

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 559 of the Regular Session

1 State of Arkansas  
2 86th General Assembly  
3 Regular Session, 2007  
4

*As Engrossed: H3/12/07*

**A Bill**

HOUSE BILL 2359

5 By: Representative E. Brown  
6  
7

**For An Act To Be Entitled**

9 AN ACT TO AMEND PROVISIONS OF ARKANSAS LAW  
10 PERTAINING TO THE STATE BOARD OF ELECTION  
11 COMMISSIONERS; AND FOR OTHER PURPOSES.  
12

**Subtitle**

13 AN ACT TO AMEND PROVISIONS OF ARKANSAS  
14 LAW PERTAINING TO THE STATE BOARD OF  
15 ELECTION COMMISSIONERS.  
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18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code § 7-4-101 is amended to read as follows:

22 7-4-101. State Board of Election Commissioners - Members - Officers -  
23 Meetings.

24 (a) The State Board of Election Commissioners shall be composed of the  
25 following seven (7) persons, with at least one (1) from each congressional  
26 district:

27 (1) The Secretary of State;

28 (2) One (1) person designated by the chair of the state  
29 Democratic Party;

30 (3) One (1) person designated by the chair of the state  
31 Republican Party;

32 (4) One (1) person to be chosen by the President Pro Tempore of  
33 the Senate;

34 (5) One (1) person to be chosen by the Speaker of the House of  
35 Representatives; and



1           (6) Two (2) persons to be chosen by the Governor, one (1) of  
2 whom shall be a county clerk and one (1) of whom shall have served for at  
3 least three (3) years as a county election commissioner.

4           (b) The Secretary of State shall serve as chair and secretary of the  
5 board.

6           (c) Except for the Secretary of State and the county clerk, no member  
7 of the board shall be an elected public official.

8           (d)(1) The term on the board of the elected state official shall be  
9 concurrent with the term of the public elected official.

10           (2) The county clerk shall hold the office of county clerk when  
11 appointed to the board and shall be removed as a member of the board if not  
12 in office.

13           (3)(A) Members of the board appointed by the President Pro  
14 Tempore of the Senate and the Speaker of the House of Representatives shall  
15 be appointed for terms of two (2) years and shall continue to serve until  
16 successors have been appointed and taken the official oath.

17           (B) All other appointive members shall be appointed for  
18 terms of four (4) years and shall continue to serve until successors have  
19 been appointed and taken the official oath.

20           (4) No appointive member shall be appointed to serve more than  
21 two (2) consecutive full terms.

22           (5)(A) If a vacancy on the board occurs, a successor shall be  
23 appointed within thirty (30) days to serve the remainder of the unexpired  
24 term.

25           (B) The appointment shall be made by the official holding  
26 the office responsible for appointing the predecessor.

27           (e)(1) The board shall meet as needed upon call of the chair or upon  
28 written request to the chair of any four (4) members.

29           (2) A majority of the membership of the board shall constitute a  
30 quorum for conducting business.

31           (3) No sanctions shall be imposed without the affirmative vote  
32 of at least four (4) members of the board.

33           (4) Meetings of the board may be chaired and conducted by either  
34 the chair or a member of the board designated by the chair as acting chair  
35 for the meeting.

36           (f) The board shall have the authority to:

1 (1) Publish a candidate's election handbook, in conjunction with  
2 the office of the Secretary of State and the Arkansas Ethics Commission,  
3 which outlines in a readable and understandable format the legal obligations  
4 of a candidate and any other suggestions that might be helpful to a candidate  
5 in complying with state election law;

6 (2) Conduct statewide training for election ~~officials~~ officers  
7 and county election commissioners;

8 (3) Adopt all necessary rules ~~and regulations~~ regarding training  
9 referred to in subdivision (f)(2) of this section and develop procedures for  
10 monitoring attendance;

11 (4) Monitor all election law-related legislation;

12 (5) Formulate, adopt, and promulgate all necessary rules ~~and~~  
13 ~~regulations~~ to assure even and consistent application of voter registration  
14 laws and fair and orderly election procedures;

15 (6)(A) Appoint certified election monitors to any county upon a  
16 signed, written request under oath filed with the board and a determination  
17 by the board that appointing a monitor is necessary.

18 (B) Certified election monitors shall serve as observers  
19 for the purpose of reporting to the board on the conduct of the election.

20 (C) The board may allow for reasonable compensation for  
21 election monitors;

22 (7) Assist the county board of election commissioners in the  
23 performance of administrative duties of the election process if the board  
24 determines that assistance is necessary and appropriate;

25 (8)(A) Formulate, adopt, and promulgate all necessary rules ~~and~~  
26 ~~regulations~~ to establish uniform and nondiscriminatory administrative  
27 complaint procedures consistent with the requirements of Title IV of the  
28 federal Help America Vote Act.

29 (B) The cost of compliance with Title IV of the federal  
30 Help America Vote Act shall be paid from the fund established to comply with  
31 the federal Help America Vote Act;

32 (9) Investigate alleged violations, render findings, and impose  
33 disciplinary action according to § 7-4-118 for violations of election and  
34 voter registration laws, except as to § 7-1-103(a)(1)-(4), (6), and (7), and  
35 except for any matters relating to campaign finance and disclosure laws which  
36 the Arkansas Ethics Commission shall have the power and authority to enforce

1 according to §§ 7-6-217 and 7-6-218;

2 (10) Examine and approve in accordance with §§ 7-5-503 and 7-5-  
3 606 the types of voting machines and electronic vote tabulating devices used  
4 in any election; and

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

8 ~~(12) Appoint third members to county boards of election~~  
9 ~~commissioners in accordance with § 7-4-102(b); and~~

10 ~~(13) Certify candidate names and titles in accordance with § 7-~~  
11 ~~7-305(e).~~

12 (g) The Attorney General shall provide legal assistance to the board  
13 in answering questions regarding election laws.

14 (h)(1) The board may appoint a director, who may hire a staff.

15 (2) The director shall serve at the pleasure of the board.

16 (3) The board shall set the personnel policies in accordance  
17 with the Regular Salary Procedures and Restrictions Act, § 21-5-101 et seq.,  
18 and the Uniform Classification and Compensation Act, § 21-5-201 et seq.

19  
20 SECTION 2. Arkansas Code § 7-4-102 is amended to read as follows:

21 7-4-102. County boards of election commissioners - Election of members  
22 - Oath.

23 (a)(1) The county chairman of the county committee of the majority  
24 party and the county chairman of the county committee of the minority party  
25 shall be members of the county board of election commissioners together with  
26 one (1) additional or third member ~~to be appointed by the State Board of~~  
27 Election Commissioners selected by the county committee of the majority party  
28 at the same time as the election of party officers.

29 (2)~~(A)~~ Provided, however, if the county chairman of a county  
30 committee of the majority party or the minority party is an elected official  
31 or is otherwise ineligible to serve as a member of the county board of  
32 election commissioners, he or she shall not serve as a member of the county  
33 board, but the county committee shall ~~elect someone~~ select a resident of the  
34 county qualified to serve in his or her stead.

35 ~~(B) No elected official who serves as county party~~  
36 ~~chairman shall participate as a party officer in providing for or conducting~~

1 a party primary election in which his or her name appears on the ballot as a  
2 candidate for any office.

3 (3) Any county chairman of a county committee of the majority  
4 party or the minority party may elect not to serve as a member of the county  
5 board, and the county committee shall ~~appoint someone~~ select a resident of  
6 the county qualified to serve in his or her stead.

7 ~~(b)(1) The third member for each of the county boards shall be~~  
8 ~~appointed by the state board from a list of five (5) names submitted to the~~  
9 ~~state board by the county committee of the majority party.~~

10 ~~(2)(A) The nominees shall be certified to the state board by the~~  
11 ~~chairman of the county committee of the majority party.~~

12 ~~(B) The third members for each of the county boards shall~~  
13 ~~be elected by a majority vote of the state board from the list of five (5)~~  
14 ~~nominees submitted.~~

15 ~~(C) The list of five (5) nominees shall be certified and~~  
16 ~~submitted to the state board by the majority party county committee chairman~~  
17 ~~subsequent to the primary election but at least sixty (60) calendar days~~  
18 ~~before any general election for state, district, or county office.~~

19 ~~(D) The third member of each county board shall be elected~~  
20 ~~as aforesaid by the state board at least fifty (50) calendar days before any~~  
21 ~~general election for state, district, or county office.~~

22 ~~(3) In the event of the failure of any county chairman of the~~  
23 ~~county committee of the majority party to submit five (5) names in nomination~~  
24 ~~for the third member of the county board within the time herein stipulated,~~  
25 ~~the state board shall nominate and elect by majority vote any resident of the~~  
26 ~~county as the third member at any time prior to the general election.~~

27 ~~(4) In the event that the identity of the county chairman of the~~  
28 ~~county committee of the majority party is in dispute, the state board shall~~  
29 ~~nominate and elect by majority vote the third member at any time prior to the~~  
30 ~~general election.~~

31 ~~(5) The result of the state board's election for the third~~  
32 ~~member shall be final.~~

33 ~~(e)(b) Notification of the election of the third member of the county~~  
34 ~~board shall be made in writing, over the signature of the chairman of the~~  
35 ~~state board, and the state board shall mail to each of the elected county~~  
36 ~~commissioners at his or her last known address a notice of his or her~~

1 ~~election and, in addition, shall mail to the clerks of the county courts a~~  
2 ~~certificate of the appointment of the county commissioners~~ The chairperson or  
3 secretary of each county committee shall, within ten (10) days of the date of  
4 selection to the county board of election commissioners, notify the county  
5 clerk in writing of the names and addresses of those selected to serve on the  
6 county board.

7 (2) Upon receipt of the notice, the county clerk shall send to  
8 each of the county election commissioners, by registered mail, notice to  
9 appear before the clerk within thirty (30) days of selection as a county  
10 election commissioner to take and subscribe to the oath prescribed by the  
11 Arkansas Constitution.

12 (3) The oath shall be filed in the office of the county clerk  
13 and a duplicate forwarded to the Secretary of State.

14 ~~(d)(c)~~ Upon receipt of the certificate of the appointment, it shall be  
15 ~~the duty of the county clerk to cause to be sent to each of the county~~  
16 ~~commissioners, by registered mail, notice to appear before the clerk at least~~  
17 ~~thirty (30) days prior to the date of the general election to take and~~  
18 ~~subscribe to the oath prescribed by Arkansas Constitution, Article 19, § 20.~~  
19 ~~The oath shall be endorsed upon the certificate, and, when so endorsed, the~~  
20 ~~certificate shall be filed in the office of the county clerk and a duplicate~~  
21 ~~thereof forwarded to the Secretary of State~~ Between January 1 and January 31  
22 of each year, the chairperson of the majority party of the county shall file  
23 with the county clerk and the Secretary of State a notice setting forth the  
24 names of the majority party's designated members of the county board and the  
25 chairperson of the minority party shall file with the county clerk and the  
26 Secretary of State a notice setting forth the name of the minority party's  
27 member of the county board.

28 ~~(e)(d)~~ The county board is deemed to consist of county officials, and  
29 its members shall be immune from tort liability pursuant to § 21-9-301.

30  
31 SECTION 3. Arkansas Code § 7-4-107(e), concerning duties of the county  
32 election commissioner, is amended to read as follows:

33 ~~(e)~~ Fifteen (15) days following any regularly scheduled preferential  
34 primary, general, or statewide special election, each county election  
35 commissioner shall file an affidavit with the State Board of Election  
36 Commissioners in a form approved by the State Board of Election Commissioners

1 ~~to the effect that all duties and responsibilities of the county election~~  
2 ~~commissioner have been complied with.~~

3  
4 SECTION 4. Arkansas Code § 7-4-118 is amended to read as follows:

5 7-4-118. Complaints of election law violations.

6 (a)(1) The State Board of Election Commissioners may investigate  
7 alleged violations, render findings, and impose disciplinary action according  
8 to this subchapter for violations of election and voter registration laws,  
9 except:

10 (A) For the provisions in § 7-1-103(a)(1)-(4), (6), and (7); and

11 (B) For any matters relating to campaign finance and  
12 disclosure laws that the Arkansas Ethics Commission shall have the power and  
13 authority to enforce according to §§ 7-6-217 and 7-6-218.

14 (2) For purposes of subdivision (a)(1), the board may file a  
15 complaint.

16 (3) A complaint must be filed with the board in writing within  
17 thirty (30) days of ~~the~~ an alleged voter registration violation or the  
18 election associated with the complaint.

19 (4) A complaint must clearly state the alleged election  
20 irregularity or illegality, when and where the alleged activity occurred, the  
21 supporting facts surrounding the allegations, and the desired resolution.

22 (5) A complaint must be signed by the complainant under penalty  
23 of perjury.

24 (6)(A) Filing of a frivolous complaint is considered a violation  
25 of this subchapter.

26 (B) For purposes of this section, "frivolous" means  
27 clearly lacking any basis in fact or law.

28 (b)(1) Upon receipt by the board of a written complaint signed under  
29 penalty of perjury stating facts constituting an alleged violation of  
30 election or voter registration laws under its jurisdiction ~~signed under~~  
31 ~~penalty of perjury~~, the board shall proceed to *investigate* the alleged  
32 violation.

33 (2) The board may determine that:

34 (A) The complaint can be disposed of through documentary  
35 submissions; or

36 (B) ~~An~~ Further investigation is necessary.

1 (3) The board may forward the complaint, along with the  
2 information and documentation as deemed appropriate, to the proper authority.

3 (4)(A) If the board determines that an investigation is  
4 necessary, the board shall provide a copy of the complaint with instructions  
5 regarding the opportunity to respond to the complaint to the party against  
6 whom the complaint is lodged.

7 (B) The board may administer oaths for the purpose of  
8 taking sworn statements from any person thought to have knowledge of any  
9 facts pertaining to the complaint.

10 (C) The board may request the party against whom the  
11 complaint is lodged to answer allegations in writing, produce relevant  
12 evidence, or appear in person before the board.

13 (D) The board may subpoena any person or the books,  
14 records, or other documents relevant to an inquiry by the board that are  
15 being held by any person and take sworn statements.

16 (E) The board shall provide the subject of the subpoena  
17 with reasonable notice of the subpoena and an opportunity to respond.

18 (F) The board shall advise in writing the complainant and  
19 the party against whom the complaint is lodged of the final action taken.

20 (c) If the board finds that probable cause exists for finding a  
21 violation of election or voter registration laws under its jurisdiction, the  
22 board may determine that a full public hearing be called.

23 (d) If the board finds a violation of election or voter registration  
24 laws under its jurisdiction, then the board may do one (1) or more of the  
25 following:

26 (1) Issue a public letter of caution, warning, or reprimand;

27 (2) Impose a fine of not less than twenty-five dollars (\$25.00)  
28 nor more than one thousand dollars (\$1,000) for each negligent or intentional  
29 violation;

30 (3) Report its findings, along with the information and  
31 documents as it deems appropriate, and make recommendations to the proper law  
32 enforcement authorities; or

33 (4) Assess costs for the investigation and hearing.

34 (e)(1) The board shall adopt rules governing the imposition of the  
35 fines in accordance with the provisions of the Arkansas Administrative  
36 Procedure Act, § 25-15-201 et seq.



1           (2)(A) The board may file suit in the Pulaski County Circuit  
2 Court or in the circuit court of the county in which the debtor resides or,  
3 according to the Small Claims Procedure Act, § 16-17-601 et seq., in the  
4 small claims division of any district court in the State of Arkansas to  
5 obtain a judgment for the amount of any fine imposed according to its  
6 authority.

7           (B) The action by the court shall not involve further  
8 judicial review of the board's actions.

9           (C) The fee normally charged for the filing of a suit in  
10 any of the circuit or district courts in the State of Arkansas shall be  
11 waived on behalf of the board.

12           (3) All moneys received by the board in payment of fines shall  
13 be deposited in the State Treasury as general revenues.

14           (f)(1) The board shall complete its investigation of a complaint filed  
15 according to this section and take final action within one hundred eighty  
16 (180) days of the filing of the complaint.

17           (2) However, if a hearing under subsection (c) of this section  
18 is conducted, all action on the complaint by the board shall be completed  
19 within two hundred forty (240) days.

20           (3) Any final action of the board under this section shall  
21 constitute an adjudication for purposes of judicial review under § 25-15-212.

22           (g)(1) The board shall keep a record of all inquiries, investigations,  
23 and proceedings.

24           (2) Records relating to investigations by the board are exempt  
25 from the Freedom of Information Act of 1967, § 25-19-101 et seq., until a  
26 hearing is set or the director's investigation is closed.

27           (3) The board may disclose, through its members or staff,  
28 otherwise confidential information to proper law enforcement officials,  
29 agencies, and bodies as may be required to conduct its investigation.

30  
31       SECTION 5. Arkansas Code § 7-5-707 is amended to read as follows:

32       7-5-707. Vote certification – Affidavit of compliance - Report.

33       (a) For all state and federal elections, the county board of election  
34 commissioners shall transmit the certified results for each polling place to  
35 the county clerk, who shall immediately transmit the results to the Secretary  
36 of State through the Internet website interface provided by the Secretary of

1 State.

2 ~~(a)~~(b) At the time that the county board of election commissioners  
3 certifies the vote to the Secretary of State, the county board shall ~~report~~  
4 submit to the State Board of Election Commissioners a written report of:

5 (1) ~~The total number of ballots cast~~ The total number of persons  
6 who voted in the election;

7 (2) ~~The total number of ballots printed and delivered to the~~  
8 ~~polls~~ The total number of early votes cast by voting machine;

9 (3) ~~The total number of provisional ballots that were~~  
10 ~~disqualified~~ The total number of votes cast by voting machine on election  
11 day;

12 (4) ~~The total number of spoiled ballots~~ The total number of  
13 absentee ballots, including without limitation:

14 (A) The total number of non-provisional absentee ballots  
15 cast;

16 (B) The total number of provisional absentee ballots cast;

17 (C) The total number of provisional absentee ballots  
18 counted;

19 (D) The total number of provisional absentee ballots  
20 disqualified;

21 (5) ~~The total number of unused ballots~~ The total number of early  
22 votes cast by paper ballot, including without limitation:

23 (A) The total number of non-provisional early paper  
24 ballots cast;

25 (B) The total number of provisional early ballots cast;

26 (C) The total number of provisional early ballots counted;

27 (D) The total number of provisional early ballots  
28 disqualified; and

29 (6) ~~The number of over votes and under votes cast in each race~~  
30 ~~and issue in the election.~~ The total number of paper ballots cast on  
31 election day, including without limitation:

32 (A) The total number of non-provisional paper ballots cast  
33 on election day;

34 (B) The total number of provisional ballots cast on  
35 election day;

36 (C) The total number of provisional election day ballots

1 counted; and

2 (D) The total number of provisional election day ballots  
3 disqualified;

4 (7) The total number of spoiled ballots;

5 (8) The total number of unused ballots; and

6 (9) The total number of ballots printed.

7 (c) The county board shall post a copy of the written report submitted  
8 to the state board in a public place in the county clerk's office for twenty  
9 (20) days and file a copy with the clerk's office.

10 ~~(b)(1) The county board shall transmit the certified results for each~~  
11 ~~polling place to the county clerk, who shall immediately transmit the results~~  
12 ~~to the Secretary of State through the Internet website interface provided by~~  
13 ~~the Secretary of State for all state and federal elections.~~

14 ~~(2)(d)~~ (d) The county board shall transmit the information required  
15 according to subsection (a) of this section the number of overvotes and  
16 undervotes cast in each race and issue in the election to the county clerk,  
17 who shall enter and transmit it to the state board through the Secretary of  
18 State's Internet website interface.

19 (e) Fifteen (15) days following any regularly scheduled preferential  
20 primary election, general election, or statewide special election, each  
21 county election commissioner shall file an affidavit, under the signature of  
22 all three (3) commissioners or individually, with the State Board of Election  
23 Commissioners in a form approved by the state board to the effect that all  
24 duties and responsibilities of the county election commissioner have been  
25 complied with.

26  
27 SECTION 6. Arkansas Code § 7-7-305(c), concerning the printing of  
28 election ballots, is amended to read as follows:

29 (c)(1)(A) Any person who shall file for any elective office in this  
30 state may use not more than three (3) given names, one (1) of which may be a  
31 nickname or any other word used for the purpose of identifying the person to  
32 the voters, and may add as a prefix to his or her name the title or an  
33 abbreviation of an elective public office the person currently holds.

34 (B) A person may only use the prefix "Judge", "Justice",  
35 or "Chief Justice" in an election for a judgeship if the person is currently  
36 serving in a judicial position to which the person has been elected.

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

(2) The names and titles as proposed to be used by each candidate on the political practice pledge or, if the political practice pledge is not filed by the filing deadline, then the names and titles that appear on the party certificate shall be reviewed no later than one (1) business day after the filing deadline by the ~~State Board of Election Commissioners~~ Secretary of State for state and district offices and by the county board of election commissioners for county, township, school, and municipal offices.

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

(4) No candidate shall 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.

*/s/ E. Brown*

**APPROVED: 3/28/2007**