

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

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

SENATE BILL 543

By: Senator K. Hammer
By: Representative Cozart

For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS LAW CONCERNING SCHOOL DISTRICT BOARDS OF DIRECTORS; AMENDING A PORTION OF LAW RESULTING FROM INITIATED ACT 1 OF 1990; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND ARKANSAS LAW CONCERNING SCHOOL DISTRICT BOARDS OF DIRECTORS AND AMENDING A PORTION OF LAW RESULTING FROM INITIATED ACT 1 OF 1990.

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

SECTION 1. Arkansas Code § 6-13-611(a)(5), concerning vacancies on a school district board of directors, is amended to read as follows:

(5) Is convicted of a:

(A) felony ~~Felony~~ in accordance with § 6-13-612; or

(B) Violation of the ethical guidelines and prohibitions under §

6-24-101 et seq.;

SECTION 2. Arkansas Code § 6-13-617 is amended to read as follows:
6-13-617. Oath.

(a)(1)(A) Each director ~~elected for an initial or nonconsecutive term of office~~ shall, within ten (10) days after receiving notice from the county clerk or his or her designee of his or her election or within ten (10) days after receiving notice from the county clerk or his or her designee of his or



her appointment, subscribe to the following oath before an individual authorized to administer oaths under § 21-2-105:

“I, _____, do hereby solemnly swear or affirm, that I will support the United States Constitution and the Arkansas Constitution, and that I will not be interested, directly or indirectly, in any contract made by the district of which I am a director, except as permitted by state law, that I shall abide by the ethical guidelines and prohibitions under § 6-24-101 et seq., and that I will faithfully discharge the duties as school director in _____ School District upon which I am about to enter.

Director’s Signature

Administrator’s Signature

Date”.

_____ Accepted

_____ Rejected

_____ Reason for rejection

County Clerk’s Signature”.

(B) The notification from the county clerk or his or her designee shall indicate the date by which the oath shall be subscribed to.

(2)(A) After the oath is administered, the director shall submit a certification of the administration of the oath to the county clerk or his or her designee.

(B) The certification of the administration of the oath shall contain:

- (i) A copy of the oath;
- (ii) The director’s signature;
- (iii) The administrator’s signature; and
- (iv) The date.

(C) The certification of the administration of the oath shall be submitted to the county clerk or his or her designee no later than the close of business on the date indicated in the notification from the county clerk under subdivision (a)(1) of this section.

(b)(1) The county clerk or his or her designee, upon receipt of the certification of the administration of the oath prescribed for a director, shall immediately: ~~commission such persons, and they shall enter at once upon their duties as directors.~~

(A) Verify that the:

(i) Certification of the administration of the oath was submitted on or before the close of business on the date indicated in the notification from the county clerk or his or her designee under subdivision (a)(1) of this section; and

(ii) Individual before whom the oath was subscribed to is an individual authorized to administer oaths under § 21-2-105; and

(B) Either:

(i) Accept the certification of the administration of the oath if it complies with the requirements of this section; or

(ii) Reject the certification of the administration of the oath if it does not comply with one (1) or more of the requirements of this section.

(2)(A) Immediately following the acceptance of the certification of the administration of the oath, the county clerk or his or her designee shall:

(i) Commission the director;

(ii) Provide the director a copy of § 6-24-101 et seq.; and

(iii) Require the director to sign an acknowledgement that he or she received a copy of § 6-24-101 et seq.

(B) The term of the director shall begin upon the receiving of the commission under subdivision (b)(2)(A)(i) of this section.

~~(2)(3)~~ By the close of business of the day following the receipt of the certification of the administration of the oath, the county clerk or his or her designee shall either:

(A)(i) ~~notify~~ Notify the superintendent of the school district by phone that the individual has subscribed to the director's oath and that the county clerk has accepted the certification of the administration of the oath; and

(ii) ~~shall send~~ Send a copy of the certificate of the administration of the oath to the school district's central office within

five (5) days; or

(B) If the certification of the administration of the oath has not been timely received or otherwise rejected by the county clerk or his or her designee, notify the superintendent of the school district by phone of the rejection of the certification of the administration of the oath by the close of business on the day following the date indicated in the notification from the county clerk or his or her designee under subdivision (a)(1) of this section.

(c) The failure of an elected director to have the oath administered and submit proof that the oath was administered as required under subsection (a) of this section will result in:

- (1) The individual's not being qualified to serve for the purpose of Arkansas Constitution, Article 19, § 5; and
- (2) A holdover.

SECTION 3. Arkansas Code § 6-13-619 is amended to add an additional subsection to read as follows:

(e)(1) In addition to the circumstances in which an executive session is permitted under the Freedom of Information Act of 1967, § 25-19-101 et seq., the board of directors may meet in executive session for the purposes of:

- (A) Pre-litigation discussions;
- (B) Litigation updates;
- (C) The discussion and consideration of settlement offers;
- (D) The discussion and consideration of contract disputes with the superintendent of the school district; and
- (E) Discussions pertaining to real property.

(2) In addition to the persons permitted to be present at an executive session under the Freedom of Information Act of 1967, § 25-19-101 et seq., the following may be present at an executive session of the board of directors upon invitation of the board of directors:

- (A) The superintendent of the school district; and
- (b) The attorney for the school district.

SECTION 4. Arkansas Code § 6-24-104 is amended to read as follows:
6-24-104. General prohibition.

(a)(1) No board member, administrator, or employee shall ~~knowingly:~~

~~(A) use~~ Use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others;

~~(b)(B) While serving as a board member, administrator, or employee, an individual shall not accept~~ Accept employment, contract, or engage in any public or professional activity that a reasonable person would expect might require or induce him or her to disclose any information acquired by the member by reason of his or her official position that is declared by law or rule to be confidential;

~~(c)(C) No board member, administrator, or employee shall knowingly disclose~~ Disclose any confidential information gained by reason of his or her position, ~~nor shall the member knowingly otherwise including~~ without limitation disclosing information acquired by attending an executive session of the board of directors unless the disclosure of that information is otherwise authorized or required by law; or

~~(D) use such~~ Use information acquired by reason or his or her position for his or her personal gain or benefit.

(b) A board member shall not act in a manner on school grounds or at a school-sponsored event that:

(1) Results or otherwise would have resulted in the removal of the board member from campus or the event if the board member's actions resulted in removal or otherwise would have resulted in removal if the actions were conducted by a member of the public; or

(2) Results in a violation of the criminal laws of this state or the Federal government.

(c) Any board member, administrator, or employee who knew or should have known his or her actions were prohibited under subsections (a) or (b) of this section may be subject to § 6-24-118.

~~(d)(d)~~ Nothing in this chapter prohibits board members, administrators, or employees of public educational entities from donating services or property to a public educational entity.

SECTION 5. Arkansas Code § 6-24-115 is amended to read as follows:
6-24-115. Criminal penalties.

(a)(1) Any board member, administrator, employee, or nonemployee who

shall knowingly violate the provisions of this chapter shall be guilty of a felony.

~~(b)(1) Upon pleading guilty or nolo contendere to or being found guilty of violating this chapter, the court shall order restitution to the public educational entity.~~

(2) In addition, the court may fine the violator in any sum not to exceed the greater of ten thousand dollars (\$10,000) or double the dollar amounts involved in the transactions, sentence the violator to prison for not more than five (5) years, or impose both a fine and imprisonment.

(b) Any board member, administrator, employee, or nonemployee who should have known his or her actions would violate the provisions of this chapter shall be guilty of a Class A misdemeanor.

(c) Upon pleading guilty or nolo contendere or being found guilty of violating this chapter, the court shall order restitution to the public educational entity in addition to any other penalty proscribed.

SECTION 5. Arkansas Code § 6-24-116 is amended to read as follows:
6-24-116. Request for review of transactions.

At the request of a board of a public educational entity, the executive administrator at a public educational entity, the Commissioner of Elementary and Secondary Education, the Arkansas Ethics Commission, or the Legislative Joint Auditing Committee, the appropriate prosecuting attorney shall review contracts or transactions for compliance with the provisions of this chapter.

SECTION 7. Arkansas Code § 6-24-117 is amended to read as follows:
6-24-117. Board position vacant upon conviction.

If a board member is found guilty of violating the provisions of this chapter and any appeals regarding the finding of guilt have been concluded, the board member shall immediately cease to be a board member, the position is declared vacant, and a replacement shall be named as provided ~~by law~~ in § 6-13-611.

SECTION 8. Arkansas Code § 6-24-118 is amended to read as follows:
6-24-118. Enforcement.

(a)(1) ~~It~~ Except as provided in subsection (b) of this section, it shall be the duty and responsibility of the prosecuting attorneys to

supervise compliance with this chapter and prosecute persons who violate this chapter.

~~(b)(2)~~ If the prosecuting attorney fails or refuses to enforce this chapter when the facts are known by the prosecuting attorney, or are called to his or her attention, the Attorney General or any citizen of this state may bring mandamus proceedings to compel the prosecuting attorney to perform his or her duties.

~~(e)(3)~~ All criminal actions related to alleged violations of this chapter shall be filed in circuit court and shall be subject to the criminal rules and procedures of this state.

(b)(1) The Arkansas Ethics Commission shall supervise compliance with this chapter by board members and investigate citizen complaints alleging violations of this chapter by board members.

(2)A) Upon completion of an investigation of a complaint that a board member has violated this chapter, the commission may assess a penalty under § 7-6-218(b)(4).

(B) All moneys received by the commission as payment of fines shall be deposited in the State Treasury as general revenues.

(3) The commission may promulgate rules that it deems necessary to perform its duties under this section.

SECTION 9. Arkansas Code § 7-6-217(g), concerning the authority of the Arkansas Ethics Commission and resulting from Initiated Act 1 of 1990, is amended to read as follows:

(g) The commission shall have the authority to:

(1) Under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., promulgate reasonable rules to implement and administer the requirements of this subchapter, as well as the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters, § 7-9-401 et seq.; § 19-11-718; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901; § 21-8-1001 et seq.; and Arkansas Constitution, Article 19, §§ 28-30; and to govern procedures before the commission, matters of commission operations, and all investigative and disciplinary procedures and proceedings;

(2) Issue advisory opinions and guidelines on the requirements

of § 6-24-101 et seq.; § 7-1-103(a)(1)-(4), (6), and (7); this subchapter; the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters, § 7-9-401 et seq.; § 19-11-718; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; § 21-8-1001 et seq.; and Arkansas Constitution, Article 19, §§ 28-30;

(3) After a citizen complaint has been submitted to the commission, investigate alleged violations of § 6-24-101 et seq.; § 7-1-103(a)(1)-(4), (6), and (7); this subchapter; the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters, § 7-9-401 et seq.; § 19-11-718; § 21-1-401 et seq.; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901; § 21-8-1001 et seq.; and Arkansas Constitution, Article 19, §§ 28-30; and render findings and disciplinary action thereon;

(4) Pursuant to commission investigations, subpoena any person or the books, records, or other documents being held by any person and take sworn statements;

(5) Administer oaths for the purpose of taking sworn testimony of witnesses and conduct hearings;

(6) Hire a staff and retain legal counsel;

(7) Approve forms prepared by the Secretary of State under this subchapter; the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters, § 7-9-401 et seq.; § 19-11-718; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; and § 21-8-1001 et seq.; and

(8)(A) File suit in the Pulaski County Circuit Court or in the circuit court of the county wherein the respondent resides or, under § 16-17-706, in the small claims division established in any district court in the State of Arkansas, to obtain a judgment for the amount of any fine imposed under § 7-6-218(b)(4)(B)(i)-(iii), or to enforce an order of the commission requiring the filing or amendment of a disclosure form.

(B) Said action by the court shall not involve further judicial review of the commission's actions.

(C) The fee normally charged for the filing of a suit in

any of the circuit courts in the State of Arkansas shall be waived on behalf of the commission.

SECTION 10. Arkansas Code § 7-6-218, resulting from Initiated Act 1 of 1990, is amended to read as follows:

7-6-218. Citizen complaints – Definition.

(a)(1) Any citizen may file a complaint with the Arkansas Ethics Commission against a person covered by this subchapter, by § 6-24-101 et seq.; § 7-1-103(a)(1)-(4), (6), or (7); the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters, § 7-9-401 et seq.; § 21-1-401 et seq.; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; § 21-8-1001 et seq.; and Arkansas Constitution, Article 19, §§ 28-30, for an alleged violation of the subchapters or sections. For purposes of this subdivision (a)(1), the Arkansas Ethics Commission shall be considered a citizen.

(2) A complaint must be filed within four (4) years after the alleged violation occurred. If the alleged violation is the failure to file a report or the filing of an incorrect report, the complaint shall be filed within four (4) years after the date the report was due.

(b)(1)(A) Upon a complaint stating facts constituting an alleged violation signed under penalty of perjury by any person, the Arkansas Ethics Commission shall investigate the alleged violation of this subchapter or § 6-24-101 et seq.; § 7-1-103(a)(1)-(4), (6), or (7); the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters, § 7-9-401 et seq.; § 21-1-401 et seq.; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; § 21-8-1001 et seq.; and Arkansas Constitution, Article 19, §§ 28-30.

(B) The Arkansas Ethics Commission shall immediately notify any person under investigation of the investigation and of the nature of the alleged violation.

(C) The Arkansas Ethics Commission in a document shall advise the complainant and the respondent of the final action taken, together with the reasons for the action, and such document shall be a public record.

(D) Filing of a frivolous complaint shall be a violation

of this subchapter. For purposes of this section, “frivolous” means clearly lacking any basis in fact or law. In any case in which the Arkansas Ethics Commission has dismissed a complaint, the respondent may request in writing that the Arkansas Ethics Commission make a finding as to whether or not the complaint filed was frivolous. In the event that the Arkansas Ethics Commission finds that the complaint was frivolous, the respondent may file a complaint seeking sanctions as provided in subdivision (b)(4) of this section.

(2) If, after the investigation, the Arkansas Ethics Commission finds that probable cause exists for a finding of a violation, the respondent may request a hearing. The hearing shall be a public hearing.

(3)(A) The Arkansas Ethics Commission shall keep a record of its investigations, inquiries, and proceedings.

(B)(i) Except as provided in subdivision (b)(3)(B)(ii) of this section, all proceedings, records, and transcripts of any investigations or inquiries shall be kept confidential by the Arkansas Ethics Commission, unless the respondent requests disclosure of documents relating to investigation of the case, in case of a hearing under subdivision (b)(2) of this section, or in case of judicial review of a decision of the Arkansas Ethics Commission pursuant to § 25-15-212.

(ii)(a) Through its members or staff, the Arkansas Ethics Commission may disclose confidential information to proper law enforcement officials, agencies, and bodies, or as may be required to conduct its investigation.

(b) If an investigation or inquiry concerns an attorney or judge, the Arkansas Ethics Commission may, through its members or staff, disclose confidential information to the Supreme Court Committee on Professional Conduct or the Judicial Discipline and Disability Commission.

(C) Thirty (30) days after any final adjudication in which the Arkansas Ethics Commission makes a finding of a violation, all records relevant to the investigation and upon which the Arkansas Ethics Commission has based its decision, except working papers of the Arkansas Ethics Commission and its staff, shall be open to public inspection.

(4) If the Arkansas Ethics Commission finds a violation of this subchapter; § 6-24-101 et seq.; § 7-1-103(a)(1)-(4), (6), or (7); § 21-1-401 et seq.; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and State and

Local Officials, § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; § 21-8-1001 et seq.; or Arkansas Constitution, Article 19, §§ 28-30, then the Arkansas Ethics Commission shall do one (1) or more of the following, unless good cause be shown for the violation:

(A) Issue a public letter of caution or warning or reprimand;

(B)(i) Notwithstanding the provisions of §§ 7-6-202, 7-9-409, 21-8-403, and 21-8-903, impose a fine of not less than fifty dollars (\$50.00) nor more than three thousand five hundred dollars (\$3,500) for negligent or intentional violation of this subchapter; § 6-24-101 et seq.; the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters, § 7-9-401 et seq.; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; § 21-8-1001 et seq.; or Arkansas Constitution, Article 19, §§ 28-30.

(ii) The Arkansas Ethics Commission shall adopt rules governing the imposition of such fines in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(iii) All moneys received by the Arkansas Ethics Commission in payment of fines shall be deposited into the State Treasury as general revenues;

(C) Order the respondent to file or amend a statutorily required disclosure form; or

(D)(i) Report its finding, along with such information and documents as it deems appropriate, and make recommendations to the proper law enforcement authorities.

(ii) When exercising the authority provided in this subdivision (b)(4), the Arkansas Ethics Commission is not required to make a finding of a violation of the laws under its jurisdiction.

(5)(A)(i) Except as provided in subdivision (b)(5)(A)(iii) of this section, the Arkansas Ethics Commission shall complete its investigation of a complaint filed pursuant to this section and take final action within two hundred ten (210) days of the filing of the complaint.

(ii) Except as provided in subdivision (b)(5)(A)(iii) of this section, if a hearing under subdivision (b)(2) of this section or

other hearing of adjudication is conducted, all action on the complaint by the Arkansas Ethics Commission shall be completed within two hundred forty (240) days.

(iii) If the Arkansas Ethics Commission requires additional time to complete its investigation under subdivision (b)(5)(A)(i) of this section or to complete its hearing or action under subdivision (b)(5)(A)(ii) of this section and gives written notice to the person who is under investigation or the subject of the hearing or action, the Arkansas Ethics Commission may extend the time to complete the investigation, hearing, or action by no more than sixty (60) days.

(B) However, such time shall be tolled during the pendency of any civil action, civil appeal, or other judicial proceeding involving those particular Arkansas Ethics Commission proceedings.

(c) Any final action of the Arkansas Ethics Commission under this section shall constitute an adjudication for purposes of judicial review under § 25-15-212.

SECTION 11. EFFECTIVE DATE. This act shall be effective on and after May 1, 2024.