

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 54th Legislature (2013)

4   COMMITTEE SUBSTITUTE  
5   FOR ENGROSSED  
6   SENATE BILL NO. 233

By: Griffin of the Senate

and

Watson of the House

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10                                   COMMITTEE SUBSTITUTE

11           An Act relating to election recounts; amending 26  
12           O.S. 2011, Sections 8-111, 8-117 and 8-118, which  
13           relate to recount procedures; requiring additional  
14           deposit in certain elections; specifying with and by  
15           whom petition must be filed; prohibiting refund of  
16           deposit if recount does not change election outcome;  
17           and providing an effective date.

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

19           SECTION 1.           AMENDATORY           26 O.S. 2011, Section 8-111, is  
20           amended to read as follows:

21           Section 8-111.   A.   1.   In the event a candidate or individual  
22           authorized to request a recount requests a recount of the ballots  
23           cast in an election, it must set forth in the petition the precincts  
24           and absentee ballots which are to be recounted.   ~~Said~~

1        2. The petition must be accompanied by either a cashier's check  
2 or certified check in the amount of Six Hundred Dollars (\$600.00)  
3 for each county affected by the petition.

4        3. The candidate or individual may indicate in the petition  
5 requesting the recount that ~~said~~ the candidate or individual desires  
6 to have the ballots recounted manually. Failure by the candidate or  
7 individual to state such preference for a manual recount in the  
8 petition shall result in a recount by electronic voting devices.

9        4. If the candidate or individual requests that the ballots be  
10 recounted manually, the petition must be accompanied by a cashier's  
11 check or certified check in the amount of Six Hundred Dollars  
12 (\$600.00) for the first three thousand (3,000) ballots and Six  
13 Hundred Dollars (\$600.00) for each additional six thousand (6,000)  
14 ballots or fraction thereof, to be recounted for each county  
15 affected.

16        5. If the petition for a manual recount is filed with the State  
17 Election Board, the petition must be accompanied by a cashier's  
18 check in the amount of Three Hundred Dollars (\$300.00) in addition  
19 to the amount required ~~above~~ in paragraph 4 of this subsection.

20        6. In elections involving candidates, an additional deposit  
21 equal to the total of the deposits required by paragraphs 2, 4 and 5  
22 of this subsection shall be required if the margin between the first  
23 place candidate and second place candidate is ten percent (10%) or  
24 greater. Provided, in a Primary Election involving three or more

1 candidates where a Runoff Primary may be required, and where the  
2 margin between the second place candidate and third place candidate  
3 is less than one percent (1%), or where the first place candidate is  
4 one percent (1%) above or below a majority, then no additional  
5 deposit shall be required.

6 7. For an election involving candidates, the petition shall be  
7 filed with the secretary of the election board with whom the  
8 candidate filed the candidate's declaration of candidacy, unless  
9 otherwise provided for by law. The petition may only be filed by a  
10 candidate whose name was printed on the ballot for that office in  
11 that election.

12 8. When such petition is properly filed, it shall be the duty  
13 of the secretary of the appropriate election board to order ~~said~~ the  
14 recount to begin not less than three (3) nor more than ten (10) days  
15 from the date of filing of ~~said~~ the petition.

16 9. a. In elections involving candidates, it shall be the  
17 duty of such contestant to cause to be served upon the  
18 opposing candidate or candidates, and directly  
19 affected by ~~said~~ the contest, a true copy of ~~said~~ the  
20 petition and a true copy of ~~said~~ the order.

21 b. Service shall be made in person where possible, within  
22 twenty-four (24) hours after the filing of ~~said~~ the  
23 original petition of contest. Service shall be made  
24 by the sheriff of the county as to all offices, except

1 that of sheriff, in which case the same shall be  
2 served by the county clerk and the certificate of  
3 returns of such sheriff or county clerk, showing the  
4 inability to make such service within the above-  
5 mentioned time, shall be deemed sufficient proof of  
6 the absence of such candidate, or candidates, or the  
7 inability to serve such notice upon the candidate, and  
8 to justify the constructive service hereafter  
9 provided.

10 c. Where personal service is impossible, within ~~said~~ the  
11 time, it is hereby made the duty of ~~said~~ the  
12 contestant to serve ~~said~~ true copies upon the  
13 secretary of the appropriate election board. Provided  
14 that for the purpose of such constructive service, the  
15 secretaries of the county election boards are hereby  
16 made and constituted the service agents for all  
17 contests of elections filed in accordance herewith.  
18 By filing declaration of candidacy for election, a  
19 candidate shall thereby be conclusively presumed to  
20 have accepted the terms and provisions hereof and  
21 specifically the aforesaid constructive service. When  
22 constructive service becomes necessary, ~~said~~  
23 constructive service shall be made at the date, time  
24 and place of ~~said~~ the hearing.

1 B. For elections on issues or questions when no candidate is  
2 involved and a majority is required for approval, recounts shall be  
3 authorized only when:

4 1. The margin of votes between those for and those against the  
5 issue is one hundred fifty (150) or less when fifteen thousand  
6 (15,000) or more total votes are counted for and against the issue  
7 or question; or

8 2. The margin of votes between those for and those against the  
9 issue is one percent (1%) or less of the total number of votes cast  
10 on the issue when fourteen thousand nine hundred ninety-nine  
11 (14,999) or fewer total votes are cast for and against the issue or  
12 question.

13 Provided, furthermore, that a recount is authorized only after  
14 an individual, who is a registered voter and who participated in the  
15 election, presents to the appropriate county election board a  
16 petition signed by one hundred fifty (150) registered voters who  
17 participated in the election when fifteen thousand (15,000) or more  
18 total votes are counted for and against the question, or if fourteen  
19 thousand nine hundred ninety-nine (14,999) or fewer votes are cast  
20 for and against the issue, by a number of registered voters who  
21 participated in the election equal to one percent (1%) or more of  
22 the total votes cast for and against the issue.

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

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

8 2. The margin of votes between those for the issue and the  
9 number required for approval is one percent (1%) or less of the  
10 total number of votes cast on the issue when fourteen thousand nine  
11 hundred ninety-nine (14,999) or fewer total votes are cast for and  
12 against the issue or question.

13 Provided, furthermore, that a recount is authorized only after an  
14 individual, who is a registered voter and who participated in the  
15 election, presents to the appropriate county election board a  
16 petition signed by one hundred fifty (150) registered voters who  
17 participated in the election when fifteen thousand (15,000) or more  
18 total votes are counted for and against the question, or if fourteen  
19 thousand nine hundred ninety-nine (14,999) or fewer votes are cast  
20 for and against the issue, by a number of registered voters who  
21 participated in the election equal to one percent (1%) or more of  
22 the total votes cast for and against the issue.

23 D. Within twenty-four (24) hours after a petition required in  
24 subsections B and C of this section is filed, not counting Saturday,

1 Sunday or legal holidays, the secretary of the county election board  
2 who received the petition shall determine, pursuant to rules  
3 promulgated by the Secretary of the State Election Board, if the  
4 petition contains a sufficient number of valid signatures of  
5 registered voters who participated in the election.

6 E. Recounts of issue or question elections shall not be  
7 permitted of any statewide election.

8 SECTION 2. AMENDATORY 26 O.S. 2011, Section 8-117, is  
9 amended to read as follows:

10 Section 8-117. Deposits accompanying petitions shall be used by  
11 the appropriate election board to defray the actual expenses of ~~said~~  
12 a recount. Expenses shall include mileage and salaries of the  
13 county election board members, which shall be made on a per diem  
14 basis at the same rate as for normal compensation; salaries for  
15 counters deemed necessary by the secretary of ~~said~~ the board to  
16 conduct an expedient and accurate recount; the expense of service of  
17 process; court reporter fees and transcript expense; travel  
18 reimbursement for the court reporter and the presiding judge;  
19 mileage and per diem of witnesses; and for all other actual and  
20 necessary expenses. The balance, if any, shall be returned to ~~said~~  
21 the contestant. In the event ~~said~~ the contestant is successful in  
22 ~~said~~ the recount, ~~said~~ the deposit shall be returned to ~~said~~ the  
23 contestant, and the expense of ~~said~~ the recount shall be borne by  
24 the county or state, as the case may be. Provided, no portion of a

1 deposit required by paragraph 6 of subsection A of Section 8-111 of  
2 this title shall be refundable unless the contestant is successful  
3 in the recount in changing the outcome of the election.

4 SECTION 3. AMENDATORY 26 O.S. 2011, Section 8-118, is  
5 amended to read as follows:

6 Section 8-118. In the event a candidate contests the  
7 correctness of the announced results of an election by alleging  
8 either fraud or any other irregularities, the secretary of the  
9 election board receiving the petition shall set a hearing in the  
10 same manner as provided for recounts. Provisions for service of  
11 notice shall be the same as for recounts. The petition shall be  
12 filed with the secretary of the election board with whom the  
13 candidate filed the candidate's declaration of candidacy, unless  
14 otherwise provided for by law.

15 The district judge conducting the hearing or such other judge as  
16 may be assigned by the Supreme Court shall have the authority to  
17 issue subpoenas and compel the attendance of witnesses and the  
18 production of evidence.

19 SECTION 4. This act shall become effective November 1, 2013.

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21 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04/03/2013 - DO  
22 PASS, As Amended.