

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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



Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

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

DEPARTMENT _____
 BOARD/COMMISSION _____
 BOARD/COMMISSION DIRECTOR _____
 CONTACT PERSON _____
 ADDRESS _____
 PHONE NO. _____ EMAIL _____
 NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING _____
 PRESENTER EMAIL(S) _____

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (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?

2. What is the subject of the proposed rule? _____
These rules concern independent expenditures and independent expenditure committees.
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes 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? Yes No

4. Is this rule being filed for permanent promulgation? Yes No

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

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire? _____

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

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

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 Are two (2) rules being repealed in accord with Executive Order 23-02?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

If yes, please list the rules being repealed.

If no, please explain.

It is the position of the Commission that this proposed amendment would not create a new rule, but rather keep existing rules up-to-date and in conformity with the law. If this is considered a new rule, then the Commission respectfully requests the exemption be granted. Moreover, the Commission is seeking to repeal the "Rules on Display of Campaign Literature..."

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes 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 No

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.

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).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes No

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

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).

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

If yes, please complete the following:

Date: TBD

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. TBD

15. What is the proposed effective date for this rule? _____

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.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. 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.

19. Is the rule expected to be controversial? Yes No

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **EMAIL** _____

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 _____

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes No

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes No

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If 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:
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

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

Total _____

Next Fiscal Year

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

Total _____

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

Current Fiscal Year

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

Total _____

Next Fiscal Year

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

Total _____

5. What is the total estimated cost by fiscal year to any private individual, 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

\$ _____

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

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

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

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

NOTICE OF RULE MAKING AND PUBLIC HEARING ARKANSAS ETHICS COMMISSION

NOTICE is hereby given that the Arkansas Ethics Commission intends to amend its existing Rules on Ballot and Legislative Question Committees, Rules on Campaign Finance & Disclosure, Rules on Conflicts, Rules on Display of Campaign Literature on Vehicle of Candidate or Public Official While on State Capitol Grounds (seeking to repeal), Rules on Independent Expenditures, Rules on Local-Option Ballot Question Committees, Rules on Political Committees, and Rules of Practice & Procedure. The proposed amendments to the rules are intended to implement and administer the provisions of Acts 85, 307, 455, 456, 552, 753, and 883 of the 2023 Regular Session of the 94th General Assembly, and to further implement and administer applicable provisions of the laws under the Commission's jurisdiction. Copies of the proposed amended rules may be obtained from the Commission, which is located at 501 Woodlane, Suite 301N, Little Rock, Arkansas, 72201, telephone (501) 324-9600, and may also be found at www.ArkansasEthics.com.

Interested parties should forward written comments to Graham F. Sloan, Director, Post Office Box 1917, Little Rock, Arkansas 72203-1917, by 5:00 p.m. on Wednesday, September 20, 2023. The Commission will hold a public hearing on Friday, September 22, 2023, beginning at 9:00 a.m. at the Commission's office in Little Rock to consider the written submissions and receive oral comments on the aforementioned sets of rules.



STATE OF ARKANSAS
SARAH HUCKABEE SANDERS
GOVERNOR

Request for Governor's Approval of Proposed Rule or Regulation

Department /Agency: Arkansas Ethics Commission

Short Title of Rule: Rules on Independent Expenditures

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: N/A

Legal Authority for Rule: §§ 7-6-217 (g), 7-6-220, and 7-6-227

Proposed Effective Date: TBD

Emergency Rule: Yes No

Expedited Rule Requested: Yes No

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

The purpose of these proposed amendments is to bring the Rules on Independent Expenditures into conformity with the legislation passed during the 94th General Assembly of the Arkansas Legislature, including Acts 753 and 307 of 2023. Likewise, there is a small grammatical change that was recommended by the Bureau of Legislative Research ("BLR") in the context of the codifications of the Code of Arkansas Rules.

The amendments include lowering the reporting threshold for independent expenditures from \$500 to \$200, modifying the reporting calendar to mirror the candidate calendar, raising the itemization threshold from \$50 to \$200, providing clarity on "Paid for by" language that must appear on printed campaign materials, and removing the concept of "and/or" from the rules. All of these amendments stem from the legislation passed in 2023 or are upon the recommendation of the BLR.

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

Public Hearing Occurred on Rule: Yes No TBD for date

Controversial: Yes No

Two Rules Repealed:**Exception from the Governor: Requested**

The Commission is seeking that an exemption be granted to the provision requiring that the agency must submit two (2) rules for repeal for every one (1) rule presented for rulemaking. It is the position of the Commission that this proposed amendment would not create a new rule, but rather keep existing rules up-to-date and in conformity with the law. If this is considered a new rule, then the Commission respectfully requests the exemption be granted.

Moreover, the Commission seeks to repeal the Rules on Display of Campaign Literature on Vehicles of Candidates or Public Officials on Capitol Grounds.

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.

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

Contact Information

Department POC for Rules Process: Graham F. Sloan

Department POC for this Rule: Graham F. Sloan

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

Agency # 153.00

Mark-up

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RULES ON INDEPENDENT EXPENDITURES

ARKANSAS ETHICS COMMISSION
910 West Second Street, Suite 100
Post Office Box 1917
Little Rock, Arkansas 72203-1917
(501) 324-9600 or (800) 422-7773
Facsimile (501) 324-9606

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§ 700 Definitions.

(a) Contribution – As used in these rules, the term “contribution” means, whether direct or indirect, advances, deposits, or transfers of funds, contracts, or obligations, whether or not legally enforceable, payments, gifts, subscriptions, assessments, payment for services, dues, advancements, forbearance, loans, pledge or promise of money or anything of value, whether or not legally enforceable, to a candidate, committee, or holder of elective office, made for the purpose of influencing the nomination or election of any candidate.

“Contribution” includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events; the granting of discounts or rebates by television stations, radio stations, and newspapers not extended on an equal basis to all candidates for the same office; and any payments for the services of any person serving as an agent of a candidate or committee by a person other than the candidate or committee or persons whose expenditures the candidates or committee must report under these rules. The term “contribution” further includes any transfer of anything of value received by a committee from another committee. “Contribution” shall not include noncompensated, nonreimbursed, volunteer personal services or travel.

“Contribution and expenditure” shall not include activity sponsored and funded by a political party that meets the definition of “political party” under Ark. Code Ann. § 7-1-101 or the requirements of Ark. Code Ann. § 7-7-205 to promote its candidates or nominees through events such as dinners, luncheons, rallies, or similar gatherings and shall not include nonpartisan activity designed to encourage individuals to register to vote or to vote or any communication by any membership organization to its members or stockholders if the membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election or election of any candidate.

(b) Expenditure – As used in these rules, the term “expenditure” means a purchase, payment, distribution, gift, loan, or advance of money or anything of value, and a contract, promise, or agreement to make an expenditure, made for the purpose of influencing the nomination or election of any candidate.

“Contribution and expenditure” shall not include activity sponsored and funded by a political party that meets the definition of “political party” under Ark. Code Ann. § 7-1-101 or the requirements of Ark. Code Ann. § 7-7-205 to promote its candidates or nominees through events such as dinners, luncheons, rallies, or similar gatherings and shall not include nonpartisan activity designed to encourage individuals to register to vote or to vote or any communication by any membership organization to its members or stockholders if the membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election or election of any candidate.

(c) Independent Expenditure – As used in these rules, the term “independent expenditure” means any expenditure which is not a contribution and expressly advocates the election or defeat of a clearly identified candidate for office; is made without arrangement, cooperation, or consultation between any candidate or any authorized

committee or agent of the candidate and the person making the expenditure or any authorized agent of that person; and is not made in concert with or at the request or suggestion of any candidate or any authorized committee or agent of the candidate.

(d) Independent Expenditure Committee – As used in these rules, the term “independent expenditure committee” means any person who receives contributions from one (1) or more persons in order to make an independent expenditure and is registered pursuant to Ark. Code Ann. § 7-6-227 prior to making expenditures.

(e) Person – As used in these rules, the term “person” means any individual, proprietorship, firm, partnership, joint venture, syndicate, labor union, business trust, company, corporation, association, committee, or any other organization or group of persons acting in concert. It shall also include a political party that meets the definition of a political party under Ark. Code Ann. § 7-1-101 or a political party that meets the requirements of Ark. Code Ann. § 7-7-205, county political party committees, and legislative caucus committees.

(f) Printed Campaign Materials –

(1) “Printed campaign materials” means:

(A) Literature mailed to an elector that is intended to or calculated to influence the vote of an elector in an election in this state, including without limitation signs, banners, flyers, and pamphlets; and

(B) Yard signs and push cards intended to or calculated to influence the vote of an elector in an election in this state.

(2) “Printed campaign materials” does not mean political paraphernalia, including without limitation stickers, buttons, pens, T-shirts, nail files, or other similar trinkets.

§ 701 Registration by Independent Expenditure Committees

(a)(1)(A) To qualify as an independent expenditure committee, the committee is required to register with the Secretary of State within fifteen (15) days after accepting contributions during a calendar year that exceed five hundred dollars (\$500) in the aggregate.

(B) Registration shall be annually renewed by January 15, unless the committee has ceased to exist.

(C) Registration shall be on forms provided by the Secretary of State, and the contents therein shall be verified by an affidavit of an officer of the committee.

(2)(A) The committee shall designate a resident agent who shall be an individual who resides in the State of Arkansas.

(B) No contribution shall be accepted from a committee and no expenditure shall be made by a committee that has not registered and does not have a resident agent.

(3) An out-of-state committee shall be required to comply with the registration and reporting provisions of these rules if the committee makes an independent expenditure or independent expenditures within the State of Arkansas that in the aggregate exceed more than five hundred dollars (\$500) during a calendar year.

(b) The registration form of an independent expenditure committee shall contain the following information:

(1) The name, address, and, where available, phone number of the committee and the name, address, phone number, and place of employment of each of its officers, provided if the committee's name is an acronym, then both it and the words forming the acronym shall be disclosed;

(2) The full name and street address, city, state, and zip code of each financial institution the committee uses for purposes of receiving contributions or making expenditures within the State of Arkansas;

(3) A written acceptance of designation as a resident agent;

(4) A certification by a committee officer, under penalty of false swearing, that the information provided on the registration is true and correct; and

(5) A clause submitting the committee to the jurisdiction of the State of Arkansas for all purposes related to compliance with the provisions of subchapter 2 of chapter 6, Title 7 of the Arkansas Code.

(c) (1) When a committee makes a change to any of the information required in § 701(b) of these rules, an amendment is required to be filed within ten (10) days to reflect the change.

(2) A committee failing to file an amendment shall be subject to a late filing fee of ten dollars (\$10.00) for each day the change is not filed.

§ 702 Reporting of Independent Expenditures

(a) A person who or an independent expenditure committee which makes independent expenditures in an aggregate amount or value in excess of ~~five hundred dollars (\$500)~~ two hundred dollars (\$200) in a calendar year shall file reports with the Secretary of State:

(1)(A) No later than thirty (30) days prior to preferential primary elections, general elections, and special elections covering the period ending thirty five (35) days prior to such elections; fifteen (15) days following the month in which the two hundred dollar (\$200) threshold required under this section is met, the first financial report shall be filed.

(B) Each subsequent report shall be filed no later than fifteen (15) days after the end of each month until the election is held, except as required in subdivision (a)(1)(C) of this section.

(C) For any month in which certain days of that month are included in a preelection financial report required under subdivision (a)(2) of this section, no monthly report for that month shall be due, but those days of that month shall be carried forward and included in the final financial report;

(2) No later than seven (7) days prior to preferential primary elections, runoff elections, general elections, and special elections covering the period ending ten (10) days prior to such elections; and

(3) As for a final report, no later than thirty (30) days after the end of the month in which the last election is held at which the candidate seeks nomination or election.

(b) Such reports shall include:

(1) In the case of an individual making such an expenditure, the name, address, telephone number, principal place of business, employer, and occupation of the individual;

(2) In the case of a committee, the name, address, employer, and occupation of its officers;

(3) In the case of a person who is not an individual, the principal name of the entity, the address, and the name, address, employer, and occupation of its officers;

(4) The total amount of contributions received, with loans stated separately, and the total amount of expenditures made during the filing periods, and the cumulative amount of those totals;

(5) The name and address of each person who made a contribution or contributions that in the aggregate exceeded ~~fifty dollars (\$50.00)~~ two hundred dollars (\$200);

(6) The contributor's principal place of business, employer, occupation, the amount contributed, the date the contribution was accepted by the committee, and the aggregate contributed for each election;

(7) The name and address of each person who contributed a nonmoney item, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals;

(8) An itemization of all single expenditures made which exceed one hundred dollars (\$100), including the amount of the expenditure, the name and address of any person to whom the expenditure was made and the date the expenditure was made;

(9) A list of all paid workers and the amount the workers were paid;

(10) A list of all expenditures by categories, including, but not limited to:

- (A) Television, radio, print, and other advertising;
- (B) Direct mail;
- (C) Office supplies;
- (D) Rent;
- (E) Travel;
- (F) Expenses;
- (G) Entertainment; and
- (H) Telephone.

(11) The total amount of all nonitemized expenditures made during the filing period; and

(12) The current balance of committee funds.

(c) The information required in § 702(b)(4)-(10) of these rules may be provided in the form of schedules attached to the report.

(d) The report shall be verified by an affidavit of an officer of the committee stating that to the best of his or her knowledge and belief the information disclosed is a complete, true, and accurate financial statement of the committee's contributions received and made.

(e)(1) A report is timely filed if it is filed in electronic form through the official website of the Secretary of State on or before the date that the report is due.

(2)(A) The Secretary of State shall receive reports in a readable electronic format that is acceptable to the Secretary of State and approved by the Arkansas Ethics Commission.

(B) The Arkansas Ethics Commission shall approve the format used by the Secretary of State for the filing of independent expenditure reports in electronic form to ensure that all required information is requested.

(C) The official website of the Secretary of State shall allow for searches of independent expenditure report information filed in electronic form.

(3)(A) A person required to file reports or register in paper form under Ark. Code Ann. § 7-6-220 may file reports or register in paper form if:

(i) The person does not have access to the technology necessary to submit reports or registration in electronic form; and

(ii) Submitting reports or registration in electronic form would constitute a substantial hardship for the person.

(B) A person filing reports or registration in paper form under subdivision (e)(3)(A) of this rule shall submit with its first report or registration a notarized affidavit on a form prepared by the Secretary of State declaring that:

(i) The person does not have access to the technology necessary to submit reports or registration in electronic form;

(ii) Submitting reports or registration in electronic form would constitute a substantial hardship for the person; and

(iii) The person agrees to file all other reports in paper form for the duration of the period of registration.

(4) The Secretary of State shall:

(A) Not accept a report or registration in paper form under subdivision (e)(3)(A) of this rule if a notarized affidavit was not submitted with the:

(i) Registration of a political action committee; or

(ii) First report of a person or independent expenditure committee;

(B) Provide written notice to the political action committee within five (5) business days if the registration in paper form was not filed or accepted;

(C) Provide written notice to a political action committee, person, or independent expenditure committee within five (5) business days if a report in paper form was not filed or accepted; and

(D) Provide the reason the registration or report in paper form was not filed or accepted.

(5) The Secretary of State shall make available to persons wishing to file reports in paper form under Ark. Code Ann. § 7-6-231:

- (A) Information on the deadlines for filing required reports; and
- (B) (i) Appropriate forms and instructions for complying with the deadlines.

(ii) The Arkansas Ethics Commission shall approve the forms and instructions used by the Secretary of State under Ark. Code Ann. § 7-6-231 to ensure that all required information is requested.

(6) Reports shall be filed on the forms furnished by the Secretary of State, except that computer-generated contribution and expenditure reports shall be accepted by the Secretary of State and the Arkansas Ethics Commission provided that all of the requisite elements are included.

(7)(A) A report submitted in paper form under Ark. Code Ann. § 7-6-231 other than a preelection report is timely filed if it is either hand delivered or mailed to the Secretary of State, properly addressed, and postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on or before the date that the report is due.

(B) A preelection report submitted in paper form under Ark. Code Ann. § 7-6-231 is timely filed if it is received by the Secretary of State no later than seven (7) days before the election for which it is filed.

(C) The Secretary of State shall accept a report via facsimile, provided the original is received by the Secretary of State within ten (10) days of the date of facsimile transmission.

(8)(A) The Secretary of State shall make available reports submitted in paper form on a portion of the official website of the Secretary of State.

(B) The Secretary of State shall comply with the requirements of Ark. Code Ann. § 7-6-214(c) regarding the “paper filer” designation and publication requirements for all reports submitted in paper form.

§ 703 Out-of-State Independent Expenditure Committees

(a) An out-of-state independent expenditure committee is required to comply with the registration ~~and reporting~~ provisions of §§ 701-702 and is subject to the jurisdiction of the State of Arkansas for all purposes related to compliance with the registration provisions of subchapter 2 of chapter 6, Title 7 of the Arkansas Code, if the committee makes an independent expenditure or independent expenditures within the State of Arkansas that in the aggregate exceed more than five hundred dollars (\$500) during a calendar year.

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(b) An out-of-state independent expenditure committee is required to comply with the reporting provisions of § 702 and is subject to the jurisdiction of the State of Arkansas for all purposes related to compliance with the reporting provisions of subchapter 2 of chapter 6, Title 7 of the Arkansas Code, if the committee makes an independent expenditure or independent expenditures within the State of Arkansas that in the aggregate exceed more than two hundred dollars (\$200) during a calendar year.

§ 704 Paid For By Disclaimer

(a) All articles, statements, or communications appearing in any newspaper printed or circulated in this state intended or calculated to influence the vote of any elector in any election and for the publication of which a consideration is paid or to be paid shall clearly contain the words “paid Political Advertisement”, “Paid Political Ad”, or “Paid for by” the candidate, committee, or person who paid for the message. Both the persons placing and the persons publishing the articles, statements, or communications shall be responsible for including the required disclaimer. In addition, all articles, statements, or communications appearing in any radio, television, or any other electronic medium intended or calculated to influence the vote of any elector in any election and for the publication of which a consideration is paid or to be paid shall clearly contain the words “Paid Political Advertisement” or “Paid Political Ad” or “Paid for by”, “Sponsored by”, or “Furnished by” the true sponsor of the advertisement. Both the persons placing and the persons publishing the articles, statements, or communications shall be responsible for including the required disclaimer.

(b)(1) Printed campaign materials as defined in § 700(f) of these rules, shall clearly contain the words “Paid for by” followed by the name of the candidate, committee, or person who paid for the campaign sign, campaign literature, or other printed campaign materials.

(2) Subdivision (b)(1) of this section applies only to campaign signs, campaign literature, and other printed campaign materials created by or sponsored by a political candidate, the campaign of a political candidate, a political action committee, or an independent expenditure committee.

(3) When the printed campaign material is a two-sided sign, the “Paid for by” language required by this subsection shall appear on both sides of the sign.

§ 705 Penalties

(a) If the Arkansas Ethics Commission finds that a person or an independent expenditure committee has committed a violation of Ark. Code Ann. § 7-6-220, ~~and~~ ~~or~~ Ark. Code Ann. § 7-6-227, or both, then it may do one or more of the following:

~~(1) impose~~ Impose a fine of not less than fifty dollars (\$50.00) and not more than three thousand, five hundred dollars (\$3,500.00); ~~and/or or~~

~~(2) issue~~ Issue a public letter of caution, warning, or reprimand.

~~(b)~~ In addition, a committee failing to file an amendment within ten (10) days as required by § 701(c) shall be subject to a late filing fee of ten dollars (\$10.00) for each day the change is not filed.

§ 706 Records Retention

(a) An independent expenditure committee required to comply with the registration requirements of § 701 shall maintain for a period of four (4) years records evidencing the name, address, and place of employment of each person that contributed to the independent expenditure committee, along with the amount contributed. Such a committee shall also maintain for a period of four (4) years records evidencing each independent expenditure made by the committee, along with the amount of each expenditure.

(b) A person required to comply with the reporting requirements of § 702 shall maintain for a period of four (4) years records evidencing each independent expenditure made by the person, along with the amount of each expenditure.

§ 707 Administrative Expenses of Independent Expenditure Committees

It is permissible for an independent expenditure committee to pay reasonable administrative expenses out of the contributions it has received.

Summary

Proposed Amendments to the Rules on Independent Expenditures

PURPOSE:

The purpose of these proposed amendments is to bring the Rules on Independent Expenditures into conformity with the legislation passed during the 94th General Assembly of the Arkansas Legislature. Likewise, there is a small grammatical change that was recommended by the Bureau of Legislative Research (“BLR”) in the context of the codifications of the Code of Arkansas Rules.

DISCUSSION:

Act 307 of 2023 amended the reporting schedule for Independent Expenditures (“IE”). It now provides that the first IE report is due within fifteen (15) days following the month in which the five hundred-dollar (\$500) threshold required under this section is met. Likewise, each subsequent report shall be filed no later than fifteen (15) days after the end of each month until the election is held.

Act 307 of 2023 provided that when the printed campaign material is a two-sided sign, the “Paid for by” language required by this subsection shall appear on both sides of the sign.

Act 753 of 2023 lowered the trigger amount for IE reporting from \$500 to \$200. Act 753 of 2023 raised the itemization threshold for contributions reported on Contribution and expenditure reports filed by state and district candidates from \$50 to \$200, which in turn, changes it for IEs as well.

Likewise, there is a small grammatical change that was recommended by the BLR in the context of the codifications of the Code of Arkansas Rules, specifically removing and replacing the phrase “and/or” whenever possible.

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RULES ON INDEPENDENT EXPENDITURES

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§ 700 Definitions.

(a) **Contribution** – As used in these rules, the term “contribution” means, whether direct or indirect, advances, deposits, or transfers of funds, contracts, or obligations, whether or not legally enforceable, payments, gifts, subscriptions, assessments, payment for services, dues, advancements, forbearance, loans, pledge or promise of money or anything of value, whether or not legally enforceable, to a candidate, committee, or holder of elective office, made for the purpose of influencing the nomination or election of any candidate.

“Contribution” includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events; the granting of discounts or rebates by television stations, radio stations, and newspapers not extended on an equal basis to all candidates for the same office; and any payments for the services of any person serving as an agent of a candidate or committee by a person other than the candidate or committee or persons whose expenditures the candidates or committee must report under these rules. The term “contribution” further includes any transfer of anything of value received by a committee from another committee. “Contribution” shall not include noncompensated, nonreimbursed, volunteer personal services or travel.

“Contribution and expenditure” shall not include activity sponsored and funded by a political party that meets the definition of “political party” under Ark. Code Ann. § 7-1-101 or the requirements of Ark. Code Ann. § 7-7-205 to promote its candidates or nominees through events such as dinners, luncheons, rallies, or similar gatherings and shall not include nonpartisan activity designed to encourage individuals to register to vote or to vote or any communication by any membership organization to its members or stockholders if the membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election or election of any candidate.

(b) **Expenditure** – As used in these rules, the term “expenditure” means a purchase, payment, distribution, gift, loan, or advance of money or anything of value, and a contract, promise, or agreement to make an expenditure, made for the purpose of influencing the nomination or election of any candidate.

“Contribution and expenditure” shall not include activity sponsored and funded by a political party that meets the definition of “political party” under Ark. Code Ann. § 7-1-101 or the requirements of Ark. Code Ann. § 7-7-205 to promote its candidates or nominees through events such as dinners, luncheons, rallies, or similar gatherings and shall not include nonpartisan activity designed to encourage individuals to register to vote or to vote or any communication by any membership organization to its members or stockholders if the membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election or election of any candidate.

(c) **Independent Expenditure** – As used in these rules, the term “independent expenditure” means any expenditure which is not a contribution and expressly advocates the election or defeat of a clearly identified candidate for office; is made without arrangement, cooperation, or consultation between any candidate or any authorized

committee or agent of the candidate and the person making the expenditure or any authorized agent of that person; and is not made in concert with or at the request or suggestion of any candidate or any authorized committee or agent of the candidate.

(d) Independent Expenditure Committee – As used in these rules, the term “independent expenditure committee” means any person who receives contributions from one (1) or more persons in order to make an independent expenditure and is registered pursuant to Ark. Code Ann. § 7-6-227 prior to making expenditures.

(e) Person – As used in these rules, the term “person” means any individual, proprietorship, firm, partnership, joint venture, syndicate, labor union, business trust, company, corporation, association, committee, or any other organization or group of persons acting in concert. It shall also include a political party that meets the definition of a political party under Ark. Code Ann. § 7-1-101 or a political party that meets the requirements of Ark. Code Ann. § 7-7-205, county political party committees, and legislative caucus committees.

(f) Printed Campaign Materials –

(1) “Printed campaign materials” means:

(A) Literature mailed to an elector that is intended to or calculated to influence the vote of an elector in an election in this state, including without limitation signs, banners, flyers, and pamphlets; and

(B) Yard signs and push cards intended to or calculated to influence the vote of an elector in an election in this state.

(2) “Printed campaign materials” does not mean political paraphernalia, including without limitation stickers, buttons, pens, T-shirts, nail files, or other similar trinkets.

§ 701 Registration by Independent Expenditure Committees

(a)(1)(A) To qualify as an independent expenditure committee, the committee is required to register with the Secretary of State within fifteen (15) days after accepting contributions during a calendar year that exceed five hundred dollars (\$500) in the aggregate.

(B) Registration shall be annually renewed by January 15, unless the committee has ceased to exist.

(C) Registration shall be on forms provided by the Secretary of State, and the contents therein shall be verified by an affidavit of an officer of the committee.

(2)(A) The committee shall designate a resident agent who shall be an individual who resides in the State of Arkansas.

(B) No contribution shall be accepted from a committee and no expenditure shall be made by a committee that has not registered and does not have a resident agent.

(3) An out-of-state committee shall be required to comply with the registration and reporting provisions of these rules if the committee makes an independent expenditure or independent expenditures within the State of Arkansas that in the aggregate exceed more than five hundred dollars (\$500) during a calendar year.

(b) The registration form of an independent expenditure committee shall contain the following information:

(1) The name, address, and, where available, phone number of the committee and the name, address, phone number, and place of employment of each of its officers, provided if the committee's name is an acronym, then both it and the words forming the acronym shall be disclosed;

(2) The full name and street address, city, state, and zip code of each financial institution the committee uses for purposes of receiving contributions or making expenditures within the State of Arkansas;

(3) A written acceptance of designation as a resident agent;

(4) A certification by a committee officer, under penalty of false swearing, that the information provided on the registration is true and correct; and

(5) A clause submitting the committee to the jurisdiction of the State of Arkansas for all purposes related to compliance with the provisions of subchapter 2 of chapter 6, Title 7 of the Arkansas Code.

(c) (1) When a committee makes a change to any of the information required in § 701(b) of these rules, an amendment is required to be filed within ten (10) days to reflect the change.

(2) A committee failing to file an amendment shall be subject to a late filing fee of ten dollars (\$10.00) for each day the change is not filed.

§ 702 Reporting of Independent Expenditures

(a) A person who or an independent expenditure committee which makes independent expenditures in an aggregate amount or value in excess of two hundred dollars (\$200) in a calendar year shall file reports with the Secretary of State:

(1)(A) No later than fifteen (15) days following the month in which the two hundred dollar (\$200) threshold required under this section is met, the first financial report shall be filed.

(B) Each subsequent report shall be filed no later than fifteen (15) days after the end of each month until the election is held, except as required in subdivision (a)(1)(C) of this section.

(C) For any month in which certain days of that month are included in a preelection financial report required under subdivision (a)(2) of this section, no monthly report for that month shall be due, but those days of that month shall be carried forward and included in the final financial report;

(2) No later than seven (7) days prior to preferential primary elections, runoff elections, general elections, and special elections covering the period ending ten (10) days prior to such elections; and

(3) As for a final report, no later than thirty (30) days after the end of the month in which the last election is held at which the candidate seeks nomination or election.

(b) Such reports shall include:

(1) In the case of an individual making such an expenditure, the name, address, telephone number, principal place of business, employer, and occupation of the individual;

(2) In the case of a committee, the name, address, employer, and occupation of its officers;

(3) In the case of a person who is not an individual, the principal name of the entity, the address, and the name, address, employer, and occupation of its officers;

(4) The total amount of contributions received, with loans stated separately, and the total amount of expenditures made during the filing periods, and the cumulative amount of those totals;

(5) The name and address of each person who made a contribution or contributions that in the aggregate exceeded two hundred dollars (\$200);

(6) The contributor's principal place of business, employer, occupation, the amount contributed, the date the contribution was accepted by the committee, and the aggregate contributed for each election;

(7) The name and address of each person who contributed a nonmoney item, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals;

(8) An itemization of all single expenditures made which exceed one hundred dollars (\$100), including the amount of the expenditure, the name and address of any person to whom the expenditure was made and the date the expenditure was made;

(9) A list of all paid workers and the amount the workers were paid;

(10) A list of all expenditures by categories, including, but not limited to:

(A) Television, radio, print, and other advertising;

(B) Direct mail;

(C) Office supplies;

(D) Rent;

(E) Travel;

(F) Expenses;

(G) Entertainment; and

(H) Telephone.

(11) The total amount of all nonitemized expenditures made during the filing period; and

(12) The current balance of committee funds.

(c) The information required in § 702(b)(4)-(10) of these rules may be provided in the form of schedules attached to the report.

(d) The report shall be verified by an affidavit of an officer of the committee stating that to the best of his or her knowledge and belief the information disclosed is a complete, true, and accurate financial statement of the committee's contributions received and made.

(e)(1) A report is timely filed if it is filed in electronic form through the official website of the Secretary of State on or before the date that the report is due.

(2)(A) The Secretary of State shall receive reports in a readable electronic format that is acceptable to the Secretary of State and approved by the Arkansas Ethics Commission.

(B) The Arkansas Ethics Commission shall approve the format used by the Secretary of State for the filing of independent expenditure reports in electronic form to ensure that all required information is requested.

(C) The official website of the Secretary of State shall allow for searches of independent expenditure report information filed in electronic form.

(3)(A) A person required to file reports or register in paper form under Ark. Code Ann. § 7-6-220 may file reports or register in paper form if:

(i) The person does not have access to the technology necessary to submit reports or registration in electronic form; and

(ii) Submitting reports or registration in electronic form would constitute a substantial hardship for the person.

(B) A person filing reports or registration in paper form under subdivision (e)(3)(A) of this rule shall submit with its first report or registration a notarized affidavit on a form prepared by the Secretary of State declaring that:

(i) The person does not have access to the technology necessary to submit reports or registration in electronic form;

(ii) Submitting reports or registration in electronic form would constitute a substantial hardship for the person; and

(iii) The person agrees to file all other reports in paper form for the duration of the period of registration.

(4) The Secretary of State shall:

(A) Not accept a report or registration in paper form under subdivision (e)(3)(A) of this rule if a notarized affidavit was not submitted with the:

(i) Registration of a political action committee; or

(ii) First report of a person or independent expenditure committee;

(B) Provide written notice to the political action committee within five (5) business days if the registration in paper form was not filed or accepted;

(C) Provide written notice to a political action committee, person, or independent expenditure committee within five (5) business days if a report in paper form was not filed or accepted; and

(D) Provide the reason the registration or report in paper form was not filed or accepted.

(5) The Secretary of State shall make available to persons wishing to file reports in paper form under Ark. Code Ann. § 7-6-231:

(A) Information on the deadlines for filing required reports; and

(B) (i) Appropriate forms and instructions for complying with the deadlines.

(ii) The Arkansas Ethics Commission shall approve the forms and instructions used by the Secretary of State under Ark. Code Ann. § 7-6-231 to ensure that all required information is requested.

(6) Reports shall be filed on the forms furnished by the Secretary of State, except that computer-generated contribution and expenditure reports shall be accepted by the Secretary of State and the Arkansas Ethics Commission provided that all of the requisite elements are included.

(7)(A) A report submitted in paper form under Ark. Code Ann. § 7-6-231 other than a preelection report is timely filed if it is either hand delivered or mailed to the Secretary of State, properly addressed, and postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on or before the date that the report is due.

(B) A preelection report submitted in paper form under Ark. Code Ann. § 7-6-231 is timely filed if it is received by the Secretary of State no later than seven (7) days before the election for which it is filed.

(C) The Secretary of State shall accept a report via facsimile, provided the original is received by the Secretary of State within ten (10) days of the date of facsimile transmission.

(8)(A) The Secretary of State shall make available reports submitted in paper form on a portion of the official website of the Secretary of State.

(B) The Secretary of State shall comply with the requirements of Ark. Code Ann. § 7-6-214(c) regarding the “paper filer” designation and publication requirements for all reports submitted in paper form.

§ 703 Out-of-State Independent Expenditure Committees

(a) An out-of-state independent expenditure committee is required to comply with the registration provisions of § 701 and is subject to the jurisdiction of the State of Arkansas for all purposes related to compliance with the registration provisions of subchapter 2 of chapter 6, Title 7 of the Arkansas Code, if the committee makes an independent expenditure or independent expenditures within the State of Arkansas that in the aggregate exceed more than five hundred dollars (\$500) during a calendar year.

(b) An out-of-state independent expenditure committee is required to comply with the reporting provisions of § 702 and is subject to the jurisdiction of the State of Arkansas for all purposes related to compliance with the reporting provisions of subchapter 2 of

chapter 6, Title 7 of the Arkansas Code, if the committee makes an independent expenditure or independent expenditures within the State of Arkansas that in the aggregate exceed more than two hundred dollars (\$200) during a calendar year.

§ 704 Paid For By Disclaimer

(a) All articles, statements, or communications appearing in any newspaper printed or circulated in this state intended or calculated to influence the vote of any elector in any election and for the publication of which a consideration is paid or to be paid shall clearly contain the words “paid Political Advertisement”, “Paid Political Ad”, or “Paid for by” the candidate, committee, or person who paid for the message. Both the persons placing and the persons publishing the articles, statements, or communications shall be responsible for including the required disclaimer. In addition, all articles, statements, or communications appearing in any radio, television, or any other electronic medium intended or calculated to influence the vote of any elector in any election and for the publication of which a consideration is paid or to be paid shall clearly contain the words “Paid Political Advertisement” or “Paid Political Ad” or “Paid for by”, “Sponsored by”, or “Furnished by” the true sponsor of the advertisement. Both the persons placing and the persons publishing the articles, statements, or communications shall be responsible for including the required disclaimer.

(b)(1) Printed campaign materials as defined in § 700(f) of these rules, shall clearly contain the words “Paid for by” followed by the name of the candidate, committee, or person who paid for the campaign sign, campaign literature, or other printed campaign materials.

(2) Subdivision (b)(1) of this section applies only to campaign signs, campaign literature, and other printed campaign materials created by or sponsored by a political candidate, the campaign of a political candidate, a political action committee, or an independent expenditure committee.

(3) When the printed campaign material is a two-sided sign, the “Paid for by” language required by this subsection shall appear on both sides of the sign.

§ 705 Penalties

(a) If the Arkansas Ethics Commission finds that a person or an independent expenditure committee has committed a violation of Ark. Code Ann. § 7-6-220, Ark. Code Ann. § 7-6-227, or both, then it may do one or more of the following:

(1) Impose a fine of not less than fifty dollars (\$50.00) and not more than three thousand, five hundred dollars (\$3,500.00); or

- (2) Issue a public letter of caution, warning, or reprimand.
- (b) In addition, a committee failing to file an amendment within ten (10) days as required by § 701(c) shall be subject to a late filing fee of ten dollars (\$10.00) for each day the change is not filed.

§ 706 Records Retention

(a) An independent expenditure committee required to comply with the registration requirements of § 701 shall maintain for a period of four (4) years records evidencing the name, address, and place of employment of each person that contributed to the independent expenditure committee, along with the amount contributed. Such a committee shall also maintain for a period of four (4) years records evidencing each independent expenditure made by the committee, along with the amount of each expenditure.

(b) A person required to comply with the reporting requirements of § 702 shall maintain for a period of four (4) years records evidencing each independent expenditure made by the person, along with the amount of each expenditure.

§ 707 Administrative Expenses of Independent Expenditure Committees

It is permissible for an independent expenditure committee to pay reasonable administrative expenses out of the contributions it has received.