

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

SENATE BILL 430

By: Senator A. Clark
By: Representative Hawk

For An Act To Be Entitled

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

Subtitle

TO AMEND ARKANSAS LAW CONCERNING CHALLENGES TO ELECTION RESULTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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

7-5-319. Recount.

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

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

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



recount.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The hourly rate paid to election officials and

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

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

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

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

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

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

(A) There is an overvote on the ballot;

(B) There is an undervote on the ballot;

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

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

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

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

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

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

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

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

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

ballot.

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

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

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

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

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

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

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

7-5-801. Right of action – Procedure.

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

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

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

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

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

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

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

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

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

(A) The complaint was filed; or

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

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

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

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

any contest and render a final judgment in such contest.

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

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

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

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

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

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

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

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

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

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

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

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

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