

STATE BOARD OF ELECTION COMMISSIONERS

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DECLARATORY ORDER 2025-001

The State Board of Election Commissioners (SBEC) received a Declaratory Order Request from Mr. Lucas Harder, a Pulaski County registered voter. The SBEC may issue a Declaratory Order pursuant to authority granted by Ark. Code Ann. § 25-15-206 and SBEC Board Rule § 1104. The SBEC hereby states the following:

I. Jurisdiction to Issue a Declaratory Order

1. The State Board finds that it has the authority to issue the requested order based on the fact the controlling sections of law are election law.
2. The State Board is empowered to enforce election and voter registration laws. Ark. Code Ann. §§ 7-4-120(a); and (b)(A)(i)(g) – (i).
3. State agencies are required to hear petitions for declaratory orders regarding the applicability of any rule, statute, or order enforced by that agency. Ark. Code Ann. §25-15-206. Per State Board Rule § 1105, a “declaratory order is a means of resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the State Board of Election Commissioners has authority.”

II. QUESTIONS PRESENTED BY THE PETITION

Question Number 1:

Does Act 503 remove authority to conduct the November 2025 Annual School Election for both the board of director positions, and the annual millage election?

Holding of the SBEC: Yes. Act 503 specifically repealed the section of Arkansas Law that allowed the November 2025 election. See Sections 9, 12, and 14 of the Act. In those Sections, reference to the November Odd-year election was repealed.

Question Number 2:

If Act 503 removes the authority to conduct the November 2025 Annual School Election, when would the term of a school board member end if it would have ended during the November 2025 election?

Holding of the SBEC: March 2026. An office holder that would have been up for election during the November 2025 cycle could have held office through the December runoff period. Thus, a director will remain in office until a replacement is elected and subscribed to the oath of office under A.C.A. § 6-13-617.

Question Number 3:

If Act 503 removes the authority to conduct the November 2025 Annual School Election, how would a school district that has not held its annual millage election comply with its Constitutional Requirements? Article 14 § 3 of the Arkansas Constitution requires a school district's millage be put before the voters annually, how should a school district who was scheduled to put the millage before the voters in November of 2025 address that Act 503 makes the only annual school election in 2025 be held in May?

Holding of the SBEC: It would need to call a special election to hold its millage. Notice of a special election must be adopted and filed with the county clerk no less than seventy (70) days before the election; however,

note that A.C.A. § 6-14-111(i) requires schools to file their language for the annual millage no less than seventy-two (72) days before the annual school election. Since Act 503 repeals the authority for the November 2025 annual school election, the millage must be adopted through a special called election.

Question Number 4:

Since petition circulation for candidates running in the currently lawfully permitted November 2025 annual school election will begin May 22, 2025, is the November 2025 election underway such that it can be held on November 18, 2025, even if Act 503 has taken effect?

Holding of the SBEC: No. The Board is adopting this Declaratory Order in anticipation of the effect of Act 503 on the November 2025 election cycle. Adoption of this Declaratory Order establishes the parameters for implementation of Act 503, and its effect in moving the November 2025 school board director elections to the March 2026 election cycle.

Question Number 5:

While Act 503 contains language setting default term ends for school board members, the default language intending to stagger school board terms can result in school boards having an election with a substantially larger number of board members up for election at once compared to other elections. When this occurs, does Act 503 require a school board to adjust term lengths to rebalance the number of positions up at each election?

Holding of the SBEC: This question is outside the scope of the State Board's authority to provide a response to a Declaratory Order Petition. Act 503 is silent on this point and the application of how a School Board should redistribute its terms is outside the scope of State Board enforcement authority.

Question Number 6:

If you answered Yes to Question 5 above, Act 503 does not include language directing how school boards should restructure their terms to balance the elections across each election cycle. What is the process that school boards should use to equalize the number of positions that are up for election at one time?

Holding of the SBEC: This question is outside the scope of the State Board's authority to provide a response to a Declaratory Order Petition. Act 503 is silent on this point and the application of how a School Board should redistribute its terms is outside the scope of State Board enforcement authority.

Question Number 7:

Act 503 amends the language addressing the end of the term for an individual serving on a school board by appointment. The repealed language required that an appointment only lasted until the next annual school election while the new language provides that an appointee serves until their successor takes the oath of office. Does the revised language mean that an individual appointed to a school board shall serve the remainder of the unexpired term once appointed? Rather than serving until the very next annual school election, this language appears to require the appointee to serve the full 4- or 6-year term?

Holding of the SBEC: Yes. Act 503 repealed the language that limited an appointee to the next annual school election. Thus, an appointee's term continues to the end of the term for the office appointed to. Answering this question concerns the calling of special elections to fill seats occupied by appointees. Under the implementation of Act 503, once established, the number of seats up for election every year will remain constant. Not requiring special elections to fill seats every annual election is within the jurisdiction of the State Board to respond within this Declaratory Order.

Question Number 8:

Act 503 appears to require board of directors whose terms end in 2026 and those that end in 2027 to be elected during the 2026 March election cycle. So, if a board of directors' term ends at any time in 2026 or 2027, is the election for that seat held in March 2026 under Act 503? Does the same process apply to those whose terms were scheduled to expire in 2028 and 2029?

Holding of the SBEC: Yes. The language of the Act is that a board member whose term ends during calendar year 2026 or 2027, "shall expire in 2026." Similarly, those board members whose terms end during calendar year 2028 and 2029 "shall expire in 2028." Applying the plain language of the Act, board members whose terms expire in 2026 and 2027 must circulate their petitions and file their candidate paperwork in compliance with the March 2026 election deadlines. Similarly, those board members whose terms end in 2028 and 2029 must circulate their petitions and file their paperwork in compliance with the March 2028 election deadlines. This question is within the authority of the State Board regarding the administration of an election, election processes, or the conduct of an election. Identifying when officer holders' terms end and when they must be up for election is within the jurisdiction of the State Board.

Question Number 9:

If a director whose term expires in 2026 or 2027 is required to be elected during the March 2026 election, when would those candidates need to circulate their petition and when would they need to file their paperwork to run for office during the March 2026 election?

Holding of the SBEC: Per Act 503, "beginning at 12:00 noon on the first day of the party filing period under § 7-7-203 and shall end at 12:00 noon on the last day of the party filing period under 7-7-203." Per Act 405, the party filing period "shall be a one-week period beginning at 12:00 noon on the first Monday in November preceding the general primary election and ending at 12:00 noon on the eighth day thereafter." See A.C.A. § 7-7-203(c)(1).

Question Number 10:

Act 503 provides several situations that require the entire school district board of directors to be up for election at the same school board election. One example is if the school district drops below twenty thousand (20,000) students in average daily membership (ADM). At what point during the student attendance reporting cycles is the ADM calculated to make this determination?

Holding of the SBEC: This question is outside the scope of the State Board's authority to provide a response to a Declaratory Order Petition. Act 503 is silent on this point and application of ADM reporting is outside the scope of State Board enforcement authority.

III. ANALYSIS

A. Act 503 Implementation Date

1. Act 503 was adopted as of April 10, 2025. It does not contain an emergency clause, nor does it contain a delayed implementation date.
2. *Sine Die* was effective May 5, 2025, meaning Act 503 will go into effect on August 5, 2025.
3. Act 264 moved the November 2025 Annual School Election to the following week because the second Tuesday of November is a state holiday. Thus, the petition filing deadline is August 20, 2025. However, Act 503 coming later in time, would repeal conflicting portions of Act 264. Act 503 would repeal the authority to conduct the November 2025 annual school election.

B. Act 264 Implementation Date and Effect

4. Act 264 was adopted as of March 12, 2025. It did include an emergency clause, causing it to go into effect upon its approval by the Governor.

5. Act 264 moved the November 11, 2025, the annual school election to the following week, November 18, 2025. It did this because November 11, 2025, is Veteran's Day and is a recognized State Holiday.
6. Moving the date of the annual school election to November 18, 2025, moves the associated filing dates and petition circulation dates.
7. Act 264, through its emergency clause, is currently in effect, meaning that petition circulation begins on May 22, 2025, with candidate filing deadline, under the terms of Act 264, during the one-week period ending ninety (90) days before the November election. That means the deadline to file candidate paperwork for the November 18, 2025, the annual school election, per Act 264, is 12:00 noon on Wednesday, August 20, 2025. See A.C.A. § 6-14-111(e)(1)(B).
8. Petition circulation occurs for the ninety-day period prior to the filing deadline. Calculating this date means that petition circulation begins May 22, 2025. See A.C.A. § 6-14-111(f)(1).

C. Implication of Act 264 and Act 503 comparison

9. Act 264 is now in effect by operation of the emergency clause. Through its current operation, it defines the necessary deadlines for the conduct of the November 2025 annual school election.
10. However, when Act 503 becomes effective on August 5, 2025, it will repeal the authority to conduct a November 2025 annual school election.
11. Act 503 takes effect on August 5, 2025. Candidate filing for the November 2025 annual school election does not occur until August 20, 2025. Therefore, Act 503 comes into effect prior to candidates filing for office.
12. Thus, Act 503's removal of authority to conduct the November 2025 annual school election taking effect prior to the filing of candidates, coupled with this Declaratory Order, cause the November 2025 annual school election to not be held.

13. Adoption of this Declaratory Order prior to school board candidate petition circulation means that petition circulation is delayed until the deadlines for conducting the school board election during the March 2026 election cycle.
14. Candidates seeking office in the March 2026 election cycle must file their petitions, Per Act 503, "beginning at 12:00 noon on the first day of the party filing period under § 7-7-203 and shall end at 12:00 noon on the last day of the party filing period under 7-7-203." Per Act 405, the party filing period "shall be a one-week period beginning at 12:00 noon on the first Monday in November preceding the general primary election and ending at 12:00 noon on the eighth day thereafter." See A.C.A. § 7-7-203(c)(1).
15. The first Monday in November 2025 is November 3, 2025. Petition Circulation thus begins ninety (90) days prior which falls on Tuesday, August 5, 2025. This is the same day that Act 503 lawfully takes effect.

D. State Board of Election Commissioners Findings

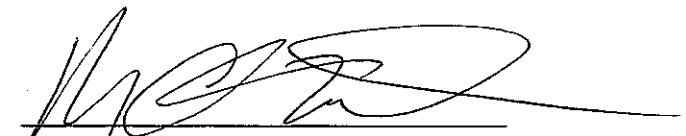
16. The State Board finds that, through implementation of Act 503 in comparison with the filing deadlines created by Act 264, the November 2025 annual school election will not occur in November of 2025.
17. Act 503 repeals the sections of Arkansas Law that allow for the November 2025 election. See Sections 9, 12, and 14 of the Act 503. In those Sections, reference to the November Odd-year election were repealed.
18. The State Board finds that candidates whose terms would have ended following the November 2025 annual school election will be extended through the March 2026 election. If a runoff is necessary then, by operation of Act 503, they shall remain in office until the November 2026 runoff and a duly elected officer takes the oath of office to replace him or her.
19. The State Board finds that the plain language of Act 503 requires school board of directors whose terms were scheduled to end in the spring or fall of 2026 and 2027 must file for office during

the filing period for election during the March 2026 election. Stated differently, any office holder or potential candidate seeking a school board position that was to be up for election in calendar year 2026 or calendar year 2027 must file in November of 2025 to be elected in the March 2026 election period.

20. Further, any office holder or potential candidate seeking office for a term that was set to expire during the calendar year of 2028 or 2029 must file and run for such school board position during the March 2028 election.
21. An appointee, in accordance with Act 503, serves the full term of office to which he or she is appointed. Act 503 repealed the language requiring an appointee to be replaced or up for election at the next annual school election. Repealing this language requires an appointee to serve the whole two-, four- or six-year term of the office to which he or she is appointed.
22. A school district that has not held its annual millage election will have to call a special election to comply with its constitutional requirements to conduct an annual millage election. Notice of a special election must be adopted and filed with the county clerk no less than seventy (70) days before the election. However, note that A.C.A. § 6-14-111(i) requires schools to file their language for the annual millage no less than seventy-two (72) days before the annual school election. However, since Act 503 repeals the authority for the November 2025 annual school election, the millage must be adopted through a special called election.

The forgoing Order is approved and adopted by the State Board of Election Commissioners on May 21, 2025. As evidence of its adoption, the State Board instructs the Director of the SBEC to affix his signature to this Order.

IT IS SO ORDERED.



Richard Chris Madison
SBEC Director