

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

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: S3/24/15 H3/30/15
A Bill

SENATE BILL 1013

By: Senator B. King

For An Act To Be Entitled

AN ACT TO PROVIDE FOR COMPREHENSIVE INVESTIGATIONS OF ELECTION MISCONDUCT; TO CREATE A VOTER INTEGRITY UNIT ADMINISTERED BY THE SECRETARY OF STATE; TO ALLOW THE VOTER INTEGRITY UNIT TO PERFORM RECOUNTS; AND FOR OTHER PURPOSES.

Subtitle

TO PROVIDE FOR COMPREHENSIVE INVESTIGATIONS OF ELECTION MISCONDUCT; TO CREATE A VOTER INTEGRITY UNIT ADMINISTERED BY THE SECRETARY OF STATE; AND TO ALLOW THE VOTER INTEGRITY UNIT TO PERFORM RECOUNTS.

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

SECTION 1. Arkansas Code Title 7, Chapter 1, is amended to add an additional section to read as follows:

7-1-114. Voter Integrity Unit – Creation.

(a) There is created a Voter Integrity Unit.

(b) The Voter Integrity Unit shall be composed of seven (7) members, including:

(1) The Secretary of State or his or her designee, to serve as Chair of the Voter Integrity Unit;

(2) a designee of the Secretary of State who is employed in the Elections Division of the Office of the Secretary of State;

(3) A certified investigator employed by the Department of



Arkansas State Police appointed by the Director of the Department of Arkansas State Police;

(4) Two (2) members who are not members of the State Board of Election Commissioners, to be appointed by the Republican Party of Arkansas; and

(5) Two (2) members who are not members of the State Board of Election Commissioners, to be appointed by the Arkansas Democratic Party.

(c) The Voter Integrity Unit may investigate any complaint of election irregularity or alleged violation of election law that has been filed with the State Board of Election Commissioners.

(d) The Voter Integrity Unit shall:

(1)(A) Conduct an investigation of each complaint of election irregularity or alleged violation of election law.

(B) In the course of an investigation, the Voter Integrity Unit may:

(i) Conduct a hearing;

(ii) Use the power of subpoena to compel the:

(a) Attendance and testimony of a witness; and

(b) Production of evidence, including without limitation books, records, or other documents; and

(iii) Administer an oath for the purpose of taking sworn testimony; and

(2) Render a report on the result of the investigation to the Secretary of State.

(e) Within thirty (30) calendar days of receiving the report, the Secretary of State shall present the results of the report to a meeting of the State Board of Election Commissioners.

(f) The State Board of Election Commissioners shall receive the report and within thirty (30) calendar days from receipt of the report determine an official response from the board, including without limitation:

(1) Dismissal of the complaint of election irregularity or violation of election law;

(2) Issuance of a letter of caution to individuals or entities responsible for election irregularity; or

(3) Referral of the instance of alleged election law violation to:

(A) The prosecuting attorney for the jurisdiction in which the alleged election law violation occurred; or

(B) The United States Attorney for the jurisdiction in which the alleged election law violation occurred.

(g) Within sixty (60) calendar days of determining the official response of the State Board of Election Commissioners to the instance of election irregularity or alleged violation of election law, the State Board of Election Commissioners shall submit to the House Committee on State Agencies and Governmental Affairs and the Senate Committee on State Agencies and Governmental Affairs of the Arkansas General Assembly a report that includes without limitation the:

(1) Name of the complainant or entity filing the complaint of election irregularity or alleged election law violation;

(2) Date the incident is alleged to have occurred;

(3) Date of the complaint;

(4) Location in which it is alleged that the incident occurred;

(5) Detailed explanation of the complaint of election irregularity or alleged election law violation;

(6) Report of the Voter Integrity Unit to the Secretary of State; and

(7) Resolution report of the State Board of Election Commissioners, including:

(A) Minutes of the meeting of the State Board of Election Commissioners on the report of the Voter Integrity Unit;

(B) Determination of the State Board of Election Commissioners regarding disposition of the complaint of election irregularity or alleged election law violation; and

(C) Copies of any referrals to prosecutors or United States Attorneys.

(h) The State Board of Election Commissioners shall immediately submit a copy of a complaint filed with the State Board of Election Commissioners to the Voter Integrity Unit.

(i) The Voter Integrity Unit shall file a quarterly report with the Senate Committee on State Agencies and Governmental Affairs and the House Committee on State Agencies and Governmental Affairs concerning the status of the cases under investigation by the Voter Integrity Unit.

(j) Upon request of a law enforcement agency, the Voter Integrity Unit shall assist the law enforcement agency in its investigation of criminal acts concerning elections.

(k) A county board of election commissioners or county clerk shall cooperate with requests of the Voter Integrity Unit for information, testimony, evidence, or other requests necessary for an investigation by the Voter Integrity Unit.

(l) The Voter Integrity Unit or its designee may perform a recount as provided under § 7-5-319.

(m) The investigative file of the Voter Integrity Unit shall be exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., until the investigation is closed by the Voter Integrity Unit.

SECTION 2. Arkansas Code § 7-5-319 is amended to read as follows:

7-5-319. Recount.

(a)(1)(A) Any candidate voted for who may be dissatisfied with the returns from any precinct shall have a recount of the votes cast therein upon the candidate's presenting the county board of election commissioners with a petition requesting the recount.

(B) Upon request of the candidate, the recount may be performed by:

(i) The county board of election commissioners; or

(ii) The Voter Integrity Unit or its designee.

(C) The Voter Integrity Unit shall designate which of the entities under subdivision (a)(1)(B) of this section will perform the recount.

(2) When the number of outstanding absentee ballots of overseas voters is not sufficient to change the results of the election, the candidate must present the petition no later than two (2) days after the county board declares preliminary and unofficial results of the election, including a statement of the number of outstanding absentee ballots of overseas voters.

(3) When the number of outstanding absentee ballots of overseas voters is sufficient to potentially change the results of the election, the candidate must present the petition at any time before the county board finally completes the canvass of the returns of the election and certifies the result.

(b) At the time that the petition requesting the recount is presented, the county board shall provide to the candidate requesting the recount a copy of the test results on the voting machines and the electronic vote tabulating devices. Only one (1) recount per candidate per election shall be permitted. The county board shall certify the results of the last recount. The county board may upon its own motion conduct a recount of the returns from any or all precincts.

(c)(1) For any recount of an election in which ballots are cast using a direct recording electronic voting machine with a voter-verified paper audit trail, the voter-verified paper audit trail shall serve as the official ballot to be recounted.

(2) ~~The county board of election commissioners~~ entity designated under subdivision (a)(1)(C) of this section either may:

(A) Manually sum the total votes for each candidate involved in the recount that is printed on the voter-verified paper audit trail; or

(B) Count by hand the votes for each candidate involved in the recount as shown on the voter-verified paper audit trail.

(3) If the voter-verified paper audit trail is damaged or for some other reason is incapable of being used for a recount, the paper record produced by the machine for manual audit shall be the official ballot to be recounted.

(4) If the voting machine is exempt from the requirement to have a voter-verified paper audit trail and does not have one, the paper record produced by the machine for manual audit shall be the official ballot to be recounted.

(d) For the recount of an election in which paper ballots are used, the ~~county board~~ entity designated under subdivision (a)(1)(C) of this section shall open the package containing the ballots and recount the ballots in the manner prescribed by law for the count to be made by the election officials in the first instance, or if there is a determination by the county board that the voting machine or electronic vote tabulating device may be malfunctioning, it may recount the ballots by any manner prescribed by law.

(e) The result as found upon the recount, if it differs from that certified by the election officials, shall be included in the canvass as the vote for the particular precinct for which the recount was ordered and made.

(f) After the recount is completed, the ballots shall again be sealed and kept as provided by law.

(g)(1) The costs for any recount must be borne by the candidate petitioning for it, and payment of the costs must be made to the county board prior to the recount in an amount determined by the county board.

(2) In the event that the outcome of the election is altered by recount, the costs of the recount shall be refunded to the candidate who petitioned for the recount.

(h) The costs of any recount shall be based on the actual costs incurred to conduct the recount, but in no instance shall the amount charged to conduct a recount exceed the rate of twenty-five cents (25¢) per vote cast in the precincts where the recount is requested or a total of two thousand five hundred dollars (\$2,500) for the entire county, whichever is less.

(i) Within forty-eight (48) hours after a petition for recount is filed, the county board of election commissioners shall notify all candidates whose election could be affected by the outcome of the recount.

(j)(1) The Voter Integrity Unit may designate one (1) or more people who have attended election training under § 7-4-109 within twelve (12) months before the election to perform a recount under this section.

(2) If the Voter Integrity Unit or its designee performs the recount, the recount shall be performed in the presence of the county board of election commissioners.

/s/B. King