

An Act

ENROLLED HOUSE
BILL NO. 2564

By: Caldwell (Chad) of the
House

and

Quinn of the Senate

An Act relating to elections; amending 26 O.S. 2011, Section 8-111, as amended by Section 1, Chapter 275, O.S.L. 2013 (26 O.S. Supp. 2020, Section 8-111), which relates to recounts; providing for recounts by electronic voting devices; providing for fees; providing exception for recounts of certain issues and questions; creating the State Question Recount Revolving Fund; establishing requirements for administration of and expenditures from fund; and providing an effective date.

SUBJECT: Elections

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

SECTION 1. AMENDATORY 26 O.S. 2011, Section 8-111, as amended by Section 1, Chapter 275, O.S.L. 2013 (26 O.S. Supp. 2020, Section 8-111), is amended to read as follows:

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

2. The 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.

3. The candidate or individual may indicate in the petition requesting the recount that the candidate or individual desires to have the ballots recounted manually or by electronic voting devices. 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.

4. a. 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) three thousand (3,000) ballots or fraction thereof, to be recounted for each county affected.
- b. If the candidate or individual requests that the ballots be recounted by electronic device, 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 or fraction thereof and Three Hundred Dollars (\$300.00) for each additional five thousand (5,000) ballots or fraction thereof, to be recounted for each affected county.

5. 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~~ amounts required in paragraph 4 of this subsection.

6. In elections involving candidates, an additional deposit equal to the total of the deposits required by paragraphs 2, 4 and 5 of this subsection shall be required if the margin between the first-place candidate and second-place candidate is ten percent (10%) or greater. Provided, in a Primary Election involving three or more candidates where a Runoff Primary may be required, and where the margin between the second-place candidate and third-place candidate is less than one percent (1%), or where the ~~first-place~~ first-place candidate is one percent (1%) above or below a majority, then no additional deposit shall be required.

7. For an election involving candidates, the petition shall be filed with the secretary of the election board with whom the candidate filed the candidate's declaration of candidacy, unless

otherwise provided for by law. The petition may only be filed by a candidate whose name was printed on the ballot for that office in that election.

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

9. a. 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 the contest, a true copy of the petition and a true copy of the order.
- b. Service shall be made in person where possible, within twenty-four (24) hours after the filing of the 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.
- c. Where personal service is impossible, within the time, it is hereby made the duty of the contestant to serve 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, constructive service shall be made at the date, time and place of the 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. Within twenty-four (24) hours after a petition required in subsections B and C of this section is filed, not counting Saturday, Sunday or legal holidays, the secretary of the county election board who received the petition shall determine, pursuant to rules promulgated by the Secretary of the State Election Board, if the petition contains a sufficient number of valid signatures of registered voters who participated in the election.

E. Recounts of issue or question elections shall not be permitted of any statewide election, except as follows:

1. The Governor or the Attorney General may request a recount of any state question. The request shall be in the form of a petition prescribed by the Secretary of the State Election Board. The petition shall be filed with the Secretary of the State Election Board no later than the deadline provided in Section 8-109 of this title, and the petition shall be accompanied by a cashier's check or certified check in the amount required by subsection A of this section.

2. Subject to available funding, the Secretary of the State Election Board shall order an automatic recount of a state question if:

- a. the margin of votes required for approval is one-half of one percent (1/2 of 1%) or less of the total number of votes cast for and against a state question involving a statutory issue or question, and
- b. the margin of votes required for approval is one percent (1%) or less of the total number of votes cast for and against a state question involving a constitutional issue or question.

For the purposes of this paragraph, "available funding" shall mean a balance of Two Hundred Fifty Thousand Dollars (\$250,000.00) or more in the State Question Recount Revolving Fund as of the date of the election.

3. Unless otherwise provided in this subsection, the general laws governing recounts shall be applicable to such recounts.

4. The Secretary of the State Election Board shall determine the dates and times each county election board shall begin a recount pursuant to this subsection. Provided, such a recount shall be concluded no later than forty-five (45) days after the date of the election.

5. The Secretary of the State Election Board may prescribe such rules and procedures as may be necessary to implement the provisions of this subsection.

F. There is hereby created in the State Treasury a revolving fund for the State Election Board to be designated the "State Question Recount Revolving Fund". The fund shall consist of monies appropriated by the Legislature.

1. The revolving fund shall be a continuing fund, not subject to fiscal year limitations, provided that at no point shall the balance in the fund exceed Five Hundred Thousand Dollars (\$500,000.00) and shall be under the administrative direction of the Secretary of the State Election Board. Fees collected each fiscal year in excess of the Five Hundred Thousand Dollars (\$500,000.00) balance limitation shall be placed to the credit of the State Election Board Revolving Fund.

2. Expenditures from the fund shall be limited to:

- a. the costs of the State Election Board directly related to conducting a recount of a state question pursuant to paragraph 2 of subsection E of this section, and
- b. reimbursements to county election boards for costs directly related to conducting a recount of a state question pursuant to paragraph 2 of subsection E of this section.

3. Warrants for expenditures from said fund shall be drawn by the State Treasurer, based on claims signed by employees authorized by the Secretary of the State Election Board and approved for payment by the Director of the Office of Management and Enterprise Services.

4. All interest earned on the balance of funds in the State Question Recount Revolving Fund shall be deposited by the State Treasurer into the fund on a monthly basis.

SECTION 2. This act shall become effective November 1, 2021.

Passed the House of Representatives the 4th day of May, 2021.

Presiding Officer of the House
of Representatives

Passed the Senate the 21st day of April, 2021.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____

Approved by the Governor of the State of Oklahoma this _____
day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____