

# STATE BOARD OF ELECTION COMMISSIONERS

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## Summary of Revisions to the

## RULES FOR CITIZEN COMPLAINTS OF NON-HAVA (HELP AMERICA VOTE ACT) VIOLATIONS OF ELECTION AND VOTER REGISTRATION LAWS

The State Board of Election Commissioners met on June 23, 2015 and approved for public comment changes to the "Rules for Non-HAVA Violations of Election and Voter Registration Laws". The public comment period ended on August 10, 2015. The State Board of Election Commissioners met again on October 30, 2015 to approve revisions to the "Rules for Non-HAVA Violations of Election and Voter Registration Laws".

Below is a summary of the rules that were approved by the Board on June 23, 2015 for the public comment period, followed by a list of persons commenting on the rule, a summary of the comments, the agency's response to the comments, and the changes to the rules as a result of the public comments.

Initial changes include:

- 1) amending the title of the rules to "Rules of Procedure for Citizen Complaints Regarding Violations of State Election and Voter Registration Laws";
- 2) adding definitions for *Election Laws*, *Letter of Instruction*, *Probable Cause Hearing*, *Public Hearing*, *Statutory Sanction*, and *Voter Registration Laws*;
- 3) amending the rules to comply with legislative changes from Act 1253 of 2015 by removing the requirement for a complaint to state a desired resolution, removing the provision that specifically treats frivolous complaints as an election law violation, clarifying notice requirements for complainants and respondents, and allowing for multiple sanctions to be issued for one complaint;
- 4) clarifying the specific process by which complaints are considered in Sections 604-605 and clarifying that the board may refer complaints to the proper authority; and
- 5) setting out the processes by which probable cause hearings and public hearings are conducted in Section 605 C. and Section 607.

### PERSONS COMMENTING ON THE RULE

None

### SUMMARY OF COMMENTS

N/A

### AGENCY'S RESPONSE TO COMMENTS

N/A

### RULE CHANGES AS A RESULT OF PUBLIC COMMENTS

N/A. However the board did make two changes on its own motion:

§600: Removed the definition of “probable cause hearing”

§ 605: Removed references to the mandatory probable cause hearing and clarified the meeting requirements if a statutory sanction is to be imposed.

Explanation: A hearing is not necessary to determine probable cause as originally proposed by this rule change. The board may do so in the course of a regular meeting instead of a mandatory probable cause hearing. Rule changes as a result of this decision are set out below:

#### A. Director’s Investigation Report

Upon completing an investigation, the director shall prepare a report of the investigation for submission to the State Board. The report may include a recommendation by the director that the complaint be addressed through documentary submissions without statutory sanctions, that a letter of instruction be issued, that the complaint be forwarded to the proper authority, or that the State Board ~~set a probable cause hearing~~ meet to consider issuing an Offer of Settlement.

After receipt of the director’s report, the director’s recommendation shall be considered to be adopted by the State Board on the seventh business day after the date that the director’s determination was sent by email unless, before the seventh business day, any commissioner requests that the State Board further consider the complaint at a meeting of the board. ~~At the meeting~~ Upon further consideration, the State Board may ~~order the staff to~~ either further investigate the complaint or:

1. ~~Set a hearing to determine whether probable cause of an election law violation exists~~ Find that probable cause of an election law violation exists;
2. Determine that the complaint ~~should~~ be dismissed;
3. Issue a letter of instruction;
4. Refer the complaint to the proper authority; or
5. Take other appropriate action.

#### B. Probable Cause Hearing Offer of Settlement

~~If the State Board sets a probable cause hearing, the director shall notify the respondent and the complainant in writing of the date, time and place of the meeting at which the probable cause determination shall be made. The respondent may be represented by counsel and may offer testimony and other evidence. The complainant may also be represented by counsel and address the State Board but shall not be responsible for presenting any evidence. Staff shall present the final report of the investigation at the meeting together with any other information staff deems appropriate.~~

If the State Board finds that probable cause exists for a finding of a violation, the board shall issue a written Offer of Settlement to the respondent, stating its findings and the proposed sanctions. The respondent may accept the State Board’s Offer of Settlement in writing within ten calendar days of the issuance of the Offer. If the Offer is not accepted, the State Board may call for a full public hearing.

If the State Board does not find probable cause, it shall dismiss the complaint. The State Board may issue a letter of instruction when the complaint and other evidence indicate that such a letter is necessary and proper. Also, the State Board may refer the complaint and any evidence in its possession related to the complaint to the proper authority.