

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

SENATE BILL 556

By: Senators M. Johnson, K. Hammer

By: Representatives Lowery, Wing

For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS ELECTION INTEGRITY ACT OF 2021; AMEND ARKANSAS LAW CONCERNING ELECTIONS; TO AMEND THE LAW CONCERNING THE STATE BOARD OF ELECTION COMMISSIONERS; TO CREATE A PROCESS FOR THE STATE BOARD OF ELECTION COMMISSIONERS TO CONDUCT AN ELECTION; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE ARKANSAS ELECTION INTEGRITY ACT OF 2021; TO AMEND THE LAW CONCERNING THE STATE BOARD OF ELECTION COMMISSIONERS; AND TO CREATE A PROCESS FOR THE STATE BOARD OF ELECTION COMMISSIONERS TO CONDUCT AN ELECTION.

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 Election Integrity Act of 2021".

SECTION 2. Arkansas Code Title 7, Chapter 4, Subchapter 1, is amended to add an additional section to read as follows:

7-4-122. State Board of Election Commissioners authorization to conduct election on emergency basis.

(a)(1) A county board of election commissioners serving a county with



a population greater than fifty thousand (50,000) is authorized to request the State Board of Election Commissioners to conduct an election in a county on an emergency basis within the one hundred twenty (120) days before the beginning of early voting for any election.

(2) A request by a county board of election commissioners to conduct an election in a county on an emergency basis shall be:

(A) Made by written order of the county board of election commissioners authorizing the chair of the county board of election commissioners to make the request; and

(B) Approved by a majority of the county board of election commissioners by a roll call vote.

(b) Before a county board of election commissioners may submit a request to the State Board of Election Commissioners to conduct an election in the county on an emergency basis, the county board of election commissioners shall:

(1)(A) Make a minimum of two (2) separate written requests to the county judge for remedial action.

(B) A request for remedial action shall be:

(i) Made upon a vote of the county board of election commissioners;

(ii) Approved by a majority of the county board of election commissioners;

(iii) Accurately recorded in the minutes of the county board of election commissioners; and

(iv) Made at any time within the six (6) months preceding the order of the county board of election commissioners.

(C) A request for remedial action may include without limitation a request for:

(i) A change in personnel responsible for conducting elections in the county, including the county board of election commissioners' decertification of a person from conducting any part of an election;

(ii) Additional in-kind support from the county, including without limitation:

(a) Secure facilities;

(b) Additional information technology;

(c) Additional personnel acceptable to the county board of election commissioners; and

(d) Other support that would enable the county board of election commissioners to carry out its legal responsibility to conduct free and equal elections in the county;

(iii) Legal representation and advice free from conflicts of interest with the county judge, the county clerk, and other officials elected in a partisan election in the county; or

(iv) Additional funding to carry out the legal responsibility of the county board of election commissioners to conduct free and equal elections in the county;

(2) Transmit a copy of the written requests under subdivision (a)(1) of this section contemporaneously to the:

(A) County judge;

(B) State Board of Election Commissioners; and

(C) Quorum court of the county; and

(3) Determine by majority vote of the county board of election commissioners that the county judge has failed to provide requested remedial action that would allow the county board of election commissioners to conduct free and equal elections in the county in a timely manner.

(c)(1) The county board of election commissioners shall transmit a written order requesting the State Board of Election Commissioners to conduct an election in their county if the remedial actions requested by the county board of election commissioners to the county judge was not met to their satisfaction and under the requirements of this section.

(2) A copy of the request for the State Board of Election Commissioners to conduct an election on an emergency basis in the county shall be transmitted contemporaneously to:

(A) The county judge;

(B) Each member of the county quorum court;

(C) The prosecuting attorney for the county; and

(D) The State Board of Election Commissioners.

(d) The State Board of Election Commissioners shall meet within ten (10) calendar days of receipt of a written request to conduct an election on an emergency basis from a county board of election commissioners to evaluate the request.

(e) If the State Board of Election Commissioners finds that the county board of election commissioners has complied with this section, the State Board of Election Commissioners may take one or more of the following actions:

(1) Direct the Director of the State Board of Election Commissioners to conduct an analysis of all of the county board of election commissioners' systems and make recommendations for action by the State Board of Election Commissioners;

(2) Find that an emergency exists;

(3) Find that emergency actions are necessary to administer and conduct a free and equal election within the time frame established by law in the affected county; or

(4) Assume immediate authority of the county board of election commissioners and take one (1) or more of the following actions at any time after the request to conduct an election on an emergency basis has been made:

(A) Remove permanently, reassign, or suspend on a temporary basis the county election coordinator and:

(i) Appoint a person, who shall become a special employee of the State Board of Election Commissioners, in place of the county election coordinator, or in place of the primary executive employee for conducting an election in the county, to operate all administrative functions of the county board of election commissioners under the supervision and approval of the director;

(ii) Authorize a person to remove, replace, reassign, or suspend any staff, or any other county personnel, or any other state employees, assigned to work on any part of the forthcoming election in that county;

(iii) Compensate from State Board of Election Commissioners funds, or other funds of the state designated for delivery to the county, the person appointed to operate the administrative functions of the county board of election commissioners, and other individuals authorized by the director;

(iv) Authorize a person to secure any facilities necessary to ensure the security of election machinery, processes, and ballot materials;

(v) Authorize a person to retain the professional

services of information technology personnel, security personnel, and legal support personnel, sufficient to conduct a free and fair election;

(vi) Authorize a person to operate the administrative functions of the county board of election commissioners using State Board of Election Commissioners funds, or other funds of the state designated for delivery to the county;

(vii) Authorize a person to obtain legal advice from the office of the Attorney General, that is free from conflicts of interest with any county elected officials; or

(viii) Authorize a person to prohibit county elected officials, and employees of county elected officials, from access to:

(a) Election materials;

(b) Physical locations where election materials are maintained; and

(c) Electronic systems and processes concerning elections;

(B) Prohibit county elected officials from interfering in any way with the conduct of the election;

(C) Remove, on a temporary basis, some or all of the powers and duties granted to the county board of election commissioners but allow the county board of election commissioners to operate under the direction and approval of the director;

(D) Require the reassignment or removal of some or all of the administrative, operational, security, information technology, and other support staff of the county board of election commissioners;

(E) Restrict, proscribe, or limit on a temporary basis some or all of the powers and duties granted to the county clerk concerning the:

(i) Conduct of early voting;

(ii) Processing of any absentee ballot materials returned to the county from any voter;

(iii) Transmission of election results to the Secretary of State; and

(iv) Retention of election materials after the election is concluded until any runoff or general primary has taken place or until the period for the conduct of any election contest has expired;

(F) Seek reimbursement for election expenses under § 7-5-104 and deposit the reimbursement into an account established with the Auditor of the State of Arkansas for this purpose.

(G) Draw funds from the account established with the Auditor of the State of Arkansas for expenses collected under § 7-5-104 and use those funds for the State Board of Election Commissioners' authorization to conduct an elections under this section;

(H) Conduct all other activity normally assigned to the county board of election commissioners, including the redrawing of boundary lines for any maps required as part of redistricting, during the time the State Board of Election Commissioners conducts an election; or

(I) Take any other necessary and proper action, as determined by the State Board of Election Commissioners.

(f)(1) The State Board of Election Commissioners may conduct the election on an emergency basis as requested by the county board of election commissioners.

(2) If the State Board of Election Commissioners conducts an election on an emergency basis as requested by the county board of election commissioners, the State Board of Election Commissioners shall conduct an associated runoff election, including a general primary election.

(g) The emergency power of the State Board of Election Commissioners shall terminate:

(1) Upon the conclusion of the time for an election contest that may arise from the runoff or general primary election associated with the requested election unless the State Board of Election Commissioners:

(A) Determines by majority vote that the State Board of Election Commissioners' continued involvement is required; and

(B)(i) Received a formal complaint involving the county;
and

(ii) The complaint against the county has not been resolved by the State Board of Election Commissioners;

(2) Upon the resolution of all pending formal complaints to the State Board of Election Commissioners concerning the requested conduct of the election on an emergency basis unless a written resolution of the county board of election commissioners is submitted to the State Board of Election Commissioners requesting that the State Board of Election Commissioners

continue conducting elections on an emergency basis, and operating all other activities assigned to the county board of election commissioners in the county; or

(3) Two (2) calendar years from the date of final certification of the first election conducted on an emergency basis, originally requested by the county board of election commissioners for the State Board of Election Commissioners to conduct an election.

(h)(1) The State Board of Election Commissioners shall charge the county for all fees, costs, and expenses, including personnel expenses, and matching personnel services, from the time the State Board of Election Commissioners makes a finding that an emergency basis exists until the State Board of Election Commissioners terminates the emergency basis.

(2) The State Board of Election Commissioners shall recover from the county all of its fees, costs, and expenses from those funds to reimburse the county for any election expenses under § 7-7-201.

(3) The State Board of Election Commissioners shall be entitled to recover from funds collected under § 7-5-109, all of the fees, costs, and expenses from those funds reimbursed by other governmental entities.

(4) The State Board of Election Commissioners shall recover any unrecovered fees, costs, and expenses from the county.

(5) Payment from the county shall be due no later than twenty-one (21) days after submission of any invoice, bill, or statement from the State Board of Election Commissioners, or its designee.

(6)(A) The State Board of Election Commissioners shall be entitled to notify the Department of Finance and Administration of a county's failure to pay for unrecovered fees, costs, and expenses of the State Board of Election Commissioners under this section.

(B) The State Board of Election Commissioners shall notify the department of a county's failing to reimburse the State Board of Election Commissioners for fees, costs, and expenses incurred if a county fails to remit appropriate payment more than thirty (30) days after billing from the State Board of Election Commissioners.

(C) Upon notification, the department shall withhold all funds due and owing to the county as revenue from the State of Arkansas until an order from the State Board of Election Commissioners authorizing delivery of those funds.

(i) Except as provided in subsection (j) of this section, the State Board of Election Commissioners is not required to comply with the requirements of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(j) The State Board of Election Commissioners shall adopt rules to implement this section in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.