

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 1725

By: Paulk

AS INTRODUCED

An Act relating to elections; amending 26 O.S. 1991, Sections 2-131, as amended by Section 1, Chapter 290, O.S.L. 1995 and 2-132, as last amended by Section 2, Chapter 290, O.S.L. 1995 (26 O.S. Supp. 1996, Sections 2-131 and 2-132), which relate to membership and disqualification for county and precinct election boards; modifying qualifications for membership on precinct board; modifying disqualifications; providing for alternative members and secretaries for certain contests or recounts; amending 26 O.S. 1991, Sections 3-101, as amended by Section 3, Chapter 247, O.S.L. 1992 and 3-108 (26 O.S. Supp. 1996, Section 3-101), which relate to general administration of elections; modifying dates for special elections in even-numbered years; authorizing certain expenditures by county election board secretary; amending 26 O.S. 1991, Section 4-103, as amended by Section 7, Chapter 260, O.S.L. 1994 (26 O.S. Supp. 1996, Section 4-103), which relates to voter registration; modifying qualifications for registering to vote; amending 26 O.S. 1991, Sections 5-116 and 5-116.1, which relate to

withdrawal of candidacy; modifying time periods for withdrawal of candidacy; amending 26 O.S. 1991, Sections 6-103, 6-104, as amended by Section 9, Chapter 247, O.S.L. 1992, 6-109, as amended by Section 11, Chapter 247, O.S.L. 1992 and 6-113 (26 O.S. Supp. 1996, Sections 6-104 and 6-109), which relate to ballots; eliminating State Election Board responsibility for printing certain local election ballots; requiring county election boards to provide for printing of all local election ballots; providing for placement of names of judicial candidates according to lot; modifying ballots for state questions; amending 26 O.S. 1991, Section 8-111, which relates to recounts; providing procedures for recounts for elections on issues or questions not involving candidates in which more than a majority is required for approval; providing for hearings on petitions alleging irregularities or fraud involving two or more counties; amending 26 O.S. 1991, Sections 14-101, 14-108, 14-112.1, 14-113.2, 14-115.4, as last amended by Section 11, Chapter 316, O.S.L. 1993, 14-120, 14-121 and 14-132 (26 O.S. Supp. 1996, Section 14-115.4), which relate to absentee ballots; authorizing charter municipalities to adjust filing periods and election dates to allow sufficient time for mailing and return of absentee ballots; setting minimum time for mailing and return of absentee ballots when election is called by a charter municipality simultaneously with election of another entity; removing specification as to method of return of absentee ballots; providing for marking of absentee

ballot by person chosen by voter in certain circumstances; making days for in-person absentee voting uniform for all elections; authorizing eligible person on officially authorized leave from the United States Armed Forces to vote if certain requirements are met; requiring completion of a voter registration application; modifying time that absentee ballot materials must be retained; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 26 O.S. 1991, Section 2-131, as amended by Section 1, Chapter 290, O.S.L. 1995 (26 O.S. Supp. 1996, Section 2-131), is amended to read as follows:

Section 2-131. To be eligible for membership on a county or precinct election board, one must be a registered voter of the county ~~or precinct, whichever is applicable,~~ in which he will serve and demonstrate competence to perform his duties. Persons thus qualified and appointed shall be trained in their duties in a manner prescribed by the Secretary of the State Election Board.

SECTION 2. AMENDATORY 26 O.S. 1991, Section 2-132, as last amended by Section 2, Chapter 290, O.S.L. 1995 (26 O.S. Supp. 1996, Section 2-132), is amended to read as follows:

Section 2-132. No person shall serve on a county election board, precinct election board or absentee voting board at any election in which he or she is a candidate for office, or is a deputy or regular employee of a candidate for office. No person shall serve as ~~chair or vice-chair of a county election board,~~ on a

precinct election board or absentee voting board at any election in which he or she is related within the third degree by either consanguinity or affinity to a candidate for office on the ballot in the precinct. In the event a member of a precinct election board is disqualified for one of the aforementioned reasons, it shall be the duty of the secretary of the county election board to appoint a suitable replacement for the official for said election. Any person so disqualified shall resign the office or position no later than ten (10) days following the close of the filing period during which such candidacy was filed.

~~The secretary~~ A member of the county election board shall not participate in or carry out any duties or functions associated with the office during the actual conduct of a contest of candidacy or recount if the ~~secretary~~ member is related within the third degree by either consanguinity or affinity to a candidate who is the petitioner or contestee in the contest of candidacy or who is a candidate in an election being recounted. In the event of such a contest or recount, the alternate for the member shall carry out the duties of the office during the actual conduct of the contest of candidacy or recount. The Secretary of the State Election Board shall appoint a replacement for the secretary to carry out the duties or functions of the office, including voting as a member of the county election board, during the actual conduct of the contest of candidacy or recount.

SECTION 3. AMENDATORY 26 O.S. 1991, Section 3-101, as amended by Section 3, Chapter 247, O.S.L. 1992 (26 O.S. Supp. 1996, Section 3-101), is amended to read as follows:

Section 3-101. A. No election required to be conducted by any county election board shall be scheduled for a day other than Tuesday.

B. Except as otherwise provided by law, no special election shall be held by any county, school district, vocational-technical

school district, municipality or other entity authorized to call elections except on the second Tuesday of January, February, May, June, July, August, September, October, November and December and the first Tuesday in March and April in odd-numbered years and the second Tuesday of January, February, March, May, June, ~~October~~ and December, the first Tuesday in April, the fourth Tuesday in August, the third Tuesday in September and the first Tuesday after the first Monday in November of any even-numbered year.

C. In the event that a regular or special election date occurs on an official state holiday, the election shall be scheduled for the next following Tuesday.

SECTION 4. AMENDATORY 26 O.S. 1991, Section 3-108, is amended to read as follows:

Section 3-108. A special depository account, to be designated "County Election Board Special Depository Account", shall be used in each county for receipt and disbursement of monies received by said county election board pursuant to statutory provisions, but not including appropriated funds. The special depository account shall be a continuing fund not subject to fiscal year limitations and shall be under the administrative direction of the secretary of the county election board. Said special depository account shall be established and administered pursuant to Section 681~~7~~ et seq.~~7~~ of Title 19~~7~~ of the Oklahoma Statutes. Expenditures of forfeited filing fees from said fund may be made by the secretary of the county election board for any lawful purpose.

SECTION 5. AMENDATORY 26 O.S. 1991, Section 4-103, as amended by Section 7, Chapter 260, O.S.L. 1994 (26 O.S. Supp. 1996, Section 4-103), is amended to read as follows:

Section 4-103. Any person who will become a qualified elector during the sixty (60) days before the next ensuing election at which he could vote shall be entitled to become a registered voter of the

precinct of his or her residence not more than sixty (60) and not less than twenty-four (24) days prior to said election.

SECTION 6. AMENDATORY 26 O.S. 1991, Section 5-116, is amended to read as follows:

Section 5-116. A candidate in a Runoff Primary Election may withdraw his candidacy upon filing a written notice of withdrawal as a candidate with the secretary of the election board which accepted said candidate's declaration of candidacy. Said notice shall be signed by the candidate, whose signature shall be notarized by a notary public, and shall be filed on or before 5:00 p.m. on the ~~Monday~~ Friday following the date of the Primary Election.

SECTION 7. AMENDATORY 26 O.S. 1991, Section 5-116.1, is amended to read as follows:

Section 5-116.1 A candidate in a General Election may withdraw his candidacy upon filing a written notice of withdrawal as a candidate with the secretary of the election board which accepted said candidate's declaration of candidacy. Said notice shall be signed by the candidate, whose signature shall be notarized by a notary public, and shall be filed on or before 5:00 p.m. on the ~~Monday~~ Friday following the date of the Runoff Primary Election.

SECTION 8. AMENDATORY 26 O.S. 1991, 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, 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 9. AMENDATORY 26 O.S. 1991, Section 6-104, as amended by Section 9, Chapter 247, O.S.L. 1992 (26 O.S. Supp. 1996, 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~~ for 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 offices 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 10. AMENDATORY 26 O.S. 1991, Section 6-109, as amended by Section 11, Chapter 247, O.S.L. 1992 (26 O.S. Supp. 1996, Section 6-109), is amended to read as follows:

Section 6-109. On all Primary and Runoff Primary Election ballots, except absentee ballots, the names of the candidates for each office shall be rotated in such a manner that all candidates' names appear in each position on said ballots an equal number of times. Provided, however, the names of candidates for judicial, school, city and town offices shall be placed on the ballot according to lot.

SECTION 11. AMENDATORY 26 O.S. 1991, 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)~~ PROPOSAL BE APPROVED?" followed by the words "FOR THE ~~(AMENDMENT OR ACT)~~ PROPOSAL - YES" and "AGAINST THE ~~(AMENDMENT OR ACT)~~ PROPOSAL - NO", one above the other.

SECTION 12. AMENDATORY 26 O.S. 1991, 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. If the candidate or individual requests that the ballots be recounted manually, the petition must be accompanied by a cashier's check or certified check in the amount of Six Hundred Dollars (\$600.00) for the first twelve thousand (12,000) ballots to be recounted and Five Hundred Dollars (\$500.00) for each additional twelve thousand (12,000) ballots, or fraction thereof, to be recounted, for each county affected. 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. 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 and a majority is required for approval, 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.

C. For elections on issues or questions when no candidate is involved and more than a majority is required for approval, recounts shall be authorized only when:

1. The margin of votes between those for the issue and the number required for approval 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 the issue and the number required for approval 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.

D. Recounts of issue or question elections shall not be permitted of any statewide election.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-121.1 of Title 26, unless there is created a duplication in numbering, reads as follows:

When a petition is filed alleging irregularities or fraud involving two or more counties, the hearings for all counties shall be scheduled at a single location by the election board secretary who accepted the petition. When such a petition is filed with the Secretary of the State Election Board, the Supreme Court shall assign a single judge to hear and determine the issue for all affected counties.

SECTION 14. AMENDATORY 26 O.S. 1991, Section 14-101, is amended to read as follows:

Section 14-101. A. Absentee ballots shall be provided for any election conducted by a county election board. ~~Provided, however, this section shall not apply to charter cities, except that such cities may by ordinance allow absentee ballots in their municipal elections if their charter does not specifically prohibit them.~~ A charter municipality may adjust its filing period and election dates to allow sufficient time for the mailing and return of absentee ballots if the filing period or election dates provided in the municipality's charter do not provide sufficient time for the mailing and return of absentee ballots.

B. Any election called by a charter municipality simultaneously with any other entity's election held in any part of the municipality shall provide no less time for the mailing and return of absentee ballots than the least time provided by the other entity.

SECTION 15. AMENDATORY 26 O.S. 1991, 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 16. AMENDATORY 26 O.S. 1991, Section 14-112.1, is amended to read as follows:

Section 14-112.1 Said ballots must be accompanied by:

1. A plain opaque envelope in which voted ballots must be placed by the voter;

2. An envelope bearing an affidavit stating that the voter is qualified to vote, that he has personally marked the ballots, ~~and has not exhibited the marked ballots to any other person~~ or has directed a person chosen by the voter to mark the ballots in accordance with the provisions of Section 7-123.3 of this title; and

3. A return envelope addressed to the secretary of the county election board.

SECTION 17. AMENDATORY 26 O.S. 1991, Section 14-113.2, is amended to read as follows:

Section 14-113.2 The voter shall be ~~required to mark his~~ responsible for marking the ballots in ink or other manner or directing a person chosen by the voter to mark the ballots in accordance with the provisions of Section 7-123.3 of this title and 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 18. AMENDATORY 26 O.S. 1991, Section 14-115.4, as last amended by Section 11, Chapter 316, O.S.L. 1993 (26 O.S. Supp. 1996, Section 14-115.4), is amended to read as follows:

Section 14-115.4 A. A registered voter may apply for an in-person absentee ballot at a location designated by the secretary of the county election board from 9 a.m. to 5 p.m. on Thursday, Friday and Monday immediately preceding any ~~statewide~~ election ~~and on Monday only for all other elections~~. As part of the application for an in-person absentee ballot such registered voter shall swear or affirm that he or she has not voted a regular mail absentee ballot and that he or she will not vote at the regular polling place in the election for which the in-person absentee ballot is requested.

B. One or more absentee voting boards shall be on duty from 9 a.m. to 5 p.m. at the in-person absentee polling place on Thursday, Friday and Monday immediately preceding any ~~statewide~~ election ~~and on Monday only for all other elections~~. If the secretary of a county election board receives an application from a registered voter requesting to vote by in-person absentee ballot the secretary shall cause to be implemented the following procedures:

1. An absentee voting board shall provide to each registered voter who applies for an in-person absentee ballot appropriate ballots and materials as may be necessary to vote;

2. The voter must sign an in-person absentee voter record, and his signature on such record must be certified by both members of the absentee voting board;

3. The voter must mark his ballots in the manner provided by law in the presence of the absentee voting board, but in such a manner as to make it impossible for any person other than the voter to ascertain how said ballots are marked. Insofar as is possible,

the voting procedure shall be the same as if the voter were casting his vote in person at a precinct;

4. The voter shall then deposit the ballot in a voting device designated for in-person absentee voting by the secretary of the county election board;

5. When the in-person polling place is closed on each day of in-person absentee voting the in-person absentee voting board shall, without obtaining a printout of results, remove the vote data pack from the voting device and seal ballots counted that day in a transfer case which shall be secured by the sheriff of the county in the same manner as provided in Section 8-110 of this title. The vote data pack shall be sealed in a container prescribed by the Secretary of the State Election Board. The sheriff shall secure the sealed vote data pack container and return it to the in-person absentee voting board no later than 8:45 a.m. on the next day of the in-person absentee voting or to the secretary of the county election board at the time of the county election board meeting to count absentee ballots on the Tuesday election day;

6. The vote data pack or packs used for in-person absentee voting shall be used by the county election board to count absentee ballots on election day as provided in Section 14-125 of this title; and

7. If there is a malfunction in such a way that the vote data pack used for in-person absentee voting will not function, the sheriff is authorized to return the transfer cases containing in-person absentee ballots to the county election board to be recounted as provided in Section 7-134.1 of this title.

SECTION 19. AMENDATORY 26 O.S. 1991, 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~~ to the county election board.

SECTION 20. AMENDATORY 26 O.S. 1991, Section 14-121, is amended to read as follows:

Section 14-121. Any person eligible to register, who has been honorably discharged or is on officially authorized leave from the ~~armed forces~~ Armed Forces of the United States, or who has been terminated in his service or employment overseas and returned home too late to register at the time when, and at the place where, registration is required, to vote at the next ensuing election, shall be entitled to vote at such election in the precinct in which he is a qualified elector without being registered. Such person shall be entitled to vote upon satisfying the precinct inspector that he is entitled to vote at such election and completing a voter registration application for an address within the precinct.

SECTION 21. AMENDATORY 26 O.S. 1991, Section 14-132, is amended to read as follows:

Section 14-132. All materials used for procuring and casting an absentee ballot shall be retained by the secretary of the county election board for a period of ~~twenty-two (22)~~ twenty-four (24) months after the day of the election.

SECTION 22. This act shall become effective November 1, 1997.

46-1-5390 SD