

# ARKANSAS REGISTER

## Proposed Rule Cover Sheet



Secretary of State

John Thurston

500 Woodlane Street, Suite 026

Little Rock, Arkansas 72201 -1094

(501) 682 -5070

[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



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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

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Name of Rule Rules of Practice and Procedure

Newspaper Name Arkansas Democrat Gazette

Date of Publishing February 9<sup>th</sup>, 10<sup>th</sup>, and the 11<sup>th</sup> 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 Practice and Procedure

**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 194 of 2023 and A.C.A. §§ 7-4-101(f)(12)'s and 7-9-111(i)'s repeal.

**Legal Authority for Rule:** 7-4-101(f)(12) (2021)'s repeal and 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:**

This amendment, incorporates the repeal of authority for the SBEC to conduct Popular Name and Ballot Title reviews for statewide initiative petitions enacted by Act 194 of 2023. It also provides some minor modifications to comply with BLR styling.

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**Two Rules Repealed:** No    **Exception from the Governor:** Yes

**First Rule Repealed:**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**Second Rule Repealed:**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](mailto: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](mailto:garritym@blr.arkansas.gov), for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

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- \* 1. What is the official title of this rule?

Rules of Practice and Procedure

2. What is the subject of the proposed rule? The Rule provides guidance for the operation of the State Board, its practices and procedures. These include meeting requirements, staff organization, processing declaratory orders, and appealing polling site closures.

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. **This Rule is amended to incorporate changes in SBEC's authority that was repealed by Act 194 of 2023. The Act removed the SBEC's authority and responsibility to review Popular Names and Ballot Titles for statewide initiative petitions.**

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.

**This is not a new rule but a repeal of authority pursuant to Act 194 of 2023. The repeal of authority necessitated this amendment to remove the process of review for Popular Names and Ballot Titles for statewide initiative petitions.**

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)(12) (2021) repealed by Act 194 of 2023; see also 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). **Act 194 of 2023.**

11. What is the reason for this proposed rule? Why is it necessary? **To incorporate the repeal of authority caused by Act 194 of 2023. The Act repealed the SBEC's authority and responsibility to review the Popular Names and Ballot Titles for statewide initiative petitions. The Rule, otherwise provides general direction for the operation of the SBEC, its staffing, meeting requirements, declaratory order process, and processing appeals of polling site closures within a county.**

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.*

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

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

16. 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"**

17. 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.**

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

If yes, please explain.

## 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 Practice and Procedure.

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: **\$0**

Total: **\$0**

(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



Secretary of State  
**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 PRACTICE AND PROCEDURE

The State Board of Election Commissioners met on August 15, 2023, and approved changes to the “Rules of Practice and Procedure.” This proposed amendment is being promulgated to incorporate changes approved by Act 194 of 2023, which moved the review of Ballot Titles and Popular Names for statewide initiative petitions from the SBEC to the Attorney General’s Office.

### **PURPOSE AND SUMMARY OF SUBSTANTIVE CHANGES**

This amendment is because of the adoption of Act 194 of 2023. Act 194 removed the responsibility to review the ballot title and popular names of statewide initiative petitions from the SBEC and assigned that responsibility to the Attorney General’s office. The amendment deletes the process the SBEC established to review these titles and names.

### **ADDITIONAL DISCUSSION**

The Rule is also amended to make minor stylistic changes to comply more closely with BLR style guides.

## 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 94<sup>th</sup> General Assembly. You may view the proposed amended rules and their accompanying Executive Summaries at [www.arkansas.gov/sbec/rules](http://www.arkansas.gov/sbec/rules) or you may obtain copies by contacting the Board by email at [info.sbec@arkansas.gov](mailto: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](mailto: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 PRACTICE AND PROCEDURE**

**(Effective December 29, 2015; Revised \_\_\_\_\_)**



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

## **Scope of Rules**

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

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

## **§ 1101 Board Organization**

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

- (6) A majority of the members of the board present shall vote on any matter before the board for any decision of the board to become effective. However, no sanctions for violations of election laws or voter registration laws may be imposed without the affirmative vote of at least four members. [A.C.A. § 7-4-101(e)(3)]
- (7) The following matters shall be by motion, followed by a second, for a vote of the board to be valid:
  - a. All matters requiring affirmative action by the full board or one of its members;
  - b. All decisions on public positions taken by the full board;
  - c. All decisions on declaratory orders; and
  - d. All decisions regarding findings of fact and conclusions of law or other actions regarding a person accused of violating the board's regulations or laws under the board's jurisdiction.
- (8) The board may by majority vote delegate the execution of any official duty or action to its chair, one of the other members, or the director.
- (9) A vacancy on the board shall not impair the right of the board to exercise its statutory powers and authority, subject to the requirement that a quorum be present and participating before any action of the board shall be considered valid.

## **§ 1102 Staff Organization**

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

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

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

### **§ 1103 Meeting Times and Sites**

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

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

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

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

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

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

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



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

#### **§ 1104 Meeting Procedures**

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

### **§ 1105 Declaratory Orders Defined**

A declaratory order is a means of resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the State Board of Election Commissioners has authority. A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules or orders may apply to the petitioner's particular circumstances. A petition must describe the potential impact of statutes, rules, or orders upon the petitioner's interests. [A.C.A. § 25-15-202]

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

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

### **§ 1107 Declaratory Order**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DRAFT – MARKUP COPY

Agency #108.00

# **RULES OF PRACTICE AND PROCEDURE**

**(Effective December 29, 2015; Revised ~~May 7, 2022~~)**



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

## Scope of Rules

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

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

### § 1101 Board Organization

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

- (6) A majority of the members of the board present shall vote on any matter before the board for any decision of the board to become effective. However, no sanctions for violations of election laws or voter registration laws may be imposed without the affirmative vote of at least four members. [A.C.A. § 7-4-101(e)(3)]
- (7) The following matters shall be by motion, followed by a second, for a vote of the board to be valid:
  - a. All matters requiring affirmative action by the full board or one of its members;
  - b. All decisions on public positions taken by the full board;
  - c. All decisions on declaratory orders; and
  - d. All decisions regarding findings of fact and conclusions of law or other actions regarding a person accused of violating the board's regulations or laws under the board's jurisdiction.
- (8) The board may by majority vote delegate the execution of any official duty or action to its chair, one of the other members, or the director.
- (9) A vacancy on the board shall not impair the right of the board to exercise its statutory powers and authority, subject to the requirement that a quorum be present and participating before any action of the board shall be considered valid.

## **§ 1102 Staff Organization**

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



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

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

### **§ 1103 Meeting Times and Sites**

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

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

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

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

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

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

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

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

#### **§ 1104 Meeting Procedures**

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

### **§ 1105 Declaratory Orders Defined**

A declaratory order is a means of resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the State Board of Election Commissioners has authority. A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules or orders may apply to the petitioner's particular circumstances. A petition must describe the potential impact of statutes, rules, or orders upon the petitioner's interests. [A.C.A. § 25-15-202]

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

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

### **§ 1107 Declaratory Order**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

members of the State Board of Election Commissioners and the county board of election commissioners for the county at issue.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

State of Arkansas

As Engrossed: H2/6/23 H2/13/23

94th General Assembly

# A Bill

Regular Session, 2023

HOUSE BILL 1320

By: Representative Ray

By: Senator J. Payton

## For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING INITIATIVE  
PETITIONS AND REFERENDUM PETITIONS; TO REQUIRE THE  
ATTORNEY GENERAL TO REVIEW AN INITIATIVE PETITION OR  
REFERENDUM PETITION BEFORE CIRCULATION; TO DECLARE AN  
EMERGENCY; AND FOR OTHER PURPOSES.

## Subtitle

TO AMEND THE LAW CONCERNING INITIATIVE  
PETITIONS AND REFERENDUM PETITIONS; TO  
REQUIRE THE ATTORNEY GENERAL TO REVIEW AN  
INITIATIVE PETITION OR REFERENDUM  
PETITION BEFORE CIRCULATION; AND TO  
DECLARE AN EMERGENCY.

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

SECTION 1. Arkansas Code § 7-4-101(f)(12), concerning the authority of  
the State Board of Election Commissioners, is repealed:

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

SECTION 2. Arkansas Code § 7-9-107 is amended to read as follows:

7-9-107. Filing of original draft before circulation.

(a) Before any initiative petition or referendum petition ordering a  
vote upon any amendment or act shall be circulated for obtaining signatures



1 of petitioners, the sponsors shall ~~file~~ submit the original draft with the  
2 ~~Secretary of State Attorney General~~.

3 (b) The original draft shall include:

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

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

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

7 (c) The ~~Secretary of State Attorney General~~ shall return to the  
8 sponsor a file-marked copy of the original draft that shall serve as evidence  
9 that the original draft was filed in compliance with this section.

10 (d)~~(1) The sponsor may begin circulating an initiative petition or~~  
11 ~~referendum petition upon receipt of the file-marked copy under subsection (e)~~  
12 ~~of this section~~ Within ten (10) business days, the Attorney General shall  
13 approve and certify or shall substitute and certify a more suitable and  
14 correct ballot title and popular name for each amendment or act.

15 (2) The ballot title so submitted or supplied by the Attorney  
16 General shall briefly and concisely state the purpose of the proposed  
17 measure.

18 (e) If, as a result of his or her review of the ballot title and  
19 popular name of a proposed initiated act or a proposed amendment to the  
20 Arkansas Constitution, the Attorney General determines that the ballot title  
21 or the nature of the issue, is presented in such manner that the ballot title  
22 would be misleading or designed in such manner that a vote "FOR" the issue  
23 would be a vote against the matter or viewpoint that the voter believes  
24 himself or herself casting a vote for, or, conversely, that a vote "AGAINST"  
25 the issue would be a vote for a viewpoint that the voter is against, the  
26 Attorney General may reject the entire ballot title, popular name, and  
27 petition and state his or her reasons therefor and instruct the petitioners  
28 to redesign the proposed measure and the ballot title and popular name in a  
29 manner that would not be misleading.

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

33  
34 SECTION 3. Arkansas Code § 7-9-111(i), concerning the determination of  
35 the sufficiency of a statewide initiative petition or statewide referendum  
36 petition is repealed.

~~(i)(1) When a statewide initiative petition or statewide referendum petition is submitted to the Secretary of State for determination of the sufficiency of the signatures, the Secretary of State shall submit the ballot title and popular name of the proposed measure to the board for certification as required by Arkansas Constitution, Article 5, § 1.~~

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

~~(3) If the board determines that the ballot title and popular name, and the nature of the issue, is presented in a manner that is not misleading and not designed in such manner that a vote "FOR" the issue would be a vote against the matter or viewpoint that the voter believes himself or herself to be casting a vote for, or, conversely, that a vote "AGAINST" an issue would be a vote for a viewpoint that the voter is against, the ballot title and popular name of the statewide initiative petition or statewide referendum petition shall be certified to the Secretary of State to be placed upon the ballot if the signatures on the statewide initiative petition or statewide referendum petition are determined to be sufficient.~~

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

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

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

~~(b) If the ballot title and popular name are not certified, the sponsor shall not submit a redesigned ballot title or popular name to the board; and~~

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

~~(B) If the ballot title and popular name are not certified~~

1 ~~under subdivision (i)(4)(A) of this section, the Secretary of State shall~~  
2 ~~declare the proposed measure insufficient for inclusion on the ballot for the~~  
3 ~~election at which the statewide initiative petition or statewide referendum~~  
4 ~~petition would be considered.~~

5  
6 SECTION 4. Arkansas Code § 7-9-112 is amended to read as follows:

7 (a) If the Secretary of State determines that the signatures submitted  
8 on a statewide initiative petition or statewide referendum petition are  
9 insufficient ~~or the State Board of Election Commissioners does not certify~~  
10 ~~the ballot title or popular name of a proposed measure resulting in the~~  
11 ~~Secretary of State's finding the proposed measure insufficient~~, the following  
12 persons may challenge that determination by petition petitioning the Supreme  
13 Court to determine if the signatures ~~submitted on the statewide initiative~~  
14 ~~petition or statewide referendum petition~~ are sufficient ~~or if the ballot~~  
15 ~~title or popular name of the proposed measure should be certified:~~

16 (1) The sponsor of the statewide initiative petition or  
17 statewide referendum petition; or

18 (2) A registered voter.

19 (b) The Supreme Court shall act expeditiously to review the  
20 sufficiency of the signatures ~~or the certification of the ballot title or~~  
21 ~~popular name~~ in a timely manner and shall make every effort to reach a  
22 decision in advance of the election at which the proposed measure would be  
23 considered.

24 (c)(1)~~(A)~~ If the Supreme Court decides that the signatures submitted  
25 on a statewide initiative petition or statewide referendum petition are  
26 sufficient, the Supreme Court shall order the Secretary of State to certify  
27 the sufficiency for placing the proposed measure on the election ballot if  
28 the ballot title and popular name are sufficient.

29 ~~(B) If the Supreme Court decides that the ballot title and~~  
30 ~~popular name should be certified, the Supreme Court shall order the board to~~  
31 ~~certify the ballot title and popular name to the Secretary of State, who~~  
32 ~~shall declare the proposed measure sufficient to be placed upon the ballot if~~  
33 ~~the signatures on the statewide initiative petition or statewide referendum~~  
34 ~~petition are sufficient.~~

35 (2) On a proper showing that the signatures are not sufficient  
36 ~~or the ballot title or popular name should not be certified~~, the Supreme

1 Court may enjoin the Secretary of State from certifying the proposed measure  
2 for inclusion on the ballot for the election at which the proposed measure  
3 would be considered or, in the event that the proposed measure will appear on  
4 the election ballot, from canvassing and certifying the vote on the proposed  
5 measure.

6  
7 SECTION 5. Arkansas Code § 7-9-126(b)(2), concerning the count of  
8 signatures for an initiative petition or referendum petition, is amended to  
9 read as follows:

10 (2) The petition does not conform to the ~~original draft filed~~  
11 version of the measure approved and certified under § 7-9-107;

12  
13 SECTION 6. Arkansas Code § 7-9-126(c)(6), concerning the count of  
14 signatures for an initiative petition or referendum petition, is amended to  
15 read as follows:

16 (6) A signature obtained before the ~~filing of the original draft~~  
17 ~~for circulation~~ submission and approval of the ballot title under § 7-9-107;

18  
19 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the General  
20 Assembly of the State of Arkansas that, at this time, no state entity  
21 certifies the legal sufficiency of the popular name and ballot title for  
22 statewide initiative and referendum petitions before they are circulated to  
23 Arkansans; that the lack of such a review and certification process makes it  
24 far more likely that Arkansans will be asked to sign a petition that bears a  
25 legally insufficient popular name or ballot title; that the Attorney General  
26 has historically been the state entity to review and certify the legal  
27 sufficiency of popular names and ballot titles for statewide initiative and  
28 referendum petitions; that the Arkansas Supreme Court has held that the  
29 process under which the Attorney General provides such a review and  
30 certification is in furtherance of Arkansans' rights under Arkansas  
31 Constitution, Amendment 7; that the process will preserve the public peace,  
32 health, and safety by protecting Arkansans from signing a legally  
33 insufficient petition; and that this act is immediately necessary to help  
34 protect Arkansans' rights under Arkansas Constitution, Amendment 7 by  
35 providing for a process of review and certification before sponsors collect  
36 signatures. Therefore, an emergency is declared to exist, and this act being

immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

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

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

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

/s/Ray

APPROVED: 3/6/23