

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL NO. 1104

By: Capps of the Senate

and

Sweeden of the House

COMMITTEE SUBSTITUTE

An Act relating to elections; amending 26 O.S. 2001, Sections 2-117, as amended by Section 3, Chapter 485, O.S.L. 2003, 3-119, 4-120.3, as amended by Section 6, Chapter 447, O.S.L. 2002, 5-115, as amended by Section 1, Chapter 88, O.S.L. 2003, 7-108.3, 7-112, 7-130, 14-115.4, as last amended by Section 13, Chapter 485, O.S.L. 2003, 14-115.5, 16-103 and 16-113 (26 O.S. Supp. 2003, Sections 2-117, 4-120.3, 5-115 and 14-115.4), which relate to secretary's duties, creation of subprecincts, deceased persons, withdrawals from primary, pollster restrictions, persons allowed in enclosure, watchers, in-person absentee voting, absentee voting boards, false swearing, and interference with voter; modifying minimum salary of chief clerk; modifying number of registered voters needed to create subprecinct; authorizing the administrator of a nursing facility to execute a form to cancel the registration of a deceased nursing facility resident; requiring certain witness; authorizing the secretary to cancel voter registration of deceased person; authorizing certain person to sign notice of withdrawal of candidacy; providing for penalty; authorizing certain persons in election enclosures under certain conditions; prohibiting certain conduct by news reporter or photographer; modifying time when sheriff must return sealed vote data pack container; clarifying language; modifying reimbursement for absentee voting board; adding penalty for persons who falsely swear to vote or to falsely obtain and vote an absentee ballot; providing penalty for certain person; providing for conviction; providing for penalty; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 26 O.S. 2001, Sections 2-117, as amended by Section 3, Chapter 485, O.S.L. 2003 (26 O.S. Supp. 2003, Section 2-117), is amended to read as follows:

Section 2-117. The secretary of the county election board shall be the administrative officer of the county election board and shall have general supervisory authority over the several precinct election boards within the county. In counties having seventeen thousand five hundred or more registered voters, the secretary shall have the authority to employ and/or terminate an assistant secretary and such other employees as are necessary to perform the duties of the county election board. In counties having fewer than seventeen thousand five hundred registered voters, the secretary shall employ a chief clerk and such other employees as are necessary to perform the duties of the county election board. In the event a vacancy exists in the office of the secretary of the county election board, the Secretary of the State Election Board shall have the authority to stand in the place of the secretary of the county election board for the purpose of employing necessary county election board personnel. The secretary shall be charged with the operational responsibilities of the board, including, but not limited to, supervision, defining job positions and responsibilities of the employees, preparation of the annual budget, preparation and filing of all reports, and the implementation of policy, findings and actions lawfully prescribed or determined by the county election board. The minimum salary of the assistant secretary shall be equal to ninety percent (90%) of the scheduled salary of the secretary in the same county, but shall not exceed the salary of the highest salaried first or chief deputy or assistant to any county officer, excluding the under sheriff, in the same county. The minimum salary of the chief clerk shall be equal to ~~one-half (1/2)~~ the hourly rate paid of the salary of the highest salaried first or chief deputy or assistant to any county officer in the same county, excluding the undersheriff, or ninety percent (90%) of the scheduled salary of the secretary in the same county, whichever is lower. The salary limitation contained in this section shall not operate to reduce the

salary of any person employed as an assistant secretary or chief clerk on May 1, 2003. Salaries of additional personnel, including personnel employed temporarily, shall not exceed the salary of the assistant secretary or chief clerk and shall be comparable to salaries paid for the same positions in other offices within the county. The salaries of the assistant secretary, chief clerk and other personnel shall be paid from county funds on a monthly basis. In the event that the secretary, assistant secretary, chief clerk, or any other essential county election board employee must be away from work for a period of time due to personal illness, family illness, or family emergency, the county ~~election board~~ shall be required to fund compensation of appropriate temporary personnel during the employee's absence.

SECTION 2. AMENDATORY 26 O.S. 2001, Section 3-119, is amended to read as follows:

Section 3-119. Where fewer than ~~one~~ two hundred registered voters are affected, an area constituting the maximum area possible without crossing boundaries of any district court judicial district electoral division or any congressional, legislative or county commissioner district may be designated as a subprecinct. Registration records shall be maintained for subprecincts in like manner as for other precincts. Subprecincts need not have a polling place separate from another precinct, nor shall they be required to have a precinct election board. The secretary of the county election board may authorize registered voters of a subprecinct to vote at a specific adjacent precinct. Provided, separate election materials shall be there afforded for the subprecinct in order that a separate certification will be made of the subprecinct's election results. Appropriate ballots shall be issued to the voters of the subprecinct.

SECTION 3. AMENDATORY 26 O.S. 2001, Section 4-120.3, as amended by Section 6, Chapter 447, O.S.L. 2002 (26 O.S. Supp. 2003, Section 4-120.3), is amended to read as follows:

Section 4-120.3 The State ~~Health~~ Department of Health shall each month transmit to the Secretary of the State Election Board a certified list of all deaths of residents that have occurred within the state for the immediately preceding month. The Secretary of the State Election Board shall transmit such list to the secretary of the county election board who shall then use such list to ascertain those voters who are deceased, and shall thereafter remove such deceased person's name from the central registry and the Oklahoma Election Management System. Such list shall be used only for the purposes hereinbefore described. In addition, the registration of a deceased voter may be canceled by the secretary of a county election board upon the execution by the next of kin of such deceased voter of a form and upon the nature of proof of the fact thereof as prescribed by the Secretary of the State Election Board. Such form must be executed in person by the deceased voter's next of kin at the county election board office, in which case it shall be witnessed by the secretary or other designated employees, at the deceased voter's precinct polling place or at the next of kin's precinct polling place in the same county on the day of any election, in which case it shall be witnessed by the inspector of such precinct, or the form may be personally signed by the next of kin, such signature to be notarized by a notary public, and returned to the county election board. The administrator of a nursing facility, as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes, also may execute a form prescribed by the Secretary of the State Election Board to notify the secretary of the county election board of the death of a nursing facility resident who is a registered voter. The administrator's signature on such form shall either be witnessed by a member of the nursing home absentee voting

board or shall be notarized. Upon receipt of such form, the secretary of the county election board shall be authorized to cancel the voter registration of such deceased person.

SECTION 4. AMENDATORY 26 O.S. 2001, Section 5-115, as amended by Section 1, Chapter 88, O.S.L. 2003 (26 O.S. Supp. 2003, Section 5-115), is amended to read as follows:

Section 5-115. Any candidate may withdraw as a candidate only upon the filing of a written notice of withdrawal as a candidate with the secretary of the election board which accepted ~~said~~ such candidate's declaration of candidacy. ~~Said~~ Such notice shall be signed by the candidate or a lawfully appointed personal representative or a lawfully appointed special administrator of any deceased candidate, whose signature shall be notarized by a notary public, and shall be filed on or before 5:00 p.m. on the Friday following the close of the filing period prescribed by law.

SECTION 5. AMENDATORY 26 O.S. 2001, Section 7-108.3, is amended to read as follows:

Section 7-108.3 The prohibition against electioneering contained in Section 7-108 of ~~Title 26 of the Oklahoma Statutes~~ this title shall apply to any pollster. No pollster shall be permitted within fifty (50) feet of any ballot box while an election is in progress. A pollster who violates the law prescribed for pollsters shall be deemed guilty of a misdemeanor.

SECTION 6. AMENDATORY 26 O.S. 2001, Section 7-112, is amended to read as follows:

Section 7-112. At no time during the hours of voting shall any person, other than the election officials and other persons authorized by law, be allowed inside the election enclosure except for one registered voter in each voting booth and one other registered voter for each voting booth. However, a news reporter or photographer may, in the course of covering the election being conducted, be allowed inside the election enclosure for a period not

to exceed five (5) minutes. Such reporter or photographer shall not interfere with voters or election officials and shall neither observe any individual voter while the voter marks a ballot nor photograph any voter who is marking a ballot.

SECTION 7. AMENDATORY 26 O.S. 2001, Section 7-130, is amended to read as follows:

Section 7-130. Any candidate or any recognized political party shall be entitled to have a watcher present at any place where an official count is being conducted. ~~Said~~ Such watcher must be commissioned in writing by the candidate, or by the chair of the recognized political party of the county in which the watcher is being authorized. ~~Said~~ Such commission must be filed with the secretary of the appropriate county election board no later than 5:00 p.m. on Wednesday preceding the election. Watchers must subscribe to an oath to observe all laws and rules prescribed for watchers as hereinafter provided. ~~Said~~ Such oath must be administered by the inspector of the precinct in which the watcher is authorized. Watchers shall be entitled to observe the voting device both before the polls are opened and after the polls are closed; provided, further, that ~~said~~ such watchers shall not be present at the polling place at other times. Watchers may be commissioned to observe voting device testing and to accompany personnel assigned to repair or maintain machines during the period of the election. In such case, the watchers shall be limited to observing the repair or maintenance work being performed and making a written record of such work. Any watcher who violates the law prescribed for watchers shall be deemed guilty of a misdemeanor.

SECTION 8. AMENDATORY 26 O.S. 2001, Section 14-115.4, as last amended by Section 13, Chapter 485, O.S.L. 2003 (26 O.S. Supp. 2003, 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 8 a.m. to 6 p.m. on Friday and Monday immediately preceding any election and ~~only in state and federal elections~~ from 8 a.m. to 1 p.m. on Saturday immediately preceding any a state or federal election. As part of the application for an in-person absentee ballot such registered voter shall swear or affirm that the voter has not voted a regular mail absentee ballot and that the voter 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 8 a.m. to 6 p.m. at the in-person absentee polling place on Friday and Monday ~~and from 8 a.m. to 1 p.m. on Saturday~~ immediately preceding any election and from 8 a.m. to 1 p.m. on Saturday immediately preceding a state or federal 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 the signature of the voter 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 the ballots of the voter 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 a 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~~ 7:45 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 9. AMENDATORY 26 O.S. 2001, Section 14-115.5, is amended to read as follows:

Section 14-115.5 To carry out the provisions of Section 14-115 of this title and Section 14-115.4 of this title, the secretary of the county election board shall designate one or more absentee voting boards, to be composed of two (2) members each, with each member to be of a different political affiliation. No later than

August 1 in each even-numbered year, the chairmen of the county central committees of the two political parties having the highest number of registered voters in the county shall each submit a list of ten names to the secretary. ~~Said~~ Such lists shall contain names of registered voters of the county, who may be members of the county election board, except the secretary, or precinct election boards ~~or~~ ~~counters~~. The secretary shall be confined to ~~said~~ such list in designating membership on the absentee voting board or boards, unless all persons on ~~said~~ such lists are ineligible or unwilling to serve. In the event the chairman of the county central committee of a political party fails to submit a list as herein provided, the secretary shall appoint membership to ~~said~~ such board or boards from the ranks of registered voters of said party within the county. Provided further, that in the event the list of names of either or both parties is exhausted and additional absentee voting boards are needed, the secretary shall appoint additional members to ~~said~~ such boards from the ranks of ~~said~~ such party or parties in the county. Members of an absentee voting board shall be reimbursed for their expenses at the same rate ~~of Forty Dollars (40.00) per day~~ as a precinct judge or clerk, as provided in Section 2-129 of this title. One member of each such board serving a nursing home or convalescent hospital shall be allowed mileage reimbursement at the rate prescribed for travel by state employees according to the State Travel Reimbursement Act, ~~Section 500.1 et seq. of Title 74 of the Oklahoma Statutes.~~

SECTION 10. AMENDATORY 26 O.S. 2001, Section 16-103, is amended to read as follows:

Section 16-103. Any person who swears or affirms a false affidavit in order to become eligible to vote, to obtain and vote a provisional ballot, or to obtain and vote an absentee ballot shall be deemed guilty of a felony.

SECTION 11. AMENDATORY 26 O.S. 2001, Section 16-113, is amended to read as follows:

Section 16-113. Any person, including a lawfully appointed watcher or exit pollster, who interferes with a registered voter who is attempting to vote, or any person who attempts to influence the vote of another by means of force or intimidation, or any person who interferes with the orderly and lawful conduct of an election shall be deemed guilty of a misdemeanor.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-108.1 of Title 26, unless there is created a duplication in numbering, reads as follows:

Any notary who charges for notarization of an absentee ballot shall, upon conviction, be guilty of a misdemeanor and shall be fined upon conviction up to One Hundred Dollars (\$100.00).

SECTION 13. 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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