

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

HOUSE BILL 1803

By: Representatives Lowery, Wing
By: Senators K. Hammer, M. Johnson

For An Act To Be Entitled

AN ACT ESTABLISH THE ARKANSAS BALLOTING INTEGRITY ACT OF 2021; TO AMEND ARKANSAS LAW CONCERNING ELECTION EXPENSE ALLOCATION; TO AMEND THE COMPLAINT PROCESS FOR ELECTION LAW VIOLATIONS; TO AMEND THE AUTHORITY AND DUTIES OF THE STATE BOARD OF ELECTION COMMISSIONERS; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE ARKANSAS BALLOTING INTEGRITY ACT OF 2021.

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

SECTION 1. DO NOT CODIFY. Title.

This act shall be known and may be cited as the "Arkansas Balloting Integrity Act of 2021".

SECTION 2. Arkansas Code § 7-4-120 is amended to read as follows:

7-4-120. Complaints of election law violations – Definitions.

(a)(1) Except as provided in subdivision (a)(2) of this section, the State Board of Election Commissioners may investigate alleged violations, render findings, institute corrective actions, and impose sanctions according to this subchapter for violations of election and voter registration laws.

(2) The State Board of Election Commissioners shall not investigate alleged violations, render findings, or impose sanctions concerning violations of:



(A) The provisions of § 7-1-103(a)(1)-(4), (6), and (7);

or

(B) Campaign finance and disclosure laws for which the Arkansas Ethics Commission has the duty and authority to investigate and sanction under §§ 7-6-217 and 7-6-218.

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

(A) An alleged violation of the ~~voter registration~~ laws regarding elections including without limitation:

- (i) Voter registration;
- (ii) Requests for absentee ballots;
- (iii) Delivery of absentee ballots;
- (iv) Casting of ballots;
- (v) Ballot tabulation;
- (vi) Certification of election results;
- (vii) Administration of an election;
- (viii) Election processes; or
- (ix) Conduct of an election; or

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

(2) A complaint shall be signed by the complainant under penalty of perjury.

(3)(A) A complaint shall clearly:

- (i) Describe the alleged violation, including without limitation the supporting facts for the violation or incident;
- (ii) State when or the approximate date that the alleged violation or incident occurred; and
- (iii) State the location or locations of the alleged violation or incident.

(B)(i) The complaint may specify, suggest, or recommend a desired resolution to the complaint.

(ii) If the complaint is timely filed but does not specify the desired resolution of the complainant:

(a) The State Board of Election Commissioners ~~shall~~ may:

(1) ~~notify~~ Notify the complainant that a desired resolution is not specified;

(2) Inform the complainant that other formal or informal resolutions may be appropriate; and

(3) Inform the complainant that the State Board of Election Commissioners may initiate a lawful resolution, correction, or remedy as the State Board of Election Commissioners deems appropriate; and

(b) The complainant may file the additional information within ten (10) days from mailing of the notice.

(4)(A) If a complaint does not meet the requirements of this section, the complainant shall be notified that the complaint may be corrected by amendment in writing within ten (10) days and that a failure to make the necessary corrections shall result in the complaint ~~shall be~~ being dismissed.

(B) If a complaint is dismissed because it does not meet the requirements of this section, the State Board of Election Commissioners shall notify the complainant of the fact of dismissal.

(5) A person shall not file a frivolous complaint.

(6)(A) If a complaint is filed as required by this section, the State Board of Election Commissioners shall investigate the alleged violation.

(B) Immediately upon beginning an investigation under this section, the State Board of Election Commissioners shall notify the person or persons under investigation of the fact of the investigation and the nature of the investigation.

(C) If at the conclusion of the investigation, the State Board of Election Commissioners finds that there is probable cause to believe there has been a violation of the voter registration laws or election laws, the State Board of Election Commissioners may set a public hearing.

(c)(1) The State Board of Election Commissioners shall maintain a record of all inquiries, investigations, and proceedings.

(2) Except as provided in subdivisions (c)(3) and (4) of this section, records under this section are exempt from disclosure under the

Freedom of Information Act of 1967, § 25-19-101 et seq., until:

(A) A hearing by the State Board of Election Commissioners is set; or

(B) The investigation by the State Board of Election Commissioners is closed by the State Board of Election Commissioners.

(3) The State Board of Election Commissioners ~~may~~ shall disclose, through its members or staff, otherwise confidential information to proper law enforcement officers, agencies, and other entities as is necessary to conduct the investigation under this section.

(4) The records of the investigation upon which the State Board of Election Commissioners has based its findings shall be opened to public inspection thirty (30) days after the final adjudication in which the State Board of Election Commissioners makes a final decision.

(d)(1) If the State Board of Election Commissioners determines that the complaint can be addressed through documentary submissions and without a formal investigation, the State Board of Election Commissioners may address the complaint with documentary submissions.

(2) If the State Board of Election Commissioners determines that an investigation is necessary, the State Board of Election Commissioners shall provide to the person who is the subject of the complaint:

(A) A copy of the complaint if a copy has not previously been provided; and

(B) Instructions for filing a response.

(3) The State Board of Election Commissioners may:

(A) Administer oaths for the purpose of taking sworn statements from witnesses in the course of its investigations;

(B) Request the person who is the subject of the complaint to answer allegations in writing, produce relevant evidence, or appear in person before the State Board of Election Commissioners; and

(C)(i) Subpoena any person or the books, records, or other documents relevant to the investigation or inquiry.

(ii) The subpoena may direct any law enforcement officer of the county concerned or the Director of the Division of Arkansas State Police to seize any public record that is withheld.

(4) The State Board of Election Commissioners shall:

(A) Provide the person subpoenaed with reasonable notice

of the subpoena and an opportunity to respond; and

(B) Advise the complainant and the person who is the subject of the complaint in writing of the final action of the State Board of Election Commissioners.

(e) If the State Board of Election Commissioners finds a violation of the voter registration laws or election laws under its jurisdiction, the State Board of Election Commissioners may:

(1) Issue a public letter of caution, warning, ~~or~~ reprimand, or a conditional warning of consequences that shall be imposed if corrective action is not completed;

(2) Impose a fine of no less than twenty-five dollars (\$25.00) and no more than one thousand dollars (\$1,000) for a negligent, knowing, or intentional violation;

(3) Report the information obtained in the investigation and the findings and determinations of the State Board of Election Commissioners to the appropriate law enforcement authorities;

(4) Make expenditures and order ~~Order~~ payment of the costs of the investigation and hearing;

(5) Combine any ~~of the~~ two (2) or more of the actions or sanctions authorized under this section.

(f) The State Board of Election Commissioners shall advise the complainant and the person who is the subject of the complaint of the:

(1) Finding of the State Board of Election Commissioners;

(2) Final action taken and sanctions issued by the State Board of Election Commissioners against a person associated with the complaint and a response thereto; and

(3) Reasons for the findings, final actions, and sanctions.

(g) The State Board of Election Commissioners shall maintain a record of all inquiries, investigations, and proceedings.

(h)(1) The State Board of Election Commissioners shall adopt rules concerning the imposition of fines under this section.

(2) If a person fails to pay the fines ordered by the State Board of Election Commissioners under this section, the State Board of Election Commissioners may obtain a judgment from a court for the amount of the fine imposed by filing suit in the:

(A) Pulaski County Circuit Court;

(B) Circuit court of the county in which the person resides; or

(C) Small claims division of a district court.

(3) The fee for filing of a suit in a circuit or district court in this state shall be waived for the State Board of Election Commissioners.

(4) All moneys received by the State Board of Election Commissioners in payment of fines shall be deposited into the State Treasury as general revenues.

(i)(1) The State Board of Election Commissioners shall conclude its investigation and take its final action under this section within one hundred eighty (180) days of the filing of a complaint.

(2) The State Board of Election Commissioners shall announce its final action as a final administrative decision.

(3) However, if the State Board of Election Commissioners fails to take its final action within one hundred eighty (180) days, the final administrative action shall be effective within one hundred eighty (180) days of the filing of the complaint.

~~(2)~~(4) If the State Board of Election Commissioners holds a hearing under this section, the State Board of Election Commissioners shall conclude all actions under this section within two hundred forty (240) days.

(j) A final action of the State Board of Election Commissioners under this section is an adjudication for purposes of judicial review under § 25-15-212.

(k) As used in this section:

(1) "Election laws" means the United States Constitution, Arkansas Constitution, and the statutes, final court decisions of general applicability, and rules of the United States and the State of Arkansas ~~statutes~~ concerning elections conducted by county boards of election commissioners and the rules promulgated by the State Board of Election Commissioners under § 7-4-101 concerning elections conducted by county boards of election commissioners;

(2) "Frivolous" means clearly lacking any basis in fact or law; and

(3) "Voter registration laws" means those laws under the United States Constitution, the Arkansas Constitution, Amendment 51, and the statutes, final court decisions, and rules promulgated by the United States

~~and the State of Arkansas concerning voter registration laws pursuant to Arkansas Constitution, Amendment 51.~~

SECTION 3. Arkansas Code § 7-5-104 is amended to read as follows:

7-5-104. Election expenses – Allocation.

(a)(1) All expenses of general elections and runoff elections for presidential, congressional, state, district, county, township, or municipal offices in this state shall be paid by the counties in which they are held.

(2) However, any city or incorporated town shall reimburse the county board of election commissioners for the expenses of the elections in an amount equal to a figure derived by multiplying fifty percent (50%) of the total cost of each election by a fraction, the numerator of which shall be the number of voters from the city or incorporated town casting ballots in each election prepared by the county board of election commissioners, and the denominator of which shall be the total number of voters casting ballots in each election.

(b)(1) Except for the expense of party primary elections under § 7-7-201 et seq., all expenses for special elections, including runoff elections as required by law, for congressional, state, district, county, and township offices shall be paid by the counties in which they are held.

(2) All expenses of special elections, including any runoff elections as required by law, for municipal offices shall be paid by the city or incorporated town calling for the elections.

(3) All expenses of special elections called by any county for the purpose of referring a question or measure to the voters of the county shall be paid by the county.

(4) All expenses of special elections called by any city or incorporated town for the purpose of referring a question or measure to the voters of the city or incorporated town shall be paid by the city or incorporated town.

(c)(1) The county board of election commissioners shall determine the expenses necessary to conduct a free, equal, and lawful election in order to comply with the United States Constitution, laws of the United States, Arkansas Constitution, and the laws of the State of Arkansas.

(2) The county board of election commissioners shall:

(A) Prepare an election budget estimate of the expenses of

all anticipated elections for the fiscal year of the county; and

(B) Transmit the election budget estimate during the same time and in the same manner as is required of other county departments and county elected officials in writing to:

(i) The county judge;

(ii) The county judge's designated comptroller or budget director; or

(iii) A person as may be directed by the county judge.

(3) The election budget estimate shall include without limitation the following cost of:

(A) The salaries and expenses of:

(i) Full-time employees with positions relating to elections; and

(ii) Additional permanent, temporary, seasonal, or part-time employees to include without limitation:

(a) Poll workers; and

(b) Election officials;

(B) Equipment;

(C) Supplies;

(D) Publication costs;

(E) Maintenance;

(F) Utilities;

(G) Insurance;

(H) Taxes;

(I) Other direct expenses to conduct elections during the calendar year following an appropriation by the quorum court; and

(J) Indirect expenses of conducting elections during the calendar year following appropriation by the quorum court.

(4) If the county board of election commissioners determines that an elected county official has made an appropriate determination of expenses necessary to conduct elections and has previously prepared a budget estimate of the expenses for all anticipated elections for the fiscal year of the county, the county board of election commissioners may fulfill its duties by identifying and requesting line item budget support in the formal budget and appropriation of the elected county official, by majority vote of the

county board of election commissioners, as set forth in its minutes annually.

(5) If the county board of election commissioners determines that the expenses necessary to conduct free, equal, and lawful elections can be met through in-kind support from other county departments, agencies, and resources, the county board of election commissioners may accept in-kind support and resources under the terms and conditions as may be acceptable to the county board of election commissioners.