

ENGROSSED HOUSE AMENDMENT

TO

ENGROSSED SENATE BILL NO. 478

BY: FISHER of the SENATE

and

HUDSON of the HOUSE

( ELECTIONS - AMENDING 39 SECTIONS IN TITLE 26 -  
CONDUCT OF ELECTIONS - PROVIDE FOR OKLAHOMA  
ELECTION MANAGEMENT SYSTEM - CODIFICATION -  
EFFECTIVE DATES )

AMENDMENT NO. 1. Strike the stricken title, enacting clause and  
entire bill and insert

"( ELECTIONS - AMENDING SECTIONS IN TITLE 26 -  
CONDUCT OF ELECTIONS - REPEALING SECTIONS IN  
TITLE 26 - OKLAHOMA ELECTION LAWS -  
EFFECTIVE DATE )

SECTION 1. AMENDATORY 26 O.S. 1981, Section 2-121, is  
amended to read as follows:

Section 2-121. It shall be the mandatory duty of the county  
commissioners of each county to furnish, at county expense, in each  
county seat a suitable office for the county election board. Said  
office shall provide adequate space for storage of election records  
and supplies, voting devices, ballot boxes and adequate space for  
the exercise of other functions required by law of the county  
election board and shall be equipped with suitable furniture and  
office equipment and a telephone. Said office shall be convenient

to the public, shall have furniture, furnishings and fixtures and other equipment comparable to other county offices within the county, and necessary to the operation of said office.

SECTION 2. AMENDATORY 26 O.S. 1981, Section 3-104, as amended by Section 3, Chapter 331, O.S.L. 1990 (26 O.S. Supp. 1990, Section 3-104), is amended to read as follows:

Section 3-104. The cost of rent for polling places, absentee ballot boxes, locks and keys, voting booths and United States flags shall be paid from county funds. The cost of central registries, maps and other materials required to be maintained by the county election board shall be paid from county funds. The cost of other supplies necessary for the conduct of state elections shall be paid from state funds. The purchase and maintenance of computer hardware, software, voting devices and related supplies used in the Oklahoma Election Management System shall be paid from state funds.

SECTION 3. AMENDATORY 26 O.S. 1981, Section 3-113, is amended to read as follows:

Section 3-113. Instructions to voters describing the manner for casting one's vote shall be posted outside each polling place and inside each voting booth ~~or upon each voting machine~~. Said instructions shall be prescribed by the Secretary of the State Election Board.

SECTION 4. AMENDATORY 26 O.S. 1981, Section 3-119, is amended to read as follows:

Section 3-119. Where fewer than one hundred registered voters are affected, an area constituting the maximum area possible without crossing boundaries of any congressional, legislative or county commissioner district may be designated as a subprecinct. Registration records shall be maintained for subprecincts in like manner as for other precincts. Subprecincts need not have a polling place separate from another precinct, nor shall they be required to have a precinct election board. The secretary of the county

election board may authorize registered voters of a subprecinct to vote at a specific adjacent precinct. Provided, separate ~~boxes and~~ election materials shall be there afforded for the subprecinct in order that a separate certification will be made of the subprecinct's election results. Appropriate ballots shall be issued to the voters of the subprecinct.

SECTION 5. AMENDATORY 26 O.S. 1981, Section 3-121, is amended to read as follows:

Section 3-121. There shall be one voting device and ballot box for each precinct. ~~Said ballot box shall be constructed of substantial material and shall be equipped with three locks so that the keys of one lock will not unlock the others.~~ Each ~~box~~ voting device shall be equipped with an opening ~~in the top~~ through which a ballot may be inserted, ~~but~~ counted and deposited into an attached ballot box which must be constructed in such a manner that the box must be unlocked before the ballots can be removed.

SECTION 6. AMENDATORY 26 O.S. 1981, Section 6-103, is amended to read as follows:

Section 6-103. The State Election Board shall cause ballots to be printed for statewide Primary, Runoff Primary and, General Elections and special elections; and for county, municipal, school or other local elections held in conjunction with statewide elections at such time as to insure delivery of said ballots to the several county election boards for distribution to the several precinct election boards prior to election day. Said board shall cause ballots to be printed for the following offices: Electors for President and Vice President; United States Senators; United States Representatives; state officers; Justices of the Supreme Court; Judges of the Court of Criminal Appeals; Judges of the Court of Appeals; district judges and associate district judges; State Senators; State Representatives; district attorneys; county officers, and such other officers as required by law, in the order

they appear in the statutes, and shall cause ballots to be printed for state questions.

SECTION 7. AMENDATORY 26 O.S. 1981, Section 6-104, is amended to read as follows:

Section 6-104. Each county election board shall cause ballots to be printed on ballot cards provided by the State Election Board for ~~Primary, Runoff Primary and General Elections~~ county, municipal, school or other local elections not held in conjunction with statewide elections at such time as to insure distribution of said ballots to the several precinct election boards within each county prior to election day. Said board shall cause ballots to be printed for ~~the following~~ offices, ~~in the following order: State Senators; State Representatives; district attorneys; and county officers,~~ in the order they appear in the statutes. The county election board shall cause a sufficient number of ballots to be printed for each precinct, taking into account the highest percentage of registered voters likely to vote in a given election based on historical experience and other factors, but shall not necessarily require a ballot to be printed for each registered voter.

SECTION 8. AMENDATORY 26 O.S. 1981, Section 6-105, is amended to read as follows:

Section 6-105. At the General Election, each ballot card shall contain a separate ~~ballots shall be printed~~ ballot for the following: (1) Electors for President and Vice President; (2) United States Senators and United States Representatives; (3) state officers; (4) Justices of the Supreme Court ~~and,~~ Judges of the Court of Criminal Appeals and Judges of the Court of Appeals; (5) ~~Judges of the Court of Appeals,~~ district judges and associate district judges; (6) state questions; and (7) State Senators, State Representatives, district attorneys and county officers.

SECTION 9. AMENDATORY 26 O.S. 1981, Section 6-106, is amended to read as follows:

Section 6-106. The official ballot card for the General Election shall be printed so that the nominees of the various political parties and nonpartisan candidates will appear in columns, ~~a column being given to the nominees of each party, and a column being given to nonpartisan candidates.~~ The For each ballot for which there are partisan candidates, the candidates of the Democratic party shall be printed in the first ~~column~~ position, those of the Republican party in the second ~~column~~ position and those of other parties as the State Election Board may direct, giving preference to the party which had the largest number of registered voters in the latest January 15 report, followed by candidates who filed as Independents. Each political party shall have the right to select an emblem to be used in designating its candidates on the ballot; provided, however, that no party shall be allowed to use the coat of arms or seal of Oklahoma or of the United States, or the respective flags thereof. Until changed by resolution of a political party, in state convention, the emblem of the Democratic party shall be a ~~rooster~~ donkey and that of the Republican party an ~~eagle~~ elephant. Change in a party emblem shall be authorized by the Secretary of the State Election Board only after receipt of written notice of said change by said Secretary from the state central committee of a party. At the top of ~~the column~~ each ballot on which there are partisan candidates shall appear the name of ~~the~~ each recognized party; ~~directly below the name of the party~~ with the emblem of said party; ~~and directly below said emblem a circle at least one-half (1/2) inch in diameter.~~ The name and emblem of the Democratic party shall be printed in the first position, the Republican party in the second position and the other parties as the State Election Board may direct, giving preference to the party which had the largest number of registered voters in the latest registration report. Below said ~~circles~~ name and emblems shall be a line extending across the entire ballot. The

name of the office entitled to the first place in the column, preceded by the word "for," shall next appear in bold type, as "For Governor". Immediately after same shall be the ~~name~~ names of ~~that~~ party's nominee the nominees for such office, ~~preceded by a square one-fourth (1/4) inch in size. The initial or the first letter of the name of a candidate shall have only the space of an "em" between it and this square, and there shall be no line between the name of an office and that of such candidate; but there shall be a line following the name of a candidate and the name of the next office in order down the column.~~ The list shall be continued down each column, naming the officers in the order in which they are set out by the Constitution and statutes, until all the nominees are given space. ~~No party's list of candidates shall occupy more than one column, and the~~ The columns shall be setoff with well defined lines. ~~At the top of the column designated for nonpartisan candidates, except in the case of judicial officers, shall appear the word "Independent"; provided further, that no party emblem and no circle shall appear between the word "Independent" and the line below same. Each type of ballot may be printed on a different color of paper, said color to be designated by the Secretary of the State Election Board.~~

SECTION 10. AMENDATORY 26 O.S. 1981, Section 6-107, is amended to read as follows:

Section 6-107. On the Monday following the close of the filing period prescribed by law, the State Election Board shall determine the order in which the name of each candidate for each of the offices shall appear on the absentee ballots printed by said Board for the Primary Election. The determination shall be at a drawing conducted in a public meeting in which the names of all candidates for each office of each political party shall be drawn from a receptacle. ~~Immediately after receipt of certification from the State Election Board of the names of candidates who have filed~~

~~declarations of candidacy for State Senator, State Representative and district attorney, each county election board shall determine the order in which the name of each candidate for each of the offices shall appear on the absentee ballots printed by said election boards for the Primary Election.~~ The determination of the order of names of candidates on absentee ballots printed by county election boards shall be made in the same manner as provided heretofore for the State Election Board.

SECTION 11. AMENDATORY 26 O.S. 1981, Section 6-110, is amended to read as follows:

Section 6-110. The names of candidates of the several political parties shall be printed on separate ~~ballots~~ ballot cards for the Primary and Runoff Primary Elections, and each ~~type of ballot card~~ shall be ~~printed on~~ a different color ~~of paper~~.

SECTION 12. AMENDATORY 26 O.S. 1981, Section 6-113, is amended to read as follows:

Section 6-113. Ballots for state questions shall be printed in such a manner as to include the number of the state question, the ballot title, and the following language, "SHALL THE PROPOSED (AMENDMENT OR ACT) BE APPROVED?" followed by the words ~~"YES" and "NO"~~ "FOR THE (AMENDMENT OR ACT) - YES" and "AGAINST THE (AMENDMENT OR ACT) - NO", one above the other, ~~each preceded by a square one-fourth (1/4) inch in size.~~

SECTION 13. AMENDATORY 26 O.S. 1981, Section 6-116, is amended to read as follows:

Section 6-116. As soon as practicable, the State Election Board and each county election board, when ballots are printed by a county election board, shall cause to be printed a sufficient number of absentee ballots, prepared as nearly as practical in the same manner as provided for other ballots for the Primary, Runoff Primary and General Elections, in time for said ballots to be issued during the time prescribed by law. Anyone who reproduces a sample ballot shall

not tamper with the sample ballot by deleting the name of one candidate while leaving the name or names of one or more candidates in the same race.

SECTION 14. AMENDATORY 26 O.S. 1981, Section 6-117, is amended to read as follows:

Section 6-117. ~~Sample ballots~~ ballot cards for ~~Primary, Runoff Primary and General Elections~~ all elections conducted by any county election board shall be exact duplicates of the regular ~~ballots~~ ballot cards for such elections, except that a stub need not be attached, and the words "Sample Ballot" shall be printed in letters at least one-half (1/2) inch high across the face of the ballot card. ~~Sample ballots~~ ballot cards shall be printed in a sufficient number to be used at each precinct polling place and as otherwise provided by law.

SECTION 15. AMENDATORY 26 O.S. 1981, Section 6-120, is amended to read as follows:

Section 6-120. The State Election Board is authorized to contract with the Office of Public Affairs for all ballots required by the State Election Board. If ballots are not printed by the Office of Public Affairs, the State Election Board and each county election board, for required ballot printing, shall cause advertisement for bids for printing of all ballots ~~for Primary, Runoff Primary and General Elections~~ to be made, and shall provide specifications and copy for said ballots. A contract for printing said ballots shall be awarded to the lowest bidder. The successful bidder shall be required to post a bond of double the amount of the bid, said bond taken in the name of the state or county, as the case may be, and conditioned upon the faithful performance of said contract.

SECTION 16. AMENDATORY 26 O.S. 1981, Section 7-107, is amended to read as follows:

Section 7-107. When all else is in readiness for the opening of the polls, the inspector shall ~~open each ballot box and~~, in view of the judge, clerk and any registered voters at the polling place, shall ~~turn said box top down to show that no ballots are contained therein.~~ ~~The inspector shall then lock said box and shall give the key to one lock to the judge, one to the clerk and retain the third~~ himself confirm that the ballot box is empty and locked and shall cause the voting device to print out a paper tape to verify that no votes have been counted. This tape shall remain attached to the voting device and in evidence throughout the voting process. The key used for obtaining printed totals shall be retained by the inspector.

SECTION 17. AMENDATORY 26 O.S. 1981, Section 7-119, is amended to read as follows:

Section 7-119. The voter shall vote by marking, ~~in ink, an "X" or cross in the appropriate circle or square~~ the ballot as prescribed by the Secretary of the State Election Board for the party of his choice or for the candidates of his choice or for the answer he desires to ~~give~~ select on each question.

SECTION 18. AMENDATORY 26 O.S. 1981, Section 7-120, is amended to read as follows:

Section 7-120. Before leaving the voting booth, the voter ~~shall fold~~ may insert his ballot ~~se~~ card into a secrecy envelope in such a manner that his votes cannot be seen, but so that the numbered stub is plainly visible. ~~He~~ The voter shall remove ~~said~~ the numbered stub in the presence of the inspector. The inspector shall examine said numbered stub to determine that the ballot card was the same ballot card said voter was issued. The voter then shall ~~deposit~~ insert his ballot card in the ~~ballot box~~ voting device. The voter thereupon shall immediately leave the polling place. Provided however, the failure to remove the numbered stub shall not invalidate the voter's ballot card. The Secretary of the State

Election Board shall prescribe procedures to provide for removal of such stubs by the appropriate officials so that the ballots shall be counted in the same manner as other ballots.

SECTION 19. AMENDATORY 26 O.S. 1981, Section 7-122, is amended to read as follows:

Section 7-122. Should a voter spoil any ballot in his effort to vote the same, he shall fold ~~it~~ the ballot card and return it and all other ~~ballots~~ ballot cards which he was issued to the clerk. The clerk shall destroy said ~~ballots~~ ballot card or cards in the presence of the voter and shall issue said voter another complete set of ballots in the same manner that the first one was provided. The voter must execute an affidavit prescribed by the Secretary of the State Election Board in which the voter swears or affirms that he spoiled his original ~~ballots~~ ballot card or cards, returned said ~~ballots~~ ballot card or cards to the clerk, that the clerk destroyed the ~~ballots~~ ballot card or cards in his presence and that he was issued a new ~~set of ballots~~ ballot card or cards.

SECTION 20. AMENDATORY 26 O.S. 1981, Section 7-125, is amended to read as follows:

Section 7-125. When counters are authorized for an election, said counters shall be permitted to begin the count at 10:00 a.m., or at a time designated by the county election board, and after said counters have cast their own ballots. The inspector shall cause the ballot box to be shaken so as to mix the voted ballots, then shall join the judge and clerk in opening said ballot box. The counters shall remove the ballots and shall proceed to count them in a secure, private, adjacent area. The clerk shall record the number of voters who have received ballots at the beginning of the official count. As often as necessary throughout the day, the aforementioned procedure shall be repeated, provided no fewer than twelve voters have received ballots since the last time the ballot box was opened. Provided, however, that in the event no counters are authorized and

voting devices are not used, the precinct election board shall conduct the count. In such case, the count may not begin until after the polls have closed.

SECTION 21. AMENDATORY 26 O.S. 1981, Section 7-127, as amended by Section 11, Chapter 171, O.S.L. 1983 (26 O.S. Supp. 1990, Section 7-127), is amended to read as follows:

Section 7-127. The following rules shall govern the counting and recounting of votes:

1. If the name of any person is written on a ballot, said ~~ballot~~ name shall not be counted ~~for any office or question thereon;~~

2. ~~An "X", cross, or two lines that meet, including the so-called "check mark", the intersection or point of meeting of which shall be within or on the line of the proper circle or square, Any mark prescribed by the Secretary of the State Election Board made by voters indicating the voter's choice of party, candidate or issue on a ballot shall be valid. Such marking shall be hereinafter referred to as "valid markings". Such valid markings located otherwise on the ballot shall not be counted. Such valid markings shall include a circle or square which has been blackened in ink, even if the entire circle or square is not filled and even if the blackened portion may extend beyond the boundaries of the circle or square;~~

3. Marks used to designate the intention of the voter, other than those herein defined as valid markings, shall not be counted;

4. ~~Valid markings shall be counted even though one or both lines thereof shall be duplicated, provided that the lines intersect or meet within or on the line of the proper circle or square;~~

~~5.~~ Failure to properly mark a ballot as to one or more candidates or questions shall not of itself invalidate the entire ballot if the same has been properly marked as to other candidates or questions, ~~unless such improper marking shall constitute a distinguishing mark;~~

~~6.~~ 5. A valid marking marked ~~in the circle under the emblem of~~ for a political party shall be counted as a vote for each of said political party's candidates on that ballot, except that a valid marking marked ~~in the square beside~~ for a candidate's name shall take precedence, for that office, over a valid marking ~~in the circle under the emblem of~~ for a political party. Provided, further, that if valid markings are marked ~~in the circles under the emblems of~~ for more than one political party on a ballot, said ballot shall not be counted for any party offices thereon; and

~~7.~~ 6. Any ballot or part of a ballot on which it is impossible to determine the voter's choice of candidate shall be void as to the candidate or candidates thereby affected.

SECTION 22. AMENDATORY Section 2, Chapter 38, O.S.L. 1984 (26 O.S. Supp. 1990, Section 7-129.2), is amended to read as follows:

Section 7-129.2 In the event a ballot ~~counted electronically by a voting device~~ card is mutilated by the voting device and thus not counted during the counting process, then two members of the precinct or county election board of different political party affiliations shall be authorized to mark a substitute ballot card in identical fashion, insofar as is possible. In the event a ballot card is mutilated to such an extent that the two members cannot agree upon how it was marked, it shall be invalidated. Once so marked, the substitute ballot card shall be entered for counting into the voting device. A written record of such action shall be made by the two precinct or county election board members.

SECTION 23. AMENDATORY 26 O.S. 1981, Section 7-130, as last amended by Section 5, Chapter 306, O.S.L. 1990 (26 O.S. Supp. 1990, Section 7-130), is amended to read as follows:

Section 7-130. Any candidate or any recognized political party shall be entitled to have a watcher present at any place where an official count is being conducted. Said watcher must be

commissioned in writing by the candidate, or by the chairman of the recognized political party of the county in which the watcher is being authorized. Said commission must be filed with the secretary of the appropriate county election board no later than 5:00 p.m. on Wednesday preceding the election. Watchers must subscribe to an oath to observe all laws and rules prescribed for watchers as hereinafter provided. Said oath must be administered by the inspector of the precinct in which the watcher is authorized. ~~In counties using paper ballots, said watcher shall be limited to observing the official count and shall have no further authority than to make written objections to said count. Said watcher shall be required to remain at the polling place for the same hours as the counters and shall be confined to the area wherein the official count is being conducted. In counties using voting machines, watchers~~ Watchers shall be entitled to observe the ~~vote-recording voting device on the machine~~ both before the polls are opened and after the polls are closed; provided, further, that said watchers need not be present at the polling place at other times. ~~In counties using voting machines, watchers~~ Watchers may be commissioned to observe voting device testing and to accompany personnel assigned to repair or maintain machines during the period of the election. In such case, the watchers shall be limited to observing the repair or maintenance work being performed and making a written record of such work.

SECTION 24. AMENDATORY 26 O.S. 1981, Section 7-132, is amended to read as follows:

Section 7-132. ~~At the conclusion of the official count, the counters shall execute certificates of vote wherein said counters attest to the correctness of the totals~~ After the last voter has voted, the inspector shall insert the key in the voting device and obtain a number, prescribed by the Secretary of the State Election Board, of printouts of results from the vote data pack. The

inspector, judge and clerk shall each sign all printouts which shall be certificates that the results are true and correct. The printed certificate of vote and electronic results of the vote data pack shall be official results of the precinct. The inspector shall cause one copy of each certificate to be posted on the door or entrance of the polling place and shall cause one copy of each certificate to be transmitted forthwith to the Secretary of the State Election Board.

SECTION 25. AMENDATORY 26 O.S. 1981, Section 7-133, is amended to read as follows:

Section 7-133. ~~All ballots and all materials used in conducting the official count~~ After certificates of vote have been printed, the ballot box shall be unlocked and all ballot cards and a copy of the signed certificate of vote shall be placed in the ballot box a transfer case. Said ~~ballot box~~ transfer case shall be ~~locked sealed,~~ and the inspector shall return it, along with all other election materials and a copy of ~~each~~ the certificate of vote, forthwith to the county election board.

SECTION 26. AMENDATORY 26 O.S. 1981, Section 7-134, is amended to read as follows:

Section 7-134. The county election board shall not disturb anything in the ~~ballot box~~ transfer case, and the ~~box~~ case shall ~~be~~ remain sealed and retained by the secretary of the county election board until opened by court order or until it is necessary to open same for use at ~~the next~~ another election, at which time the ballots shall be destroyed; provided, however, that in no case shall the ~~ballots~~ ballot cards be destroyed until thirty (30) days after the election at which they were cast. ~~Provided, however, if the certificate of vote or pollbook has been locked inside a ballot box inadvertently, said box may be opened in public view in the presence of all members of the county election board by the inspector, who~~

~~shall remove only said certificate or pollbook and relock the ballot box.~~

SECTION 27. AMENDATORY 26 O.S. 1981, Section 7-136, is amended to read as follows:

Section 7-136. The county election board shall convene at the county courthouse, or at such other place as the county election board may designate on the day of each election, for the purpose of receiving the official precinct returns and shall remain in session until said precinct returns are all delivered. The board shall cause to be accumulated and listed the results of such election, as the official precinct returns are received, in a manner and upon forms prescribed by the Secretary of the State Election Board. The county election board shall use such precinct returns to certify the results of such election for county officers and questions and shall transmit electronically or in writing as prescribed by the Secretary of the State Election Board immediately to the State Election Board the completed county returns for all state officers and questions. Such county returns shall be prima facie evidence of the correctness of the result in the several counties. The State Election Board shall use such county returns to certify the results of such election for all state officers and questions.

SECTION 28. AMENDATORY 26 O.S. 1981, Section 8-110, is amended to read as follows:

Section 8-110. It shall be the duty of the sheriff in each county to provide security for the ballot boxes or transfer cases from the time said ballot boxes or transfer cases are stored by the county election board following an election until 5:00 p.m. Friday next following the election or, in the event a recount contest is filed, until such time as said ballot boxes or transfer cases are delivered to the district courtroom.

SECTION 29. AMENDATORY 26 O.S. 1981, Section 8-111, as last amended by Section 2, Chapter 289, O.S.L. 1989 (26 O.S. Supp. 1990, Section 8-111), is amended to read as follows:

Section 8-111. A. In the event a candidate or individual authorized to request a recount requests a recount of the ballots cast in an election, he must set forth in his petition the precincts and absentee ballots which he desires to be recounted. Said petition must be accompanied by either a cashier's check or certified check in the amount of Six Hundred Dollars (\$600.00) for each county affected by the petition. The candidate or individual may indicate in the petition requesting the recount that said candidate or individual desires to have the ballots recounted manually. Failure by the candidate or individual to state such preference for a manual recount in the petition shall result in a recount by electronic voting devices. When such petition is properly filed, it shall be the duty of the secretary of the appropriate election board to order said recount to begin not less than three (3) nor more than ten (10) days from the date of filing of said petition. ~~It~~ In elections involving candidates, it shall be the duty of such contestant to cause to be served upon the candidate or candidates opposing him, and directly affected by said contest, a true copy of said petition and a true copy of said order. Said service shall be made in person where possible, within twenty-four (24) hours after the filing of said original petition of contest. Service shall be made by the sheriff of the county as to all offices, except that of sheriff, in which case the same shall be served by the county clerk and the certificate of returns of such sheriff or county clerk, showing the inability to make such service within the above-mentioned time, shall be deemed sufficient proof of the absence of such candidate, or candidates, or the inability to serve such notice upon him, and to justify the constructive service hereafter provided. Where personal service is impossible, within

said time, it is hereby made the duty of said contestant to serve said true copies upon the secretary of the appropriate election board. Provided that for the purpose of such constructive service, the secretaries of the county election boards are hereby made and constituted the service agents for all contests of elections filed in accordance herewith. By filing his declaration of candidacy for election, a candidate shall thereby be conclusively presumed to have accepted the terms and provisions hereof and specifically the aforesaid constructive service. When constructive service becomes necessary, said constructive service shall be made at the date, time and place of said hearing.

B. For elections on issues or questions when no candidate is involved, recounts shall be authorized only when:

1. the margin of votes between those for and those against the issue is one hundred fifty (150) or less when fifteen thousand (15,000) or more total votes are counted for or against the issue or question; or

2. the margin of votes between those for and those against the issue is one percent (1%) or less of the total number of votes cast on the issue when fourteen thousand nine hundred ninety-nine (14,999) or fewer total votes are cast for or against the issue or question. Provided, furthermore, that a recount is authorized only after an individual, who is a registered voter and who participated in the election, presents to the appropriate county election board a petition signed by one hundred fifty (150) registered voters who participated in the election when fifteen thousand (15,000) or more total votes are counted for and against the question, or if fourteen thousand nine hundred ninety-nine (14,999) or fewer votes are cast for and against the issue, by a number of registered voters who participated in the election equal to one percent (1%) or more of the total votes cast for and against the issue. ~~Said petition must be accompanied by either a cashier's check or certified check in the~~

~~amount of Six Hundred Dollars (\$600.00) for each county affected by the petition. When such petition is properly filed, it shall be the duty of the secretary of the appropriate election board to order said recount to begin not less than three (3) days nor more than ten (10) days from the date of filing of said petition.~~ Recounts of issue or question elections shall not be permitted of any statewide election.

SECTION 30. AMENDATORY 26 O.S. 1981, Section 8-114, as amended by Section 5, Chapter 289, O.S.L. 1989 (26 O.S. Supp. 1990, Section 8-114), is amended to read as follows:

Section 8-114. A. If a recount is to be conducted using electronic voting devices, the devices used shall be tested for accuracy by the county election board, giving all contestants, or their agents, an opportunity to view the testing procedure. In conducting a recount using electronic voting devices, the county election board shall open the transfer cases from each requested precinct or for absentee ballots individually and shall assign said ballot cards to one or more voting devices operated by persons appointed by the secretary of the county election board. The county election board shall supervise such counting and its decision shall be final in all cases. Each contestant is entitled to have a watcher present at each place where a voting device is being used. Said watcher shall be limited to a challenge, in writing, of any action taken by operators of the voting devices. Such challenge shall be made immediately to the county election board, whose decision on said challenge shall be final.

B. In conducting ~~the~~ a manual recount of ballots, the county election board shall open the transfer cases from each ~~ballot box~~ requested precinct or for absentee ballots individually and shall assign said ~~ballots~~ ballot cards to a group of counters appointed by the secretary of the county election board. ~~Said counters~~ Counters shall then conduct the recount in the same manner as provided by law

for counting ballots in Primary, Runoff Primary and General Elections. The county election board shall supervise such counting and its decision shall be final in all cases. Each candidate affected by or individual petitioning for the recount is entitled to have a watcher present at each place where a count is being made. Said watcher shall be limited to a challenge, in writing, of any decision made by the counters with regard to counting of a ballot. Such challenge shall be made immediately to the county election board, whose decision on said challenge shall be final. Each group of counters shall have representation of at least two political parties, where possible. Said counters shall be appointed from among the registered voters of the county and shall meet such qualifications as may be imposed for a precinct inspector, judge or clerk. Counters shall be paid on the same basis as ~~they~~ precinct judges and clerks are paid for Primary, Runoff Primary or General Elections.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-100 of Title 26, unless there is created a duplication in numbering, reads as follows:

Officials authorized by law to purchase voting devices and equipment may, with written authorization of the Secretary of the State Election Board, allow for the experimental use of one or more devices or equipment which they might lawfully purchase, to be used in one or more election precincts, without a formal purchase thereof. The use of such device or equipment in any election shall be as valid for all purposes as if it had been purchased.

SECTION 32. AMENDATORY 26 O.S. 1981, Section 9-115, is amended to read as follows:

Section 9-115. Not less than ten (10) days prior to the preparation of the ~~machines~~ voting devices for any partisan election, the secretary of the county election board shall mail a notice to the county chairman of each political party stating the

time and place the ~~machines~~ voting devices will be prepared for the election and stating a time at which one representative of each political party shall be afforded an opportunity to see that the ~~machines~~ voting devices are in proper condition for use in the election. The representatives may observe the programming of the voting ~~machines~~ devices but shall not interfere with the employees or assume any of their duties.

SECTION 33. AMENDATORY 26 O.S. 1981, Section 9-118, is amended to read as follows:

Section 9-118. Any person who defaces a voting ~~machine or the ballot thereon~~ device, breaks, tampers with, impairs, impedes or otherwise interferes with the maintenance, adjustment, delivery, use or operation of any voting ~~machine~~ device or part thereof shall be guilty of a felony.

SECTION 34. AMENDATORY 26 O.S. 1981, Section 11-109, as amended by Section 7, Chapter 33, O.S.L. 1987 (26 O.S. Supp. 1990, Section 11-109), is amended to read as follows:

Section 11-109. Ballots for retention of Justices of the Supreme Court and Judges of the Court of Criminal Appeals and the Court of Appeals shall be printed in the same manner as other ballots for the General Election, except as hereinafter provided. Near the top of the ballot shall be printed the following words: "NOTICE TO VOTER: Vote separately on each justice or judge; they are not running against each other." Below said words shall appear the office number, as reflected by the numbers of the districts from which said Justices or Judges were appointed, and this question: "Shall (Here insert name of Justice or Judge) of (Here insert the title of the court) be retained in Office?" Said question shall be followed by the words "YES" and "NO", one above the other, ~~each preceded by a square one-fourth (1/4) inch in size.~~

SECTION 35. AMENDATORY 26 O.S. 1981, Section 14-108, as last amended by Section 5, Chapter 204, O.S.L. 1984 (26 O.S. Supp. 1990, Section 14-108), is amended to read as follows:

Section 14-108. The voter shall be required to mark his ballot in ink or other manner as prescribed by the Secretary of the State Election Board; seal the ballots in the plain opaque envelope; fill out completely and sign the affidavit, such signature to be notarized by a notary public; seal the plain opaque envelope inside the envelope bearing the affidavit and return both envelopes, sealed inside the return envelope, by United States mail to the county election board.

SECTION 36. AMENDATORY Section 9, Chapter 204, O.S.L. 1984 (26 O.S. Supp. 1990, Section 14-113.2), is amended to read as follows:

Section 14-113.2 The voter shall be required to mark his ballots in ink or other manner as prescribed by the Secretary of the State Election Board; seal the ballots in the plain opaque envelope; fill out completely and sign the affidavit, such signature to be witnessed by two persons whose signature and address shall appear on the affidavit; seal the plain opaque envelope inside the envelope bearing the affidavit and return both envelopes, sealed inside the return envelope, by United States mail to the county election board.

SECTION 37. AMENDATORY 26 O.S. 1981, Section 14-120, as last amended by Section 1, Chapter 56, O.S.L. 1987 (26 O.S. Supp. 1990, Section 14-120), is amended to read as follows:

Section 14-120. The voter shall be required to mark his ballots in ink or other manner as prescribed by the Secretary of the State Election Board, seal the ballots in the plain opaque envelope, fill out completely and sign the affidavit, seal the plain opaque envelope inside the envelope bearing the affidavit, and return both envelopes, sealed inside the return envelope, by United States mail.

SECTION 38. AMENDATORY 26 O.S. 1981, Section 14-125, as amended by Section 1, Chapter 45, O.S.L. 1983 (26 O.S. Supp. 1990, Section 14-125), is amended to read as follows:

Section 14-125. A. ~~At 7:00 a.m. on~~ On the day of the election, ~~or~~ at such ~~later~~ time ~~that day~~ as the secretary of the county election board may prescribe, the ~~absentee counters~~ county election board shall meet at the county courthouse or at the offices of the county election board if located elsewhere to count absentee ballots in the following manner:

1. The ballot box containing the properly executed envelopes bearing affidavits shall be opened and the envelopes bearing affidavits removed;

2. The plain opaque envelopes shall be placed in a ballot box locked with three locks; and

3. The ballot box shall be shaken to mix the plain opaque envelopes, after which the box shall be opened, the envelopes removed, and the ballots counted ~~according to law~~ by a voting device assigned to count absentee ballots and operated by persons appointed by the secretary of the county election board.

B. The procedure described in this section shall be repeated as is necessary until all ballots have been counted. In no event shall fewer than twelve ~~ballots~~ ballot cards be counted at any time, unless fewer than twelve ~~ballots~~ ballot cards are received in total or after the first count is made. The results of said absentee ballots shall not be announced earlier than 7:00 p.m. on the day of the election.

SECTION 39. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-101 of Title 26, unless there is created a duplication in numbering, reads as follows:

The Secretary of the State Election Board is authorized to declare an election emergency for any area of the state if it becomes impossible to conduct one or more elections using voting

devices. Said declaration must be in writing and specify the county or counties, election or elections and dates covered by the emergency. The Secretary of the State Election Board is authorized to prescribe procedures for elections conducted under said declaration consistent with purposes of the General Election laws.

SECTION 40. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-102 of Title 26, unless there is created a duplication in numbering, reads as follows:

In a declared election emergency the Secretary of the State Election Board shall declare that either this section or Section 6-106 of this title shall govern General Election ballot printing. The official ballot for the General Election shall be printed so that the nominees of the various political parties and nonpartisan candidates will appear in columns, a column being given to the nominees of each party, and a column being given to nonpartisan candidates. The candidates of the Democratic party shall be printed in the first column, those of the Republican party in the second position column and those of other parties as the State Election Board may direct, giving preference to the party which had the largest number of registered voters in the latest January 15 report. Each political party shall have the right to select an emblem to be used in designating its candidates on the ballot; provided, however, that no party shall be allowed to use the coat of arms or seal of Oklahoma or of the United States, or the respective flags thereof. Until changed by resolution of a political party, in state convention, the emblem of the Democratic party shall be a rooster and that of the Republican party an eagle. Change in a party emblem shall be authorized by the Secretary of the State Election Board only after receipt of written notice of said change by said Secretary from the state central committee of a party. At the top of the column shall appear the name of the recognized party; directly below the name of the party the emblem of said party; and

directly below said emblem a circle at least one-half (1/2) inch in diameter. The name of the office entitled to the first place in the column, preceded by the word "for", shall next appear in bold type, as "For Governor". Immediately after same shall be the names of the party's nominees for such office, preceded by a square one-fourth (1/4) inch in size. The initial or the first letter of the name of a candidate shall have only the space of an "em" between it and this square, and there shall be no line between the name of an office and that of such candidate; but there shall be a line following the name of a candidate and the name of the next office in order down the column. The list shall be continued down each column, naming the officers in the order in which they are set out by the Constitution and statutes, until all the nominees are given space. No party's list of candidates shall occupy more than one column, and the columns shall be set off with well-defined lines. At the top of the column designated for nonpartisan candidates, except in the case of judicial officers, shall appear the word "Independent"; provided further, that no party emblem and no circle shall appear between the word "Independent" and the line below same. Each type of ballot may be printed on a different color of paper, said color to be designated by the Secretary of the State Election Board.

SECTION 41. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-103 of Title 26, unless there is created a duplication in numbering, reads as follows:

In a declared election emergency, when all else is in readiness for the opening of the polls, the inspector shall open each ballot box and, in view of the judge, clerk and any registered voters at the polling place, shall turn said box top down to show that no ballots are contained therein. The inspector shall then lock said box and shall give the key to one lock to the judge, one to the clerk and retain the third himself.

SECTION 42. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-104 of Title 26, unless there is created a duplication in numbering, reads as follows:

In a declared election emergency, the counting of ballots shall be conducted in accordance with the procedure prescribed by the Secretary of the State Election Board so as to ensure accuracy and promptness in determining the result. Provided, however, that the following provisions shall be incorporated into said prescribed procedure:

1. In elections for which counters have been authorized, two counters, of different political parties if possible, shall call from the ballots the names of the candidates voted for, while two other counters, also of different political parties if possible, shall record the votes upon the official tally sheets. Only pencils may be used in recording the vote.

2. If only two counters are authorized for an election, they shall be of different political parties, if possible. Both counters shall examine the ballots at the same time, while calling out the vote and recording said vote upon the tally sheets in the manner prescribed by the Secretary of the State Election Board.

It shall be unlawful for any person to divulge the progress of the count until after all ballots have been counted and the results of said count have been certified.

SECTION 43. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-105 of Title 26, unless there is created a duplication in numbering, reads as follows:

In a declared election emergency, the Secretary of the State Election Board shall declare that either this section or Section 7-107 of this title shall govern the counting and recounting of votes:

1. If the name of any person is written on a ballot, said ballot shall not be counted for any office or question thereon;

2. An "X", cross, or two lines that meet, including the so-called "check mark", the intersection or point of meeting of which shall be within or on the line of the proper circle or square, shall be valid. Such marking shall be hereinafter referred to as "valid markings". Such valid markings located otherwise on the ballot shall not be counted. Such valid markings shall include a circle or square which has been blackened in ink, even if the entire circle or square is not filled and even if the blackened portion may extend beyond the boundaries of the circle or square;

3. Marks used to designate the intention of the voter, other than those herein defined as valid markings, shall not be counted;

4. Valid markings shall be counted even though one or both lines thereof shall be duplicated, provided that the lines intersect or meet within or on the line of the proper circle or square;

5. Failure to properly mark a ballot as to one or more candidates or questions shall not of itself invalidate the entire ballot if the same has been properly marked as to other candidates or questions, unless such improper marking shall constitute a distinguishing mark;

6. A valid marking marked in the circle under the emblem of a political party shall be counted as a vote for each of said political party's candidates on that ballot card, except that a valid marking marked in the square beside a candidate's name shall take precedence, for that office, over a valid marking in the circle under the emblem of a political party. Provided, further, that if valid markings are marked in the circles under the emblems of more than one political party on a ballot, said ballot shall not be counted for any offices thereon; and

7. Any ballot or part of a ballot on which it is impossible to determine the voter's choice of candidate shall be void as to the candidate or candidates thereby affected.

SECTION 44. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-106 of Title 26, unless there is created a duplication in numbering, reads as follows:

In a declared election emergency, if a ballot or part of a ballot is not counted for any reason, a counter shall write said reason on the back of said ballot, and sign said statement.

SECTION 45. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-107 of Title 26, unless there is created a duplication in numbering, reads as follows:

In a declared election emergency, a ballot bearing the name of a person or which is marked in the circles under the emblems for more than one political party, as hereinbefore described, and a ballot which was placed in the ballot box without being voted, shall be considered as a mutilated ballot and shall be retained separately from the ballots which have been counted in whole or in part.

SECTION 46. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-108 of Title 26, unless there is created a duplication in numbering, reads as follows:

In a declared election emergency, any candidate or any recognized political party shall be entitled to have a watcher present at any place where an official count is being conducted. Said watcher must be commissioned in writing by the candidate, or by the chairman of the recognized political party of the county in which the watcher is being authorized. Said commission must be filed with the secretary of the appropriate county election board no later than 5:00 p.m. on Wednesday preceding the election. Watchers must subscribe to an oath to observe all laws and rules prescribed for watchers as hereinafter provided. Said oath must be administered by the inspector of the precinct in which the watcher is authorized. In counties using paper ballots, said watcher shall be limited to observing the official count and shall have no further authority than to make written objections to said count. Said

watcher shall be required to remain at the polling place for the same hours as the counters and shall be confined to the area wherein the official count is being conducted.

SECTION 47. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-109 of Title 26, unless there is created a duplication in numbering, reads as follows:

In a declared election emergency, at the conclusion of the official count, the counters shall execute certificates of vote wherein said counters attest to the correctness of the totals. The inspector shall cause one copy of each certificate to be posted on the door or entrance of the polling place and shall cause one copy of each certificate to be transmitted forthwith to the Secretary of the State Election Board.

SECTION 48. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-110 of Title 26, unless there is created a duplication in numbering, reads as follows:

In a declared election emergency, all ballots and all materials used in conducting the official count shall be placed in the ballot box. Said ballot box shall be locked, and the inspector shall return it, along with all other election materials and a copy of each certificate of vote, forthwith to the county election board.

SECTION 49. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-111 of Title 26, unless there is created a duplication in numbering, reads as follows:

In a declared election emergency, the county election board shall not disturb anything in the ballot box, and the box shall be retained by the secretary of the county election board until opened by court order or until it is necessary to open same for use at the next election, at which time the ballots shall be destroyed; provided, however, that in no case shall the ballot cards be destroyed until thirty (30) days after the election at which they were cast. Provided, however, if the certificate of vote or

precinct registry has been locked inside a ballot box inadvertently, said box may be opened in public view in the presence of all members of the county election board by the inspector, who shall remove only said certificate or precinct registry and relock the ballot box.

SECTION 50. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-112 of Title 26, unless there is created a duplication in numbering, reads as follows:

In a declared election emergency, each member of the county election board shall retain one key to each ballot box until the time for contests of elections has expired, or until the boxes are opened pursuant to such a contest.

SECTION 51. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-113 of Title 26, unless there is created a duplication in numbering, reads as follows:

In a declared election emergency:

A. In the event a candidate requests a recount of the ballots cast in an election, he must set forth in his petition the precincts and absentee ballots which he desires to be recounted. Said petition must be accompanied by either a cashier's check or certified check in the amount of Six Hundred Dollars (\$600.00) for each county affected by the petition. When such petition is properly filed, it shall be the duty of the secretary of the appropriate election board to order said recount to begin not less than three (3) nor more than ten (10) days from the date of filing of said petition. It shall be the duty of such contestant to cause to be served upon the candidate or candidates opposing him, and directly affected by said contest, a true copy of said petition and a true copy of said order. Said service shall be made in person where possible, within twenty-four (24) hours after the filing of said original petition of contest. Service shall be made by the sheriff of the county as to all offices, except that of sheriff, in which case the same shall be served by the county clerk and the

certificate of returns of such sheriff or county clerk, showing the inability to make such service within the above-mentioned time, shall be deemed sufficient proof of the absence of such candidate, or candidates, or the inability to serve such notice upon him, and to justify the constructive service hereafter provided. Where personal service is impossible, within said time, it is hereby made the duty of said contestant to serve said true copies upon the secretary of the appropriate election board. Provided that for the purpose of such constructive service, the secretaries of the county election boards are hereby made and constituted the service agents for all contests of elections filed in accordance herewith. By filing his declaration of candidacy for election, a candidate shall thereby be conclusively presumed to have accepted the terms and provisions hereof and specifically the aforesaid constructive service. When constructive service becomes necessary, said constructive service shall be made at the date, time and place of said hearing.

B. For elections on issues or questions when no candidate is involved, recounts shall be authorized only when:

1. the margin of votes between those for and those against the issue is one hundred fifty (150) or less when fifteen thousand (15,000) or more total votes are counted for or against the issue or question; or

2. the margin of votes between those for and those against the issue is one percent (1%) or less of the total number of votes cast on the issue when fourteen thousand nine hundred ninety-nine (14,999) or fewer total votes are cast for or against the issue or question. Provided, furthermore, that a recount is authorized only after an individual, who is a registered voter and who participated in the election, presents to the appropriate county election board a petition signed by one hundred fifty (150) registered voters who participated in the election when fifteen thousand (15,000) or more

total votes are counted for and against the question, or if fourteen thousand nine hundred ninety-nine (14,999) or fewer votes are cast for and against the issue, by a number of registered voters who participated in the election equal to one percent (1%) or more of the total votes cast for and against the issue. Said petition must be accompanied by either a cashier's check or certified check in the amount of Six Hundred Dollars (\$600.00) for each county affected by the petition. When such petition is properly filed, it shall be the duty of the secretary of the appropriate election board to order said recount to begin not less than three (3) days nor more than ten (10) days from the date of filing of said petition. Recounts of issue or question elections shall not be permitted of any statewide election.

SECTION 52. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-114 of Title 26, unless there is created a duplication in numbering, reads as follows:

In a declared election emergency, in conducting the recount of ballots, the county election board shall open each ballot box individually and shall assign said ballots to a group of counters appointed by the secretary of the county election board. Said counters shall then conduct the recount in the same manner as provided by law for counting ballots in Primary, Runoff Primary and General Elections. The county election board shall supervise such counting and its decision shall be final in all cases. Each candidate affected by or individual petitioning for the recount is entitled to have a watcher present at each place where a count is being made. Said watcher shall be limited to a challenge, in writing, of any decision made by the counters with regard to counting of a ballot. Such challenge shall be made immediately to the county election board, whose decision on said challenge shall be final. Each group of counters shall have representation of at least two political parties, where possible. Said counters shall be

appointed from among the registered voters of the county and shall meet such qualifications as may be imposed for a precinct inspector, judge or clerk. Counters shall be paid on the same basis as precinct judges and clerks are paid for Primary, Runoff Primary or General Elections.

SECTION 53. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-115 of Title 26, unless there is created a duplication in numbering, reads as follows:

In a declared election emergency:

A. At 7:00 a.m. on the day of the election, or at such later time that day as the secretary of the county election board may prescribe, the absentee counters shall meet at the county courthouse or at the offices of the county election board if located elsewhere to count absentee ballots in the following manner:

1. The ballot box containing the properly executed envelopes bearing affidavits shall be opened and the envelopes bearing affidavits removed;

2. The plain opaque envelopes shall be placed in a ballot box locked with three locks; and

3. The ballot box shall be shaken to mix the plain opaque envelopes, after which the box shall be opened, the envelopes removed, and the ballots counted according to law.

B. The procedure described in this section shall be repeated as is necessary until all ballots have been counted. In no event shall fewer than twelve ballots be counted at any time, unless fewer than twelve ballots are received in total or after the first count is made. The results of said absentee ballots shall not be announced earlier than 7:00 p.m. on the day of the election.

SECTION 54. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-116 of Title 26, unless there is created a duplication in numbering, reads as follows:

In an election emergency, in the event no absentee counters are authorized, the county election board shall conduct the count of absentee ballots in the manner hereinbefore provided.

SECTION 55. REPEALER 26 O.S. 1981, Sections 3-106, 6-118, 7-126, 7-128, 7-129, as amended by Section 12, Chapter 171, O.S.L. 1983, 7-135, Section 1, Chapter 29, O.S.L. 1987, as amended by Section 3, Chapter 289, O.S.L. 1989, Section 2, Chapter 29, O.S.L. 1987, 9-101, 9-102, 9-103, Section 7, Chapter 225, O.S.L. 1983, 9-104, 9-105, 9-106, 9-107, 9-108, 9-109, 9-110, 9-111, 9-112, 9-113, 9-114, 9-116, 9-117, 9-119, 9-120 and 14-126 (26 O.S. Supp. 1990, Sections 7-129, 8-111.1, 8-114.1 and 9-103.1), are hereby repealed.

SECTION 56. This act shall become effective March 1, 1992."

Passed the House of Representatives the 11th day of April, 1991.

Speaker of the House of Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1991.

President of the Senate