

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

SENATE BILL 543

5 By: Senator K. Hammer
6 By: Representative Cozart
7

For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS LAW CONCERNING SCHOOL
10 DISTRICT BOARDS OF DIRECTORS; AMENDING A PORTION OF
11 LAW RESULTING FROM INITIATED ACT 1 OF 1990; AND FOR
12 OTHER PURPOSES.
13
14

Subtitle

15 TO AMEND ARKANSAS LAW CONCERNING SCHOOL
16 DISTRICT BOARDS OF DIRECTORS AND AMENDING
17 A PORTION OF LAW RESULTING FROM INITIATED
18 ACT 1 OF 1990.
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21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

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

26 (5) Is convicted of a:

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

28 (B) Violation of the ethical guidelines and prohibitions under §
29 6-24-101 et seq.;
30

31 SECTION 2. Arkansas Code § 6-13-617 is amended to read as follows:
32 6-13-617. Oath.

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



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

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

11 _____
12 Director's Signature

13 _____
14 Administrator's Signature

15 _____
16 Date".

17 Accepted

18 Rejected

19 _____ Reason for rejection

20 _____
21 County Clerk's Signature".

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

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

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

- 29 (i) A copy of the oath;
- 30 (ii) The director's signature;
- 31 (iii) The administrator's signature; and
- 32 (iv) The date.

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

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

5 (A) Verify that the:

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

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

12 (B) Either:

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

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

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

21 (i) Commission the director;

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

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

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

28 ~~(2)(3)~~ (3) By the close of business of the day following the receipt
29 of the certification of the administration of the oath, the county clerk or
30 his or her designee shall either:

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

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

1 five (5) days; or

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

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

12 (1) The individual's not being qualified to serve for the
 13 purpose of Arkansas Constitution, Article 19, § 5; and

14 (2) A holdover.

15
 16 SECTION 3. Arkansas Code § 6-13-619 is amended to add an additional
 17 subsection to read as follows:

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

22 (A) Pre-litigation discussions;

23 (B) Litigation updates;

24 (C) The discussion and consideration of settlement offers;

25 (D) The discussion and consideration of contract disputes
 26 with the superintendent of the school district; and

27 (E) Discussions pertaining to real property.

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

32 (A) The superintendent of the school district; and

33 (b) The attorney for the school district.

34
 35 SECTION 4. Arkansas Code § 6-24-104 is amended to read as follows:
 36 6-24-104. General prohibition.

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

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

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

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

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

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

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

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

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

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

33

34 SECTION 5. Arkansas Code § 6-24-115 is amended to read as follows:
35 6-24-115. Criminal penalties.

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

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

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

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

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

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

16

17 SECTION 5. Arkansas Code § 6-24-116 is amended to read as follows:
18 6-24-116. Request for review of transactions.

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

24

25 SECTION 7. Arkansas Code § 6-24-117 is amended to read as follows:
26 6-24-117. Board position vacant upon conviction.

27 If a board member is found guilty of violating the provisions of this
28 chapter and any appeals regarding the finding of guilt have been concluded,
29 the board member shall immediately cease to be a board member, the position
30 is declared vacant, and a replacement shall be named as provided ~~by law~~ in §
31 6-13-611.

32

33 SECTION 8. Arkansas Code § 6-24-118 is amended to read as follows:
34 6-24-118. Enforcement.

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

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

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

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

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

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

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

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

21

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

25 (g) The commission shall have the authority to:

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

36 (2) Issue advisory opinions and guidelines on the requirements

1 of § 6-24-101 et seq.; § 7-1-103(a)(1)-(4), (6), and (7); this subchapter;
 2 the Disclosure Act for Public Initiatives, Referenda, and Measures Referred
 3 to Voters, § 7-9-401 et seq.; § 19-11-718; § 21-8-301 et seq.; the Disclosure
 4 Act for Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-
 5 601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.;
 6 § 21-8-1001 et seq.; and Arkansas Constitution, Article 19, §§ 28-30;

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

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

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

21 (6) Hire a staff and retain legal counsel;

22 (7) Approve forms prepared by the Secretary of State under this
 23 subchapter; the Disclosure Act for Public Initiatives, Referenda, and
 24 Measures Referred to Voters, § 7-9-401 et seq.; § 19-11-718; § 21-8-301 et
 25 seq.; the Disclosure Act for Lobbyists and State and Local Officials, § 21-8-
 26 401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.;
 27 § 21-8-901 et seq.; and § 21-8-1001 et seq.; and

28 (8)(A) File suit in the Pulaski County Circuit Court or in the
 29 circuit court of the county wherein the respondent resides or, under § 16-17-
 30 706, in the small claims division established in any district court in the
 31 State of Arkansas, to obtain a judgment for the amount of any fine imposed
 32 under § 7-6-218(b)(4)(B)(i)-(iii), or to enforce an order of the commission
 33 requiring the filing or amendment of a disclosure form.

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

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

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

3
4 SECTION 10. Arkansas Code § 7-6-218, resulting from Initiated Act 1 of
5 1990, is amended to read as follows:

6 7-6-218. Citizen complaints – Definition.

7 (a)(1) Any citizen may file a complaint with the Arkansas Ethics
8 Commission against a person covered by this subchapter, by § 6-24-101 et
9 seq.; § 7-1-103(a)(1)-(4), (6), or (7); the Disclosure Act for Public
10 Initiatives, Referenda, and Measures Referred to Voters, § 7-9-401 et seq.; §
11 21-1-401 et seq.; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and
12 State and Local Officials, § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701
13 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; § 21-8-1001 et seq.; and
14 Arkansas Constitution, Article 19, §§ 28-30, for an alleged violation of the
15 subchapters or sections. For purposes of this subdivision (a)(1), the
16 Arkansas Ethics Commission shall be considered a citizen.

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

21 (b)(1)(A) Upon a complaint stating facts constituting an alleged
22 violation signed under penalty of perjury by any person, the Arkansas Ethics
23 Commission shall investigate the alleged violation of this subchapter or § 6-
24 24-101 et seq.; § 7-1-103(a)(1)-(4), (6), or (7); the Disclosure Act for
25 Public Initiatives, Referenda, and Measures Referred to Voters, § 7-9-401 et
26 seq.; § 21-1-401 et seq.; § 21-8-301 et seq.; the Disclosure Act for
27 Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-601 et
28 seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; § 21-8-
29 1001 et seq.; and Arkansas Constitution, Article 19, §§ 28-30.

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (B)(i) Notwithstanding the provisions of §§ 7-6-202, 7-9-
 9 409, 21-8-403, and 21-8-903, impose a fine of not less than fifty dollars
 10 (\$50.00) nor more than three thousand five hundred dollars (\$3,500) for
 11 negligent or intentional violation of this subchapter; § 6-24-101 et seq.;
 12 the Disclosure Act for Public Initiatives, Referenda, and Measures Referred
 13 to Voters, § 7-9-401 et seq.; § 21-8-301 et seq.; the Disclosure Act for
 14 Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-601 et
 15 seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; § 21-8-
 16 1001 et seq.; or Arkansas Constitution, Article 19, §§ 28-30.

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

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

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

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

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

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

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

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

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

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

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

17
18 SECTION 11. EFFECTIVE DATE. This act shall be effective on and after
19 May 1, 2024.

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