



STATE BOARD OF ELECTION COMMISSIONERS

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MEMORANDUM

TO: County Election Officials
FROM: State Board of Election Commissioners
DATE: June 26, 2023 ¹
SUBJECT: 2023 Election Related Legislation Summaries

The following acts were passed by the 94th General Assembly and relate to Arkansas Election or Voter Registration law, the operation of the County Board of Election Commissioners (CBECs), or the operation of the State Board of Election Commissioners (SBEC). Unless otherwise noted, these laws will go into effect as of August 1, 2023.

Please note that this analysis is provided for informational and training purposes and does not reflect a legal interpretation of any law nor an official policy position or Declaratory Order of the SBEC.

[Act 92](#) / House Bill 1198:

Early Voting Calendar

The purpose of this act is to remove a provision of law which prevents early voting from being held on a day when the county government declares a holiday. The policy that early voting is held on all the legally established dates, except for state holidays, will ensure uniformity across the state.

[Act 138](#) / Senate Bill 196:

Vacancies on the CBEC

This act establishes the authority for the chairman of the county party to make a temporary appointment to fill a vacancy in the CBEC. If the county has no party chairman, the state party chairman may fill the vacancy with a temporary appointment. The appointments made under this act will remain in effect until the vacancy is filled under the existing statutory procedures either by the county party or the state chairman.

¹ Updated on July 19, 2023, to reflect the final determinations of the Code Revision Commission.

[Act 141](#) / Senate Bill 247:

Eligibility for Absentee Voting

This act provides for a new qualification for casting a ballot using the absentee voting process. A person who is prevented from voting due to an “observance of a religious discipline or religious holiday for the entire twelve (12) hours that the polls are open on election day” will be eligible to vote absentee.

[Act 246](#) / House Bill 1404:

Moving Early Voting Polling Locations During the Early Voting Period

This act provides procedures for moving election equipment from one location to another during the early voting period. Counties who choose to utilize the same voting equipment and material at multiple locations during early voting now have two options.

If the county utilizes precinct ballot tabulators during early voting, the election officials will be required to utilize containers with the ballot tabulators which allow ballots to fall directly into a container which can be secured without the election officials handling the ballots. When the poll is being relocated, the ballot container must be taken from the DS200, secured with a numbered seal, and transported directly to the central location where ballots are stored for that county.

If the county utilizes ballot marking devices and ballot boxes during early voting, the ballot boxes must be secured with a numbered seal and transported directly to the central location where ballots are stored for that county when the poll is being relocated. These ballots will then be counted at the central counting location on election day.

[Act 263](#) / House Bill 1325:

Standardization of Early Voting Hours

The act requires, in most cases, that any discretionary offsite early voting be conducted for all the hours required for the early voting location in the county seat(s). The CBEC is allowed to deviate from the hours required at the county seat location if the off-site location used during early voting is not available for the entire time period established in law for the county seat location.

[Act 294](#) / House Bill 1461:

Federal Election Guidance Report

This act establishes a process by which the Secretary of State is required to compile and report all “new federal election guidance.” County election officials are required to report any guidance they receive from any federal government entity to the Secretary of State within two business days. The Secretary will compile any guidance received into a report that is annually provided to the Joint Performance Review Committee.

[Act 300](#) / House Bill 1510:

Limitations of the Dates a Special Election Can be Called

This act reduces the available dates on which a special election for measures and questions can be called from four dates per year to two dates per year. In a presidential election year, special elections can be held in March and in November. In all other years, the dates in which a special election can be called are May and November. The act leaves in place the current rule that special elections are held on the second Tuesday of the month unless a special election is called in the month of a preferential primary election or general election, in which case, the special election will be held on the date of the major election.

The act also provides a more concrete definition of emergency that allows for special elections to be called for dates other than the two designated dates. In order to qualify as an emergency, the circumstances constituting an emergency include: (1) an interpretation of law by a state or federal court which renders the governing entity incapable of performing its lawful duties and obligations; (2) a fire, flood, tornado, or other natural disaster rendering the governing entity financially incapable of performing its lawful duties and obligations; or (3) an imminent danger to public health and safety.

Effective Date: January 1, 2024

[Act 305](#) / Senate Bill 254:

Elimination of Write-In Voting

This act eliminates write-in candidates and write-in voting from Arkansas’s election process. This policy change protects voters who are often unaware that a write-in vote for any person who did not file as a write-in candidate will be a vote which cannot be counted. The change also simplifies the election process for voters and election officials.

Ballot Error Correction Procedures

This act revises the existing law governing ballot errors. It establishes a uniform set of procedures which codify and explicitly authorize much of the current practice utilized to correct and mitigate errors on ballots.

GENERAL RULE: The fundamental rule established in this act is that ballot errors must be corrected unless the CBEC determines, with a unanimous vote, that the error can be effectively mitigated and that the disruption to the election process and financial cost outweighs the benefits of correcting the ballot. However, the CBEC is required to correct ballots that omit a contest or candidate or which omit an issue (other than a no change millage issue). Regardless of whether the error is corrected, the applicable mitigation must be implemented and remain in place until the error is corrected or the election is concluded.

ERROR IN CANDIDATE'S NAME: A notice must be posted on each ballot marking device or booth which informs the voter that an error exists on the ballot regarding the affected race and which lists the correct rendering of all candidates in that race in the order in which they appear on the ballot. The notice shall NOT identify the candidate affected by the error. The same notice shall be provided to each absentee voter whose ballot is sent after the error is discovered.

ERROR IN BALLOT ISSUE: A notice must be posted on each ballot marking device or booth which informs the voter that an error exists on the ballot regarding the issue in question and renders the correct text of the ballot issue. The same notice shall be provided to each absentee voter whose ballot is sent after the error is discovered.

OMISSION OF A RACE OR ISSUE: If possible, the voters assigned a ballot style omitting an issue or race must be assigned a ballot style which contains all the correct issues and races should one be available. If no alternate ballot style is available, the CBEC shall provide an error correction ballot which is a separate paper ballot containing the omitted race or issue. The CBEC must also work with the county clerk to develop a list of voters who are affected by the error and who are eligible to cast the error correction ballot. Voters whose names appear on that list may cast the error correction ballot as a regular ballot to be counted by the CBEC on election day. Any person not on the list may cast the error correction ballot as a provisional ballot if they believe they are affected by the error. In this circumstance, the CBEC is required to use all information available in the voter registration system to contact all voters who have already voted before the CBEC implemented ballot mitigation.

CANDIDATE REVIEW OF BALLOT CONTENT: For candidates who supply their email address on their political practice pledge, the CBEC is required to provide a proof of the approved ballot or a report from the ballot programming software which shows: (1) the name of each candidate as it appears on the ballot, (2) the ballot contests to

which the candidate is assigned, and (3) the precinct or precinct-parts to which the race is assigned.

Act 320 / House Bill 1411:

Application for Absentee Ballot

The act revises the existing law governing the assistance of voters in the casting of an absentee ballot or absentee ballot application.

ABSENTEE BALLOT APPLICATIONS: The act prohibits any person from filling out an absentee ballot application for a voter prior to delivering that application to the voter. This does not include information automatically populated by the voter registration system. The act also requires all persons returning an absentee ballot on behalf of another person, other than a mail carrier, to provide a photo ID when they return the ballot. Finally, if a person other than the voter assists a voter in “filling out” an absentee ballot application, that person providing assistance must provide his or her name, address, and signature on the application.

CRIMINAL PROHIBITION: The act also establishes a class A misdemeanor for a county clerk or an election official who distributes unsolicited absentee ballot applications or unsolicited absentee ballots to electors. However, making the applications generally available online or in the county clerk’s offices is not a violation of this provision.

Act 321 / House Bill 1423:

Recount Procedures

The act revises the existing law governing how a recount is requested and the procedures for conducting a recount when requested by a candidate.

REQUESTS FOR RECOUNT: The act provides that, when the number of outstanding UOCAVA ballots combined with provisional ballots could alter the outcome of a race, a candidate’s deadline to request a recount is extended beyond the standard two days following the reporting of unofficial election results. Under these circumstances, a candidate may request a recount no later than certification of the election by the CBEC or noon on the seventh day after the election whichever is sooner. This hard deadline is established to ensure a CBEC is not obligated to conduct a recount without sufficient time to prepare.

REMOVAL OF OLD LANGUAGE: The act clarifies the statute by removing outdated language referring to procedures relating to direct-recording electronic (DRE) voting machines which are no longer in use in Arkansas.

REQUIRED PROCEDURES: The act establishes a requirement that all duplicated ballots must be matched to their original ballot to confirm that the duplication was correctly executed. The act also establishes an explicit notice requirement that the CBEC apprise all candidates affected by a recount that it will be held. Finally, the act requires results tapes for the recount be manually compiled into totals prior to the final certification of the election. This is already a requirement of certification; however, the act makes it explicit that if the CBEC has concluded this review pursuant to A.C.A. § 7-5-529 prior to the recount the process must be repeated for the recount. The CBEC may also comply with this provision by substituting the recount results tapes with the original results tapes in the effected races during the normal review conducted prior to certification of the election.

Act 328 / House Bill 1469:

Alignment of Municipal Election Dates and Deadlines

This act generally aligns election dates and timelines for all municipalities and adjusts timelines in order to simplify the election process for voters, candidates, and election officials.

MAYOR / COUNCIL: Current law allows a municipality to select from one of three filing periods: the partisan filing period, the default independent filing period in August, or the alternative filing period in May. The act eliminates the alternative filing period in May. The act also adjusts the deadline to change between partisan and non-partisan as August 31st of the year prior to the election.

CITY MANAGER: The act aligns the filing period with Mayor / Council forms of government described above. The act also establishes a petition circulation period of 90 day prior to filing which mirrors the circulation period under Mayor / Council forms of government.

CITY ADMINISTRATOR: Current law provides that the election for the city administrator form of government is held on the second Tuesday in September and that, if no candidate wins with a majority of the votes, a runoff is held on the date of the General Election. The act moves the municipal election to the date of the November general election and the runoff to the date of the runoff for the general election. The act also establishes a petition circulation period of 90 day prior to filing which mirrors the circulation period for the other forms of municipal government.

Ballot Handling and Chain of Custody

This act establishes new procedures and measures designed to enhance the security of the ballots and election materials.

DELIVERY OF ABSENTEE BALLOTS TO THE COUNTY CLERK: The act requires that the CBEC deliver absentee ballots to the Clerk in a secure manner. In addition, the CBEC must provide the clerk with a report documenting the following: (1) the date of delivery, (2) the method of delivery, (3) the total number of ballots provided by style, and (4) names and signatures of the persons delivering the ballots. The report must be supplemented if additional ballot deliveries to the clerk are made.

CASTING OF A PROVISIONAL BALLOT: The act obligates a poll worker to verify that the provisional ballot envelope information is completed. In addition, the poll worker is required to write his or her name, the polling location, the date, the reason the ballot is provisional, and sign the envelope. Provisional ballots cast shall be placed in a secure container located within the building in which voting is held which can be observed by the public inside the poll.

TRANSFER OF MARKED BALLOTS: The act requires that marked absentee and provisional ballots be transferred “in a secured manner” from one location to another in teams of two election officials who have taken their oath of office. Officials transporting ballots are required to execute a “ballot transfer form” which captures the following information: (1) date, (2) time, (3) location ballots were acquired, (4) number of ballots in each container, (5) the names of the officials transporting the ballots, and (6) the location where the ballots were delivered. The CBEC, or its designee, shall sign the ballot transfer form when the ballots are received. In addition, the secure container used to transfer marked provisional ballots from the poll must have the following information visibly displayed on the absentee ballot container: (1) the number of marked ballots, (2) the location where the ballots were cast, and (3) the names of the officials transporting the ballots.

CBEC PROCESSING OF PROVISIONAL BALLOTS: When the CBEC receives provisional ballots, it is required to “electronically record” the following information:

- The first and last name of each provisional voter;
- Each voter’s address;
- Each voter’s DOB;
- The date the ballot was marked;
- The location the ballot was marked;
- The name of the election official documented on the provisional ballot envelope;
- The reason(s) the provisional ballot was cast.

Within one business day of the election, the CBEC shall provide a photocopy of each provisional ballot envelope to the county clerk along with the list described above. Following the county clerk's review of the provisional ballots, the CBEC is required to ensure the clerk reviewed each ballot submitted.

Acts [350](#) & [743](#) / Senate Bill 250 & House Bill 1687:

Procedures for Counties Who Hand Count Ballots

REPORTING UNOFFICIAL ELECTION RESULTS: Preliminary election results must be reported as soon as they are available. The act establishes a legal deadline of 24 hours after the polls close as the latest time preliminary election results can be reported.

(NOTE: The remainder of these acts do not apply to your county unless your quorum court votes to require your county to conduct a hand marked and hand counted election.)

Act 350 was designed to provide procedures and standards for a county which chooses to conduct its election primarily using hand marked, hand counted ballots. Act 743 was passed subsequently in order to revise and extend policies established in Act 350. The following analysis reads the two bills together with Act 743 controlling in any circumstance where the two acts are in conflict.

GENERAL PROVISIONS: The act requires that, in a county electing to hand count ballots, the ballots used must be compatible with the DS 200 and DS 450 tabulators. In addition, the act clarifies that a county choosing to hand count in place of using tabulators is responsible for the cost of the pre-printed ballots, any additional equipment necessary for the voting process, and the labor costs associated with conducting a hand count. However, the county is eligible to receive reimbursement for all reimbursable election costs not addressed that are excluded by this act. The act reiterates ballot marking devices must be available to voters in order to comply with the requirements of state and federal law regarding voters with disabilities. Finally, the act requires that all pre-printed paper ballots in hand count counties must contain a watermark.

PROCEDURES FOR HAND-COUNTS: Ballots to be hand counted must first be counted using an electronic vote tabulation device, except in certain minor elections involving fewer than 5,000 registered voters. After being tabulated, the ballots must be secured in a sealed double-locking hard shell ballot box for transportation to the designated hand count location and be sealed and initialed by at least two election officials. Tabulation results shall be posted at each polling site prior to the completion of the hand count.

The hand count must be conducted by precinct in a location designated at least 30 days prior to the election. Each ballot shall be counted by at least two officials verifying the voter's selection. When ballots are not being counted, the act requires that they be stored in a secure location. When questions of voter intent arises, it is the CBEC's responsibility to resolve those questions. The hand count must be completed within 24 hours of the certification deadline. If the count cannot be completed by that time, the CBEC is required to conduct its certification of the election using the certified election results produced by the tabulators. The CBEC must maintain at least four officials to continue the vote count.

PUBLIC OBSERVATION OF THE CANVASSING PROCESS: Public observers may not be within three feet of the canvassing process. If spaces are limited, candidate representatives and political party representatives are prioritized to have access to the canvassing process.

Effective Date: April 12, 2023

Act 353 / Senate Bill 258:

Drop Box Prohibition

This act explicitly prohibits the use of drop boxes in Arkansas elections. In order to comply with this provision, an absentee ballot which is not returned through the mail must be delivered into the hands of a representative of the county clerk inside the physical offices of the county clerk.

Act 356 / Senate Bill 292:

CBEC Compensation

This act establishes a minimum pay for county election commissioners at \$15 an hour for work conducted outside of a meeting up to 40 hours, if the CBEC and the elected county officials cannot agree on an election coordinator. However, the county may deny hourly wages to the CBEC if the county and the CBEC agree on an election coordinator to assist the CBEC. This law does not prohibit the county from paying rates or hours in excess of the minimums established under this act.

The act also increases the pay per meeting from a minimum of \$25 to a minimum of \$125 per meeting, up to 10 meetings per election and \$25 per meeting thereafter.

[Act 389](#) / Senate Bill 273:

Vote Center Polling Locations in Runoff Elections

This act provides that, in a county using vote centers and which does not establish an assigned polling site for each precinct, the polling sites for a runoff election are the sites which were located in the territory of the jurisdiction, district, ward, or other political boundary which requires the runoff. If no poll would be opened under this general rule, the CBEC is required to open a poll in the territory or the county seat if establishing a poll inside the area participating in the runoff is not possible.

In addition, the act clarifies two other issues related to polling sites. First, the deadline to alter vote centers prior to a primary or general election is moved from 30 days to 60 days. This change aligns the deadline to alter vote centers with the deadline to alter polling sites which are assigned to a single precinct. This corrects an oversight in the 2021 session related to the act that established an appeal process for the reduction in the number of polls in a major election. The second issue is the clarification that the CBEC may add additional polls after the deadline to move or close polls. The addition of a poll may be done by a majority vote but must be completed prior to the publication of the notice of election.

[Act 421](#) / House Bill 1512:

Simplification of UOCAVA Voting Process

The act eliminates a current distinction in the deadline to return an overseas civilian's absentee ballot based on the date of application. Current law requires that overseas civilian absentee voters applying less than 30 days prior to the election must have their ballots returned to the county clerk by the poll on election night, but those voters applying more than 30 days prior to the election have until 10 days after the election. The act sets a deadline for all overseas civilian absentee voters to return their absentee ballot at 10 days after the election.

The act also eliminates a dating requirement regarding an overseas civilian's absentee ballot that was not being enforced due to it being in conflict with the requirements governing uniformed service voters.

Voter Registration Records

This act establishes or amends various provisions to enhance the accuracy and efficacy of the voter registration records in Arkansas.

LIST MAINTENANCE: The act requires the Secretary to ensure the “security and accuracy” of the voter registration list through multiple strategies. The first is through the cooperation with other states and jurisdictions to compare VR information regarding: (1) identifying changes of address, (2) preventing registration in more than one state, and (3) determination of voter eligibility. Second is the utilization of any available service to verify voter citizenship status. Third is to regularly utilize the Social Security Administration’s master death file to identify registered Arkansans who are deceased. Finally, implement an address verification process. The Secretary will be responsible for providing an annual report to the Joint Performance Review Committee of the legislature regarding the accuracy of the voter registration records.

ACCESS TO VOTER REGISTRATION INFORMATION: The act requires that the Secretary shall ensure all confidential VR records remain protected. The act also requires that CBEC members be allowed view-only access to the VR system.

OTHER REPORTING REQUIREMENTS: The act provides that reporting requirements to the U.S. Election Assistance Commission be fulfilled with data which does not specify the agency or program which collected the data. The act also provides greater specificity regarding the data which must be reported to the Secretary of State by the agencies or programs which participate in voter requisition.

VOTER ID: The act provides that a photo ID issued by a trade school in the State of Arkansas is an acceptable ID to verify one’s voter registration when voting. The act also provides that the name on the ID used for voter registration verification must be the voter’s legal name.

VOTER REGISTRATION RECORDS AUDIT: The act requires the SBEC to conduct an annual audit of the voter registration data with a goal of ensuring the information is “accurate and up to date.” The SBEC is required to complete the audit by the end of the calendar year and publish its findings on the agency’s website.

MODIFICATION OF THE VOTER REGISTRATION APPLICATION FORM: The act requires the VR application to include a statement warning applicants that if they allow a third party to submit the form on their behalf, the third party may fail to return the application in a timely manner and, should this occur, the applicant will not be registered to vote. The application form must also inform the voters how to determine if the application was received by the Secretary of State.

Poll Watchers

The act establishes or amends various provisions of law to ensure access of poll watchers to all aspects of the election process as well as providing greater specificity regarding the powers and obligations governing poll watchers.

POLL WATCHER TRAINING: The act requires the SBEC to establish an online training program for poll watchers. All poll watchers in the State of Arkansas must complete the SBEC training course prior to acting as a poll watcher. The SBEC is required to promulgate rules governing poll watcher training which (1) establish procedures for recording who has completed the program, (2) provides for how the program will be promoted, and (3) establishes an appeal process if the certification of completion is not granted to the prospective poll watcher.

POLL WATCHER'S RIGHTS: The primary objective of this act is to ensure poll watchers are given uniform and nondiscriminatory access to all stages of the election process. The area designated for poll watchers at the poll must be allowed within three to six feet of the voter check-in area. Should a poll have a separate area for voter registration updates, the same level of access must be allowed for that area. In addition, a poll watcher is entitled to three copies of his or her appointment document with the file mark of the county clerk without a fee.

POLL WATCHER'S ELIGIBILITY: The act provides that poll watchers must be qualified electors of the state but do not need to be qualified electors of the county.

POLL WATCHER'S OBLIGATIONS: The act establishes the requirement that the poll watcher must wear a name tag. The act restates conduct currently prohibited in law and provides explicit statutory authority for the CBEC and County Clerk to remove a poll watcher who acts in violation of the provision of A.C.A. §7-5-312.

APPOINTMENT OF POLL WATCHERS: The act establishes a new authority for political parties, both state and county, to appoint poll watchers if the party is supporting or opposing a ballot measure. The act also clarifies that groups, other than political parties, must have filed financial disclosure documents with the Secretary of State in order to be eligible to appoint poll watchers.

LOGGING A CHALLENGE: The act provides that a poll watcher may speak to any election official to initiate the challenge but must speak with the supervisor of the poll in order to perfect the challenge.

CRIMINAL PENALTIES: The act establishes a Class A misdemeanor criminal provision prohibiting the use of “force, intimidation, harassment, or coercion” to interfere with:

- Voters' ability to vote;
- An election official in the conduct of his or her duties; or
- A poll watcher in the conduct of his or her duties.

DUPPLICATION OF DAMAGED OR DEFECTIVE BALLOTS: In addition to specifying that poll watchers are entitled to be present when ballot duplication is conducted, the act requires election officials conducting the duplication of ballots to keep a record of the ballots duplicated and to provide a report to the CBEC.

[Act 460](#) / Senate Bill 253:

Duplicating Defective Ballots

The act clarifies procedures for duplicating defective ballots and provides additional procedures to ensure the process of duplicating ballots is accurate and transparent. Current law simply requires the CBEC to mark the ballot being created and substituted for the defective original ballot with the word “duplicate.”

The act establishes a requirement that a unique serial number be placed on both the original ballot and the duplicated ballot so that the two can be linked at a later time to verify the duplication was faithfully reproduced. The act provides that both the duplicated ballots and the original ballots must be securely stored in the same location as other ballots.

The act also clarifies that, if necessary, the duplication of ballots counted at the central counting location are to be duplicated and counted contemporaneously with the other ballots being counted. However, if a ballot cast at a polling site must be duplicated, the original ballot shall be delivered to the CBEC who may duplicate the ballot or add the ballot to the count manually.

[Act 462](#) / Senate Bill 277:

New Political Parties

The act alters the filing period one day in order to restore the filing period ruled as invalid by a federal court. This was done because a court order struck down the party filing period as a part of an unconstitutional scheme as it relates to third party filing. In addition, the act sets the number of signatures needed to establish a new political party ballot at 10,000. It also establishes timelines for the filing of new party petitions and nominations made by convention. The act makes additional modifications regarding the filing process for new political party candidates.

[Act 620](#) / Senate Bill 272:

SBEC Election Integrity Bill

This act is the SBEC election integrity bill and is designed to enhance the agency's ability to detect, prevent, and address attempts to corrupt the election process as well as enhance the public confidence in the election process.

TABULATION EQUIPMENT AUDITS: The act provides that the auditing program, which the SBEC currently conducts following the general election, to also be conducted following the Preferential Primary.

EXPANDED COMPLAINT JURISDICTION: The act allows the SBEC itself to file a complaint more than 30 days after certification of the election if:

- The allegation involves an alleged violation of a felony provision within the SBEC's jurisdiction; or
- The allegation, if true, would affect the accuracy of the certified election results.

ELECTION INTEGRITY REVIEW: The act established a biennial review of election documents to search for indications of wrongdoing primarily in absentee voting and voter registration. This review is discretionary based on agency resources.

NEW CRIMINAL PROVISION: The act establishes a Felony Provision prohibiting the act of forging a signature on a voter registration application, absentee ballot application, or absentee ballot voter statement.

[Act 721](#) / House Bill 1495:

Adjusting Deadlines of Schools to Submit Ballot Language

The act requires school districts to provide ballot language to the county no later than 72 days prior to the school election except in presidential election years in which the deadline is 89 days prior to the school election. (The current rule is 60 days prior to the election.)