

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: H3/18/13
A Bill

HOUSE BILL 1855

By: Representatives Shepherd, Steel
By: Senator Irvin

For An Act To Be Entitled

AN ACT TO ESTABLISH THE OFFICE OF PROSECUTING ATTORNEY AS A NONPARTISAN OFFICE; TO AMEND THE LAW CONCERNING THE DATES OF CERTAIN ELECTIONS; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE OFFICE OF PROSECUTING ATTORNEY AS A NONPARTISAN OFFICE; AND TO AMEND THE LAW CONCERNING THE DATES OF CERTAIN ELECTIONS.

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

SECTION 1. Arkansas Code § 7-1-101, concerning definitions, is amended to add three new subdivisions to read as follows:

(35)(A) "Nonpartisan candidate" means a candidate for the office of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney.

(B) "Nonpartisan candidate" does not include a candidate for nonpartisan municipal office;

(36)(A) "Nonpartisan election" means a general, special, or runoff election for the office of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney.

(B) "Nonpartisan election" does not include a general, special, or runoff election for a nonpartisan municipal office; and

(37)(A) "Nonpartisan office" means the office of Justice of the



Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney.

(B) "Nonpartisan office" does not include a nonpartisan municipal office.

SECTION 2. Arkansas Code § 7-4-101(f)(11), concerning the authority of the State Board of Election Commissioners, is amended to read as follows:

(11) Administer reimbursement of election expenses to counties in accordance with § 7-7-201(a) for primary elections, statewide special elections, and nonpartisan ~~judicial~~ general elections.

SECTION 3. Arkansas Code § 7-5-102 is amended to read as follows:
7-5-102. Time of general election.

On the Tuesday next after the first Monday in November in every even-numbered year, there shall be held an election in each precinct and ward in this state for the election of ~~all~~:

(1) All elective state, county, and township officers whose term of office is fixed at two (2) years by the Arkansas Constitution or the General Assembly; ~~for state~~

(2) State senators in their respective districts when the terms for which the state senators have been elected expire before the next general election; ~~for Representatives in the Congress of the~~

(3) Members of the United States House of Representatives for each congressional district in this state; ~~and for~~

(4) United States Senators when the term of office of any United States Senator expires before the next general election; ~~and for prosecuting attorney in this state.~~

SECTION 4. Arkansas Code § 7-5-207(d), concerning names printed on ballots, is amended to read as follows:

(d)(1) ~~Beside or adjacent to~~ Adjacent to the name of each candidate in the general election shall be:

(A) His or her party designation; or

(B) The term "INDEPENDENT" if he or she represents no officially recognized party.

(2) Subdivision (d)(1) of this section ~~shall~~ does not apply to

a:

- (A) Nonpartisan ~~judicial~~ election; or
- (B) Nonpartisan municipal election.

SECTION 5. Arkansas Code § 7-5-407(a), concerning the preparation and delivery of absentee ballots, is amended to read as follows:

(a)(1) The county board of election commissioners shall prepare official absentee ballots and deliver them to the county clerk for mailing to all qualified applicants as soon as practicable but ~~in any event~~ not later than forty-seven (47) days before a preferential primary, general election, *school election, nonpartisan ~~judicial~~ general election, nonpartisan ~~judicial~~ runoff election, or ~~any~~ special election.*

SECTION 6. Arkansas Code § 7-6-102 is amended to read as follows:

7-6-102. Political practices pledge – Penalty for falsification.

(a)(1) Candidates for political party nominations for state or district offices shall file with the Secretary of State and candidates for county, municipal, or township offices shall file with the county clerk of the county during the filing period set out in § 7-7-203 for the preferential primary election a pledge in writing stating that they are familiar with the requirements of §§ 7-1-103, 7-1-104, 7-3-108, 7-6-101, 7-6-103, 7-6-104, and this section and will comply in good faith with their terms.

(2) ~~Persons seeking nomination as independent candidates and school district candidates~~ An independent candidate or school district candidate shall file the political practices pledge at the time of filing the petition for nomination.

(3) Independent candidates for municipal office shall file the political practices pledge with the county clerk at the time of filing the petition for nomination.

(4) ~~Persons who wish to be write-in candidates~~ Write-in candidates shall file the political practices pledge at the time of filing the notice to be a write-in candidate.

(5) ~~Nonpartisan judicial candidates~~ A nonpartisan candidate paying filing fees in accordance with § 7-10-103(b) shall file the political practices pledge at the time of filing for office.

(6) ~~Nonpartisan judicial candidates~~ A nonpartisan candidate

filing by petition ~~in accordance with~~ according to § 7-10-103(c) shall file the political practices pledge at the time of filing the petition.

(b) All political practices pledge forms for state or district offices and county, municipal, or township offices shall ~~be required to~~ contain the following additional pledge:

“I hereby certify that I have never been convicted of a felony in Arkansas or in any other jurisdiction outside of Arkansas.”

(c) Any person who has been convicted of a felony and signs the pledge stating that he or she has not been convicted of a felony shall be guilty of a Class D felony.

(d) For purposes of this section, a person shall be qualified to be a candidate for a state, district, county, municipal, and township office and may certify that he or she has never been convicted of a felony if his or her record was expunged in accordance with §§ 16-93-301 – 16-93-303, or a similar expunction statute in another state, ~~provided, if~~ if the candidate presents a certificate of expunction from the court that convicted the ~~prospective~~ candidate.

(e)(1) The name of a candidate who fails to sign and file the pledge shall not appear on the ballot.

(2)(A) ~~However, within~~ Within five (5) two (2) days from which of the date the pledge is required to be filed, the Secretary of State or the county clerk shall notify by certified mail that requires a return receipt signed by the candidate those candidates who have failed to file a signed political practice pledge. ~~The notice shall~~ and include a copy of the written pledge required by this section.

(B) *Failure of the state or district candidate to file with the Secretary of State or of the county, municipal, or township candidate to file with the county clerk within ~~twenty (20) five (5) days of receipt or refusal of this notice shall prevent the candidate's name from appearing on the ballot.~~*

SECTION 7. Arkansas Code § 7-6-203(h)(3)(B), concerning disposition of campaign contributions, is amended to read as follows:

(B) For an unopposed ~~candidates for~~ nonpartisan ~~judicial office candidate~~, the affidavit may be filed after the deadlines have passed to declare as a filing fee candidate, petition candidate, or write-in candidate under § 7-10-103.

SECTION 8. Arkansas Code § 7-7-306 is amended to read as follows:

7-7-306. Partisan and nonpartisan ~~judicial~~ general election ballots.

(a) At each party primary and nonpartisan ~~judicial~~ general election, each county board of election commissioners shall furnish ~~separate ballots~~ a separate ballot for each political party containing:

(1) The ~~names of persons seeking offices~~ name of each person seeking an office to be voted on as a nominee or candidate of that political party;

(2) The ~~names of all qualified candidates~~ name of each candidate for the general election to a nonpartisan judicial office under § 7-10-101; and

(3) All measures and questions, if any, to be decided by the voters.

(b) The county board of election commissioners shall also furnish a separate ~~nonpartisan~~ ballot containing the names of all qualified candidates for the general election to nonpartisan ~~judicial~~ offices and all measures, if any, to be decided by the voters.

SECTION 9. The name of Arkansas Code Title 7, Chapter 10, is changed from "Nonpartisan Election of Judges" to "Nonpartisan Elections". The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to implement this section.

SECTION 10. Arkansas Code § 7-10-101 is repealed:

~~7-10-101. Definitions.~~

~~For the purposes of this chapter:~~

(1) ~~"Nonpartisan judicial office" means the offices of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, and district judge; and~~

(2) ~~"Political party" has the same meaning as provided in § 7-1-101.~~

SECTION 11. Arkansas Code § 7-10-102 is amended to read as follows:

7-10-102. Nonpartisan election of judges ~~and~~, justices, and prosecuting attorneys.

(a) The offices of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, ~~and district judge, and prosecuting attorney~~ are ~~declared to be~~ nonpartisan offices.

(b)(1) The general elections for nonpartisan ~~judicial~~ offices shall be held on the same ~~dates~~ date and at the same times and places as provided by law for preferential primary elections.

(2)(A) The names of ~~candidates for nonpartisan judicial offices~~ candidates shall be ~~included~~:

(i) Included on the ballots of the political parties; ~~and shall be designated~~

(ii) Designated as nonpartisan ~~judicial~~ candidates.

~~However, separate~~

(B) Separate ballots containing the names of nonpartisan ~~judicial~~ candidates shall be ~~prepared~~:

(i) Prepared; ~~and shall be made~~

(ii) Made available to voters requesting ~~the same a~~ separate ballot.

(3) ~~No voter shall~~ A voter shall not be required to vote in a political party's preferential primary ~~in order~~ to be able to vote in a nonpartisan judicial election.

(c)(1) A person shall not be elected to a ~~nonpartisan judicial office~~ without receiving the office of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney unless the person receives a majority of the votes cast at the election for the office.

(2) In ~~any a~~ nonpartisan ~~judicial~~ election in which no person receives a majority of the votes cast, the two (2) candidates receiving the highest and next highest number of votes shall be certified to a runoff election, which shall be held on the same date and at the same times and places as the November general election.

(3) The names of the candidates in a nonpartisan ~~judicial~~ runoff election shall be placed on the same ballots as used for the November general elections.

SECTION 12. Arkansas Code § 7-10-103 is amended to read as follows:
7-10-103. Filing as a candidate — ~~Judicial Filing Fee Fund.~~

(a) A candidate for a nonpartisan ~~judicial~~ office ~~may pay under this chapter shall:~~

- (1) Pay a filing fee as provided for in this chapter, file;
- (2) File a petition in the manner provided for in this chapter, or file; or
- (3) File as a write-in candidate in the manner as provided for in this chapter.

(b)(1) The State Board of Election Commissioners shall establish reasonable filing fees for nonpartisan ~~judicial~~ offices.

(2)(A)(i) The filing fee A candidate for the offices office of Justice of the Supreme Court, Judge of the Court of Appeals, and circuit judge, or prosecuting attorney who chooses to pay by filing fee shall be paid pay the filing fee to the Secretary of State at the same time that when the candidate files his or her political practices pledge.

(ii) A candidate for the office of district judge who chooses to file by paying a filing fee shall pay the filing fee to the county clerk at the same time that when the candidate files his or her political practices pledge.

(B) The period for paying filing fees and filing political practice pledges shall be the same as the party filing period under § 7-7-203.

~~(3)(A) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Judicial Filing Fee Fund".~~

~~(B)~~ The filing fees collected for the offices of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, and district judge shall be remitted to the Treasurer of State for deposit into the fund Nonpartisan Filing Fee Fund under § 19-5-1225 for covering the cost of election expenses of the state board State Board of Election Commissioners.

(B)(i) Except as provided in subdivision (b)(3)(B)(ii) of this section, the filing fees collected for the office of prosecuting attorney shall be remitted to the Treasurer of State for deposit into the Nonpartisan Filing Fee Fund under § 19-5-1225.

(ii) The first one hundred thousand dollars (\$100,000) collected annually from filing fees for the office of prosecuting

attorney shall be remitted to the Treasurer of State for deposit into the Trial Court Administrative Assistant Fund under § 19-5-1241.

(c)(1)(A)(i) ~~Any~~ A person ~~desiring to~~ may have his or her name placed on the ballot for a nonpartisan ~~judicial~~ office without paying a filing fee ~~may do so~~ by filing a petition in the manner provided for under this section. ~~Petitions for Supreme Court, Court of Appeals, and circuit court positions~~ A petition for a candidate for the office of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, or prosecuting attorney shall be filed with the Secretary of State, and ~~petitions for district court positions~~ a petition for a candidate for the office of district judge shall be filed with the ~~applicable~~ county clerk beginning at 12:00 noon forty-six (46) days before the first day of the party filing period under § 7-7-203 and ending at 12:00 noon thirty-two (32) days before the first day of the party filing period under § 7-7-203.

(ii) ~~Political practice pledges for~~ A nonpartisan ~~judicial candidates~~ candidate filing by petition shall be filed ~~at the same time as~~ file a political practices pledge with the petition.

(B)(i) The petition shall ~~be~~:

(a) Be directed to the office with which it is to be filed; and ~~shall request~~

(b) Request that the name of the candidate be placed on the ballot for the election set forth in the petition. ~~Candidates may~~

(ii) A candidate shall not begin circulating petitions ~~not~~ earlier than sixty (60) days ~~prior to~~ before the filing deadline.

(C)(i) The Secretary of State or the county clerk, ~~as the case may be,~~ within thirty (30) days of the filing of the petition shall ~~determine within thirty (30) days;~~

(a) Determine whether the petition contains the names of a sufficient number of qualified electors. ~~The Secretary of State or county clerk shall verify; and~~

(b) Verify the sufficiency of the ~~petitions~~ petition ~~within thirty (30) days of filing~~.

(ii) The sufficiency of ~~any~~ a petition filed under ~~the provisions of~~ this section may be challenged in the same manner as

provided by law for election contests, under § 7-5-801 et seq.

(D) ~~Qualified electors~~ A qualified elector signing the ~~petitions~~ petition must be a registered ~~voters~~ voter in the geographic area applicable to the position at the time ~~they sign~~ he or she signs the petition. Each qualified elector shall provide on the petition his or her printed:

(i) Printed name, signature, address, date;

(ii) Signature;

(iii) Address;

(iv) Date of birth,; and date

(v) Date of signing on the petition.

(E) In determining the number of qualified electors in the state or in any court of appeals district, circuit court circuit, or district court district, the ~~total~~ number of ~~all~~ votes cast ~~therein~~ for Governor in the immediately preceding general gubernatorial election shall be conclusive of the number of all qualified electors ~~therein~~ in the state, circuit, or district for purposes of this section.

(2)(A) ~~Candidates~~ A candidate by petition for Justice of the Supreme Court shall file ~~petitions~~ a petition signed by ~~at least ten~~ the lesser of:

(i) Three percent (3%) of the qualified electors residing within the state; and

(ii) Ten thousand (10,000) qualified electors or three percent (3%) of the qualified electors residing within the state, whichever is the lesser.

(B) ~~Candidates~~ A candidate by petition for Judge of the Court of Appeals shall file ~~petitions~~ a petition signed by the lesser of:

(i) three Three percent (3%) of the qualified electors residing within the court of appeals district for which the candidate seeks office, but in no event shall more than two; and

(ii) Two thousand (2,000) signatures be required qualified electors.

(C) ~~Candidates~~ A candidate by petition for circuit judge shall file ~~petitions~~ a petition signed by the lesser of:

(i) three Three percent (3%) of the qualified electors residing within the circuit for which the candidate seeks office,

~~but in no event shall more than two; and~~

~~(ii) Two thousand (2,000) signatures be required~~
qualified electors.

(D) ~~Candidates~~ A candidate by petition for district judge shall file ~~petitions~~ a petition signed by ~~at least one~~ the lesser of:

~~(i) One percent (1%) of the qualified electors~~
 residing within the district for which the candidate seeks office, ~~but in no~~
~~event shall more than two; and~~

~~(ii) Two thousand (2,000) signatures be required~~
qualified electors.

(E) A candidate by petition for prosecuting attorney shall
file a petition signed by the lesser of:

(i) Three percent (3%) of the qualified electors
residing within the district for which the candidate seeks office; and

(ii) Two thousand (2,000) qualified electors.

~~(d)(1) No votes~~ Votes for a write-in candidate in a nonpartisan
~~judicial~~ election shall not be counted or tabulated unless the candidate or
 his or her agent gives notice in writing of his or her intention to be a
 write-in candidate to ~~the;~~

(A) The county board of election commissioners of each
county in which the candidate seeks election; and either:

~~(1)(A)(B)(i)~~ The Secretary of State, if a candidate for a
Justice of the Supreme Court, Judge of the Court of Appeals, or a circuit
judgeship judge, or prosecuting attorney; or

~~(B)(ii)~~ A county clerk, if a candidate for a
district judgeship district judge.

(2) The written notice ~~must~~ shall be given ~~not~~ no later than
 eighty (80) days before the nonpartisan ~~judicial~~ election.

(3) ~~Write-in candidates~~ A write-in candidate shall file a
 political practices pledge at the same time as filing a notice of intention.

(e)(1) A candidate for Justice of the Supreme Court, Judge of the
 Court of Appeals, ~~or~~ circuit judge, or prosecuting attorney shall file with
 the Secretary of State.

(2) A candidate for district judge shall file with the county
 clerk.

(f)(1)(A) ~~A candidate for nonpartisan judicial office may~~ candidate

shall not use more than three (3) given names, one (1) of which may be a nickname or ~~any other~~ another word used ~~for the purpose of identifying to~~ identify the candidate to the voters.

(B)(i) A ~~candidate for nonpartisan judicial office~~ candidate may add as a prefix to his or her name the title or an abbreviation of an elective public office the candidate currently holds.

(ii) A candidate may use as the prefix the title of a judicial office in an election for a judgeship only if the candidate is currently serving in a judicial position to which the candidate has been elected.

(C) A nickname shall not include a professional or honorary title.

(2) The names and titles ~~as proposed~~ to be used by ~~each a~~ a candidate on the political ~~practice~~ practices pledge shall be reviewed no later than one (1) business day after the filing deadline by ~~the:~~

(A) The Secretary of State for Supreme Court, Court of Appeals, and circuit court positions a candidate for Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, and prosecuting attorney; and by the

(B) The county board of election commissioners for district court positions a candidate for district judge.

(3)(A) The name of ~~every~~ each candidate shall be printed on the ballot in the form as certified by either the Secretary of State or the county board of election commissioners.

(B) ~~However, the~~ The county board of election commissioners may substitute an abbreviated title if the ballot lacks space for the title requested by a candidate.

(C) The county board of election commissioners immediately shall ~~immediately~~ notify a candidate whose requested title is abbreviated by the county board of election commissioners.

(4) A candidate shall not ~~be permitted to~~ change the form in which his or her name will be printed on the ballot after the deadline for filing the political practices pledge.

SECTION 13. Arkansas Code § 7-11-105(d)(3), concerning special election ballots, is amended to read as follows:

(3) Separate ballots containing the names of the candidates to be voted on at the special election or nonpartisan ~~judicial elections~~ election, ~~if applicable~~, and any other measures or questions that may be presented for a vote shall be prepared and made available to voters requesting a separate ballot.

SECTION 14. Arkansas Code § 19-5-1225 is amended to read as follows:
19-5-1225. ~~Judicial~~ Nonpartisan Filing Fee Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "~~Judicial~~ Nonpartisan Filing Fee Fund".

(b)(1) The fund shall consist of nonpartisan ~~judicial~~ office filing fees ~~as set out in~~ under § 7-10-103.

(2) The fund shall be used ~~for covering~~ to cover the cost of election expenses of the State Board of Election Commissioners as set out in § 7-10-101 et seq.

/s/Shepherd