

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: H3/18/13

A Bill

HOUSE BILL 1855

5 By: Representatives Shepherd, Steel
6 By: Senator Irvin
7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH THE OFFICE OF PROSECUTING
10 ATTORNEY AS A NONPARTISAN OFFICE; TO AMEND THE LAW
11 CONCERNING THE DATES OF CERTAIN ELECTIONS; AND FOR
12 OTHER PURPOSES.
13
14

Subtitle

16 TO ESTABLISH THE OFFICE OF PROSECUTING
17 ATTORNEY AS A NONPARTISAN OFFICE; AND TO
18 AMEND THE LAW CONCERNING THE DATES OF
19 CERTAIN ELECTIONS.
20
21

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

24 SECTION 1. Arkansas Code § 7-1-101, concerning definitions, is amended
25 to add three new subdivisions to read as follows:

26 (35)(A) "Nonpartisan candidate" means a candidate for the office
27 of Justice of the Supreme Court, Judge of the Court of Appeals, circuit
28 judge, district judge, or prosecuting attorney.

29 (B) "Nonpartisan candidate" does not include a candidate
30 for nonpartisan municipal office;

31 (36)(A) "Nonpartisan election" means a general, special, or
32 runoff election for the office of Justice of the Supreme Court, Judge of the
33 Court of Appeals, circuit judge, district judge, or prosecuting attorney.

34 (B) "Nonpartisan election" does not include a general,
35 special, or runoff election for a nonpartisan municipal office; and

36 (37)(A) "Nonpartisan office" means the office of Justice of the



1 Supreme Court, Judge of the Court of Appeals, circuit judge, district judge,
2 or prosecuting attorney.

3 (B) "Nonpartisan office" does not include a nonpartisan
4 municipal office.

5
6 SECTION 2. Arkansas Code § 7-4-101(f)(11), concerning the authority of
7 the State Board of Election Commissioners, is amended to read as follows:

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

11
12 SECTION 3. Arkansas Code § 7-5-102 is amended to read as follows:

13 7-5-102. Time of general election.

14 On the Tuesday next after the first Monday in November in every even-
15 numbered year, there shall be held an election in each precinct and ward in
16 this state for the election of ~~all~~:

17 (1) All elective state, county, and township officers whose term
18 of office is fixed at two (2) years by the Arkansas Constitution or the
19 General Assembly; ~~for state~~

20 (2) State senators in their respective districts when the terms
21 for which the state senators have been elected expire before the next general
22 election; ~~for Representatives in the Congress of the~~

23 (3) Members of the United States House of Representatives for
24 each congressional district in this state; and for

25 (4) United States Senators when the term of office of any United
26 States Senator expires before the next general election; ~~and for prosecuting~~
27 ~~attorney in this state.~~

28
29 SECTION 4. Arkansas Code § 7-5-207(d), concerning names printed on
30 ballots, is amended to read as follows:

31 ~~(d)(1) Beside or adjacent to~~ Adjacent to the name of each candidate in
32 the general election shall be:

33 (A) His or her party designation; or

34 (B) The term "INDEPENDENT" if he or she represents no
35 officially recognized party.

36 (2) Subdivision (d)(1) of this section ~~shall~~ does not apply to

1 a:

2 (A) Nonpartisan ~~judicial~~ election; or

3 (B) Nonpartisan municipal election.

4
5 *SECTION 5.* Arkansas Code § 7-5-407(a), concerning the preparation and
6 delivery of absentee ballots, is amended to read as follows:

7 (a)(1) The county board of election commissioners shall prepare
8 official absentee ballots and deliver them to the county clerk for mailing to
9 all qualified applicants as soon as practicable but ~~in any event~~ not later
10 than forty-seven (47) days before a preferential primary, general election,
11 *school election, nonpartisan ~~judicial~~ general election, nonpartisan ~~judicial~~*
12 *runoff election, or ~~any~~ special election.*

13
14 *SECTION 6.* Arkansas Code § 7-6-102 is amended to read as follows:

15 7-6-102. Political practices pledge – Penalty for falsification.

16 (a)(1) Candidates for political party nominations for state or
17 district offices shall file with the Secretary of State and candidates for
18 county, municipal, or township offices shall file with the county clerk of
19 the county during the filing period set out in § 7-7-203 for the preferential
20 primary election a pledge in writing stating that they are familiar with the
21 requirements of §§ 7-1-103, 7-1-104, 7-3-108, 7-6-101, 7-6-103, 7-6-104, and
22 this section and will comply in good faith with their terms.

23 (2) ~~Persons seeking nomination as independent candidates and~~
24 ~~school district candidates~~ An independent candidate or school district
25 candidate shall file the political practices pledge at the time of filing the
26 petition for nomination.

27 (3) Independent candidates for municipal office shall file the
28 political practices pledge with the county clerk at the time of filing the
29 petition for nomination.

30 (4) ~~Persons who wish to be write-in candidates~~ Write-in
31 candidates shall file the political practices pledge at the time of filing
32 the notice to be a write-in candidate.

33 (5) ~~Nonpartisan judicial candidates~~ A nonpartisan candidate
34 paying filing fees in accordance with § 7-10-103(b) shall file the political
35 practices pledge at the time of filing for office.

36 (6) ~~Nonpartisan judicial candidates~~ A nonpartisan candidate

1 filing by petition ~~in accordance with~~ according to § 7-10-103(c) shall file
2 the political practices pledge at the time of filing the petition.

3 (b) All political practices pledge forms for state or district offices
4 and county, municipal, or township offices shall ~~be required to~~ contain the
5 following additional pledge:

6 "I hereby certify that I have never been convicted of a felony in Arkansas or
7 in any other jurisdiction outside of Arkansas."

8 (c) Any person who has been convicted of a felony and signs the pledge
9 stating that he or she has not been convicted of a felony shall be guilty of
10 a Class D felony.

11 (d) For purposes of this section, a person shall be qualified to be a
12 candidate for a state, district, county, municipal, and township office and
13 may certify that he or she has never been convicted of a felony if his or her
14 record was expunged in accordance with §§ 16-93-301 – 16-93-303, or a similar
15 expunction statute in another state, ~~provided, if~~ if the candidate presents a
16 certificate of expunction from the court that convicted the ~~prospective~~
17 candidate.

18 (e)(1) The name of a candidate who fails to sign and file the pledge
19 shall not appear on the ballot.

20 (2)(A) ~~However, within~~ Within five (5) two (2) days from which
21 of the date the pledge is required to be filed, the Secretary of State or the
22 county clerk shall notify by certified mail that requires a return receipt
23 signed by the candidate those candidates who have failed to file a signed
24 political practice pledge. ~~The notice shall~~ and include a copy of the
25 written pledge required by this section.

26 (B) *Failure of the state or district candidate to file*
27 *with the Secretary of State or of the county, municipal, or township*
28 *candidate to file with the county clerk within ~~twenty (20)~~ five (5) days of*
29 *receipt or refusal of this notice shall prevent the candidate's name from*
30 *appearing on the ballot.*

31 **SECTION 7.** Arkansas Code § 7-6-203(h)(3)(B), concerning disposition of
32 campaign contributions, is amended to read as follows:

33 (B) For an ~~unopposed candidates for~~ nonpartisan judicial
34 office candidate, the affidavit may be filed after the deadlines have passed
35 to declare as a filing fee candidate, petition candidate, or write-in
36 candidate under § 7-10-103.

1
2 *SECTION 8.* Arkansas Code § 7-7-306 is amended to read as follows:

3 7-7-306. Partisan and nonpartisan ~~judicial~~ general election ballots.

4 (a) At each party primary and nonpartisan ~~judicial~~ general election,
5 each county board of election commissioners shall furnish ~~separate ballots a~~
6 separate ballot for each political party containing:

7 (1) The ~~names of persons seeking offices~~ name of each person
8 seeking an office to be voted on as a nominee or candidate of that political
9 party;

10 (2) The ~~names of all qualified candidates~~ name of each candidate
11 for the general election to a nonpartisan judicial office under § 7-
12 10-101; and

13 (3) All measures and questions, if any, to be decided by the
14 voters.

15 (b) The county board of election commissioners shall also furnish a
16 separate ~~nonpartisan~~ ballot containing the names of all qualified candidates
17 for the general election to nonpartisan ~~judicial~~ offices and all measures, if
18 any, to be decided by the voters.

19
20 *SECTION 9.* The name of Arkansas Code Title 7, Chapter 10, is changed
21 from "Nonpartisan Election of Judges" to "Nonpartisan Elections". The
22 Arkansas Code Revision Commission shall make all changes in the Arkansas Code
23 necessary to implement this section.

24
25 *SECTION 10.* Arkansas Code § 7-10-101 is repealed:

26 ~~7-10-101. Definitions.~~

27 ~~For the purposes of this chapter:~~

28 (1) ~~"Nonpartisan judicial office" means the offices of Justice~~
29 ~~of the Supreme Court, Judge of the Court of Appeals, circuit judge, and~~
30 ~~district judge; and~~

31 (2) ~~"Political party" has the same meaning as provided in § 7-1-~~
32 ~~101.~~

33
34 *SECTION 11.* Arkansas Code § 7-10-102 is amended to read as follows:

35 7-10-102. Nonpartisan election of judges ~~and~~, justices, and prosecuting
36 attorneys.

1 (a) The offices of Justice of the Supreme Court, Judge of the Court of
2 Appeals, circuit judge, ~~and district judge, and prosecuting attorney~~ are
3 ~~declared to be~~ nonpartisan offices.

4 (b)(1) The general elections for nonpartisan ~~judicial~~ offices shall be
5 held on the same ~~dates~~ date and at the same times and places as provided by
6 law for preferential primary elections.

7 (2)(A) The names of ~~candidates for nonpartisan judicial offices~~
8 candidates shall be ~~included~~:

9 (i) Included on the ballots of the political
10 parties; ~~and shall be designated~~

11 (ii) Designated as nonpartisan ~~judicial~~ candidates.
12 ~~However, separate~~

13 (B) Separate ballots containing the names of nonpartisan
14 ~~judicial~~ candidates shall be prepared:

15 (i) Prepared; ~~and shall be made~~

16 (ii) Made available to voters requesting ~~the same a~~
17 separate ballot.

18 (3) ~~No voter shall~~ A voter shall not be required to vote in a
19 political party's preferential primary ~~in order~~ to be able to vote in a
20 nonpartisan ~~judicial elections~~ election.

21 (c)(1) A person shall not be elected to a ~~nonpartisan judicial office~~
22 ~~without receiving~~ the office of Justice of the Supreme Court, Judge of the
23 Court of Appeals, circuit judge, district judge, or prosecuting attorney
24 unless the person receives a majority of the votes cast at the election for
25 the office.

26 (2) In ~~any a~~ nonpartisan ~~judicial~~ election in which no person
27 receives a majority of the votes cast, the two (2) candidates receiving the
28 highest and next highest number of votes shall be certified to a runoff
29 election, which shall be held on the same date and at the same times and
30 places as the November general election.

31 (3) The names of the candidates in a nonpartisan ~~judicial~~ runoff
32 election shall be placed on the same ballots as used for the November general
33 elections.

34
35 *SECTION 12.* Arkansas Code § 7-10-103 is amended to read as follows:

36 7-10-103. Filing as a candidate — ~~Judicial Filing Fee Fund.~~

1 (a) A candidate for a nonpartisan ~~judicial~~ office ~~may pay under this~~
2 chapter shall:

3 (1) ~~Pay a filing fee as provided for in this chapter, file;~~

4 (2) ~~File a petition in the manner provided for in this chapter,~~
5 ~~or file; or~~

6 (3) ~~File as a write-in candidate in the manner as provided for~~
7 ~~in this chapter.~~

8 (b)(1) The State Board of Election Commissioners shall establish
9 reasonable filing fees for nonpartisan ~~judicial~~ offices.

10 (2)(A)(i) ~~The filing fee~~ A candidate for the ~~offices office~~ of
11 Justice of the Supreme Court, Judge of the Court of Appeals, ~~and~~ circuit
12 judge, or prosecuting attorney who chooses to pay by filing fee shall ~~be paid~~
13 pay the filing fee to the Secretary of State ~~at the same time that~~ when the
14 candidate files his or her political practices pledge.

15 (ii) A candidate for the office of district judge
16 who chooses to file by paying a filing fee shall pay the filing fee to the
17 county clerk ~~at the same time that~~ when the candidate files his or her
18 political practices pledge.

19 (B) The period for paying filing fees and filing political
20 practice pledges shall be the same as the party filing period under § 7-7-
21 203.

22 (3)(A) ~~There is created on the books of the Treasurer of State,~~
23 ~~the Auditor of State, and the Chief Fiscal Officer of the State a fund to be~~
24 ~~known as the "Judicial Filing Fee Fund".~~

25 ~~(B)~~ The filing fees collected for the offices of Justice
26 of the Supreme Court, Judge of the Court of Appeals, circuit judge, and
27 district judge shall be remitted to the Treasurer of State for deposit into
28 the ~~fund~~ Nonpartisan Filing Fee Fund under § 19-5-1225 for covering the cost
29 of election expenses of the ~~state board~~ State Board of Election
30 Commissioners.

31 (B)(i) Except as provided in subdivision (b)(3)(B)(ii) of
32 this section, the filing fees collected for the office of prosecuting
33 attorney shall be remitted to the Treasurer of State for deposit into the
34 Nonpartisan Filing Fee Fund under § 19-5-1225.

35 (ii) The first one hundred thousand dollars
36 (\$100,000) collected annually from filing fees for the office of prosecuting

1 attorney shall be remitted to the Treasurer of State for deposit into the
2 Trial Court Administrative Assistant Fund under § 19-5-1241.

3 (c)(1)(A)(i) ~~Any~~ A person ~~desiring to~~ may have his or her name placed
4 on the ballot for a nonpartisan ~~judicial~~ office without paying a filing fee
5 ~~may do so~~ by filing a petition in the manner provided for under this section.
6 ~~Petitions for Supreme Court, Court of Appeals, and circuit court positions~~ A
7 petition for a candidate for the office of Justice of the Supreme Court,
8 Judge of the Court of Appeals, circuit judge, or prosecuting attorney shall
9 be filed with the Secretary of State, and ~~petitions for district court~~
10 ~~positions~~ a petition for a candidate for the office of district judge shall
11 be filed with the ~~applicable~~ county clerk beginning at 12:00 noon forty-six
12 (46) days before the first day of the party filing period under § 7-7-203 and
13 ending at 12:00 noon thirty-two (32) days before the first day of the party
14 filing period under § 7-7-203.

15 (ii) ~~Political practice pledges for~~ A nonpartisan
16 ~~judicial candidates~~ candidate filing by petition shall ~~be filed at the same~~
17 ~~time as~~ file a political practices pledge with the petition.

18 (B)(i) The petition shall ~~be~~:

19 (a) Be directed to the office with which it is
20 to be filed; and ~~shall request~~

21 (b) Request that the name of the candidate be
22 placed on the ballot for the election set forth in the petition. ~~Candidates~~
23 ~~may~~

24 (ii) A candidate shall not begin circulating
25 petitions ~~not~~ earlier than sixty (60) days ~~prior to~~ before the filing
26 deadline.

27 (C)(i) The Secretary of State or the county clerk, ~~as the~~
28 ~~case may be,~~ within thirty (30) days of the filing of the petition shall
29 ~~determine within thirty (30) days;~~

30 (a) Determine whether the petition contains
31 the names of a sufficient number of qualified electors. ~~The Secretary of~~
32 ~~State or county clerk shall verify; and~~

33 (b) Verify the sufficiency of the ~~petitions~~
34 ~~within thirty (30) days of filing petition.~~

35 (ii) The sufficiency of ~~any~~ a petition filed under
36 ~~the provisions of~~ this section may be challenged in the same manner as

provided by law for election contests, under § 7-5-801 et seq.

(D) ~~Qualified electors~~ A qualified elector signing the ~~petitions~~ petition must be a registered ~~voters~~ voter in the geographic area applicable to the position at the time ~~they sign~~ he or she signs the petition. Each qualified elector shall provide on the petition his or her printed:

(i) Printed name, signature, address, date;

(ii) Signature;

(iii) Address;

(iv) Date of birth; and ~~date~~

(v) Date of signing ~~on the petition.~~

(E) In determining the number of qualified electors in the state or in any court of appeals district, circuit court circuit, or district court district, the ~~total~~ number of ~~all~~ votes cast ~~therein~~ for Governor in the immediately preceding general gubernatorial election shall be conclusive of the number of all qualified electors ~~therein~~ in the state, circuit, or district for purposes of this section.

(2)(A) ~~Candidates~~ A candidate by petition for Justice of the Supreme Court shall file ~~petitions~~ a petition signed by ~~at least ten~~ the lesser of:

(i) Three percent (3%) of the qualified electors residing within the state; and

(ii) Ten thousand (10,000) qualified electors ~~or three percent (3%) of the qualified electors residing within the state, whichever is the lesser.~~

(B) ~~Candidates~~ A candidate by petition for Judge of the Court of Appeals shall file ~~petitions~~ a petition signed by the lesser of:

(i) ~~three~~ Three percent (3%) of the qualified electors residing within the court of appeals district for which the candidate seeks office, ~~but in no event shall more than two;~~ and

(ii) Two thousand (2,000) signatures ~~be required~~ qualified electors.

(C) ~~Candidates~~ A candidate by petition for circuit judge shall file ~~petitions~~ a petition signed by the lesser of:

(i) ~~three~~ Three percent (3%) of the qualified electors residing within the circuit for which the candidate seeks office,

1 ~~but in no event shall more than two; and~~

2 (ii) Two thousand (2,000) signatures be required
3 qualified electors.

4 (D) ~~Candidates~~ A candidate by petition for district judge
5 shall file ~~petitions~~ a petition signed by ~~at least one~~ the lesser of:

6 (i) One percent (1%) of the qualified electors
7 residing within the district for which the candidate seeks office; but in no
8 event shall more than two; and

9 (ii) Two thousand (2,000) signatures be required
10 qualified electors.

11 (E) A candidate by petition for prosecuting attorney shall
12 file a petition signed by the lesser of:

13 (i) Three percent (3%) of the qualified electors
14 residing within the district for which the candidate seeks office; and

15 (ii) Two thousand (2,000) qualified electors.

16 (d)(1) ~~No votes~~ Votes for a write-in candidate in a nonpartisan
17 ~~judicial~~ election shall not be counted or tabulated unless the candidate or
18 his or her agent gives notice in writing of his or her intention to be a
19 write-in candidate to ~~the;~~

20 (A) The county board of election commissioners of each
21 county in which the candidate seeks election; and either:

22 ~~(1)(A)(B)(i)~~ (i) The Secretary of State, if a candidate for a
23 Justice of the Supreme Court, Judge of the Court of Appeals, or a circuit
24 judgeship judge, or prosecuting attorney; or

25 ~~(B)(ii)~~ (ii) A county clerk, if a candidate for a
26 district judgeship district judge.

27 (2) The written notice ~~must~~ shall be given ~~not~~ no later than
28 eighty (80) days before the nonpartisan ~~judicial~~ election.

29 (3) ~~Write-in candidates~~ A write-in candidate shall file a
30 political practices pledge at the same time as filing a notice of intention.

31 (e)(1) A candidate for Justice of the Supreme Court, Judge of the
32 Court of Appeals, ~~or~~ circuit judge, or prosecuting attorney shall file with
33 the Secretary of State.

34 (2) A candidate for district judge shall file with the county
35 clerk.

36 (f)(1)(A) ~~A candidate for nonpartisan judicial office may~~ candidate

1 shall not use more than three (3) given names, one (1) of which may be a
2 nickname or ~~any other~~ another word used ~~for the purpose of identifying to~~
3 identify the candidate to the voters.

4 (B)(i) A ~~candidate for nonpartisan judicial office~~
5 candidate may add as a prefix to his or her name the title or an abbreviation
6 of an elective public office the candidate currently holds.

7 (ii) A candidate may use as the prefix the title of
8 a judicial office in an election for a judgeship only if the candidate is
9 currently serving in a judicial position to which the candidate has been
10 elected.

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

13 (2) The names and titles ~~as proposed~~ to be used by ~~each~~ a
14 candidate on the political ~~practice~~ practices pledge shall be reviewed no
15 later than one (1) business day after the filing deadline by ~~the~~ :

16 (A) The Secretary of State for Supreme Court, Court of
17 Appeals, and circuit court positions a candidate for Justice of the Supreme
18 Court, Judge of the Court of Appeals, circuit judge, and prosecuting
19 attorney; and by the

20 (B) The county board of election commissioners for
21 district court positions a candidate for district judge.

22 (3)(A) The name of ~~every~~ each candidate shall be printed on the
23 ballot in the form as certified by either the Secretary of State or the
24 county board of election commissioners.

25 (B) ~~However, the~~ The county board of election
26 commissioners may substitute an abbreviated title if the ballot lacks space
27 for the title requested by a candidate.

28 (C) The county board of election commissioners immediately
29 shall ~~immediately~~ notify a candidate whose requested title is abbreviated by
30 the county board of election commissioners.

31 (4) A candidate shall not ~~be permitted to~~ change the form in
32 which his or her name will be printed on the ballot after the deadline for
33 filing the political practices pledge.

34
35 *SECTION 13.* Arkansas Code § 7-11-105(d)(3), concerning special
36 election ballots, is amended to read as follows:

(3) Separate ballots containing the names of the candidates to be voted on at the special election or nonpartisan ~~judicial elections~~ election, if applicable, and any other measures or questions that may be presented for a vote shall be prepared and made available to voters requesting a separate ballot.

SECTION 14. Arkansas Code § 19-5-1225 is amended to read as follows:
19-5-1225. ~~Judicial~~ Nonpartisan Filing Fee Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "~~Judicial~~ Nonpartisan Filing Fee Fund".

(b)(1) The fund shall consist of nonpartisan ~~judicial~~ office filing fees ~~as set out in~~ under § 7-10-103.

(2) The fund shall be used ~~for covering~~ to cover the cost of election expenses of the State Board of Election Commissioners as set out in § 7-10-101 et seq.

/s/Shepherd