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THE STATE SENATE
Thursday, February 12, 2004

Senate Bill No. 1104
As Amended

SENATE BILL NO. 1104 - By: CAPPS of the Senate and SWEEDEN of the House.

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:

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

4 Section 2-117. The secretary of the county election board shall
5 be the administrative officer of the county election board and shall
6 have general supervisory authority over the several precinct
7 election boards within the county. In counties having seventeen
8 thousand five hundred or more registered voters, the secretary shall
9 have the authority to employ and/or terminate an assistant secretary
10 and such other employees as are necessary to perform the duties of
11 the county election board. In counties having fewer than seventeen
12 thousand five hundred registered voters, the secretary shall employ
13 a chief clerk and such other employees as are necessary to perform
14 the duties of the county election board. In the event a vacancy
15 exists in the office of the secretary of the county election board,
16 the Secretary of the State Election Board shall have the authority
17 to stand in the place of the secretary of the county election board
18 for the purpose of employing necessary county election board
19 personnel. The secretary shall be charged with the operational
20 responsibilities of the board, including, but not limited to,
21 supervision, defining job positions and responsibilities of the
22 employees, preparation of the annual budget, preparation and filing
23 of all reports, and the implementation of policy, findings and

1 actions lawfully prescribed or determined by the county election
2 board. The minimum salary of the assistant secretary shall be equal
3 to ninety percent (90%) of the scheduled salary of the secretary in
4 the same county, but shall not exceed the salary of the highest
5 salaried first or chief deputy or assistant to any county officer,
6 excluding the under sheriff, in the same county. The minimum salary
7 of the chief clerk shall be equal to ~~one-half (1/2)~~ the hourly rate
8 paid of the salary of the highest salaried first or chief deputy or
9 assistant to any county officer in the same county, excluding the
10 undersheriff, or ninety percent (90%) of the scheduled salary of the
11 secretary in the same county, whichever is lower. The salary
12 limitation contained in this section shall not operate to reduce the
13 salary of any person employed as an assistant secretary or chief
14 clerk on May 1, 2003. Salaries of additional personnel, including
15 personnel employed temporarily, shall not exceed the salary of the
16 assistant secretary or chief clerk and shall be comparable to
17 salaries paid for the same positions in other offices within the
18 county. The salaries of the assistant secretary, chief clerk and
19 other personnel shall be paid from county funds on a monthly basis.
20 In the event that the secretary, assistant secretary, chief clerk,
21 or any other essential county election board employee must be away
22 from work for a period of time due to personal illness, family
23 illness, or family emergency, the county ~~election board~~ shall be

1 required to fund compensation of appropriate temporary personnel
2 during the employee's absence.

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

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

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

1 Section 4-120.3 The State ~~Health~~ Department of Health shall
2 each month transmit to the Secretary of the State Election Board a
3 certified list of all deaths of residents that have occurred within
4 the state for the immediately preceding month. The Secretary of the
5 State Election Board shall transmit such list to the secretary of
6 the county election board who shall then use such list to ascertain
7 those voters who are deceased, and shall thereafter remove such
8 deceased person's name from the central registry and the Oklahoma
9 Election Management System. Such list shall be used only for the
10 purposes hereinbefore described. In addition, the registration of a
11 deceased voter may be canceled by the secretary of a county election
12 board upon the execution by the next of kin of such deceased voter
13 of a form and upon the nature of proof of the fact thereof as
14 prescribed by the Secretary of the State Election Board. Such form
15 must be executed in person by the deceased voter's next of kin at
16 the county election board office, in which case it shall be
17 witnessed by the secretary or other designated employees, at the
18 deceased voter's precinct polling place or at the next of kin's
19 precinct polling place in the same county on the day of any
20 election, in which case it shall be witnessed by the inspector of
21 such precinct, or the form may be personally signed by the next of
22 kin, such signature to be notarized by a notary public, and returned
23 to the county election board. The administrator of a nursing

1 facility, as defined in Section 1-1902 of Title 63 of the Oklahoma
2 Statutes, also may execute a form prescribed by the Secretary of the
3 State Election Board to notify the secretary of the county election
4 board of the death of a nursing facility resident who is a
5 registered voter. The administrator's signature on such form shall
6 either be witnessed by a member of the nursing home absentee voting
7 board or shall be notarized. Upon receipt of such form, the
8 secretary of the county election board shall be authorized to cancel
9 the voter registration of such deceased person.

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

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

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

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

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

9 Section 7-112. At no time during the hours of voting shall any
10 person, other than the election officials and other persons
11 authorized by law, be allowed inside the election enclosure except
12 for one registered voter in each voting booth and one other
13 registered voter for each voting booth. However, a news reporter or
14 photographer may, in the course of covering the election being
15 conducted, be allowed inside the election enclosure **for a period not**
16 **to exceed five (5) minutes.** Such reporter or photographer shall not
17 interfere with voters or election officials and shall neither
18 observe any individual voter while the voter marks a ballot nor
19 photograph any **voter who is marking a ballot.**

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

22 Section 7-130. Any candidate or any recognized political party
23 shall be entitled to have a watcher present at any place where an

1 official count is being conducted. ~~Said~~ Such watcher must be
2 commissioned in writing by the candidate, or by the chair of the
3 recognized political party of the county in which the watcher is
4 being authorized. ~~Said~~ Such commission must be filed with the
5 secretary of the appropriate county election board no later than
6 5:00 p.m. on Wednesday preceding the election. Watchers must
7 subscribe to an oath to observe all laws and rules prescribed for
8 watchers as hereinafter provided. ~~Said~~ Such oath must be
9 administered by the inspector of the precinct in which the watcher
10 is authorized. Watchers shall be entitled to observe the voting
11 device both before the polls are opened and after the polls are
12 closed; provided, further, that ~~said~~ such watchers shall not be
13 present at the polling place at other times. Watchers may be
14 commissioned to observe voting device testing and to accompany
15 personnel assigned to repair or maintain machines during the period
16 of the election. In such case, the watchers shall be limited to
17 observing the repair or maintenance work being performed and making
18 a written record of such work. Any watcher who violates the law or
19 rules prescribed for watchers shall be deemed guilty of a
20 misdemeanor.

21 SECTION 8. AMENDATORY 26 O.S. 2001, Section 14-115.4, as
22 last amended by Section 13, Chapter 485, O.S.L. 2003 (26 O.S. Supp.
23 2003, Section 14-115.4), is amended to read as follows:

1 Section 14-115.4 A. A registered voter may apply for an in-
2 person absentee ballot at a location designated by the secretary of
3 the county election board from 8 a.m. to 6 p.m. on Friday and Monday
4 immediately preceding any election and ~~only in state and federal~~
5 ~~elections~~ from 8 a.m. to 1 p.m. on Saturday immediately preceding
6 any a state or federal election. As part of the application for an
7 in-person absentee ballot such registered voter shall swear or
8 affirm that the voter has not voted a regular mail absentee ballot
9 and that the voter will not vote at the regular polling place in the
10 election for which the in-person absentee ballot is requested.

11 B. One or more absentee voting boards shall be on duty from 8
12 a.m. to 6 p.m. at the in-person absentee polling place on Friday and
13 Monday ~~and from 8 a.m. to 1 p.m. on Saturday~~ immediately preceding
14 any election and from 8 a.m. to 1 p.m. on Saturday immediately
15 preceding a state or federal election. If the secretary of a county
16 election board receives an application from a registered voter
17 requesting to vote by in-person absentee ballot the secretary shall
18 cause to be implemented the following procedures:

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

22 2. The voter must sign an in-person absentee voter record, and
23 the signature of the voter on such record must be certified by both

1 members of the absentee voting board, except that the secretary of
2 the county election board and one other member of the absentee
3 voting board may certify the signature of another member of the
4 absentee voting board;

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

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

14 5. When the in-person polling place is closed on each day of
15 in-person absentee voting the in-person absentee voting board shall,
16 without obtaining a printout of results, remove the vote data pack
17 from the voting device and seal ballots counted that day in a
18 transfer case which shall be secured by the sheriff of the county in
19 the same manner as provided in Section 8-110 of this title. The
20 vote data pack shall be sealed in a container prescribed by the
21 Secretary of the State Election Board. The sheriff shall secure the
22 sealed vote data pack container and return it to the in-person
23 absentee voting board no later than ~~8:45~~ 7:45 a.m. on the next day

1 of ~~the~~ in-person absentee voting or to the secretary of the county
2 election board at the time of the county election board meeting to
3 count absentee ballots on ~~the Tuesday~~ election day;

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

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

13 SECTION 9. AMENDATORY 26 O.S. 2001, Section 14-115.5, is
14 amended to read as follows:

15 Section 14-115.5 To carry out the provisions of Section 14-115
16 of this title and Section 14-115.4 of this title, the secretary of
17 the county election board shall designate one or more absentee
18 voting boards, to be composed of two (2) members each, with each
19 member to be of a different political affiliation. No later than
20 August 1 in each even-numbered year, the chairmen of the county
21 central committees of the two political parties having the highest
22 number of registered voters in the county shall each submit a list
23 of ten names to the secretary. ~~Said~~ Such lists shall contain names

1 of registered voters of the county, who may be members of the county
2 election board, except the secretary, or precinct election boards ~~or~~
3 ~~counters~~. The secretary shall be confined to ~~said~~ such list in
4 designating membership on the absentee voting board or boards,
5 unless all persons on ~~said~~ such lists are ineligible or unwilling to
6 serve. In the event the chairman of the county central committee of
7 a political party fails to submit a list as herein provided, the
8 secretary shall appoint membership to ~~said~~ such board or boards from
9 the ranks of registered voters of said party within the county.
10 Provided further, that in the event the list of names of either or
11 both parties is exhausted and additional absentee voting boards are
12 needed, the secretary shall appoint additional members to ~~said~~ such
13 boards from the ranks of ~~said~~ such party or parties in the county.
14 Members of an absentee voting board shall be reimbursed for their
15 expenses at the same rate ~~of Forty Dollars (40.00) per day as a~~
16 precinct judge or clerk, as provided in Section 2-129 of this title.
17 One member of each such board serving a nursing home or convalescent
18 hospital shall be allowed mileage reimbursement at the rate
19 prescribed for travel by state employees according to the State
20 Travel Reimbursement Act, ~~Section 500.1 et seq. of Title 74 of the~~
21 ~~Oklahoma Statutes.~~

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

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

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

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

13 **SECTION 12. Any notary who charges for notarization of an**
14 **absentee ballot shall, upon conviction, be guilty of a misdemeanor**
15 **and shall be fined upon conviction up to One Hundred Dollars**
16 **(\$100.00).**

17 SECTION 13. It being immediately necessary for the preservation
18 of the public peace, health and safety, an emergency is hereby
19 declared to exist, by reason whereof this act shall take effect and
20 be in full force from and after its passage and approval.

21 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT, dated 2-9-04 -
22 DO PASS, As Amended and Coauthored.