ENGROSSED HOUSE
BILL NO. 1638

By: Turner and Weaver of the House

and

Shurden of the Senate

An Act relating to elections; amending 26 O.S. 1991, Section 5-118, as amended by Section 1, Chapter 360, O.S.L. 1994 (26 O.S. Supp. 1996, Section 5-118), which relates to contests of candidacy; deleting certain exception for district boards of education; amending 26 O.S. 1991, Section 13A-105, as last amended by Section 2, Chapter 360, O.S.L. 1994 (26 O.S. Supp. 1996, Section 13A-105), which relates to declarations of candidacy for school district board of education; deleting provisions providing procedure for contests of a candidacy; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 26 O.S. 1991, Section 5-118, as amended by Section 1, Chapter 360, O.S.L. 1994 (26 O.S. Supp. 1996, Section 5-118), is amended to read as follows:

Section 5-118. ~~With the exception of a contest of a candidacy for member of a district board of education, any~~ Any candidate, hereafter referred to as petitioner, may contest the candidacy of any other candidate for the same office, hereafter referred to as

contestee, by filing a written petition with the secretary of the election board with whom said candidate filed the declaration of candidacy. In the event only one candidate files for an office, a petition contesting the candidacy may be filed by any registered voter who is eligible to vote for the candidate.

SECTION 2. AMENDATORY 26 O.S. 1991, Section 13A-105, as last amended by Section 2, Chapter 360, O.S.L. 1994 (26 O.S. Supp. 1996, Section 13A-105), is amended to read as follows:

Section 13A-105. ~~A.~~ Candidates for member of the board of education of every school district or vocational-technical school district shall file declarations of candidacy in the same place and with the same officials as candidates for county office. The declaration of candidacy shall have an attachment listing the requirements of a candidate for election or reelection to a school board as set forth in Sections 13A-106 and 5-105a of this title and Sections 5-110, 5-110.1 and 5-113 of Title 70 of the Oklahoma Statutes and the candidate shall swear or affirm that he or she is eligible to run for such office or serve in such office if elected. Candidates shall file on the first Monday in December through the following Wednesday. For school districts and vocational-technical school districts located in more than one county, filing shall be in the county wherein supervision of the district is located.

~~B. The candidacy of any candidate for member of a district board of education may be contested by any candidate for the same office or any registered voter who is eligible to vote for the candidate by the filing of a written petition with the State Board of Education. A person filing such petition is hereinafter referred to as petitioner.~~

~~C. A petition contesting the candidacy of any candidate for member of a district board of education shall be filed no later than 5:00 p.m. on the ninth day following the close of the filing period.~~

~~D. A petition contesting the candidacy of any candidate for member of a district board of education, hereinafter referred to as contestee, must allege that the contestee is not qualified by law to become a candidate for member of a district board of education and must set forth specific facts to support the allegation. The State Superintendent of Public Instruction may add allegations and supporting facts to the petition if the contestee is given written notice of the additional allegations and facts by the State Superintendent at least three (3) days prior to the hearing on the petition. Any reason not appearing on the face of the petition, unless added by the State Superintendent of Public Instruction, shall be considered waived and shall not be grounds for a contest based on the petition.~~

~~E. A petition contesting the candidacy of a candidate for member of a district board of education must be accompanied by a cashier's check or certified check in the amount of Two Hundred Fifty Dollars ($250.00) payable to the State Board of Education.~~

~~F. When a petition contesting the candidacy of a candidate is properly filed, the State Superintendent of Public Instruction shall set the matter for a hearing before the State Board of Education at the Board's next regularly scheduled meeting or at a special meeting. The hearing shall be scheduled no earlier than three (3) days from the date the petition was filed and no later than twenty (20) days after the close of the period for filing declarations of candidacy.~~

~~G. The petitioner shall cause a copy of the petition and notice of the date and place of the hearing to be served on the contestee and the secretary of the county election board in which the contested declaration of candidacy was filed. Service shall be made as set forth in Sections 5-124 and 5-125 of this title.~~

~~H. If a contestee desires to appear in answer to the contest, the contestee shall upon appearance at the hearing on the petition,~~

~~or at the time the contestee files a written answer with the State Board of Education, whichever occurs first, deposit a cashier's check or certified check in the amount of Two Hundred Fifty Dollars ($250.00) with the State Board of Education. Failure of the contestee to post the required cashier's or certified check shall be deemed a failure to answer the contest, and the petition contesting the candidacy shall be deemed successful.~~

~~I. The burden of proof shall be upon the petitioner to sustain the allegations in the petition. However, failure of the contestee to appear or answer shall be deemed a default and shall constitute an admission of the allegations of the petition. In the event of a default, the State Board of Education shall determine whether the factual allegations of the petition constitute appropriate grounds for disqualification. If the Board finds grounds for disqualification, the contestee's candidacy shall be stricken.~~

~~J. The petition may be heard without a formal answer being filed by the contestee if the contestee appears on the hearing date and posts the required cashier's or certified check. The State Board of Education shall have authority to issue subpoenas, compel the attendance of witnesses and the production of evidence, and receive testimony of witnesses under oath. The State Superintendent of Public Instruction or, in the absence of the State Superintendent, the acting chair of the Board shall administer the oath. At the conclusion of the hearing, the Board shall render its decision in writing. The decision of the Board shall in all cases be final. If the Board determines that the contestee's declaration of candidacy may be amended or corrected to conform to law, the Board may allow the amendment or correction to be made.~~

~~K. The State Board of Education shall notify the secretary of the county election board in the county in which the contested declaration of candidacy was filed of the Board's decision on a contested candidacy by mailing notice of its decision within one (1)~~

~~day of the decision. Upon receiving notice that the State Board of Education determined that the contestee was not qualified to become a candidate for member of a district board of education, the secretary of the county election board shall strike the candidacy and shall not place the name of the candidate on the ballot. If the State Board of Education determined that the declaration of candidacy may be amended or corrected, the secretary of the county election board shall allow the correction or amendment to be made upon appearance of the contestee for the purpose of making the correction or amendment.~~

~~L. If the petitioner is successful, the deposit shall be returned to petitioner, and the costs of the hearing shall be deducted from the deposit of the contestee. The balance of the deposit shall be returned to the contestee. If the contestee does not file an answer or make an appearance, or if the petitioner is unsuccessful, all costs of the hearing shall be paid from the petitioner's deposit. The balance of the petitioner's deposit shall be returned to the petitioner.~~

~~M. The State Board of Education shall cause to be compiled and issued an annual report which provides information, pursuant to the provisions of this section, on the number of petitions received, the disposition of the petitions and the funds received, deposited and/or returned by the State Board of Education.~~

~~N. The provisions of this section shall be the exclusive procedure for contesting a candidacy for member of a district board of education.~~

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 10th day of March, 1997.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1997.

President of the Senate