

1 State of Arkansas
2 94th General Assembly
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4

A Bill

SENATE BILL 430

5 By: Senator A. Clark
6 By: Representative Hawk
7

For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS LAW CONCERNING CHALLENGES TO
10 ELECTION RESULTS; AMENDING THE PROCESS FOR RECOUNTING
11 AN ELECTION; REVISING THE LAW CONCERNING ELECTION
12 CONTESTS; AND FOR OTHER PURPOSES.
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Subtitle

15 TO AMEND ARKANSAS LAW CONCERNING
16 CHALLENGES TO ELECTION RESULTS.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code § 7-5-319 is amended to read as follows:
23 7-5-319. Recount.

24 (a)(1)~~(A)~~ Any candidate voted for who may be dissatisfied with the
25 returns from any precinct shall have a recount of the votes cast therein upon
26 the candidate's presenting the county board of election commissioners with a
27 petition requesting the recount.

28 (B) A petition shall also be filed with the county clerk.

29 ~~(2)(A) When the number of outstanding absentee ballots of~~
30 ~~overseas voters is not sufficient to change the results of the election, the~~
31 ~~candidate must present the petition no later than two (2) days after the~~
32 ~~county board of election commissioners declares preliminary and unofficial~~
33 ~~results of the election, including a statement of the number of outstanding~~
34 ~~absentee ballots of overseas voters~~ A recount shall also be called if at
35 least ten (10) qualified electors sign a petition presented to the county
36 board of election commissioners and filed with the county clerk requesting a



1 recount.

2 (B) The qualified electors signing the petition shall
3 attest that they voted in the election and are petitioning for a recount.

4 (C) A petition under this subdivision (a)(2) shall be
5 notarized.

6 ~~(3)(A) When the number of outstanding absentee ballots of~~
7 ~~overseas voters is sufficient to potentially change the results of the~~
8 ~~election, the candidate must present the petition at any time before the~~
9 ~~county board of election commissioners finally completes the canvass of the~~
10 ~~returns of the election and certifies the result~~ A petition for a recount
11 shall be filed before the county board of election commissioners certifies
12 the results of the election.

13 (B) Within forty-eight (48) hours after a petition for a
14 recount is filed, the county board of election commissioners shall notify all
15 candidates whose election could be affected by the outcome of the recount.

16 ~~(b) At the time that the petition requesting the recount is presented,~~
17 ~~the county board of election commissioners shall provide to the candidate~~
18 ~~requesting the recount a copy of the test results on the voting machines and~~
19 ~~the electronic vote tabulating devices. Only one (1) recount per candidate~~
20 ~~per election shall be permitted. The county board of election commissioners~~
21 ~~shall certify the results of the last recount. The county board of election~~
22 ~~commissioners may upon its own motion conduct a recount of the returns from~~
23 ~~any or all precincts.~~

24 ~~(c)(1)(b)(1) For any recount of an election in which ballots are cast~~
25 ~~using a direct recording electronic voting machine with a voter verified~~
26 ~~paper audit trail, the voter verified paper audit trail shall serve as the~~
27 ~~official ballot to be recounted~~ The certificates of election under § 7-5-
28 603(4) shall serve as the official count of the votes to be recounted.

29 (2) The county board of election commissioners ~~either may~~ shall

30 ~~(A) Manually sum the total votes for each candidate~~
31 ~~involved in the recount that is printed on the voter verified paper audit~~
32 ~~trail; or~~

33 ~~(B) Count~~ count by hand the votes for each candidate
34 involved in the recount as shown on the ~~voter verified paper audit trail~~
35 certificates of election.

36 (3) ~~If the voter verified paper audit trail is damaged or for~~

1 ~~some other reason is incapable of being used for a recount, the paper record~~
 2 ~~produced by the machine for manual audit shall be the official ballot to be~~
 3 ~~recounted~~ The county board of election commissioner may utilize poll workers,
 4 election officials, or both poll workers and election officials to conduct
 5 the recount.

6 (4) ~~If the voting machine is exempt from the requirement to have~~
 7 ~~a voter verified paper audit trail and does not have one, the paper record~~
 8 ~~produced by the machine for manual audit shall be the official ballot to be~~
 9 ~~recounted~~ The county board of election commissioners shall be present during
 10 a recount and observe all aspects of the recount.

11 (5)(A) ~~If the county board of election commissioners counts by~~
 12 ~~hand the votes for each candidate involved in the recount, the~~ The county
 13 board of election commissioners may shall check the back of the each
 14 preprinted paper ballot to see determine if the back of the ballot has been
 15 initialed by an election official a poll worker as required by § 7-5-
 16 309(a)(1).

17 (B) If the back of a voted, preprinted paper ballot has
 18 not been initialed by a poll worker as required by § 7-5-309(a)(1), the
 19 ballot shall be presumed fraudulent and shall not be counted.

20 (d)(c) ~~For the recount of an election in which paper ballots are used,~~
 21 ~~the county board of election commissioners shall open the package containing~~
 22 ~~the ballots and recount the ballots in the manner prescribed by law for the~~
 23 ~~count to be made by the election officials in the first instance, or if there~~
 24 ~~is a determination by the county board of election commissioners that the~~
 25 ~~voting machine or electronic vote tabulating device may be malfunctioning, it~~
 26 ~~may recount the ballots by any manner prescribed by law~~ A candidate or one
 27 (1) or more qualified electors may not file an election contest or other
 28 lawsuit related to the outcome of an election if he or she:

29 (1) Did not submit a petition for a recount or sign a petition
 30 requesting a recount;

31 (2) Submitted a petition for a recount as a candidate but did
 32 not submit payment for the recount in advance; or

33 (3) Signed a petition requesting a recount as a qualified
 34 elector but the recount did not occur due to payment not being submitted for
 35 the recount in advance.

36 (e)(d) The result as found upon the recount, if it differs from that

1 certified by the election officials, shall be included in the canvass as the
2 vote for the particular precinct for which the recount was ordered and made.

3 ~~(f)~~(e) After the recount is completed, the ballots shall again be
4 sealed and kept as provided by law.

5 ~~(g)(1)~~(f)(1)(A) The costs for any recount ~~must~~ shall be borne by the
6 candidate or qualified electors petitioning for it.

7 (B) The costs of the recount shall be determined by the
8 county board of election commissioners and shall include without limitation:

9 (i) The cost of payments to all pollworkers,
10 election officials, or other persons participating in the recount;

11 (ii) The costs of the certified court reporter
12 making the record of the recount; and

13 (iii) The costs of the official transcript of the
14 record of the recount.

15 (C) ~~and payment~~ Payment of the costs ~~must~~ shall be made to
16 the county board of election commissioners prior to the commencement of the
17 recount in an amount determined by the county board of election
18 commissioners.

19 (2) In the event that the outcome of the election is altered by
20 recount, the costs of the recount shall be refunded to the candidate or
21 qualified electors who petitioned for the recount.

22 ~~(h)~~(g)(1) The costs of any recount shall be based on the actual costs
23 incurred to conduct the recount.

24 (2) ~~but in~~ In no instance shall the amount charged to conduct a
25 recount requested by a candidate exceed the rate of twenty-five cents (25¢)
26 per vote cast in the precincts where the recount is requested or a total of
27 two thousand five hundred dollars (\$2,500) for the entire county, whichever
28 is less.

29 (3)(A) The cost of payments to pollworkers, election officials,
30 or other persons participating in the recount shall be determined by the
31 county board of election commissioners.

32 (B) In determining the hourly rate for the cost of
33 payments to pollworkers, election officials, or other persons participating
34 in the recount, the county board of election commissioners shall use the
35 greater of the following rates:

36 (i) The hourly rate paid to election officials and

1 pollworkers for the election that is subject to the recount; or

2 (ii) Twice the amount of the minimum wage under §
3 11-4-210.

4 (4) If the payment for the costs of the recount is greater than
5 the actual cost of the recount, the sum exceeding the actual cost of the
6 recount shall be refunded to the candidate or qualified electors.

7 (h)(1) A recount shall commence within forty-eight (48) hours of the
8 payment for the costs of the recount and shall continue for no more than
9 twelve (12) hours each day until the recount is complete.

10 (2) The recount shall be transcribed by a certified court
11 reporter whose record shall be the official record of the recount.

12 (3) The candidate or qualified electors requesting the recount
13 or an attorney representing the candidate or qualified electors may challenge
14 a ballot for cause if:

15 (A) There is an overvote on the ballot;

16 (B) There is an undervote on the ballot;

17 (C) There is a good faith basis to believe that the
18 elector was not qualified to vote in the election;

19 (D) The back of the ballot is not initialed by an election
20 official;

21 (E) There is reason to interpret voter intent with regards
22 to the ballot;

23 (F) There is an articulable reason or basis to believe
24 that an election law was not followed with regards to the ballot;

25 (G) An election irregularity exists which presents a basis
26 to not count the ballot or a vote on the ballot; or

27 (H) There is a reasonable basis to believe that an
28 irregularity or defect exists with the ballot or ballot application
29 materials.

30 (4) A poll watcher shall not challenge a ballot.

31 (5)(A) A challenge to a ballot under this section shall be
32 resolved on the record by the county board of election commissioners in a
33 public vote decided by a majority vote of the county board of election
34 commissioners.

35 (B) Prior to voting on the challenge, the county board of
36 election commissioners shall hear from persons challenging and defending a

1 ballot.

2 (6)(A) The record of the recount under this section shall be the
 3 only official record considered if an election contest is filed regarding the
 4 election subject to the recount.

5 (B) Any issue, defect, or objection not made on the record
 6 before the county board of election commissioners shall not be preserved for
 7 appeal in an election contest unless subject to an exception under § 7-5-804.

8 (C)(i) The county board of election commissioners, by
 9 public vote, shall resolve all issues or matters presented to it during a
 10 recount.

11 (ii) The failure of the county board of election
 12 commissioners to vote upon an issue or matter presented to it during a
 13 recount does not preclude the consideration of the matter in an election
 14 contest.

15 (D) An election contest regarding an election that is the
 16 subject of a recount shall be filed in a timely manner.

17 ~~(i) Within forty-eight (48) hours after a petition for recount is~~
 18 ~~filed, the county board of election commissioners shall notify all candidates~~
 19 ~~whose election could be affected by the outcome of the recount~~ After the
 20 recount is complete, the county board of election commissioners shall certify
 21 the results of the recount within forty-eight (48) hours.

22
 23 SECTION 2. Arkansas Code § 7-5-801 is amended to read as follows:

24 7-5-801. Right of action – Procedure.

25 (a)(1) A right of action is conferred on any candidate or one (1) or
 26 more qualified electors who signed a petition for a recount under § 7-5-319
 27 to contest the certification of nomination or the certificate of vote as made
 28 by the appropriate officials in any election.

29 (2) This subchapter shall be liberally construed to allow a
 30 candidate or qualified elector who petitioned for a recount under § 7-5-319
 31 to challenge the results of an election or the decisions of a county board of
 32 election commissioners without regard to technical defects in the litigation
 33 process, including without limitation technical defects in pleadings
 34 concerning an election contest.

35 (b) The action shall be brought in the circuit court of the county in
 36 which the certification of nomination or certificate of vote is made when a

1 county or city or township office, including the office of county delegate or
 2 county committee member, is involved, and ~~except as provided in this~~
 3 ~~subchapter~~, within any county in the circuit or district ~~wherein any of the~~
 4 ~~wrongful acts occurred~~ when any circuit or district office is involved, and
 5 ~~except as provided in this subchapter~~, in the Pulaski County Circuit Court
 6 when the office of President of the United States, United States Senator,
 7 United States Representative, or any state office is involved.

8 ~~(e) If there are two (2) or more counties in the district where the~~
 9 ~~action is brought and when fraud is alleged in the complaint, answer, or~~
 10 ~~cross-complaint, the circuit court may hear testimony in any county in the~~
 11 ~~district.~~

12 ~~(d)(c)~~ The complaint shall be verified by the affidavit of the
 13 contestant or contestants to the effect that he or she believes the
 14 statements to be true and shall be filed within twenty (20) days of the
 15 certification that is the subject of the complaint.

16 ~~(e)(d)(1)~~ Any preliminary motion under Rule 12 of the Arkansas Rules
 17 of Civil Procedure in a an election contest under this subchapter shall be
 18 filed within five (5) days of service of the complaint.

19 (2) If the court finds a basis for granting a preliminary motion
 20 to dismiss the election contest, the contestant or contestants shall be
 21 allowed one (1) opportunity to replead or refile their case within three (3)
 22 calendar days from the date of the order granting the motion to dismiss.

23 (3) The complaint shall be answered within twenty (20) days from
 24 the date:

25 (A) The complaint was filed; or

26 (B) Of an order granting or denying a motion under Rule 12
 27 of the Arkansas Rules of Civil Procedure.

28
 29 SECTION 3. Arkansas Code § 7-5-803 is amended to read as follows:

30 7-5-803. Special judges for additional contests.

31 (a) In the event that there are more election contests brought under
 32 this section than the circuit court judge can dispose of prior to ten (10)
 33 days before any election to be held, either of the parties to the contest may
 34 so report to the circuit judge in vacation or otherwise, who shall ~~have full~~
 35 ~~and complete authority to appoint an attorney with the qualifications of~~
 36 ~~circuit judge~~ request that the Supreme Court appoint a special judge to hear

1 any contest and render a final judgment in such contest.

2 ~~(b) The circuit judge shall appoint as special judge any attorney~~
3 ~~named by a committee of three (3) qualified electors of the county in which~~
4 ~~the contest is pending, one (1) to be named by the contestant, one (1) to be~~
5 ~~named by the contestee, and the third to be named by those two (2) committee~~
6 ~~members. In the event that the first two (2) committee members do not agree~~
7 ~~within five (5) days on the third member, then the third member shall be~~
8 ~~chosen by lot from the respective choices of the two committee members.~~

9 ~~(e)(b)(1)~~ All proceedings shall be conducted as in the case of any
10 regular judge trying any such case, including the right of appeal.

11 (2) The judge so appointed shall have full power and authority
12 in the trial of election contests in all respects as are now conferred by the
13 Arkansas Constitution upon circuit judges in this state.

14 (3) The judgment rendered ~~by the attorney so appointed~~ shall be
15 binding with full force and effect as if the regular circuit judge had heard
16 the cause.

17 ~~(d) In the appointment of the attorney, the circuit judge shall not be~~
18 ~~confined in the selection of the attorney to the judicial circuit in which~~
19 ~~the contest is pending. However, the hearing of the contest shall be had in~~
20 ~~the county in which the contest has been filed.~~

21
22 SECTION 4. Arkansas Code § 7-5-804(a), concerning the trial of an
23 election contest, is amended to read as follows:

24 (a)(1) The election contest shall be tried by the circuit judge in
25 open court without a jury.

26 (2) The election contest shall be a de novo review of the
27 actions of the county board of election commissioners at the recount as
28 recorded and transcribed by the court reporter.

29 (3) The failure to raise an issue, defect, or objection on the
30 record at the recount shall preclude review of the issue, defect, or
31 objection in the election contest unless:

32 (A) The issue, defect, or objection was unknown or
33 unavailable at the time of the recount; or

34 (B) Good cause is shown for the failure to raise the
35 issue, defect, or objection at the recount.

36 (4) The actions of the county board of election commissioners at

1 the recount shall only be overturned by the circuit court upon clear and
2 convincing evidence that the decision of the county board of election
3 commissioners was incorrect, unjust, or not supported by the evidence or
4 information before the county board of election commissioners at the time of
5 the recount.

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