

CHAPTER 759

H.B. No. 2468

AN ACT

relating to certain procedures regarding election contests and recounts.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 213.0111(a), Election Code, is amended to read as follows:

(a) On receipt of an affidavit executed by any recount committee member alleging that legal votes were not counted or *illegal votes were counted* during the initial recount, the recount coordinator may order a new recount of the disputed ballots. For a county or precinct office in a primary election, the county chairman may order the new recount only on the approval of the state chairman.

SECTION 2. Section 213.033(a), Election Code, is amended to read as follows:

(a) *As soon as practicable after completion of a* ~~[If the]~~ *recount that changes the number of votes received for a particular candidate or for or against a measure, the canvassing authority shall conduct a canvass for the office or measure involved using the recount committee's report in the recount supervisor's possession, instead of the original precinct election returns, for each precinct in which a recount was conducted. An original* ~~[If a canvass involving the office or measure is completed before the recount begins, the previous]~~ *canvass for the office or measure is void, and the new canvass is the official canvass for the election on that office or measure. If no change occurs in the recount in the number of votes received for a candidate or for or against a measure, the official result of the election is determined from the original canvass.*

SECTION 3. Section 213.057, Election Code, is amended to read as follows:

Sec. 213.057. CANVASS FOLLOWING RECOUNT. *As soon as practicable after completion of a recount that changes the number of votes received for a particular candidate or for or against a measure* ~~[result of an election]~~, the final canvassing authority shall conduct a canvass for the office or measure involved using the recount supervisor's report, instead of the original county election returns, for each county in which a recount was conducted. *An original* ~~[If the final canvass involving the office or measure is completed before the recount~~

~~begins, the previous~~ final canvass for the office or measure is void, and the new final canvass is the official final canvass for the election on that office or measure. *If no change occurs in the recount in the number of votes received for a candidate or for or against a measure, the official result of the election is determined from the original final canvass.*

SECTION 4. Section 213.058(a), Election Code, is amended to read as follows:

(a) Unless a person entitled to notice under Section 213.056 makes an objection to the recount coordinator before the canvass resulting from a recount ~~[that changed the result of the election]~~, the final canvassing authority may use results reported to the recount coordinator by telephone or telegraph under Section 213.054 as the basis for its canvass following an expedited recount if the orderly conduct of a runoff election would be disrupted by delaying the canvass until the recount supervisors' written reports are received.

SECTION 5. Section 221.015, Election Code, is amended to read as follows:

Sec. 221.015. RIGHT TO OCCUPY OFFICE INVOLVED IN CONTEST. (a) If the official result of a contested election shows that the contestee won, on qualifying as provided by law the contestee is entitled to occupy the office after the beginning of the term for which the election was held, pending the determination of the *contest* ~~[rightful holder of the office]~~.

~~[(b)] If the final judgment does not change the official result, the [of a contested election, a] contestee [occupying the office under Subsection (a)] is entitled to continue in office without again qualifying for the office. [If the judgment declares the election void and the occupant is elected at the new election, the occupant must again qualify for the office as if no contest had occurred].~~

(b) ~~[(e)]~~ If a final judgment declaring the contestant elected is rendered after the beginning of the term for which the contested election was held, on qualifying as provided by law the contestant shall assume office as soon as practicable after the judgment becomes final.

(c) *A contestee occupying the office* ~~[(d) An officeholder under Subsection (a)]~~ is entitled to the emoluments of the office that accrue during the period of occupancy. A contestant who gains the office is not entitled to emoluments for any period before the contestant assumes office.

(d) If the final judgment declares the election void, the vacancy is created as of the later of the date of the judgment or the first day of the term for which the contested election was held. A person who occupies the office pending the outcome of the new election, either as a constitutional holdover from the prior term or through other law, is entitled to receive the emoluments of office until the successor qualifies for the office after the new election.

~~(e) The person elected at the new election must qualify for the office as if no contest had occurred [This section applies to a person appointed to fill a vacancy in the contested office].~~

SECTION 6. Section 241.003, Election Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) The contestant must file the petition with the secretary of state not later than the *seventh* ~~[10th]~~ day after the date the official result of the contested election is determined. The contestant must deliver a copy of the petition to the contestee by the same deadline.

(d) Section 1.006 does not apply to this section.

SECTION 7. Section 241.004, Election Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The contestee must file the answer with the secretary of state not later than the *seventh* ~~[10th]~~ day after the date the contestee receives the copy of the petition. The contestee must deliver a copy of the answer to the contestant by the same deadline.

(c) Section 1.006 does not apply to this section.

SECTION 8. Section 241.006(b), Election Code, is amended to read as follows:

(b) The secretary of state shall deliver a petition to the president of the senate or the speaker of the house of representatives, as appropriate, *as soon as possible but* not later than the ~~[third]~~ day after the date the petition is received. The secretary shall deliver an answer to the appropriate presiding officer *as soon as possible but* not later than the ~~[third]~~ day after the date of its receipt.

SECTION 9. Chapter 241, Election Code, is amended by amending Sections 241.009 and 241.011 and by adding Sections 241.0061 and 241.0091 to read as follows:

Sec. 241.0061. SECURITY FOR COSTS. (a) Not later than the third day after the date the contestee's answer is received by the presiding officer of the house having jurisdiction, the contestant must file with the secretary of the senate or chief clerk of the house of representatives, as appropriate:

(1) a cost bond payable to the appropriate house and to the contestee in the amount of \$5,000, having sufficient sureties approved by the presiding officer, and conditioned that the contestant will pay all costs of the contest assessed against him;

(2) a cash deposit in lieu of bond; or

(3) an affidavit of inability to pay costs.

(b) Security for costs must be filed under Subsection (a), and an affidavit of inability to pay costs may be contested, in the manner generally applicable to a civil suit in the district court, subject to any changes imposed by the master or by rules of the house having jurisdiction.

Sec. 241.009. MASTER OF DISCOVERY. (a) As soon as practicable [At any time] after receiving the contestee's answer, the presiding officer of the house having jurisdiction shall [may] appoint a master of discovery to supervise discovery proceedings and the taking of depositions, to issue any necessary process, to receive and report evidence, and to perform any other duties assigned by the presiding officer or by the committee to which the contest is referred.

~~*(b) [If an appointment has not already been made, the presiding officer shall appoint a master on request of the committee to which the contest is referred or of any party to the contest.*~~

~~*[(e)]*~~ The master must be a member of the house in which the contest is pending.

~~*(c) [(d)]*~~ The presiding officer or the committee may limit the master's authority in the same manner as a civil court in appointing a master in chancery.

~~*(d) [(e)]*~~ The master acts under the direction of the presiding officer before the case is referred to a committee and acts under the direction of the committee after the referral.

~~*(e) [(f)]*~~ The master's rulings are subject to review by the committee to which the contest is referred unless otherwise provided by rules of the house.

Sec. 241.0091. FRIVOLOUS PETITION. (a) The master may on his own motion, or shall on the motion of the committee, determine whether the contestant's petition is frivolous or otherwise does not state the grounds necessary to maintain the contest.

(b) After making a determination under Subsection (a), the master shall promptly deliver to the committee a report stating the findings. The report to the committee may include any recommendation the master considers appropriate.

Sec. 241.011. REFERRAL OF CONTEST TO COMMITTEE; HEARING BY COMMITTEE. (a) As soon as practicable after receiving the contestee's answer, the presiding officer of the house in which the contest is pending shall refer the contest to a special committee, a standing committee, or a committee of the whole, as provided by rules of the house.

(b) The committee shall promptly set a time and place for hearing the contest. After notice to the parties, the committee shall investigate the issues raised by the contest, hearing all legal evidence presented by the parties, except as provided by Subsection (c).

(c) The committee may refuse to hear testimony or other evidence presented in person by the parties if the master determines under Section 241.0091 that the contestant's petition is frivolous or otherwise groundless.

SECTION 10. Sections 242.002(b) and (c), Election Code, are amended to read as follows:

(b) Two copies of the petition and answer must be filed with the secretary of state. The secretary shall deliver one copy of each document to the presiding officer of each house of the legislature. Security for costs must be filed with the chief clerk of the house of representatives. Any cost bond must be payable to both houses.

(c) The presiding officers of the two houses of the legislature shall act jointly in appointing a master of discovery *and in setting the amount of and approving the sureties on a cost bond*. The master may be a member of either house.

SECTION 11. Section 242.003, Election Code, is amended to read as follows:

Sec. 242.003. CONTEST FOR OFFICE OF GOVERNOR OR LIEUTENANT GOVERNOR. (a) This section applies only to a contest for the office of governor or lieutenant governor.

(b) *For* ~~[Except as provided by Subsection (d), for]~~ purposes of a ~~[conducting the]~~ contest under this section, the *date the* official result of the contested election is determined *is the date the governor completes the state canvass*. *The official result is determined from the tabulation of the election returns prepared by the secretary of state, except as provided by Subsection (d)*.

(c) The secretary of state shall deliver a certified copy of the tabulation to each of the presiding officers ~~[instead of a certified statement of the votes cast as shown by the official canvass]~~.

(d) The committee to which the contest is referred may treat the tabulation as correct until the speaker of the house of representatives opens and publishes the official election returns. If a discrepancy exists between the tabulation and the speaker's official count that might be material to a determination of the contest, the committee shall investigate the discrepancy to ascertain, if possible, the correct vote count.

~~[(e) The speaker may announce the result of the election as shown by the election returns but may not declare the candidate receiving the most votes, as shown by the returns, to be elected unless the judgment in the contest warrants that action. No candidate is entitled to take office until the outcome of the contest is finally determined.]~~

SECTION 12. This Act takes effect September 1, 1993.

SECTION 13. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 6, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 2468 on May 26, 1993, by a non-record vote; passed by the Senate, with amendments, on May 23, 1993, by a viva-voce vote.

Approved June 17, 1993.

Effective Sept. 1, 1993.