

Contact Person Chris Madison - Director

Contact E-mail Chris.Madison@Arkansas.gov

Contact Phone 501-682-1447

Name of Rule Rules of Procedure for Citizen Complaints Regarding Violations of State Election and Voter Registration Laws.

Newspaper Name Arkansas Democrat Gazette

Date of Publishing February 9th, 10th, and the 11th of 2024.

Final Date for Public Comment March 11, 2024

Location and Time of Public Meeting: N/A



STATE OF ARKANSAS
SARAH HUCKABEE SANDERS GOVERNOR

Request for Governor's Approval of Proposed Rule or Regulation

Department /Agency: State Board of Election Commissioners

Short Title of Rule: Rules of Procedure for Citizen Complaints Regarding Violations of State Election and Voter Registration Laws

New Rule: ☐ Yes ☒ No

Amendment to Existing Rule: ☒ Yes ☐ No

State Mandate: ☒ Yes ☐ No

Federal Mandate: ☐ Yes ☒ No

If yes, please provide the legal citation of the mandate: Act 295 of 2023 and Act 620 of 2023; See also A.C.A. §§ 7-4-120(b)(1)(A); (b)(1)(C); and (c)(4)(A) and 7-5-702(c)(3).

Legal Authority for Rule: A.C.A. §§ 7-4-101(f)(5).

Proposed Effective Date: May 1, 2024

Emergency Rule: ☐ Yes ☒ No

Expedited Rule Requested: ☒ Yes ☐ No

Summary of Proposed New Rule or Proposed Amendment to Existing Rule:

Acts 295 and 620 along with some necessary clarity in the final determination of citizen complaints drive the amendments to this Rule. Act 295 clarified that citizen complaint can be filed up to thirty (30) days following the deadline to certify the election in question. It also clarified the difference between a procedurally deficient complaint, i.e. failed to sign under penalty of perjury which is curable, and a substantively deficient complaint. Act 620 expanded the SBEC's temporal complaint filing jurisdiction from thirty (30) days to three (3) years if certain conditions are met. Lastly, some clarification in the process was needed when a complaint reaches the final stages, so that clarity exists for Staff and Respondents.

Financial Impact: ☐ Yes ☒ No ☐ Unknown; If yes or unknown, please explain:

Public Hearing Occurred on Rule: ☐ Yes ☒ No

Controversial: ☐ Yes ☒ No

If yes, please explain and provide detail of expected opposition.

Two Rules Repealed: No **Exception from the Governor:** Yes

First Rule Repealed:

Brief explanation of why repeal is appropriate:

Second Rule Repealed:

Brief explanation of why repeal is appropriate:

Documents Required for Approval Process

Please note that the Governor's office will not begin the approval process if any of the following applicable documents are not enclosed with the approval request.

- X BLR Questionnaire
- X BLR Financial Impact Statement
- X Proposed Rule - clean version
- X Mark-Up of Rule, if amended from previous version
- X Copy of Act or Regulation, if Rule is pursuant to State or Federal mandate

Contact Information

Department POC for Rules Process: Chris Madison – Director
Chris.Madison@Arkansas.gov

Department POC for this Rule: Chris Madison – Director
Chris.Madison@Arkansas.gov

NOTE: All documents must be returned to the Governor's Counsel as a single PDF file.

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

DEPARTMENT: Independent Agency

BOARD/COMMISSION: State Board of Election Commissioners

BOARD/COMMISSION DIRECTOR: Chris Madison

CONTACT PERSON: Chris Madison

ADDRESS: 501 Woodlane Street, Ste. 122S, Little Rock, Arkansas, 72201

PHONE NO.: 501-682-1447 **EMAIL:** Chris.Madison@Arkansas.gov

NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING: Director Chris Madison

PRESENTER EMAIL(S): Chris.Madison@Arkansas.gov

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach:

- X (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes;
- X (2) both a markup and clean copy of the rule; and
- X (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

- * 1. What is the official title of this rule?
Rules of Procedure for Citizen Complaints Regarding Violations of State Election and voter Registration Laws.
- 2. What is the subject of the proposed rule? **The rule provides the administrative steps for handling and processing a formal complaint. It also governs the SBEC's ability to file its own formal complaint for investigation.**
- 3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? **No**

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? N/A

4. Is this rule being filed for permanent promulgation? Yes

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? No

If yes, what was the effective date of the emergency rule? N/A.

On what date does the emergency rule expire? N/A.

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

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes

If yes, please provide the state statute and/or rule citation. Acts 295 and 620; See also A.C.A. §§ 7-4-101(f)(5).

7. Are two (2) rules being repealed in accord with Executive Order 23-02? No.

If yes, please list the rules being repealed.

If no, please explain.

The Rule incorporates legislative changes made by Acts 295 and 620 of 2023. These incorporations are necessary to modify the Rule to mirror current Law.

8. Is this a new rule? No.

Does this repeal an existing rule? No.

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes.

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup. See Attached, Draft Markup and Draft Clean Copies.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s). A.C.A. § 7-4-101(f)(5).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes.

If yes, please provide the year of the act(s) and act number(s). **Acts 295 and 620 of 2023.**

11. What is the reason for this proposed rule? Why is it necessary? **To incorporate the changes created by Acts 295 and 620 of 2023. This Rule existed to govern the Complaint process. These amendments are necessary to incorporate the legislative changes to the complaint process, time lines, and requirements. Furthermore, the amendments clarify the Final Determination process for the convenience of Staff and Respondents to complaints.**

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1). **<https://www.arkansas.gov/sbec/rules/>**

13. Will a public hearing be held on this proposed rule? **No.**

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

Please be sure to advise Bureau Staff if this information changes for any reason.

2. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. **March 11, 2024.**

3. What is the proposed effective date for this rule? **May 1, 2024.**

4. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice. See Attached.

Copy of the Notice.

Proof of Publication will be added following publication on February 9, 10, and 11, 2024.

Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A). **See Attached "Arkansas Register – Proposed Rule Cover Sheet"**

5. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known. **None.**

6. Is the rule expected to be controversial? **No.**

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT: Independent Agency

BOARD/COMMISSION: State Board of Election Commissioners

PERSON COMPLETING THIS STATEMENT: Chris Madison - Director

TELEPHONE NO.: 501-682-1447

EMAIL: Chris.Madison@Arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents.

Please attach additional pages, if necessary.

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?
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.
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes.

If no, please explain:

- (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 reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and
 - (d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.
4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:
N/A.
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____

Federal Funds _____

Cash Funds _____

Special Revenue _____

Next Fiscal Year

General Revenue _____

Federal Funds _____

Cash Funds _____

Special Revenue _____

Other (Identify)_____

Other (Identify)_____

Total_____

Total_____

(b) What is the additional cost of the state rule? **None**

Current Fiscal Year

Next Fiscal Year

General Revenue: **\$0**

General Revenue: **\$0**

Federal Funds_____

Federal Funds_____

Cash Funds_____

Cash Funds_____

Special Revenue_____

Special Revenue_____

Other (Identify)_____

Other (Identify)_____

Total: **\$0**

Total: **\$0**

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

Current Fiscal Year

Next Fiscal Year

\$0

\$0

6. What is the total estimated cost by fiscal year to a state, county, or 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

Next Fiscal Year

\$0

\$0

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?

No.

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

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

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

STATE BOARD OF ELECTION COMMISSIONERS

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



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John Thurston
Chairman

Sharon Brooks
Jamie Clemmer
Bilenda Harris-Ritter
William Luther
J. Harmon Smith
Johnathan Williams
Commissioners

Chris Madison
Director

Jon Davidson
Educational Services Manager

Charlie Morris
Election Administration Supervisor

Tena Arnold
Business Operations Manager

Executive Summary of the 2023 Proposed Amendment to the RULES OF PROCEDURE FOR CITIZEN COMPLAINTS REGARDING VIOLATIONS OF STATE ELECTION AND VOTER REGISTRATION LAWS

The State Board of Election Commissioners met on August 15, 2023, and approved changes to the “Rules of Procedure for Citizen Complaints Regarding Violations of State Election and Voter Registration Laws.” This proposed amendment is being promulgated to incorporate changes approved by Acts 295 and 620 of 2023.

PURPOSE AND SUMMARY OF SUBSTANTIVE CHANGES

This amendment is because of the adoption of Acts 295 and 620 of 2023.

Act 295 modified the Citizen Complaint process, where a complaint may be filed up to thirty (30) days following the deadline to certify the election at issue. This was a change from the prior rule, which required identifying the specific date the county certified the election for which to calculate the thirty (30) day complaint filing deadline. This change allows a single deadline for all complaints regarding a specific election. Secondly this Act clarified that a complaint that is procedurally deficient, i.e. complainant failed to sign under penalty of perjury, can be corrected within ten (10) days. If a complaint is procedurally correct but fails to allege a violation of election law, it may be dismissed without the ten (10) day cure period. The Act also explicitly authorizes the SBEC to subpoena sealed election records as part of an investigation if necessary.

Act 620 expanded the SBEC’s authority to file a complaint itself. Prior to the Act’s adoption, the Board was limited to filing its complaints to within the 30 days of the certification of the election, like other complainants. The Act changed this deadline, and when certain conditions are met, the SBEC may file a complaint to begin the formal investigation process up to three (3) years after the election in question.

ADDITIONAL DISCUSSION

In addition to the substantive changes, the amendment does include some updating of the formatting of subsections to better comply with the codification of rules by the Bureau of Legislative Research.

Because the Rule is being amended to incorporate Acts 295 and 620 of 2023, the Final Determination section of the Rule is being proposed for amendment to clarify the sequence of events when an offer of settlement is made and a hearing may be scheduled. This portion of the amended Rule is to streamline and clarify this process for both Staff and Respondents to complaints.

NOTICE OF RULEMAKING

Pursuant to the Administrative Procedure Act, notice is hereby given that the State Board of Election Commissioners (Board) is proposing to amend the following: (1) Rules for Poll Watchers, Vote Challenges, and Provisional Voting; (2) Rules of Procedure for Citizen Complaint Regarding Violations of State Election and Voter Registration Law; (3) Rules for Reimbursement of Expenses for State-Funded Elections; (4) Rules for the Verification of Voter Registration; and (5) Rules of Practice and Procedure.

These amendments reflect changes enacted during the 94th General Assembly. You may view the proposed amended rules and their accompanying Executive Summaries at www.arkansas.gov/sbec/rules or you may obtain copies by contacting the Board by email at info.sbec@arkansas.gov, by phone at 501-682-1834, or by mailed request to: Arkansas State Board of Election Commissioners, 501 Woodlane, Suite 122S, Little Rock, AR 72201.

You may provide written comments regarding these proposed amendments. Comments must be received by 4:30 p.m. on Monday, March 11, 2024. Comments may be sent by email to info.sbec@arkansas.gov or by mail to: Arkansas State Board of Election Commissioners, 501 Woodlane, Suite 122S, Little Rock, AR 72201.

DRAFT – CLEAN COPY

Agency # 108.00

**RULES OF PROCEDURE FOR CITIZEN
COMPLAINTS
REGARDING VIOLATIONS OF STATE
ELECTION AND VOTER REGISTRATION LAWS**

(Effective February 6, 2004; Revised _____)



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

TABLE OF CONTENTS

Scope of Rules	3
§ 601 Definitions.....	3
§ 602 Who May File	5
§ 603 Form of Complaint.....	5
§ 604 Filing a Complaint	6
§ 605 Processing a Complaint.....	6
§ 606 Investigations – Determination of Probable Cause.....	8
§ 607 Oaths and Subpoenas	9
§ 608 Public Hearing	10
§ 609 Imposition of Fines and Other Sanctions.....	13
§ 610 Final Determination	14
§ 611 Records	15
§ 612 Corrective Action.....	15
§ 613 Decertification of a County Election Official	16
§ 614 Direct Administration of a County Election	17

Scope of Rules

These rules set forth the procedures for providing uniform and nondiscriminatory resolution of any complaint alleging a violation of election and voter registration laws under the jurisdiction of the State Board of Election Commissioners in accordance with Arkansas Code Annotated § 7-4-120.

§ 601 Definitions

- (a) “Complainant” means any person who files a complaint with the State Board of Election Commissioners, hereinafter referred to as the “State Board,” alleging that a violation of any election or voter registration law under the State Board of Election Commissioners’ jurisdiction has occurred.
- (b) “Dismissed” means a resolution to an allegation within a complaint in which the allegation is resolved without the imposition of a statutory sanction.
- (c) “Election laws” includes provisions of law from the following sources which concern elections conducted by county boards of election commissioners in conjunction with the county clerk:
 - (1) The Constitution of the United States;
 - (2) The Constitution of the State of Arkansas;
 - (3) Statutory provisions enacted by the United States or the State of Arkansas;
 - (4) Final court decisions of general applicability in State or Federal Court; and
 - (5) Rules promulgated by the United States or the State of Arkansas
- (d) “Election Official” is 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.
 - (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.
- (e) “Federal election cycle” under this rule means the preferential primary, general primary, general election, and general election runoff.
- (f) “Frivolous” means clearly lacking any basis in fact or law.
- (g) “HAVA” is the federal Help America Vote Act of 2002, Pub. L. No. 107-252, that established the Election Assistance Commission to assist in the administration of federal elections and allocated federal funds to states for election administration improvements, including replacing punch card and lever voting machines, improving accessibility for voters with disabilities, implementing a statewide voter registration system, voter and election official training, and other improvements.
- (h) “Corrective Actions” is a resolution to a complaint in which the State Board of Election Commissioners directs the respondent to take an action or to refrain from an action so as to cause the respondent to comply with the requirements of an election or voter registration law or to prevent the violation of an election or voter registration law in the future.
- (i) “County Board” means a County Board of Election Commissioners.
- (j) “Letter of Caution” means a written disposition of an allegation against any person which is advisory in nature, clearly giving notice to the respondent that his or her action or lack of action is a violation of law.
- (k) “Letter of Instruction” means a written disposition of an allegation against an election official or county clerk issued in furtherance of the State Board of Election Commissioner’s responsibility to provide training for election officials. A letter of instruction may be issued when the State Board lacks authority to adjudicate a complaint, when the board makes no finding that an election law violation occurred, or when the board determines that a letter of instruction is preferable to a statutory sanction.
- (l) “Letter of Reprimand” means a written disposition of an allegation against any person which is condemnatory in nature, clearly giving notice to the respondent that his or her action or lack of action is a violation of the law. The reprimand will require the respondent to refrain from engaging in the same activity again. A reprimand shall be considered more severe than a caution or warning.
- (m) “Letter of Warning” means a written disposition of an allegation against any person which is condemnatory in nature, expressing strong disapproval for the respondent’s misconduct and expressing the view that the misconduct undermines public confidence in the integrity of the election process.
- (n) “Public Hearing” means a hearing on a complaint by the State Board, open to the public, to adjudicate a complaint.

- (o) “Refer to the Proper Authority” means to dismiss from the administrative process and to forward all information relating to the complaint to another law enforcement entity when the State Board determines that the available information indicates a violation of a criminal law or of a civil law enforced by another agency and the allegations either do not fall within the jurisdiction of the State Board or further administrative action may damage a future criminal case.
- (p) “Respondent” means any person whose actions are asserted, in a complaint filed with the State Board, to be in violation of any election or voter registration law under the board’s jurisdiction.
- (q) “State Board” means the State Board of Election Commissioners.
- (r) “Statutory Sanction” means a letter of caution, warning, or reprimand, a corrective action, a decertification, direct administration of a county’s election, or a fine that can be imposed pursuant to the State Board’s statutory authority to sanction violations of election and voter registration laws.
- (s) “Voter registration laws” includes provisions of law from the following sources which concern voter registration:
 - (1) The Constitution of the United States;
 - (2) The Constitution of the State of Arkansas;
 - (3) Statutory provisions enacted by the United States or the State of Arkansas;
 - (4) Final court decisions of general applicability in State or Federal Court; and
 - (5) Rules promulgated by the United States or the State of Arkansas.

§602 Who May File

Any person alleging that a violation of any election or voter registration law under the State Board’s jurisdiction has occurred may file a complaint. The State Board may file a complaint of its own volition.

§ 603 Form of Complaint

- (a) A procedurally sufficient complaint must:
 - (1) be in writing;
 - (2) be signed;
 - (3) include an affirmation that facts articulated in the complaint are true and correct to the best of the complainant’s knowledge under penalty of perjury;
 - (4) clearly describe the alleged incident, election irregularities, or illegalities;
 - (5) state approximately when the alleged violation or incident occurred;
 - (6) state the location or locations where the alleged activities occurred; and
 - (7) provide any supporting facts surrounding the allegations.

§ 604 Filing a Complaint

- (a) Except as provided in subsection (b), a written complaint must be filed no sooner than forty-six (46) days prior to the election affected by or associated with the alleged violation of law and no later than 30 days after the deadline to certify that election.
- (b)(1) The State Board may file a complaint within three years of an alleged violation of a criminal law within the jurisdiction of State Board or within three years of an unlawful act which is alleged to have caused a certified election result to be inaccurate.
- (2) The determination whether to file a complaint under (b)(1) of this section is discretionary. In making this determination, the State Board shall consider the following factors:
 - (A) the severity of the alleged misconduct;
 - (B) the perceived credibility of the information indicates a violation of law has occurred;
 - (C) the prioritization of available agency resources; and
 - (D) the likelihood an investigation will succeed in determining whether a violation of law has occurred.

§ 605 Processing a Complaint

(a) Receipt of Complaint

- (1) Upon receipt of a written complaint, it shall be stamped with the current date, filed, entered upon the complaint docket and a copy forwarded to the director. The director shall determine if the written complaint meets the requirements of a complaint as set forth in §§ 603 and 604.
- (2) If a complaint is filed which alleges a violation of law under the State Board's jurisdiction but which otherwise fails to satisfy the procedural requirements for a complaint, the director shall notify the complainant that the complaint is deficient, describe the nature of the deficiency, and inform the complainant that the complaint may be corrected within ten (10) calendar days of this notice being issued. Failure of the complainant to cure the procedurally deficient complaint within ten (10) calendar days shall result in the complaint being dismissed if the State Board agrees that the complaint is deficient. The director shall use all information provided with the complaint to deliver notice of a deficient complaint but shall not be required to provide notice if no contact information or mailing address is provided with the complaint. A complaint filed after the deadline to file a complaint cannot be cured by this process.

(b) Staff Report – Sufficient Complaint

- (1) If the director determines that a written complaint is timely, in proper form, and that the allegations, if true, establish a violation of election or voter registration laws under the State Board's jurisdiction, then the director shall make a concise report stating those findings, analyzing the legal issues raised by the complaint, and summarizing the complaint including any additional evidence known to the director. Additional evidence known to the director may include the review, the receipt, or the examination of any publicly available information or document that bears on an allegation. A procedurally and substantively sufficient complaint that alleges an election or voter registration law violation within the jurisdiction of the State Board shall be investigated.
- (2) The director may recommend that the complaint be further investigated through either documentary submissions or through a formal investigation. The director shall send a copy of the complaint and the report to each State Board commissioner by email and, if requested in advance by a State Board commissioner, by first class mail. If the director recommends that the complaint be further investigated, either formally or informally, or referred to the proper authority, such recommendation shall be considered to be adopted by the board on the fifth (5) business day after the date that the director's determination was sent by email unless, before the fifth (5) business day, any State Board commissioner requests that the board further consider the complaint at a meeting of the board.

(c) Staff Report – Insufficient Complaint

- (1) If the allegations are found to be procedurally or substantively insufficient the director shall send a copy of the complaint and make a concise report stating those findings to each commissioner by email and, if requested in advance by a commissioner, by first class mail.
 - (2) The director's determination that the complaint is insufficient shall be considered adopted by the State Board on the fifth business day after the date that the director's determination was sent by email unless, before the fifth business day, any State Board commissioner requests that the board further consider the complaint at a meeting of the board. If the State Board so adopts the director's determination that the complaint is insufficient and fails to meet the requirements of these rules, then the director shall notify the complainant that the complaint has been dismissed.
- (d) In addition to the steps addressed above, the following action may be recommended by the Director or adopted by the State Board without a recommendation by the director in a meeting of the State Board regardless of whether the complaint is found to be sufficient:
- (A) The State Board may issue a letter of instruction;
 - (B) The State Board may refer the complaint to the proper authorities; or
 - (C) The State Board may issue a letter of instruction and refer the complaint to the proper authorities.

§ 606 Investigations - Determination of Probable Cause

- (a) Notice to Respondent - Upon determination that a complaint should be investigated, either through a formal investigation or through documentary submissions, the director shall notify the respondent of the complaint, the investigation, and the nature of the investigation. The director shall provide a copy of the complaint or pertinent parts of the complaint to the respondent, along with instructions regarding the opportunity to respond to the complaint.
- (b) Investigation through Documentary Submissions
 - (1) The director may request documents from the identified respondents, third parties, or from sources with documents that are otherwise publicly available to determine the facts either supporting or disproving the allegations of the complaint. Investigations through documentary submission may also include informal communications or interviews with relevant parties including a respondent.
 - (2) An investigation based upon documentary submissions may transition into a formal investigation if the director determines that a formal investigation is necessary to obtain sufficient information to resolve the complaint.
- (c) Formal Investigation
 - (1) In a formal investigation, the director shall either submit written interrogatories to the respondent, conduct a formal interview with the respondent, or a combination of both written interrogatories and a formal interview with the respondent. The director may also take additional investigative action utilizing subpoenas or testimony obtained under oath.
 - (2) Interrogatory questions may request the respondent or another person to provide written statements bearing on the facts, circumstances, or information relevant to the investigation.
 - (3) The director may also ask the respondent or another person to produce relevant evidence, or to appear to answer questions in person during an interview or deposition.
 - (4) Written responses to interrogatory questions shall be answered under penalty of perjury.
 - (5) As part of a formal investigation, the director or his or her designee may interview any respondent, complainant, witness, or other third party, or may take the formal deposition of any respondent, complainant, witness, or other third party. Oral statements by respondents taken during a formal investigation will be provided under oath administered by the director or his or her designee, or in the case of a deposition, by a certified court reporter.
 - (6) The director or his or her designee may subpoena any document or record that may be relevant to the allegations of the complaint. The director may gather and use as part of the investigation any document or record that may be relevant to the allegations of the Complaint.

(d) Director's Investigation Report

- (1) Upon completing an investigation, the director shall prepare a report of the investigation for submission to the State Board. The report may include a recommendation by the director that the complaint be dismissed, that a letter of instruction be issued, that the complaint be forwarded to the proper authorities, or that the State Board meet to consider issuing an Offer of Settlement including a statutory sanction.
- (2) After receipt of the director's report, the director's recommendation shall be adopted by the State Board on the fifth (5) business day after the date that the director's determination was sent by email unless, before the fifth (5) business day, any commissioner requests that the State Board further consider the complaint at a meeting of the board. Upon further consideration, the State Board may either further investigate the complaint or:
 - (A) Determine that the complaint be dismissed;
 - (B) Issue a letter of instruction;
 - (C) Refer the complaint to the proper authorities;
 - (D) Direct the director to further investigate the complaint;
 - (E) Find that probable cause of an election or voter registration law violation exists, based upon the investigation report and its findings; or
 - (F) Take other appropriate action.

(e) Offer of Settlement

- (1) If the State Board finds that probable cause exists for a finding of a violation, the board shall issue a written Offer of Settlement to the respondent, stating its findings and the proposed sanctions. The respondent may accept the State Board's Offer of Settlement in writing within ten calendar days of the issuance of the offer. If the offer is not accepted, the State Board may call for a full public hearing. The offer may state that the hearing is set as of the tenth calendar day after the offer was issued if the offer is not accepted.
- (2) If the State Board does not find probable cause, it shall dismiss the complaint. The State Board may issue a letter of instruction when the complaint and other evidence indicate that such a letter is necessary and proper. Also, the State Board may refer the complaint and any evidence in its possession related to the complaint to the proper authority.

§ 607 Oaths and Subpoenas

- (a) The State Board, its director, or the director's designee may administer oaths for the purpose of taking sworn statements from any person thought to have knowledge of any facts pertaining to the complaint.
- (b) The State Board, its director, or the director's designee may request that the respondent answer allegations in writing, produce relevant evidence, or appear in person before the board.

- (c) The State Board, its director, or the director's designee may subpoena any person, books, records, or other documents relevant to the complaint investigation by the board.
- (d) The State Board, its director, or the director's designee shall provide the subject of the subpoena with reasonable notice of the subpoena and an opportunity to respond.
- (e)(1) The State Board, its director, or the director's designee may subpoena any person, book, or record for testimony or presentation at any public hearing called by the State Board.
- (2) Respondents may request the director of the State Board to issue a subpoena on his or her behalf for any witness, book, or other document relevant to the issues identified in the notice of hearing.
 - (A) Respondent must make his or her request to the director for a subpoena no less than five business days before a public hearing identified in the notice of hearing.
 - (B) Respondent must provide:
 - (i) the full name,
 - (ii) address, and
 - (iii) any additional contact information the respondent may possess and is necessary for the issuance of a subpoena by the director on behalf of that respondent.
 - (C) Respondent or his or her counsel shall be responsible for ensuring service of any subpoena prepared by the director at respondent or his or her counsel's request.
 - (D) A Respondent or his or her counsel may not issue their own subpoena, as only the State Board, its director, or the director's designee has the authority to issue a subpoena as part of this complaint process.

§ 608 Public Hearing

- (a) If an Offer of Settlement is rejected and the State Board sets a public hearing, the director shall notify the respondent and the complainant in writing of the date, time, and place of the meeting at which the complaint will be considered.
- (b) The notice shall include a statement of the legal authority and jurisdiction under which the hearing is to be held and a short and plain statement of the matters of fact and law asserted. The respondent may attend in person or by counsel and have the right to representation by counsel in all matters related to the complaint.
- (c) The respondent has the right to representation by counsel in all matters related to the complaint. The respondent may offer testimony and present tangible evidence in connection with the complaint. The complainant also has the right to attend the public hearing and be represented

by counsel, but the complainant shall not be responsible for presenting any evidence. Such responsibility lies with staff of the State Board.

- (d) If a respondent fails to appear after proper service of notice, the State Board may proceed with the public hearing and render a decision in the absence of the respondent.
- (e) Any attorney representing a respondent or complainant shall file a notice of appearance as soon as possible. Service on counsel of record is equivalent of service on the person represented.
- (f) Either the State Board, the chair of the board, a board member designated by the chair, or a hearing officer designated by the board shall preside at the hearing. A member of the staff shall appear at the hearing to present evidence of the asserted violation of election or voter registration law by the respondent.
- (g) Matters before the State Board for hearing that are similar in issues of fact or law or have identical parties may be consolidated if the board finds that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings and not unduly prejudice the rights of a respondent.
- (h) All requests for relief must be made in writing by motion filed with the State Board stating the action requested and the grounds relied upon. The presiding officer may conduct hearings on the motion and enter such orders as he/she deems necessary to address issues raised by the motion. However, the presiding officer will not issue dispositive orders.
- (i) The presiding officer presides at the hearing and may rule on motions, require briefs, and issue such orders as will ensure the orderly conduct of the proceedings. A presiding officer shall not enter a dispositive order.
- (j) The respondent has the right to participate or to be represented by counsel in all hearings or pre-hearing conferences related to the case. The respondent or respondent's counsel has the right to introduce evidence of material fact, cross-examine witnesses as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and upon request by the presiding officer, may submit briefs and engage in oral argument.
- (k) The hearing will be conducted in the following manner:
 - (1) The hearing officer will give an opening statement, briefly describing the nature of the proceedings;
 - (2) The staff and respondent will be given the opportunity to present opening statements;
 - (3) The staff and the respondent will present their cases in the sequence decided by the presiding officer;
 - (4) Each witness must be sworn or affirmed by the presiding officer or the court reporter, be subject to examination or cross-examination and questioning by the State Board;
 - (5) The presiding officer may limit questioning in a manner consistent with the law; and
 - (6) At the close of evidence, staff and respondent may present final arguments.

- (l) The presiding officer shall rule on the admissibility of evidence and may, when appropriate, take official notice of facts in accordance with applicable laws.
- (m) Stipulation of facts is encouraged and the State Board may decide the issue or issues based on stipulated facts.
- (n) Evidence in the proceeding must be confined to the issues set forth in the notice of the hearing sent to the respondent unless the respondent and staff waive the right to such notice or the presiding officer determines that good cause justifies expansion of the issues. Either the respondent or staff may be granted a continuance to allow for time to prepare for any additional issues.
- (o) When the respondent and staff seek admission of an exhibit, nine copies of the exhibit must be provided. Each party must be allowed to examine the exhibit prior to the ruling on its admission. All exhibits admitted into evidence must be marked and entered into the record.
- (p) The respondent or staff may object to specific evidence or may request limits on the scope of the examination or cross-examination of a witness. The objection, the ruling on the objection and the reasons for the ruling will be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve the ruling until the written decision.
- (q) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony will briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and included in the record.
- (r) Irrelevant, immaterial, and unduly repetitive evidence will be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs.
- (s) The State Board shall be responsible for recording the testimony heard at the hearing. Upon filing a petition for judicial review, the State Board will provide a verbatim transcript of testimony taken before the agency.
- (t) The decision of the State Board shall be reduced to a final order adopted by the State Board containing written findings of fact and conclusions of law stated separately. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. A copy of the final order shall be served on the respondent along with any order by the State Board. The State Board shall also provide a copy of the findings and order to the complainant.

§ 609 Imposition of Fines and Other Sanctions

- (a) If the State Board finds a violation of election or voter registration laws under its jurisdiction, then the board may render one (1) or more of the following sanctions:
 - (1) Issue a public letter of caution, warning, or reprimand;
 - (2) Impose a fine of not less than twenty-five dollars (\$25) nor more than one thousand dollars (\$1,000) for each negligent, knowing, or intentional violation;
 - (3) Issue conditional directives that corrective actions be taken which, if not satisfied based on the terms of that directive, will result in additional sanctions;
 - (4) Decertify a county election official;
 - (5) Institute the direct administration of the county's election pursuant to Ark. Code Ann. §7-4-120(e)(6);
 - (6) Report its findings and other evidence to the proper law enforcement authorities along with recommendations; or
 - (7) Order payment of the costs for the investigation and hearing.
- (b) The State Board may issue one or more of the above sanctions for a violation of election or voter registration laws within the State Board's jurisdiction.
- (c) In lieu of, or in addition to, imposing the statutory sanctions set out above, the State Board may issue a letter of instruction or refer the complaint and related evidence to the proper authority when the board determines that the circumstances warrant.
- (d) In determining the imposition of fines upon a finding of a violation, the State Board may consider all surrounding circumstances including, but not limited to, the seriousness of the violation, whether the violation was intentional or negligent, whether the respondent demonstrated good faith by consulting the State Board staff or the local county board of election commissioners, whether the violation was isolated or part of a pattern, and whether the respondent showed good cause for the violation.
- (e) For violators who have not previously received a statutory sanction, fines will range from not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for each negligent or intentional violation. Fines for violators who have previously received a statutory sanction will range from not less than one hundred dollars (\$ 100) nor more than one thousand dollars (\$1,000) and will be determined on a case-by-case basis depending upon the nature and degree of the negligent or intentional violation.
- (f) In the event a fine is not paid by the specified time, the State Board may file suit in the Pulaski County Circuit Court or in the circuit court or the small claims division of the appropriate district court of the county in which the debtor resides to obtain a judgment for any fine imposed according to its authority.
- (g) The fee normally charged for the filing of a suit in any of the circuit or district courts in the State of Arkansas shall be waived on behalf of the State Board.

- (h) All moneys received by the State Board in payment of fines shall be deposited in the State Treasury as general revenues.

§ 610 Final Determination

- (a) Unless a respondent rejects an offer of settlement, the State Board shall complete its investigation of a complaint filed according to Arkansas Code Annotated § 7-4-120 and take final action within one hundred eighty (180) days of the filing of the complaint.
 - (1) If an offer of settlement is made and the respondent rejects the offer by failing to communicate an acceptance of the offer within 10 calendar days of the day the State Board transmitted the offer, the State Board may conduct a hearing and shall take final action within two hundred forty (240) days of the filing of the complaint.
 - (2) An offer of settlement that has not been responded to within ten (10) calendar days may be accepted, after the ten (10) day deadline, at the discretion of the director so long as such acceptance is made more than 10 calendar days before any scheduled public meeting.
 - (3) A respondent seeking to accept an offer of settlement within ten (10) calendar days before any scheduled public hearing on the matter must be approved by the State Board.
 - (i) A respondent seeking to accept an offer of settlement within ten (10) days of a scheduled public hearing shall notify the director of his or her acceptance of the offer. The director shall notify the State Board by email of the tendered acceptance by the respondent. The director shall recommend either that the tendered offer be rejected and that the matter proceed to the public hearing, or that the State Board accept the respondent's acceptance of the offer of settlement. The recommendation of the director shall be accepted by the State Board on the fifth (5) business day after the date the director makes his or her recommendation unless an objection is made by any one State Board Commissioner.
 - (ii) If a State Board commissioner objects to the acceptance of the respondent's tendered acceptance within ten (10) days of a scheduled public hearing, the matter shall proceed on the date set for the public hearing. At the public hearing, the State Board shall determine whether to accept the tendered offer of settlement or proceed with the public hearing.
- (b) The State Board shall advise the complainant and the respondent in writing of the finding of the board, final action taken, including sanctions, if any, and the reasons for the finding, final action, and sanctions, if any.
- (c) Any final action of the State Board shall constitute an adjudication for purposes of judicial review under Arkansas Code Annotated § 25-15-212.

§ 611 Records

- (a) The State Board shall keep a record of all inquiries, investigations, and proceedings.
- (b) Records relating to investigations by the State Board are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., until a hearing is set or the director's investigation is closed.
- (c) The State Board may disclose, through its members or staff, otherwise confidential information to proper law enforcement officials, agencies, and bodies as may be required to conduct its investigation.

§ 612 Corrective Action

- (a) A statutory sanction imposed by the State Board of Election Commissioners which includes instituting a corrective action shall be governed by the following provisions:
 - (1) A corrective action may require a respondent to comply with any election or voter registration law;
 - (2) A corrective action may require the respondent to take steps, which are reasonably calculated, to ensure the future compliance with election or voter registration laws;
 - (3)(A) The State Board of Election Commissioners may make an Offer of Settlement for a complaint contingent on the implementation of corrective actions so long as:
 - (i) The corrective action is within the authority and ability of the respondent to implement within the 180 days of the date the complaint was filed;
 - (ii) The offer defines the sanctions that will be imposed if the respondent fails to satisfy the requirements of the offer; and
 - (iii) The offer provides clear requirements which the respondent must satisfy and clear instructions explaining how the respondent is required to certify the satisfaction of the offer to implement corrective action to the State Board.
 - (B) In the event a contingent offer is made to a member of the County Board of Election Commissioners which requires an act of the county board of election commissioners as a body, an individual member will have satisfied their obligation to accept the offer by voting consistent with the corrective action or making a motion to implement the correction action regardless of whether the motion in question is adopted or fails for want of a second.
 - (C) If the State Board makes an offer pursuant to §611(a)(3), the respondent shall have the lesser of 180 days from the date the complaint was filed or 30 days from the date the

offer was made to comply with the requirements of the offer. The failure to comply with the requirements of the offer shall constitute a rejection of the offer and results in the complaint being set for an administrative hearing at a date and time to be determined by the State Board.

- (4) The State Board may issue a directive to a county to implement corrective action which is not contingent on acceptance, but which includes a warning of the sanction which the State Board will consider appropriate should a future complaint come before the Board alleging the issues addressed by the corrective action.
- (b) The failure to implement the corrective action prescribed by an offer made by the State Board under this rule shall not be considered evidence of the truthfulness of the underlying allegation should an administrative hearing be held for that complaint.

§ 613 Decertification of a County Election Official

- (a) In the event that the State Board of Election Commissioners resolves a complaint with the decertification of an election official under A.C.A. § 7-4-120(e)(5), the implementation of this sanction shall be governed by the following provisions:
 - (1) The board may only decertify an election official who is a respondent in the complaint being considered.
 - (2) An offer of settlement or a sanction imposed following a hearing may include a term of years for which the decertification will remain in effect within the following range:
 - (A) Not less than two (2) federal election cycles; and
 - (B) Not more than seven (7) federal election cycles.
 - (3) An offer of settlement or a sanction imposed following a hearing may include a permanent decertification as an election official in the State of Arkansas if the State Board makes the additional findings that the violation of election or voter registration law was:
 - (A) Intentional;
 - (B) Severe in nature; and
 - (C) Of a nature that undermines the public confidence in the integrity of the election process.
 - (4) Notice of decertification shall be directed to the respondent or respondents and shall also be sent to the following person if those persons are not respondents:

- (A) The county board of election commissioners; and
 - (B) The county clerk;
- (b) Pursuant to the governing provision of state law, the county clerk is not an election official for the purposes of this rule and is not subject to decertification.

§ 614 Direct Administration of a County Election

- (a) In the event that the State Board of Election Commissioners issues an order to take over and conduct the direct administration of a county's election under A.C.A. 7-4-120(e)(6), the implementation of this sanction shall be governed by the following provisions:
- (1) The State Board of Election Commissioners may take over and conduct the administration of the county's election in its entirety or may take over and conduct the responsibilities of a person or entity which is the subject of the complaint.
 - (2) An order issued under A.C.A. 7-4-120(e)(6) shall be directed to the respondent or respondents and shall also be sent to the following persons if those persons are not respondents:
 - (A) The county board of election commissioners;
 - (B) The county clerk;
 - (C) The county judge; and
 - (D) The county prosecuting attorney.
 - (3) The State Board of Election Commissioners shall continue to conduct the direct administration of a county's election until the State Board votes to terminate the direct administration of the county's election but no longer than two federal election cycles including the cycle in which the administration began.
- (b) Upon assuming the election related duties of the county board of election commissioners or the county clerk, the State Board of Election Commissioners shall:
- (1) Appoint a person certified by the State Board of Election Commissioners as an election coordinator to conduct the administrative functions of the election which the State Board has assumed including, but not limited to:
 - (A) Conducting ballot draw;
 - (B) Preparing ballots and voting equipment;

- (C) Conducting logic and accuracy testing;
 - (D) Publishing or ensuring all required notices are posted;
 - (E) Selecting and training election officials required to conduct the election;
 - (F) Receiving and reporting preliminary and unofficial election night results; and
 - (G) Any responsibility of the county clerk which is assumed by the State Board:
 - (i) including any receptibilities related to the election; but
 - (ii) excluding any responsibility related to voter registration other than compiling the precinct voter registration list based on the records kept by the county clerk.
- (2) Fulfill the following deliberative functions of the election which the State Board has assumed through a county election administration committee including, but not limited to:
- (A) Fulfilling the role of the county board regarding the canvassing and counting of absentee ballots:
 - (B) Fulfilling the role of the county board regarding the review of provisional ballots;
 - (C) Overseeing the canvassing and counting of the ballots cast in the election; and
 - (D) Certifying the results of the election pursuant to the requirements of State Law:
 - (E) Issuing any certificate or other election related document required under state law.
- (3) The county election administration committee may be made up of;
- (A) the State Board;
 - (B) A subcommittee of the State Board;
 - (C) Three qualified voters of the state selected by the State Board; or
 - (D) A combination three individuals including members of the State Board and other qualified electors of the state.
- (c) Following the election, the election coordinator appointed by the State Board shall:
- (1) Ensure the return of voting equipment to a secure facility for storage; and

- (2) Ensure that ballot boxes and records are appropriately labeled and stored in such a manner that records may be retrieved for any election challenge or post-election audit authorized by the State Board.
- (d) When the State Board makes an offer of settlement which includes the direct administration of the county board of election commissioners' roll in the election process, all the members of the county board must accept the offer of settlement for it to be immediately effective.
 - (1) If one or more members of the county board reject the offer, a hearing must be held to determine whether the state board of election commissioners will directly administer the county's election and to resolve the complaint with respect to the members rejecting the offer of settlement.
 - (2) A member of the county board who accepts the offer of settlement will not be a respondent in the hearing to determine whether the state board will directly administer the county's election.
- (e) Care and custody of the county election equipment that rests with the county board of election commissioners or county clerk under A.C.A. 7-5-301(k)-(m) shall temporarily transfer to the state board of election commissioners if the state board directly administers a county's election.

**RULES OF PROCEDURE FOR CITIZEN
COMPLAINTS
REGARDING VIOLATIONS OF STATE
ELECTION AND VOTER REGISTRATION LAWS**

(Effective February 6, 2004; Revised _____)



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TABLE OF CONTENTS

Scope of Rules	3
§ 601 Definitions.....	3
§ 602 Who May File	5
§ 603 Form of Complaint.....	5
§ 604 Filing a Complaint	6
§ 605 Processing a Complaint.....	6
§ 606 Investigations – Determination of Probable Cause.....	7 8
§ 607 Oaths and Subpoenas	9
§ 608 Public Hearing	10
§ 609 Imposition of Fines and Other Sanctions.....	12 13
§ 610 Final Determination	14
§ 611 Records	14 15
§ 612 Corrective Action.....	14 15
§ 613 Decertification of a County Election Official	15 16
§ 614 Direct Administration of a County Election	16 17

Scope of Rules

These rules set forth the procedures for providing uniform and nondiscriminatory resolution of any complaint alleging a violation of election and voter registration laws under the jurisdiction of the State Board of Election Commissioners in accordance with Arkansas Code Annotated § 7-4-120.

§ 601 Definitions

- (a) “Complainant” means any person who files a complaint with the State Board of Election Commissioners, hereinafter referred to as the “State Board,” alleging that a violation of any election or voter registration law under the State Board of Election Commissioners’ jurisdiction has occurred.
- (b) “Dismissed” means a resolution to an allegation within a complaint in which the allegation is resolved without the imposition of a statutory sanction.
- (c) “Election laws” includes provisions of law from the following sources which concern elections conducted by county boards of election commissioners in conjunction with the county clerk:
 - (1) The Constitution of the United States;
 - (2) The Constitution of the State of Arkansas;
 - (3) Statutory provisions enacted by the United States or the State of Arkansas;
 - (4) Final court decisions of general applicability in State or Federal Court; and
 - (5) Rules promulgated by the United States or the State of Arkansas
- (d) Election Official is 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.
 - (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.
- (e) “Federal election cycle” under this rule means the preferential primary, general primary, general election, and general election runoff.
- (f) “Frivolous” means clearly lacking any basis in fact or law.
- (g) “HAVA” is the federal Help America Vote Act of 2002, Pub. L. No. 107-252, that established the Election Assistance Commission to assist in the administration of federal elections and allocated federal funds to states for election administration improvements, including replacing punch card and lever voting machines, improving accessibility for voters with disabilities, implementing a statewide voter registration system, voter and election official training, and other improvements.
- (h) “Institute Corrective Actions” ~~—A is a~~ resolution to a complaint in which the State Board of Election Commissioners directs the respondent to take an action or to refrain from an action so as to cause the respondent to comply with the requirements of an election or voter registration law or to prevent the violation of an election or voter registration law in the future.
- (i) “County Board” means a County Board of Election Commissioners.
- ~~(j)~~ (i) “Letter of Caution” means a written disposition of an allegation against any person which is advisory in nature, clearly giving notice to the respondent that his or her action or lack of action is a violation of law.
- ~~(k)~~ (j) “Letter of Instruction” means a written disposition of ~~a complaint of~~ an allegation against an election official or county clerk issued in furtherance of the State Board of Election Commissioner’s responsibility to provide training for election officials. A letter of instruction may be issued when the State Board lacks authority to adjudicate a complaint, when the board makes no finding that an election law violation occurred, or when the board determines that a letter of instruction is preferable to a statutory sanction.
- ~~(l)~~ (k) “Letter of Reprimand” means a written disposition of an allegation against any person which is condemnatory in nature, clearly giving notice to the respondent that his or her action or lack of action is a violation of the law. The reprimand will require the respondent to refrain from engaging in the same activity again. A reprimand shall be considered more severe than a caution or warning.
- ~~(m)~~ (l) “Letter of Warning” means a written disposition of an allegation against any person which is condemnatory in nature, expressing strong disapproval for the respondent’s misconduct and expressing the view that the misconduct undermines public confidence in the integrity of the election process.
- ~~(n)~~ (m) “Public Hearing” means a hearing on a complaint by the State Board, open to the public, to adjudicate a complaint.

~~(n)~~ (o) “Refer to the Proper Authority” means to dismiss from the administrative process and to forward all information relating to the complaint to another law enforcement entity when the State Board SBEC determines that the available information indicates a violation of a criminal law or of a civil law enforced by another agency and the allegations either do not fall within the jurisdiction of the State Board SBEC or further administrative action may damage a future criminal case.

~~(o)~~ (p) “Respondent” means any person whose actions are asserted, in a complaint filed with the State Board, to be in violation of any election or voter registration law under the board’s jurisdiction.

(q) “State Board” means the State Board of Election Commissioners.

~~(p)~~ (r) “Statutory Sanction” means a letter of caution, warning, or reprimand, a corrective action, a decertification, direct administration of a county’s election, or a fine that can be imposed pursuant to the State Board’s statutory authority to sanction violations of election and voter registration laws.

~~(q)~~ (s) “Voter registration laws” includes provisions of law from the following sources which concern voter registration:

- (1) The Constitution of the United States;
- (2) The Constitution of the State of Arkansas;
- (3) Statutory provisions enacted by the United States or the State of Arkansas;
- (4) Final court decisions of general applicability in State or Federal Court; and
- (5) Rules promulgated by the United States or the State of Arkansas.

§602 Who May File

Any person alleging that a violation of any election or voter registration law under the State Board’s jurisdiction has occurred may file a complaint. The State Board may file a complaint of its own volition.

§ 603 Form of Complaint

(a) A procedurally sufficient complaint must:

- (1) be in writing;
- (2) be signed;
- (3) include an affirmation that facts articulated in the complaint are true and correct to the best of the complainant’s knowledge under penalty of perjury;
- (4) clearly describe the alleged incident, election irregularities, or illegalities;
- (5) state approximately when the alleged violation or incident occurred;

- (6) state the location or locations where the alleged activities occurred; and
- (7) provide any supporting facts surrounding the allegations.

§ 604 Filing a Complaint

~~(a) A~~ Except as provided in subsection (b), a written complaint must be filed no sooner than forty-six (46) days prior to the election affected by or associated with the alleged violation of law and no later than 30 days after the deadline to certify that election ~~certification of the election in the county where the violation is alleged to have occurred.~~

~~(b)(1) The State Board may file a complaint within three years of an alleged violation of a criminal law within the jurisdiction of State Board or within three years of an unlawful act which is alleged to have caused a certified election result to be inaccurate.~~

~~(2) The determination whether to file a complaint under (b)(1) of this section is discretionary. In making this determination, the State Board shall consider the following factors:~~

~~(A) the severity of the alleged misconduct;~~

~~(B) the perceived credibility of the information indicates a violation of law has occurred;~~

~~(C) the prioritization of available agency resources; and~~

~~(D) the likelihood an investigation will succeed in determining whether a violation of law has occurred.~~

§ 605 Processing a Complaint

(a) Receipt of Complaint

(1) Upon receipt of a written complaint, it shall be stamped with the current date, filed, entered upon the complaint docket, and a copy forwarded to the director. The director shall determine if the written complaint meets the requirements of a complaint as set forth in §§ 603 and 604.

~~(2) If the director determines that the written complaint is deficient in that it is not timely filed, not in proper form, or that the allegations, taken as true, are insufficient to establish a violation of election or voter registration laws under the State Board's jurisdiction, If a complaint is filed which alleges a violation of law under the State Board's jurisdiction but which otherwise fails to satisfy the procedural requirements for a complaint, the D director shall notify the complainant that the complaint is deficient, describe the nature of the~~

deficiency, and inform the complainant that the complaint may be corrected within ten (10) calendar days of this notice being issued. Failure of the **E** complainant to cure the procedurally deficient complaint within ten (10) calendar days shall result in the complaint being dismissed if the State Board agrees that the complaint is deficient. The **D** director shall use all information provided with the complaint to deliver notice of a deficient complaint but shall not be required to provide notice if no contact information or mailing address is provided with the complaint. A complaint filed after the deadline to file a complaint cannot be cured by this process.

(b) Staff Report – Sufficient Complaint

- (1) If the director determines that a written complaint is timely, in proper form, and that the allegations, if true, establish a violation of election or voter registration laws under the State Board's jurisdiction, then the director shall make a concise report stating those findings, analyzing the legal issues raised by the complaint, and summarizing the complaint including any additional evidence known to the director. Additional evidence known to the director may include the review, the receipt, or the examination of any publicly available information or document that bears on an allegation. A procedurally and substantively sufficient complaint that alleges an election or voter registration law violation within the jurisdiction of the **State Board SBEC** shall be investigated.
- (2) The director may recommend that the complaint be further investigated through either documentary submissions or through a formal investigation. The director shall send a copy of the complaint and the report to each **State Board** commissioner by email and, if requested in advance by a **State Board** commissioner, by first class mail. If the director recommends that the complaint be further investigated, either formally or informally, or referred to the proper authority, such recommendation shall be considered to be adopted by the board on the fifth (5) business day after the date that the director's determination was sent by email unless, before the fifth (5) business day, any **State Board** commissioner requests that the board further consider the complaint at a meeting of the board.

(c) Staff Report – Insufficient Complaint

- (1) If the allegations are found to be procedurally or substantively insufficient the director shall send a copy of the complaint and make a concise report stating those findings to each commissioner by email and, if requested in advance by a commissioner, by first class mail.
- (2) The director's determination that the complaint is insufficient shall be considered adopted by the State Board on the fifth business day after the date that the director's determination was sent by email unless, before the fifth business day, any **State Board** commissioner requests that the board further consider the complaint at a meeting of the board. If the State Board so adopts the director's determination that the complaint is insufficient and fails to meet the requirements of these rules, then the director shall notify the complainant that the complaint has been dismissed.

- (d) In addition to the steps addressed above, the following action may be recommended by the **D** director or adopted by the **State Board SBEC** without a recommendation by the **D** director in a meeting of the **State Board SBEC** regardless of whether the complaint is found to be sufficient:
- (A) The **State Board SBEC** may issue a letter of instruction;
 - (B) The **State Board SBEC** may refer the complaint to the proper **authority authorities**; or
 - (C) The **State Board SBEC** may issue a letter of instruction and refer the complaint to the proper **authority authorities**.

§ 606 Investigations - Determination of Probable Cause

- (a) Notice to Respondent - Upon determination that a complaint should be investigated, either through a formal investigation or through documentary submissions, the director shall notify the respondent of the complaint, the investigation, and the nature of the investigation. The **D** director shall provide a copy of the complaint or pertinent parts of the complaint to the respondent, along with instructions regarding the opportunity to respond to the complaint.
- (b) Investigation through Documentary Submissions
- (1) The director may request documents from the identified respondents, third parties, or from sources with documents that are otherwise publicly available to determine the facts either supporting or disproving the allegations of the complaint. Investigations through documentary submission may also include informal communications or interviews with relevant parties including a respondent.
 - (2) An investigation based upon documentary submissions may transition into a formal investigation if the **D** director determines that a formal investigation is necessary to obtain sufficient information to resolve the complaint.
- (c) Formal Investigation
- (1) In a formal investigation the director shall submit interrogatories to the respondent and may take additional investigative action utilizing subpoenas or testimony obtained under oath. In a formal investigation, the director shall either submit written interrogatories to the respondent, conduct a formal interview with the respondent, or a combination of both written interrogatories and a formal interview with the respondent. The director may also take additional investigative action utilizing subpoenas or testimony obtained under oath.
 - (2) Interrogatory questions may request the respondent or another person to provide written statements bearing on the facts, circumstances, or information relevant to the investigation.
 - (3) The **D** director may also ask the respondent or another person to produce relevant evidence, or to appear to answer questions in person during an interview or deposition.

- (4) Written responses to interrogatory questions shall be answered under penalty of perjury.
- (5) As part of a formal investigation, the director or his or her designee may interview any respondent, complainant, witness, or other third party, or may take the formal deposition of any respondent, complainant, witness, or other third party. Oral statements by respondents taken during a formal investigation will be provided under oath administered by the director or his or her designee, or in the case of a deposition, by a certified court reporter.
- (6) The director or his or her designee may subpoena any document or record that may be relevant to the allegations of the complaint. The director may gather and use as part of the investigation any document or record that may be relevant to the allegations of the Complaint.

(d) Director's Investigation Report

- (1) Upon completing an investigation, the director shall prepare a report of the investigation for submission to the State Board. The report may include a recommendation by the director that the complaint be dismissed, that a letter of instruction be issued, that the complaint be forwarded to the proper authorities authority, or that the State Board meet to consider issuing an Offer of Settlement including a statutory sanction.
- (2) After receipt of the director's report, the director's recommendation shall be adopted by the State Board on the fifth (5) business day after the date that the director's determination was sent by email unless, before the fifth (5) business day, any commissioner requests that the State Board further consider the complaint at a meeting of the board. Upon further consideration, the State Board may either further investigate the complaint or:
 - (A) Determine that the complaint be dismissed;
 - (B) Issue a letter of instruction;
 - (C) Refer the complaint to the proper authorities authority;
 - (D) Direct the director to further investigate the complaint;
 - (E) Find that probable cause of an election or voter registration law violation exists, based upon the investigation report and its findings; or
 - (F) Take other appropriate action.

(e) Offer of Settlement

- (1) If the State Board finds that probable cause exists for a finding of a violation, the board shall issue a written Offer of Settlement to the respondent, stating its findings and the proposed sanctions. The respondent may accept the State Board's Offer of Settlement in writing within ten calendar days of the issuance of the offer Offer. If the offer Offer is not accepted, the State Board may call for a full public hearing. The offer may state that the hearing is set as of the tenth calendar day after the offer was issued if the offer is not accepted.

- (2) If the State Board does not find probable cause, it shall dismiss the complaint. The State Board may issue a letter of instruction when the complaint and other evidence indicate that such a letter is necessary and proper. Also, the State Board may refer the complaint and any evidence in its possession related to the complaint to the proper authority.

§ 607 Oaths and Subpoenas

- (a) The State Board, its director, or the director's designee may administer oaths for the purpose of taking sworn statements from any person thought to have knowledge of any facts pertaining to the complaint.
- (b) The State Board, its director, or the director's designee may request that the respondent answer allegations in writing, produce relevant evidence, or appear in person before the board.
- (c) The State Board, its director, or the director's designee may subpoena any person, books, records, or other documents relevant to the complaint investigation by the board.
- (d) The State Board, its director, or the director's designee shall provide the subject of the subpoena with reasonable notice of the subpoena and an opportunity to respond.
- (e)(1) The State Board, its director, or the director's designee may subpoena any person, book, or record for testimony or presentation at any public hearing called by the State Board.
- (2) Respondents may request the director of the State Board to issue a subpoena on his or her behalf for any witness, book, or other document relevant to the issues identified in the notice of hearing.
 - (A) Respondent must make his or her request to the director for a subpoena no less than five business days before a public hearing identified in the notice of hearing.
 - (B) Respondent must provide:
 - (i) the full name,
 - (ii) address, and
 - (iii) any additional contact information the respondent may possess and is necessary for the issuance of a subpoena by the director on behalf of that respondent.
 - (C) Respondent or his or her counsel shall be responsible for ensuring service of any subpoena prepared by the director at respondent or his or her counsel's request.
 - (D) A Respondent or his or her counsel may not issue their own subpoena, as only the State Board, its director, or the director's designee has the authority to issue a subpoena as part of this complaint process.

§ 608 Public Hearing

- (a) If an Offer of Settlement is rejected and the State Board sets a public hearing, the director shall notify the respondent and the complainant in writing of the date, time, and place of the meeting at which the complaint will be considered.
- (b) The notice shall include a statement of the legal authority and jurisdiction under which the hearing is to be held and a short and plain statement of the matters of fact and law asserted. The respondent may attend in person or by counsel, and have the right to representation by counsel in all matters related to the complaint.
- (c) ~~The respondent may attend in person or by counsel.~~ The respondent has the right to representation by counsel in all matters related to the complaint. The respondent may offer testimony and present tangible evidence in connection with the complaint. The complainant also has the right to attend the public hearing and be represented by counsel, but the complainant shall not be responsible for presenting any evidence. Such responsibility lies with staff of the State Board.
- (d) If a respondent fails to appear after proper service of notice, the State Board may proceed with the public hearing and render a decision in the absence of the respondent.
- (e) Any attorney representing a respondent or complainant shall file a notice of appearance as soon as possible. Service on counsel of record is equivalent of service on the person represented.
- (f) Either the State Board, the chair of the board, a board member designated by the chair, or a hearing officer designated by the board shall preside at the hearing. A member of the staff shall appear at the hearing to present evidence of the asserted violation of election or voter registration law by the respondent.
- (g) Matters before the State Board for hearing that are similar in issues of fact or law or have identical parties may be consolidated if the board finds that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings and not unduly prejudice the rights of a respondent.
- (h) All requests for relief must be made in writing by motion filed with the State Board stating the action requested and the grounds relied upon. The presiding officer may conduct hearings on the motion and enter such orders as he/she deems necessary to address issues raised by the motion. However, the presiding officer will not issue dispositive orders.
- (i) The presiding officer presides at the hearing and may rule on motions, require briefs, and issue such orders as will ensure the orderly conduct of the proceedings. ~~However, any A presiding officer other than the State Board~~ shall not enter a dispositive order.
- (j) The respondent has the right to participate or to be represented by counsel in all hearings or pre-hearing conferences related to the case. The respondent or respondent's counsel has the

right to introduce evidence of material fact, cross-examine witnesses as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and upon request by the presiding officer, may submit briefs and engage in oral argument.

(k) The hearing will be conducted in the following manner:

- (1) The hearing officer will give an opening statement, briefly describing the nature of the proceedings;
- (2) The staff and respondent will be given the opportunity to present opening statements;
- (3) The staff and the respondent will present their cases in the sequence decided by the presiding officer;
- (4) Each witness must be sworn or affirmed by the presiding officer or the court reporter, be subject to examination or cross-examination and questioning by the State Board;
- (5) The presiding officer may limit questioning in a manner consistent with the law; and
- (6) At the close of evidence, staff and respondent may present final arguments.

(l) The presiding officer shall rule on the admissibility of evidence and may, when appropriate, take official notice of facts in accordance with applicable laws.

(m) Stipulation of facts is encouraged and the State Board may decide the issue or issues based on stipulated facts.

(n) Evidence in the proceeding must be confined to the issues set forth in the notice of the hearing sent to the respondent unless the respondent and staff waive the right to such notice or the presiding officer determines that good cause justifies expansion of the issues. Either the respondent or staff may be granted a continuance to allow for time to prepare for any additional issues.

(o) When the respondent and staff seek admission of an exhibit, nine copies of the exhibit must be provided. Each party must be allowed to examine the exhibit prior to the ruling on its admission. All exhibits admitted into evidence must be marked and entered into the record.

(p) The respondent or staff may object to specific evidence or may request limits on the scope of the examination or cross-examination of a witness. The objection, the ruling on the objection and the reasons for the ruling will be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve the ruling until the written decision.

(q) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony will briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and included in the record.

(r) Irrelevant, immaterial, and unduly repetitive evidence will be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs.

- (s) The State Board shall be responsible for recording the testimony heard at the hearing. Upon filing a petition for judicial review, the State Board will provide a verbatim transcript of testimony taken before the agency.
- (t) The decision of the State Board shall be reduced to a final order adopted by the State Board containing written findings of fact and conclusions of law stated separately. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. A copy of the final order shall be served on the respondent along with any order by the State Board. The State Board shall also provide a copy of the findings and order to the complainant.

§ 609 Imposition of Fines and Other Sanctions

- (a) If the State Board finds a violation of election or voter registration laws under its jurisdiction, then the board may render one (1) or more of the following sanctions:
 - (1) Issue a public letter of caution, warning, or reprimand;
 - (2) Impose a fine of not less than twenty-five dollars (\$25) nor more than one thousand dollars (\$1,000) for each negligent, knowing, or intentional violation;
 - (3) Issue conditional directives that corrective actions be taken which, if not satisfied based on the terms of that directive, will result in additional sanctions;
 - (4) Decertify a county election official;
 - (5) Institute the direct administration of the county's election pursuant to Ark. Code Ann. §7-4-120(e)(6);
 - (6) Report its findings and other evidence to the proper law enforcement authorities along with recommendations; or
 - (7) Order payment of the costs for the investigation and hearing.
- (b) The State Board may issue one or more of the above sanctions for a violation of election or voter registration laws within the State Board's jurisdiction.
- (c) In lieu of, or in addition to, imposing the statutory sanctions set out above, the State Board may issue a letter of instruction or refer the complaint and related evidence to the proper authority when the board determines that the circumstances warrant.
- (d) In determining the imposition of fines upon a finding of a violation, the State Board may consider all surrounding circumstances including, but not limited to, the seriousness of the violation, whether the violation was intentional or negligent, whether the respondent demonstrated good faith by consulting the State Board staff or the local county board of election commissioners, whether the violation was isolated or part of a pattern, and whether the respondent showed good cause for the violation.
- (e) For violators who have not previously received a statutory sanction, fines will range from not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for each negligent or intentional violation. Fines for violators who have previously received a statutory sanction

will range from not less than one hundred dollars (\$ 100) nor more than one thousand dollars (\$1,000) and will be determined on a case-by-case basis depending upon the nature and degree of the negligent or intentional violation.

- (f) In the event a fine is not paid by the specified time, the State Board may file suit in the Pulaski County Circuit Court or in the circuit court or the small claims division of the appropriate district court of the county in which the debtor resides to obtain a judgment for any fine imposed according to its authority.
- (g) The fee normally charged for the filing of a suit in any of the circuit or district courts in the State of Arkansas shall be waived on behalf of the State Board.
- (h) All moneys received by the State Board in payment of fines shall be deposited in the State Treasury as general revenues.

§ 610 Final Determination

~~(a) The State Board shall complete its investigation of a complaint filed according to Arkansas Code Annotated § 7-4-120 and take final action within one hundred eighty (180) days of the filing of the complaint, except if a public hearing is conducted then all action on the complaint by the board shall be completed within two hundred forty (240) days.~~

(a) Unless a respondent rejects an offer of settlement, the State Board shall complete its investigation of a complaint filed according to Arkansas Code Annotated § 7-4-120 and take final action within one hundred eighty (180) days of the filing of the complaint.

(1) If an offer of settlement is made and the respondent rejects the offer by failing to communicate an acceptance of the offer within 10 calendar days of the day the State Board transmitted the offer, the State Board may conduct a hearing and shall take final action within two hundred forty (240) days of the filing of the complaint.

(2) An offer of settlement that has not been responded to within ten (10) calendar days may be accepted, after the ten (10) day deadline, but at the discretion of the director so long as such acceptance is made more than 10 calendar days before any scheduled public meeting.

(3) A respondent seeking to accept an offer of settlement within ten (10) calendar days before any scheduled public hearing on the matter must be approved by the State Board.

(i) A respondent seeking to accept an offer of settlement within ten (10) days of a public hearing shall notify the director of his or her acceptance of the offer. The director shall notify the State Board by email of the tendered acceptance by the respondent. The director shall recommend either that the tendered offer be rejected and that the matter proceed to the public hearing, or that the State Board accept the respondent's acceptance of the offer of settlement. The recommendation of the director shall be accepted by the State Board on the fifth (5) business day after the date the director

makes his or her recommendation, unless an objection is made by a State Board Commissioner.

(ii) If a State Board commissioner objects to the acceptance of the respondent's tendered acceptance within ten (10) days of a scheduled public hearing, the matter shall proceed on the date set for the public hearing. At the public hearing, the State Board shall determine whether to accept the tendered offer of settlement or proceed with the public hearing.

- (b) The State Board shall advise the complainant and the respondent in writing of the finding of the board, final action taken, including sanctions, if any, and the reasons for the finding, final action, and sanctions, if any.
- (c) Any final action of the State Board shall constitute an adjudication for purposes of judicial review under Arkansas Code Annotated § 25-15-212.

§ 611 Records

- (a) The State Board shall keep a record of all inquiries, investigations, and proceedings.
- (b) Records relating to investigations by the State Board are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., until a hearing is set or the director's investigation is closed.
- (c) The State Board may disclose, through its members or staff, otherwise confidential information to proper law enforcement officials, agencies, and bodies as may be required to conduct its investigation.

§ 612 Corrective Action

- (a) A statutory sanction imposed by the State Board of Election Commissioners which includes instituting a corrective action shall be governed by the following provisions:
 - (1) A corrective action may require a respondent to comply with any election or voter registration law;
 - (2) A corrective action may require the respondent to take steps, which are reasonably calculated, to ensure the future compliance with election or voter registration laws;
 - (3)(A) The State Board of Election Commissioners may make an Offer of Settlement for a complaint contingent on the implementation of corrective actions so long as:
 - (i) The corrective action is within the authority and ability of the respondent to implement within the 180 days of the date the complaint was filed;

- (ii) The offer defines the sanctions that will be imposed if the respondent fails to satisfy the requirements of the offer; and
 - (iii) The offer provides clear requirements which the respondent must satisfy and clear instructions explaining how the respondent is required to certify the satisfaction of the offer to implement corrective action to the State Board SBEC.
- (B) In the event a contingent offer is made to a member of the County Board of Election Commissioners which requires an act of the county board of election commissioners as a body, an individual member will have satisfied their obligation to accept the offer by voting consistent with the corrective action or making a motion to implement the correction action regardless of whether the motion in question is adopted or fails for want of a second.
- (C) If the State Board SBEC makes an offer pursuant to §611(a)(3), the respondent complaint shall have the lesser of 180 days from the date the complaint was filed or 30 days from the date the offer was made to comply with the requirements of the offer. The failure to comply with the requirements of the offer shall constitute a rejection of the offer and results in the complaint being set for an administrative hearing at a date and time to be determined by the State Board.
- (4) The State Board SBEC may issue a directive to a county to implement corrective action which is not contingent on acceptance, but which includes a warning of the sanction which the State Board SBEC will consider appropriate should a future complaint come before the Board alleging the issues addressed by the corrective action.
- (b) The failure to implement the corrective action prescribed by an offer made by the State Board under this rule shall not be considered evidence of the truthfulness of the underlying allegation should an administrative hearing be held for that complaint.

§ 613 Decertification of a County Election Official

- (a) In the event that the State Board of Election Commissioners resolves a complaint with the decertification of an election official under A.C.A. § 7-4-120(e)(5), the implementation of this sanction shall be governed by the following provisions:
 - (1) The board may only decertify an election official who is a respondent in the complaint being considered.
 - (2) An offer of settlement or a sanction imposed following a hearing may include a term of years for which the decertification will remain in effect within the following range:
 - (A) Not less than two (2) federal election cycles; and

- (B) Not more than seven (7) federal election cycles.
- (3) An offer of settlement or a sanction imposed following a hearing may include a permanent decertification as an election official in the State of Arkansas if the State Board makes the additional findings that the violation of election or voter registration law was:
 - (A) Intentional;
 - (B) Severe in nature; and
 - (C) ~~Was of~~ Of a nature that undermines the public confidence in the integrity of the election process.
- (4) Notice of decertification shall be directed to the respondent or respondents and shall also be sent to the following person if those persons are not respondents:
 - (A) The county board of election commissioners; and
 - (B) The county clerk;
- (b) Pursuant to the governing provision of state law, the county clerk is not an election official for the purposes of this rule and is not subject to decertification.

§ 614 Direct Administration of a County Election

- (a) In the event that the State Board of Election Commissioners issues an order to take over and conduct the direct administration of a county's election under A.C.A. 7-4-120(e)(6), the implementation of this sanction shall be governed by the following provisions:
 - (1) The State Board of Election Commissioners may take over and conduct the administration of the county's election in its entirety or may take over and conduct the responsibilities of a person or entity which is the subject of the complaint.
 - (2) An order issued under A.C.A. 7-4-120(e)(6) shall be directed to the respondent or respondents and shall also be sent to the following persons if those persons are not respondents:
 - (A) The county board of election commissioners;
 - (B) The county clerk;
 - (C) The county judge; and
 - (D) The county prosecuting attorney.

- (3) The State Board of Election Commissioners shall continue to conduct the direct administration of a county's election until the State Board votes to terminate the direct administration of the ~~County's Election~~ county's election but no longer than two federal election cycles including the cycle in which the administration began.
- (b) Upon assuming the election related duties of the county board of election commissioners or the county clerk, the State Board of Election Commissioners shall:
- (1) Appoint a person certified by the State Board of Election Commissioners as an election coordinator to conduct the administrative functions of the election which the State Board has assumed including, but not limited to:
- (A) Conducting ballot draw;
 - (B) Preparing ballots and voting equipment;
 - (C) Conducting logic and accuracy testing;
 - (D) Publishing or ensuring all required notices are posted;
 - (E) Selecting and training election officials required to conduct the election;
 - (F) Receiving and reporting preliminary and unofficial election night results; and
 - (G) Any responsibility of the county clerk which is assumed by the State Board:
 - (i) including any receptibilities related to the election; but
 - (ii) excluding any responsibility related to voter registration other than compiling the precinct voter registration list based on the records kept by the county clerk.
- (2) Fulfill the following deliberative functions of the election which the State Board has assumed through a county election administration committee including, but not limited to:
- (A) Fulfilling the role of the county ~~board election commission~~ regarding the canvassing and counting of absentee ballots;
 - (B) Fulfilling the role of the county ~~board election commission~~ regarding the review of provisional ballots;
 - (C) Overseeing the ~~canvasses and counts~~ canvassing and counting of the ballots cast in the election; and
 - (D) Certifying the results of the election pursuant to the requirements of State Law;

- (E) Issuing any certificate or other election related document required under state law.
- (3) The county election administration committee may be made up of;
 - (A) the State Board;
 - (B) A subcommittee of the State Board;
 - (C) Three qualified voters of the state selected by the State Board; or
 - (D) A combination three individuals including members of the State Board and other qualified electors of the state.
- (c) Following the election, the election coordinator appointed by the State Board shall:
 - (1) Ensure the return of voting equipment to a secure facility for storage; and
 - (2) Ensure that ballot boxes and records are appropriately labeled and stored in such a manner that records may be retrieved for any election challenge or post-election audit authorized by the State Board.
- (d) When the **State Board SBEC** makes an offer of settlement which includes the direct administration of the county board of election commissioners' roll in the election process, all the members of the county board must accept the offer of settlement for it to be immediately effective.
 - (1) If one or more members of the county board reject the offer, a hearing must be held to determine whether the state board of election commissioners will directly administer the county's election and to resolve the complaint with respect to the members rejecting the offer of settlement.
 - (2) A member of the county board who accepts the offer of **settlement settlement** will not be a respondent in the hearing to determine whether the state board will directly administer the county's election.
- (e) Care and custody of the county election equipment **that** rests with the county board of election commissioners or county clerk under A.C.A. 7-5-301(k)-(m) shall temporarily transfer to the state board of election commissioners **s** if the state board directly administers a county's election.

State of Arkansas

94th General Assembly

Regular Session, 2023

A Bill

HOUSE BILL 1464

By: Representatives Burkes, Wing, Achor, Andrews, Barker, Beaty Jr., Beck, Bentley, M. Berry, Breaux, Brooks, K. Brown, M. Brown, Joey Carr, C. Cooper, Cozart, Evans, C. Fite, L. Fite, Fortner, Furman, Gazaway, Gonzales, Gramlich, Haak, Hawk, Hollowell, Jean, Ladyman, Long, Lundstrum, Lynch, McAlindon, McClure, McCollum, M. McElroy, McGrew, B. McKenzie, McNair, S. Meeks, Miller, Milligan, K. Moore, Pilkington, Puryear, R. Scott Richardson, Richmond, Rose, Rye, Tosh, Underwood, Vaught, Womack, Wooten

By: Senators K. Hammer, Dees, M. McKee, J. Petty, Stone

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING COMPLAINTS OF
ELECTION LAW VIOLATIONS; TO AMEND THE LAW CONCERNING
THE STATE BOARD OF ELECTION COMMISSIONERS; AND FOR
OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING COMPLAINTS OF
ELECTION LAW VIOLATIONS; AND TO AMEND THE
LAW CONCERNING THE STATE BOARD OF
ELECTION COMMISSIONERS.

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

SECTION 1. Arkansas Code § 7-4-120(b)(1), concerning complaints of election law violations and definitions, is amended to read as follows:

(b)(1)(A) A complaint shall be filed with the State Board of Election Commissioners in writing no earlier than the date established by law for the delivery or mailing of absentee ballots to a voter and no later than thirty (30) days following the ~~certification of~~ deadline to certify an election by a county board of election commissioners of the following:

(A)(i) An alleged violation of the laws regarding



elections including without limitation:

- ~~(i)~~(a) Voter registration;
- ~~(ii)~~(b) Requests for absentee ballots;
- ~~(iii)~~(c) Delivery of absentee ballots;
- ~~(iv)~~(d) Casting of ballots;
- ~~(v)~~(e) Ballot tabulation;
- ~~(vi)~~(f) Certification of election results;
- ~~(vii)~~(g) Administration of an election;
- ~~(viii)~~(h) Election processes; or
- ~~(ix)~~(i) Conduct of an election; or

~~(B)~~(ii) The election or elections affected or associated with the complaint.

~~(G)~~(B) A complaint may be referred to the State Board of Election Commissioners by the Joint Performance Review Committee and is not subject to the thirty (30) day filing requirement under subdivision (b)(1) of this section.

SECTION 2. Arkansas Code § 7-4-120(c)(4)(A), concerning complaints of election law violations and definitions, is amended to read as follows:

(4)(A) If a complaint alleges a violation of election law or voter registration law but does not otherwise meet the requirements of this section, the complainant shall be notified that the complaint may be corrected by amendment in writing within ten (10) days and that a failure to make the necessary corrections shall result in the complaint's being dismissed.

SECTION 3. Arkansas Code § 7-4-120(i)(4), concerning complaints of election law violations and definitions, is amended to read as follows:

(4) If the State Board of Election Commissioners ~~holds a hearing~~ makes its offer of settlement and the offer is rejected under this section, the State Board of Election Commissioners ~~shall conclude all actions may~~ conduct a hearing and shall take final action under this section within two hundred forty (240) days.

SECTION 4. Arkansas Code § 7-5-702(c), concerning the preservation of ballots, stubs, certificates, and other election materials, is amended to add

1 an additional subdivision to read as follows:

2 (3) Upon receipt of a subpoena issued by the State Board of
3 Election Commissioners under § 7-4-120.

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6 **APPROVED: 3/16/23**
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State of Arkansas

As Engrossed: H3/30/23

94th General Assembly

A Bill

Regular Session, 2023

SENATE BILL 272

By: Senators J. Petty, K. Hammer, Dees, M. McKee, Stone

By: Representatives McCollum, Wing, Achor, Andrews, Barker, Beaty Jr., Beck, Bentley, M. Berry, Breaux, Brooks, K. Brown, M. Brown, Burkes, Joey Carr, C. Cooper, Cozart, Evans, C. Fite, L. Fite, Fortner, Furman, Gazaway, Gonzales, Gramlich, Haak, Hawk, Hollowell, Jean, Ladyman, Long, Lundstrum, Lynch, McAlindon, McClure, M. McElroy, McGrew, B. McKenzie, McNair, S. Meeks, Miller, Milligan, K. Moore, Pilkington, Puryear, R. Scott Richardson, Richmond, Rose, Rye, Tosh, Underwood, Vaught, Womack, Wooten

For An Act To Be Entitled

AN ACT TO CREATE AN ELECTION INTEGRITY REVIEW
PROCESS; TO AMEND THE DUTIES OF THE STATE BOARD OF
ELECTION COMMISSIONERS; TO AMEND THE LAW CONCERNING
ELECTION LAW VIOLATIONS; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE AN ELECTION INTEGRITY REVIEW
PROCESS; TO AMEND THE DUTIES OF THE STATE
BOARD OF ELECTION COMMISSIONERS; AND TO
AMEND THE LAW CONCERNING ELECTION LAW
VIOLATIONS.

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

SECTION 1. Arkansas Code § 7-1-104(a), concerning felonies under
election law, is amended to add an additional subdivision to read as follows:

(19) No person shall forge the signature of a voter on an
absentee ballot application, absentee ballot voter statement, or voter
registration application;

SECTION 2. Arkansas Code § 7-4-101(f), concerning the members,



1 officers, and meetings of the State Board of Election Commissioners, is
2 amended to add an additional subdivision to read as follows:

3 (17) Conduct an election integrity review of election-related
4 documents and records following each election cycle in the following odd-
5 numbered year under § 7-4-123.

6
7 SECTION 3. Arkansas Code § 7-4-120(b)(1), concerning complaints of
8 election law violations, is amended to add an additional subdivision to read
9 as follows:

10 (D) The State Board of Election Commissioners may file a
11 complaint within three (3) years following the alleged violation of an
12 election law or voter registration law if the alleged violation:

13 (i) Relates to a felony criminal provision of
14 election law;

15 (ii) Relates to a felony criminal provision of voter
16 registration law; or

17 (iii) Affects the accuracy of a certified election
18 result.

19
20 SECTION 4. Arkansas Code § 7-4-121(a)(1), concerning election audits
21 by the State Board of Election Commissioners, is amended to read as follows:
22 7-4-121. Election audits.

23 (a)(1) The State Board of Election Commissioners shall audit the
24 results of each preferential primary election and general election to ensure
25 the integrity and accuracy of the voting process.

26
27 SECTION 5. Arkansas Code Title 7, Chapter 4, Subchapter 1, is amended
28 to add an additional section to read as follows:

29 7-4-123. Election Integrity Review.

30 (a)(1) The State Board of Election Commissioners may conduct an
31 election integrity review of election related documents and records following
32 each election cycle in the odd-numbered years following an election.

33 (2) The counties to be selected to participate in the election
34 integrity review shall be selected by:

35 (A) Random selection in a public meeting of the board; or

36 (B) Designation by a two-thirds (2/3) vote of the board if

1 information obtained through the complaint process or by a certified election
2 monitor indicates that a substantial violation of election or voter
3 registration laws may have occurred in that county.

4 (3)(A) The random selection of counties under subdivision
5 (a)(2)(A) of this section shall be conducted in a public meeting.

6 (B) The board shall establish the number of counties to be
7 reviewed based on the available resources of the board.

8 (C) If a county was reviewed under this section, that
9 county will not be subject to a subsequent review under this section for a
10 period of four (4) years.

11 (b)(1) When conducting the election integrity review, the board may:

12 (A) Obtain and review any election or voter registration
13 record; and

14 (B) Conduct interviews with election officials, elected
15 officials, or others.

16 (2) The board may engage in the proactive review of voter
17 registration documents to the extent practical based on agency resources in
18 order to identify:

19 (A) Errors in the voter registration records; and

20 (B) Fraudulent activity reflected in the voter
21 registration records.

22 (3) The board may engage in the proactive review of absentee
23 voting documents in order to identify violations of law including but not
24 limited to the following:

25 (A) Fraudulent applications for an absentee ballot;

26 (B) Fraudulent completion of an absentee ballot voter
27 statement;

28 (C) Fraudulent return of an absentee ballot;

29 (D) Unlawful influence of an absentee voter by a third
30 party; and

31 (E) Failure to comply with the statutory requirement
32 regarding the sending and receiving of absentee ballots.

33 (4) The board may engage in the proactive review of other
34 documents related to the election to verify the accuracy and integrity of the
35 certified election results.

36 (c)(1) The board shall adopt a report that describes the finding of

1 the review no later than December 31 of the year in which the review is
2 conducted.

3 (2) The board shall deliver a copy of the report to the:

4 (A) Attorney General's office; and

5 (B) Joint Performance Review Committee.

6 (d) If the election integrity review indicates that a violation of
7 election law has occurred that is not a felony criminal violation and that
8 does not affect the accuracy of a certified election result, the board may:

9 (1) Compel an election official who is indicated as having
10 violated an election or voter registration law to attend supplemental
11 training to address the violation;

12 (2) Notify the person or entity who appointed the official of
13 the information obtained by the board; or

14 (3) Issue a letter of instruction.

15 (e) If the election integrity review indicates that a violation of
16 election law has occurred that is a felony criminal violation or that affects
17 the accuracy of a certified election result, the board may:

18 (1) Initiate a complaint under § 7-4-120; or

19 (2) Refer the matter to the appropriate law enforcement
20 authorities.

21 (f) If a county official refuses to provide records requested to
22 conduct a review under this section, the board may consider the failure to
23 provide documents as an indication that a criminal election law violation has
24 occurred authorizing the filing of a complaint under § 7-4-120 more than
25 thirty (30) days after the deadline to certify the election.

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27 */s/J. Petty*
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30 **APPROVED: 4/11/23**
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