

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL 1346

By: Monson

COMMITTEE SUBSTITUTE

An Act relating to elections; amending 26 O.S. 2001, Section 1-106, which relates to determination of dates; authorizing the Secretary of the State Election Board to change the date of an event in certain circumstances; amending 26 O.S. 2001, Section 2-107, as amended by Section 2, Chapter 485, O.S.L. 2003 (26 O.S. Supp. 2003, Section 2-107), which relates to the duties of the Secretary of the State Election Board; modifying duties; amending 26 O.S. 2001, Section 3-113, which relates to instructions to voters; requiring instructions to include all information required by law; amending 26 O.S. 2001, Sections 4-112, as amended by Section 4, Chapter 447, O.S.L. 2002, 4-113, 5-116, as amended by Section 2, Chapter 88, O.S.L. 2003, 5-116.1, 7-136 and 7-138 (26 O.S. Supp. 2003, Sections 4-112 and 5-116), which relate to voter registration, withdrawals from elections, canvassing returns and credit for voting; modifying information to be provided in registration application; clarifying statutory reference; requiring certain voters to provide identification to vote in federal elections; providing acceptable forms of identification; providing exception to requirement; modifying withdrawal date from primary election; modifying withdrawal date from general election; allowing certain voters to cast provisional ballots; requiring provisional ballots to be available for all elections conducted by a county election board; requiring the Secretary of the State Election Board to promulgate rules pertaining to provisional ballots; providing who is entitled to cast a provisional ballot; providing procedure for casting and counting provisional ballots; making certain information confidential; providing for an extension of time to investigate and verify provisional ballots; requiring the secretary of a county election board to retain materials pertaining to provisional ballots for a certain period of time; providing date and time to certify certain results of certain elections; providing registered voter credit for voting; amending 26 O.S. 2001, Sections 8-105, 8-106, 8-108, 8-109, 8-110 and 8-114, which relate to tie votes, certifications and contests; modifying date for issuance of list for tied vote; modifying time for issuance of lists of successful candidates and certificates of election; modifying time to contest an election; modifying time related to security and transfer of ballot boxes and transfer cases; providing that procedure for recount applies

to provisional ballots; amending 26 O.S. 2001, Section 9-100, which relates to experimental voting devices or equipment; authorizing the State Election Board to use experimental vote counting devices or equipment; amending 26 O.S. 2001, Section 11-106, which relates to certification of election of judicial officers; modifying time for certification of election results; providing election dates for municipalities with home rule charters; amending Section 9, Chapter 485, O.S.L. 2003 and 26 O.S. 2001, Section 14-121, as last amended by Section 20, Chapter 485, O.S.L. 2003 (26 O.S. Supp. 2003, Sections 14-104.1 and 14-121), which relate to absentee voting; providing that certain absentee ballot procedure applies to ballots cast by voters who are absent from the United States; providing for absentee provisional ballots; repealing 26 O.S. 2001, Section 7-116, which relates to voter identification cards; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 26 O.S. 2001, Section 1-106, is amended to read as follows:

Section 1-106. In determining the date of any event pertaining to elections which date is fixed by statute as occurring a certain number of days before or after an election, neither the day of the election nor the day of the event shall be counted. If the date set by law for an event pertaining to an election falls on an official holiday, the Secretary of the State Election Board shall have the authority to move the event to a preceding business day or to the next succeeding business day as appropriate for completion of the event.

SECTION 2. AMENDATORY 26 O.S. 2001, Section 2-107, as amended by Section 2, Chapter 485, O.S.L. 2003 (26 O.S. Supp. 2003, Section 2-107), is amended to read as follows:

Section 2-107. The Secretary of the State Election Board shall be the administrative officer of the State Election Board and shall have general supervisory authority over county election boards and shall have the authority to provide administrative supervision to any county election board, as well as the authority to stand in the

place of the secretary of the county election board for the purpose of employing county election board personnel when a vacancy exists in the office of the secretary of the county election board. The Secretary shall have the authority to employ and fix the salaries and duties of such personnel as may be necessary to perform the duties of the State Election Board. The Secretary may promulgate, repeal or modify such rules or regulations as the Secretary deems necessary to facilitate and assist in achieving and maintaining uniformity in the application, operation and interpretation of the state and federal election laws and a maximum degree of correctness, impartiality and efficiency in administration of the election laws; provided, however, that such rules or regulations, to be binding and effective, must have been officially adopted by the Secretary of the State Election Board; the procedure and adoption of such rules and regulations shall be subject to the provisions of the Administrative Procedures Act. The Secretary shall promote and encourage voter registration and voter participation in elections. The Secretary shall be the chief state election official responsible for coordination of state responsibilities under the National Voter Registration Act of 1993 and under the Help America Vote Act of 2002. The Secretary shall have the authority to implement programs for confirmation of voter registration and for removal of ineligible voters in compliance with general Oklahoma election law and requirements of the National Voter Registration Act of 1993.

SECTION 3. AMENDATORY 26 O.S. 2001, Section 3-113, is amended to read as follows:

Section 3-113. Instructions to voters describing the manner for casting one's vote shall be posted outside each polling place and inside each voting booth. Said instructions shall be prescribed by the Secretary of the State Election Board and shall include all information required by federal or state law.

SECTION 4. AMENDATORY 26 O.S. 2001, Section 4-112, as amended by Section 4, Chapter 447, O.S.L. 2002 (26 O.S. Supp. 2003, 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 form to be used for registering voters. Such registration application shall contain the following information: ~~voter's~~ applicant'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; the names of political parties recognized by the laws of the State of Oklahoma with which the ~~voter~~ applicant may be affiliated; the Oklahoma driver license or identification card number if the applicant has been issued a current and valid driver license or identification card by the Department of Public Safety, or if the applicant does not have a valid Oklahoma driver license or identification card, the last four digits of the voter's social security number; an oath of the ~~voter's~~ eligibility of the applicant to become a registered voter; and such other information as may be deemed necessary by the Secretary to identify such ~~voter~~ applicant 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 a 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 or "no party". 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 for change of 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 5. AMENDATORY 26 O.S. 2001, Section 4-113, is amended to read as follows:

Section 4-113. A. The Secretary of the State Election Board shall devise a voter identification card which shall be issued to every person who becomes a registered voter in Oklahoma. Said voter identification card shall contain such information as is necessary to determine a registered voter's eligibility.

B. When a person registers to vote or changes his or her registration in any manner to require a new voter identification card, the county election board secretary in the county of the voter's residence shall transmit the new voter identification card as acknowledgment of the transaction which may be the notice required in Section ~~§~~ 4-103.1 of this ~~act~~ title.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-115.2 of Title 26, unless there is created a duplication in numbering, reads as follows:

Registered voters who submitted applications for new voter registration in the county of their residence by mail on or after January 1, 2003, shall be required to provide identification when they vote for the first time in a federal election. Acceptable forms of identification shall include, but shall not be limited to, a current and valid photo identification, a voter identification card issued by the county election board in acknowledgement of the person's valid voter registration application as required by Section 4-113 of Title 26 of the Oklahoma Statutes, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the voter's name and address. Voters who may be subject to the voter identification requirements of this section may submit a copy of one of these forms of identification along with their voter registration application, but they shall not be required to do so. A voter who submits such identification with a voter registration application shall not be required to show identification when voting as outlined in this section. Any registered voter subject to the voter identification requirements of this section who is unable to provide one of the acceptable forms of identification when they appear at the precinct polling place on election day or at the in-person absentee polling place on a day of in-person absentee voting is entitled to cast a provisional ballot

as provided in Section 7 of this act and to have said ballot counted upon verification of the voter's identity.

SECTION 7. AMENDATORY 26 O.S. 2001, Section 5-116, as amended by Section 2, Chapter 88, O.S.L. 2003 (26 O.S. Supp. 2003, Section 5-116), is amended to read as follows:

Section 5-116. A candidate in a Runoff Primary Election may withdraw as a candidate upon the filing of a written notice of withdrawal as a candidate with the secretary of the election board which accepted said candidate's declaration of candidacy. Said notice shall be signed by the candidate or the 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~~ Tuesday next succeeding the date of the Primary Election.

SECTION 8. AMENDATORY 26 O.S. 2001, Section 5-116.1, is amended to read as follows:

Section 5-116.1 A candidate in a General Election may withdraw ~~his candidacy~~ as a candidate upon filing a written notice of withdrawal as a candidate with the secretary of the election board which accepted said candidate's declaration of candidacy. Said notice shall be signed by the 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~~ Tuesday next succeeding the date of the Runoff Primary Election.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-116.1 of Title 26, unless there is created a duplication in numbering, reads as follows:

A. Provisional ballots shall be available for all elections conducted by the county election board. Provisional ballots shall include all offices, candidates and questions and shall be identical to the regular ballots for each precinct. The Secretary of the

State Election Board shall promulgate rules and shall prescribe materials necessary for the implementation of provisional ballots.

B. Persons who are not listed in the precinct registry, but who claim to be registered voters in the precinct and eligible to vote in the election, shall be entitled to vote a provisional ballot upon execution of an affidavit prescribed by the Secretary of the State Election Board. Registered voters required to show identification before voting for the first time in a federal election, as described in Section 6 of this act and who are unable to show one of the acceptable forms of identification described in said section, shall be entitled to cast a provisional ballot. Persons identified in Section 14-121 of Title 26 of the Oklahoma Statutes shall be entitled to vote a provisional ballot upon execution of an affidavit prescribed by the Secretary of the State Election Board. Persons who are listed in the precinct registry for a partisan primary election, but who dispute the political affiliation indicated by said precinct registry, shall be entitled to vote a provisional ballot for a party other than the one indicated. However, such provisional ballot shall be counted only if evidence is found by the secretary of the county election board of the voter's valid voter registration in the party for which the provisional ballot was cast.

C. Provisional ballots shall be segregated from the regular ballots cast in the precinct in the manner prescribed by the Secretary of the State Election Board and shall not be inserted in the precinct voting device. Information provided by a person who votes a provisional ballot shall be investigated by the secretary of the county election board after the election. A provisional ballot shall be counted only if it is cast in the precinct of the voter's residence and if evidence of the provisional voter's valid voter registration, or of the voter's identity, is found, except a provisional ballot cast by a voter identified in Section 14-121 of Title 26 of the Oklahoma Statutes shall be counted.

D. No information concerning provisional ballots, except the number of provisional ballots cast in the county, shall be made public by any election official prior to 5:00 p.m. on Friday following the election. The county sheriff shall secure sealed ballot transfer cases containing provisional ballots that have been counted after 5:00 p.m. on Friday following the election until 5:00 p.m. on Tuesday next succeeding the election or, in the event a recount contest is filed, until such times as said transfer cases are delivered to the district courtroom.

E. In the event that the secretary of any county election board is unable to complete the investigation and verification of provisional ballots by 5:00 p.m. on Friday following the election, the Secretary of the State Election Board shall be authorized to extend the period for the investigation and verification of provisional ballots. When such an extension is required by any county for a statewide election, the extension shall apply statewide. The Secretary shall promulgate rules establishing procedures for requesting and granting such extensions.

F. All materials used for procuring and casting a provisional ballot shall be retained by the secretary of the county election board for a period of twenty-four (24) months after the day of the election.

SECTION 10. AMENDATORY 26 O.S. 2001, Section 7-136, is amended to read as follows:

Section 7-136. The county election board shall convene at the county courthouse, or at such other place as the county election board may designate on the day of each election, for the purpose of receiving the official precinct returns and shall remain in session until said precinct returns are all delivered. The board shall cause to be accumulated and listed the results of such election, as the official precinct returns are received, in a manner and upon forms prescribed by the Secretary of the State Election Board. The

county election board shall use such precinct returns to certify the results of such election for county officers and questions and shall transmit electronically or in writing as prescribed by the Secretary of the State Election Board ~~immediately~~ after 5:00 p.m. on Friday following the election to the State Election Board the completed county returns for all state officers and questions. Such county returns shall be prima facie evidence of the correctness of the result in the several counties. The State Election Board shall use such county returns to certify the results of such election for all state officers and questions after 5:00 p.m. on Tuesday following the election.

SECTION 11. AMENDATORY 26 O.S. 2001, Section 7-138, is amended to read as follows:

Section 7-138. Following the election, the secretary of the county election board shall cause each registered voter who cast a ballot to be credited with voting in ~~said~~ such election according to procedures specified by the Secretary of the State Election Board.

SECTION 12. AMENDATORY 26 O.S. 2001, Section 8-105, is amended to read as follows:

Section 8-105. A. When a tie vote is certified in the nomination or election of any candidate in any Runoff Primary, General Election or any Primary Election, the election board which is authorized by law to issue the certified list or certificate of election shall, at a public meeting of the board and in the presence of the candidates involved or their designee, if they or any of them desire to be present, select the nominee or elected by lot.

B. When a nominee or electee is to be selected by lot pursuant to the provisions of this section, the following procedures shall be observed:

1. The secretary of the appropriate election board shall, on or before the ~~seventh~~ tenth day following the election, notify each of the tying candidates for which the vote was tied. The notice shall

include the time, date and location of the selection, shall be made in writing by registered or certified mail and shall be postmarked not fewer than five (5) days prior to the meeting;

2. A candidate may designate one person as a witness to attend the meeting on the candidate's behalf. The designation shall be made in writing, signed by the candidate and presented to the secretary of the appropriate election board;

3. The secretary of the appropriate election board shall, in full view of those present at the meeting, clearly write or print the name of each tied candidate on separate pieces of paper measuring approximately equal size. The names of the candidates shall be written or printed on the same color and type of paper. The papers shall be folded in half one time so that the written names are not visible and shall be placed into a container selected by the secretary of the appropriate election board;

4. The secretary shall draw, or may designate a person other than the candidates, witnesses or other person directly interested in the election to draw, one paper, and the name of the nominee or electee appearing on the first drawn paper shall be declared the winner. The secretary shall then expose the other name or names not drawn to all witnesses present; and

5. The meeting shall be held on a weekday, holidays excepted, between the hours of 7:00 a.m. and 7:00 p.m.

C. When there are three (3) or more candidates and a tie for first place occurs for the nomination of a candidate at a Primary Election for which a Runoff Primary will be held, the names of the tied candidates shall be placed on the Runoff Primary ballot.

SECTION 13. AMENDATORY 26 O.S. 2001, Section 8-106, is amended to read as follows:

Section 8-106. No ~~such~~ lists or certificates provided for in Section 8-103 of this title shall be issued either by the county election board or State Election Board before 5:00 p.m. ~~Friday~~

Tuesday next following a Primary, Runoff Primary or General Election.

SECTION 14. AMENDATORY 26 O.S. 2001, Section 8-108, is amended to read as follows:

Section 8-108. If no contest shall be filed by 5:00 p.m. ~~Friday~~ Tuesday next following an election, the county election boards and State Election Board shall declare the result of such election and shall issue the appropriate lists or certificates to the successful party as provided by law. Provided, however, that no such lists or certificates shall be issued until the total of all returns has been verified, and a complete tabulation thereof made.

SECTION 15. AMENDATORY 26 O.S. 2001, Section 8-109, is amended to read as follows:

Section 8-109. Any candidate whose name appeared on a Primary, Runoff Primary or General Election ballot, or any individual authorized to request a recount pursuant to Section 8-111 of this title may, at any time before 5:00 p.m. ~~Friday~~ Tuesday next following an election, contest the correctness of the announced results of said election by filing a written petition with the appropriate election board. Contests alleging irregularities or fraud shall not be permitted in any election except those in which candidates are seeking office. Nothing in this section shall be construed to prohibit any proceedings in district court, which are otherwise authorized by law, alleging irregularities or fraud in an election.

SECTION 16. AMENDATORY 26 O.S. 2001, Section 8-110, is amended to read as follows:

Section 8-110. It shall be the duty of the sheriff in each county to provide security for the ballot boxes or transfer cases from the time said ballot boxes or transfer cases are stored by the county election board following an election until 5:00 p.m. ~~Friday~~ Tuesday next following the election or, in the event a recount

contest is filed, until such time as said ballot boxes or transfer cases are delivered to the district courtroom.

SECTION 17. AMENDATORY 26 O.S. 2001, Section 8-114, is amended to read as follows:

Section 8-114. A. If a recount is to be conducted using electronic voting devices, the devices used shall be tested for accuracy by the county election board, giving all contestants, or their agents, an opportunity to view the testing procedure. In conducting a recount using electronic voting devices, the county election board shall open the transfer cases containing regular ballots and counted provisional ballots from each requested precinct or for absentee ballots individually and shall assign said ballot cards to one or more voting devices operated by persons appointed by the secretary of the county election board. The county election board shall supervise such counting and its decision shall be final in all cases. Each contestant is entitled to have a watcher present at each place where a voting device is being used. Said watcher shall be limited to a challenge, in writing, of any action taken by operators of the voting devices. Such challenge shall be made immediately to the county election board, whose decision on said challenge shall be final.

B. In conducting a manual recount of ballots, the county election board shall open the transfer cases containing regular ballots and counted provisional ballots from each requested precinct or for absentee ballots individually and shall assign said ballot cards to a group of counters appointed by the secretary of the county election board. Counters shall then conduct the recount in the same manner as provided by law for counting ballots in Primary, Runoff Primary and General Elections. The county election board shall supervise such counting and its decision shall be final in all cases. Each candidate affected by or individual petitioning for the recount is entitled to have a watcher present at each place where a

count is being made. Said watcher shall be limited to a challenge, in writing, of any decision made by the counters with regard to counting of a ballot. Such challenge shall be made immediately to the county election board, whose decision on said challenge shall be final. Each group of counters shall have representation of at least two political parties, where possible. Said counters shall be appointed from among the registered voters of the county and shall meet such qualifications as may be imposed for a precinct inspector, judge or clerk. Counters shall be paid on the same basis as precinct judges and clerks are paid for Primary, Runoff Primary or General Elections.

SECTION 18. AMENDATORY 26 O.S. 2001, Section 9-100, is amended to read as follows:

Section 9-100. ~~Officials authorized by law to purchase voting devices and equipment may, with written authorization of the~~ The Secretary of the State Election Board, shall be authorized to allow for the experimental use of one or more vote counting devices or other equipment ~~which they might lawfully purchase, to be used in~~ one or more election precincts in one or more counties, without a formal purchase thereof. The experimental use of such vote counting device or other equipment in any election shall be as valid for all purposes as if it had been purchased.

SECTION 19. AMENDATORY 26 O.S. 2001, Section 11-106, is amended to read as follows:

Section 11-106. If a Declaration of Candidacy is filed, an election held, and no contest thereto is filed, the State Election Board shall certify the result to the Secretary of State by 5:00 p.m. ~~Friday~~ Tuesday next following the General Election. If a contest is filed, the result shall be certified to the Secretary of State either when the contest is determined or when it has been abandoned. If a decision by a majority of those voting thereon is that the officer shall not be retained in office, the Secretary of

State shall immediately notify the Governor and the ~~Chairman~~ Chair of the Judicial Nominating Commission of the decision, stating the name and office of the officer, and that a vacancy has occurred or is certain to occur, as is appropriate.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-101.1 of Title 26, unless there is created a duplication in numbering, reads as follows:

Recognizing that the conduct of all elections is a matter of statewide concern and that adequate time to prepare, conduct and certify the results of an election is essential, all regular and special elections that are conducted by the county election board for municipalities with home rule charters shall be held on an election date established by subsection B of Section 3-101 of Title 26 of the Oklahoma Statutes. In the event that the secretary of the county election board receives a resolution calling an election on any date other than one established by subsection B of Section 3-101 of Title 26 of the Oklahoma Statutes, the election shall be scheduled and conducted on an appropriate election date succeeding the date specified in the resolution.

SECTION 21. AMENDATORY Section 9, Chapter 485, O.S.L. 2003 (26 O.S. Supp. 2003, Section 14-104.1), is amended to read as follows:

Section 14-104.1 Absentee ballots cast no later than the day of the federal election by voters identified pursuant to Section 14-116 of ~~Title 26 of the Oklahoma Statutes~~ this title who are absent from the United States who made timely applications for absentee ballots in the Runoff Primary Election and received by the secretary of the county election board by ~~5~~ 5:00 p.m. on the fourteenth day following the Runoff Primary Election shall be accepted as validly cast ballots and shall be tabulated and included in the final election results for federal offices. However, the Secretary of the State Election Board shall not be prevented from declaring the successful

candidate in a Runoff Primary Election for a federal office if the total number of the ballots sent to absentee voters identified pursuant to Section 14-116 of ~~Title 26 of the Oklahoma Statutes~~ this title who are absent from the United States is mathematically insufficient to affect the outcome of the election.

SECTION 22. AMENDATORY 26 O.S. 2001, Section 14-121, as last amended by Section 20, Chapter 485, O.S.L. 2003 (26 O.S. Supp. 2003, 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 Uniformed Services of the United States, or who has been terminated in such 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 Uniformed Services of the United States or who has been terminated in such 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 provisional ballot at such election in the precinct for which the person 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 the person is entitled to vote at such election and completing a voter registration application for an address within the precinct~~ cast the provisional ballot and to have the provisional ballot counted upon completion of an affidavit as required by Section 9 of this act.

SECTION 23. REPEALER 26 O.S. 2001, Section 7-116, is hereby repealed.

SECTION 24. This act shall become effective January 1, 2005.

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