

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1113

By: Pettigrew

AS INTRODUCED

An Act relating to elections; amending 26 O.S. 1991, Sections 8-111, as last amended by Section 10, Chapter 88, O.S.L. 1999, 8-114, 8-116 and 8-116.1 (26 O.S. Supp. 2000, Section 8-111), which relate to certifications and contests of elections; modifying procedures for recounts; requiring recount to take place in all precincts in which the name of the candidate appears on the ballot and to include all absentee ballots; providing exception; allowing termination of recount if contestant agrees to original result of election; and providing an effective date.

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

SECTION 1. AMENDATORY 26 O.S. 1991, Section 8-111, as last amended by Section 10, Chapter 88, O.S.L. 1999 (26 O.S. Supp. 2000, 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~~ petitions for a recount of the ballots cast in an election, ~~it~~ the recount must ~~set forth in the petition~~ occur in all precincts in which the candidate's name appeared on the ballot and must include all absentee ballots which are to be recounted for such precincts, unless the reason for the requested recount is due to mechanical failure of one or more voting devices in a specific precinct or precincts. Recounts due to mechanical failure of voting devices shall only take place in the affected precincts. ~~Said~~ The petition for recount 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 three thousand (3,000) ballots and Six Hundred Dollars (\$600.00) for each additional six thousand (6,000) ballots or fraction thereof, to be recounted for each county affected. If the petition for a manual recount is filed with the State Election Board, the petition must be accompanied by a cashier's check in the amount of Three Hundred Dollars (\$300.00) in addition to the amount required above. 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 opposing candidate or candidates, and directly affected by said contest, a true copy of said petition and a true copy of said order. 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 the candidate, 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 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 and 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 and 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 and 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 and 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 2. AMENDATORY 26 O.S. 1991, 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~~ applicable precinct ~~or~~ and 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 a manual recount of ballots, the county election board shall open the transfer cases from each ~~requested~~ applicable precinct ~~or~~ and for absentee ballots individually and shall assign said ballot cards to a group of counters appointed by the secretary of the county election board. 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 3. AMENDATORY 26 O.S. 1991, Section 8-116, is amended to read as follows:

~~Section 8-116. Should the contestant at any time during the proceeding desire that the recount be terminated, he may announce the same to the county election board. In such event, the recount shall end at that point, and any changes be made a part of the certificate of vote. Provided further, however, that should any contestee desire that the recount continue, he may petition in writing at the time of said announcement for the remainder of the ballots in that county to be recounted. Said petition must be filed immediately with the county election board conducting said recount, and petition must be accompanied by either a cashier's check or certified check in an amount equal to the deposit made by the contestant to conduct the recount. If said recount was ordered by the Secretary of the State Election Board, said check shall be transmitted forthwith to the State Election Board. In the event contestee files such petition, the recount shall continue until such time as all the ballots in said county have been recounted, and the recount is complete.~~ Recounts of issue or question elections shall not cease until all precincts and absentee ballots in the designated county or counties have been recounted.

SECTION 4. AMENDATORY 26 O.S. 1991, Section 8-116.1, is amended to read as follows:

Section 8-116.1 When a recount is initiated, all ballots in ~~the~~ every applicable precinct involved must be counted, and neither party to the recount shall be allowed to terminate the recount process until all such ballots have been recounted, unless the person requesting the recount agrees to end the recount. If the recount is terminated, the original results for the election shall be certified. This provision shall apply to all elections.

SECTION 5. This act shall become effective November 1, 2001.

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