

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 573

By: Dickerson of the Senate

and

Plunk of the House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to elections; amending 11 O.S. 1991, Section 16-307, which relates to voting in town meetings; clarifying language; deleting certain reference to pollbooks; authorizing the Secretary of the State Election Board to adopt certain procedures to keep confidential mailing addresses of certain persons; amending 26 O.S. 1991, Sections 4-112, as last amended by Section 4, Chapter 88, O.S.L. 1999, 7-114, 8-111, as last amended by Section 10, Chapter 88, O.S.L. 1999, 12-111, as last amended by Section 1, Chapter 174, O.S.L. 1995, 14-113.2, as last amended by Section 12, Chapter 358, O.S.L. 2000, 14-115.4, as last amended by Section 17, Chapter 176, O.S.L. 1997, 14-121, as last amended by Section 13, Chapter 357, O.S.L. 1998, and 14-121.1 (26 O.S. Supp. 2000, Sections 4-112, 8-111, 12-111, 14-113.2, 14-115.4 and 14-121), which relate to registration applications, procedure for determining eligibility, recounts, vacancies in the office of a county commissioner, marking ballots, in-person absentee ballots, discharged military personnel, and replacement absentee ballots; requiring additional voter information and allowing additional information; prohibiting denial of right to register because of specified condition; requiring specified information for voter registration for voter who seeks to change or alter registration; disallowing use of post office box as residence address; making language gender neutral; requiring verification of specific information and voting changes; prohibiting denial of right to vote for lack thereof; stating procedures for revisions; authorizing the Secretary of the State Election Board to determine numerical sufficiency of valid signatures; clarifying language relating to population figure; allowing incumbents in certain elective offices to file resignation to become effective on some date certain; authorizing the Governor to call a special election to fill the vacancy; providing that person elected to take office on specified date and serve remainder of term; limiting persons who may witness signature of affidavits of persons who are unable to vote in person; providing for certification of signature of certain persons; authorizing certain family members of returning members of military service the right to

vote in certain circumstances; modifying procedure for voter to receive second set of absentee ballots; setting penalty for witnessing signatures on certain affidavits; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 11 O.S. 1991, Section 16-307, is amended to read as follows:

Section 16-307. A. The presiding officer at a town meeting shall follow reasonable and necessary procedures to ensure that persons who are not registered voters of the town do not vote. Registered voters shall be seated in a clearly marked area separate from persons not registered to vote.

B. To be eligible to vote at a town meeting, a person must be registered with the county election board at an address located within the municipality. Before being seated in the section reserved for registered voters, each voter shall sign his or her name in a town meeting pollbook, said signature to constitute a sworn affidavit on the part of the voter that he or she is eligible to vote at the election. The pollbook shall be prepared by the municipal clerk ~~and shall be substantially the same form as the pollbook prescribed by the State Election Board for school district elections.~~ For such purpose, the municipal clerk or designee of the municipal clerk shall be authorized to administer the oath or affirmation contained in the affidavit. The town meeting pollbook shall be on file in the office of the municipal clerk and shall be open to public inspection during reasonable office hours; provided, however, that such town meeting pollbooks may be destroyed by the municipal clerk at the end of six (6) months from the date of the election wherein such town meeting pollbook was used. Any person knowingly voting illegally or found guilty of casting more than one vote for any office or on any question considered at the meeting

shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for not to exceed thirty (30) days or both such fine and imprisonment.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4-115.2 of Title 26, unless there is created a duplication in numbering, reads as follows:

The Secretary of the State Election Board is authorized to adopt procedures to keep confidential the residence and mailing address, upon application to do so, of individual registered voters who are members of certain classes. These classes shall be limited to the judiciary, district attorneys and assistant district attorneys, law enforcement personnel, correctional officers and persons who are covered by victim's protection orders. Such address information shall not be a public record but shall be provided to any lawful authority as part of a contest of candidacy or contest of an election as provided for in Title 26 of the Oklahoma Statutes.

SECTION 3. AMENDATORY 26 O.S. 1991, Section 4-112, as last amended by Section 4, Chapter 88, O.S.L. 1999 (26 O.S. Supp. 2000, Section 4-112), is amended to read as follows:

Section 4-112. A. The Secretary of the State Election Board shall devise and distribute a registration application to be used for registering voters. Such registration application shall contain the following information: voter's full name and date of birth, county and place of residence, and mailing address pursuant to the provisions of subsection B of this section; and may include the voter's telephone number including area code if the voter has a telephone at the place of residence, provided that no applicant shall be denied the right to register to vote because of failure to provide a telephone number; the names of political parties recognized by the laws of the State of Oklahoma with which the voter may be affiliated; the last four digits of the voter's social security number; an oath of the voter's eligibility to become a

registered voter; and such other information as may be deemed necessary by the Secretary to identify such voter and to ascertain his or her eligibility. A voter registration application shall be signed by the applicant in writing. The applicant shall personally subscribe his or her name to or make his or her mark on the application, and no agent, representative or employee of the applicant may sign or mark on the applicant's behalf. The signature or mark must be the original, handwritten signature, autograph or mark of the applicant. No facsimile, reproduction, typewritten or other substitute signature, autograph or mark will be valid.

Notwithstanding any law to the contrary, the Secretary of the State Election Board shall prescribe procedures to authorize any person incapable of personally making his or her mark to complete a voter registration application with assistance of an official of any voter registration agency or motor license agency specified in Sections 4-109.2 and 4-109.3 of this title. Persons who do not indicate a recognized political party or political organization on their registration application shall be designated as Independents. Any person may apply in writing to the Secretary of the State Election Board for permission to print, copy or otherwise prepare and distribute the registration applications designed by the Secretary of the State Election Board. The Secretary may revoke any such permission at any time. All registration applications shall be distributed to the public at no charge. The Secretary also shall prescribe procedures to accept and use federal registration applications as required by the National Voter Registration Act of 1993.

B. Applicants for voter registration or who seek to alter or change their voter registration in any way shall provide a residence address and, if different from the residence address, a mailing address. A residence address shall include the street address of the residence, including a full house number, street name or number,

apartment or suite number, if applicable, and zip code. If a street address is not available for the residence, applicants shall provide such information as the State Election Board deems necessary for voter registration purposes. A post office box may not be given as a residence address. A mailing address, which shall include the city and zip code, may be the actual emergency notification or 911 address on file in the local community, a rural route and box number, a post office box number or a street address.

SECTION 4. AMENDATORY 26 O.S. 1991, Section 7-114, is amended to read as follows:

Section 7-114. A. Each person presenting himself or herself to vote shall announce his or her name to the judge of the precinct, whereupon the judge shall determine whether ~~said~~ the person's name is in the precinct registry.

B. The judge shall ask each person whose name appears in the precinct registry to verify his or her address and, if the voter indicates that the information has changed, give the voter an application which the voter shall use to update the information and return the same to the judge. No person shall be denied the right to vote for failure to verify his or her address. Any revisions made pursuant to this subsection shall be entered into the Oklahoma Election Management System as soon as possible.

SECTION 5. AMENDATORY 26 O.S. 1991, Section 8-111, as last amended by Section 10, Chapter 88, O.S.L. 1999 (26 O.S. Supp. 2000, Section 8-111), is amended to read as follows:

Section 8-111. A. 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. Said 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. The candidate or individual may indicate in the

petition requesting the recount that said candidate or individual desires to have the ballots recounted manually. 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. 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) ballots or fraction thereof, to be recounted for each county affected. 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 required above. When such petition is properly filed, it shall be the duty of the secretary of the appropriate election board to order said recount to begin not less than three (3) nor more than ten (10) days from the date of filing of said petition. 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 said contest, a true copy of said petition and a true copy of said order. Service shall be made in person where possible, within twenty-four (24) hours after the filing of said 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. Where personal service is impossible, within said time, it is hereby made the duty of said

contestant to serve said 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, said constructive service shall be made at the date, time and place of said 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 state holidays, the Secretary of the State Election Board who received the petition shall determine, using standards and procedures prescribed 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.

SECTION 6. AMENDATORY 26 O.S. 1991, Section 12-111, as last amended by Section 1, Chapter 174, O.S.L. 1995 (26 O.S. Supp. 2000, Section 12-111), is amended to read as follows:

Section 12-111. A. Whenever a vacancy shall occur in the office of a county commissioner, the vacancy shall be filled at a special election to be called by the Governor within thirty (30) days after the vacancy occurs. Provided, no special election shall be called if the vacancy occurs after March 1 of any even-numbered year if the term of the office expires the following year. In such case, the candidate elected to the office at the Primary Election, runoff Primary Election, or the regular General Election shall be appointed by the Governor as soon as practical after the applicable election to fill the unexpired term.

B. Whenever a vacancy shall occur in any elective county office of any county in this state having a population of more than ~~five hundred and fifty thousand (550,000)~~, ~~according to the latest Federal Decennial Census~~ the population figure specified in subsection B of Section 10 of Title 51 of the Oklahoma Statutes, the vacancy shall be filled at a special election to be called by the Governor within thirty (30) days after the vacancy occurs. Provided, no special election shall be called if the vacancy occurs after March 1 of any even-numbered year if the term of the office expires the following year. In such case, the candidate elected to the office at the Primary Election, runoff Primary Election, or the regular General Election shall be appointed by the Governor as soon as practical after the applicable election to fill the unexpired term.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-119 of Title 26, unless there is created a duplication in numbering, reads as follows:

Except as otherwise provided by law, an incumbent in any elective office for which a vacancy is filled by special election

called by the governor may file with the Oklahoma Secretary of State a resignation in writing which states that the resignation will not become effective immediately, but rather will become effective on some date certain. The vacancy shall be filled by a special election which shall be called by the Governor. The person elected at the special election shall take office on the date the resignation of the incumbent becomes effective and shall serve the remainder of the unexpired term.

SECTION 8. AMENDATORY 26 O.S. 1991, Section 14-113.2, as last amended by Section 12, Chapter 358, O.S.L. 2000 (26 O.S. Supp. 2000, Section 14-113.2), is amended to read as follows:

Section 14-113.2 A. The voter shall be responsible for marking the ballots or directing a person chosen by the voter to mark the ballots in accordance with the provisions of Section 7-123.3 of this title and as prescribed by the Secretary of the State Election Board; seal the ballots in the plain opaque envelope; fill out completely and sign the affidavit or direct a person chosen by the voter to sign the affidavit, such signature to be witnessed by two persons, who did not sign the affidavit, whose signature and address shall appear on the affidavit; seal the plain opaque envelope inside the envelope bearing the affidavit and return both envelopes, sealed inside the return envelope, by United States mail to the county election board.

B. No person, except members of absentee voting boards, shall witness the signature of more than fifty (50) affidavits of persons who swear they are physically incapacitated and unable to vote in person at their precinct on election day.

SECTION 9. AMENDATORY 26 O.S. 1991, Section 14-115.4, as last amended by Section 17, Chapter 176, O.S.L. 1997 (26 O.S. Supp. 2000, Section 14-115.4), is amended to read as follows:

Section 14-115.4 A. A registered voter may apply for an in-person absentee ballot at a location designated by the secretary of

the county election board from 9 a.m. to 5 p.m. on Thursday, Friday and Monday immediately preceding any election. As part of the application for an in-person absentee ballot such registered voter shall swear or affirm that he or she has not voted a regular mail absentee ballot and that he or she will not vote at the regular polling place in the election for which the in-person absentee ballot is requested.

B. One or more absentee voting boards shall be on duty from 9 a.m. to 5 p.m. at the in-person absentee polling place on Thursday, Friday and Monday immediately preceding any election. If the secretary of a county election board receives an application from a registered voter requesting to vote by in-person absentee ballot the secretary shall cause to be implemented the following procedures:

1. An absentee voting board shall provide to each registered voter who applies for an in-person absentee ballot appropriate ballots and materials as may be necessary to vote;

2. The voter must sign an in-person absentee voter record, and ~~his~~ the voter's signature on such record must be certified by both members of the absentee voting board, except that the secretary of the county election board and one other member of the absentee voting board may certify the signature of another member of the absentee voting board;

3. The voter must mark ~~his~~ the voter's ballots in the manner provided by law in the presence of the absentee voting board, but in such a manner as to make it impossible for any person other than the voter to ascertain how said ballots are marked. Insofar as is possible, the voting procedure shall be the same as if the voter were casting ~~his~~ the voter's vote in person at a precinct;

4. The voter shall then deposit the ballot in a voting device designated for in-person absentee voting by the secretary of the county election board;

5. When the in-person polling place is closed on each day of in-person absentee voting the in-person absentee voting board shall, without obtaining a printout of results, remove the vote data pack from the voting device and seal ballots counted that day in a transfer case which shall be secured by the sheriff of the county in the same manner as provided in Section 8-110 of this title. The vote data pack shall be sealed in a container prescribed by the Secretary of the State Election Board. The sheriff shall secure the sealed vote data pack container and return it to the in-person absentee voting board no later than 8:45 a.m. on the next day of the in-person absentee voting or to the secretary of the county election board at the time of the county election board meeting to count absentee ballots on the Tuesday election day;

6. The vote data pack or packs used for in-person absentee voting shall be used by the county election board to count absentee ballots on election day as provided in Section 14-125 of this title; and

7. If there is a malfunction in such a way that the vote data pack used for in-person absentee voting will not function, the sheriff is authorized to return the transfer cases containing in-person absentee ballots to the county election board to be recounted as provided in Section 7-134.1 of this title.

SECTION 10. AMENDATORY 26 O.S. 1991, Section 14-121, as last amended by Section 13, Chapter 357, O.S.L. 1998 (26 O.S. Supp. 2000, Section 14-121), is amended to read as follows:

Section 14-121. Any person eligible to register, who has been honorably discharged or is on officially authorized leave from the Armed Forces of the United States, or who has been terminated in his or her service or employment overseas, or who is the spouse or dependent of a person who has been honorably discharged, is on authorized leave from the Armed Forces of the United States or who has been terminated in his or her service or employment overseas,

and returned home too late to register at the time when, and at the place where, registration is required, to vote at the next ensuing election, shall be entitled to vote a ballot at such election in the precinct for which he or she is a qualified elector without being registered. Such person shall be entitled to vote upon satisfying the precinct inspector or in-person absentee voting board member that he or she is entitled to vote at such election and completing a voter registration application for an address within the precinct.

SECTION 11. AMENDATORY 26 O.S. 1991, Section 14-121.1, is amended to read as follows:

Section 14-121.1 A registered voter whose application is on file and who lost or did not receive absentee ballots may apply for a second set of absentee ballots if more than seven (7) days have passed since the ballots were transmitted to the voter by the county election board. To receive a second set of ballots, the voter must swear or affirm that he or she lost or did not receive the original set of ballots for that election and that he or she will vote only one set of ballots. The Secretary of the State Election Board shall prescribe a form to be used for such application, although any written application setting forth substantially the same facts shall be valid. The written application for replacement ballots shall be personally signed by the voter and acknowledged before a notary public or witnessed as required on the affidavit for return of the original absentee ballots; and may be transmitted to the county election board in person by the voter, by United States Mail or by an agent designated by the voter. The person transmitting such application on behalf of the voter may be anyone of the voter's choosing at least sixteen (16) years of age, provided said person is not employed by or related within the third degree of consanguinity or affinity to any person whose name appears on the ballot. No person may be the agent for more than one voter at any election. Such second ballot set shall be transmitted by the voter to the

county election board in the same manner as provided in the original set.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 16-123.1 of Title 26, unless there is created a duplication in numbering, reads as follows:

Any person, except members of absentee voting boards, who witnesses the signature of more than fifty (50) affidavits of persons who swear they are physically incapacitated and unable to vote in person at their precinct on election day shall, upon conviction, be deemed guilty of a misdemeanor.

SECTION 13. Sections 1 through 4 and 6 through 13 of this act shall become effective November 1, 2001.

SECTION 14. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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