

THE HOUSE OF REPRESENTATIVES  
Monday, March 30, 2009

ENGROSSED

Senate Bill No. 692

ESB 692

ENGROSSED SENATE BILL NO. 692 - By: FORD of the Senate and TIBBS of the House.

An Act relating to elections; ordering a legislative referendum pursuant to the Oklahoma Constitution; amending 26 O.S. 2001, Sections 7-114, Section 8, Chapter 545, O.S.L. 2004, 14-115.4, as last amended by Section 8, Chapter 307, O.S.L. 2004, 14-121, as last amended by Section 23, Chapter 545, O.S.L. 2004 and 16-120 (26 O.S. Supp. 2008, Sections 7-116.1, 14-115.4 and 14-121), which relate to voting procedures; requiring persons appearing to vote or applying for in-person absentee ballot to provide proof of identity; defining term; providing exception to certain requirements; providing procedure if person declines to or is unable to provide proof of identity; allowing certain persons to cast provisional ballots; modifying time period in which return of certain persons from overseas entitles such persons to vote provisional ballots at subsequent election; modifying certain penalties; repealing Section 7, Chapter 545, O.S.L. 2004 (26 O.S. Supp. 2008, Section 7-115.2), which relates to certain applications for voter registration; providing conditional effective date; providing ballot title; and directing filing.

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

- 1 SECTION 1. Pursuant to Section 3 of Article V of the Oklahoma Constitution,
- 2 there is hereby ordered the following legislative referendum which shall be filed with the
- 3 Secretary of State and addressed to the Governor of the state, who shall submit the same
- 4 to the people for their approval or rejection at the next General Election.

1 SECTION 2. AMENDATORY 26 O.S. 2001, Section 7-114, is amended to read  
2 as follows:

3 Section 7-114. A. Each person presenting himself appearing to vote shall announce  
4 his that person's name to the judge of the precinct and shall provide proof of identity,  
5 whereupon the judge shall determine whether said the person's name is in the precinct  
6 registry. As used in this section, "proof of identity" shall mean a document that satisfies  
7 all of the following:

8 1. The document shows the name of the person to whom the document was issued,  
9 and the name substantially conforms to the name in the precinct registry;

10 2. The document shows a photograph of the person to whom the document was  
11 issued;

12 3. The document includes an expiration date, which is after the date of the election  
13 in which the person is appearing to vote. The provisions of this paragraph shall not  
14 apply to an identification card issued to a person sixty-five (65) years of age or older  
15 which is valid indefinitely, as provided in Section 6-105.3 of Title 47 of the Oklahoma  
16 Statutes; and

17 4. The document was issued by the United States, the State of Oklahoma or the  
18 government of a federally recognized Indian tribe or nation.

19 Provided, if the person presents a voter identification card issued by the appropriate  
20 county election board, such card may serve as proof of identity without meeting the  
21 requirements of paragraphs 2 and 3 of this subsection.

1 B. 1. If a person declines to or is unable to produce proof of identity, the person  
2 may sign a statement under oath, in a form approved by the Secretary of the State  
3 Election Board, swearing or affirming that the person is the person identified on the  
4 precinct registry, and shall be allowed to cast a provisional ballot as provided in Section  
5 7-116.1 of this title.

6 2. False swearing or affirming under oath shall be punishable as a felony as  
7 provided in Section 16-103 of this title, and the penalty shall be distinctly set forth on the  
8 face of the statement.

9 SECTION 3. AMENDATORY Section 8, Chapter 545, O.S.L. 2004 (26 O.S.  
10 Supp. 2008, Section 7-116.1), is amended to read as follows:

11 Section 7-116.1 A. Provisional ballots shall be available for all elections conducted  
12 by the county election board. Provisional ballots shall include all offices, candidates and  
13 questions and shall be identical to the regular ballots for each precinct. The Secretary of  
14 the State Election Board shall promulgate rules and shall prescribe materials necessary  
15 for the implementation of provisional ballots.

16 B. Persons who are not listed in the precinct registry, but who claim to be  
17 registered voters in the precinct and eligible to vote in the election, shall be entitled to  
18 vote a provisional ballot upon execution of an affidavit prescribed by the Secretary of the  
19 State Election Board. Registered voters required to show identification ~~before voting for~~  
20 ~~the first time in a federal election,~~ as described in Section ~~7 of the act~~ 7-114, 14-115.4 or  
21 14-121 of this title and who are unable to show one of the acceptable forms of  
22 identification described in ~~said section~~ such sections, shall be entitled to cast a

1 provisional ballot. Persons identified in Section 14-121 of ~~Title 26 of the Oklahoma~~  
2 ~~Statutes~~ this title shall be entitled to vote a provisional ballot upon execution of an  
3 affidavit prescribed by the Secretary of the State Election Board. Persons who are listed  
4 in the precinct registry for a partisan primary election, but who dispute the political  
5 affiliation indicated by ~~said~~ such precinct registry, shall be entitled to vote a provisional  
6 ballot for a party other than the one indicated. However, such provisional ballot shall be  
7 counted only if evidence is found by the secretary of the county election board of the  
8 voter's valid voter registration in the party for which the provisional ballot was cast.

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

17 D. No information concerning provisional ballots, except the number of provisional  
18 ballots cast in the county, shall be made public by any election official prior to 1:00 p.m.  
19 on Friday following the election. The county sheriff shall secure sealed ballot transfer  
20 cases containing provisional ballots that have been counted after 1:00 p.m. on Friday  
21 following the election until 5:00 p.m. on Tuesday next succeeding the election or, in the

1 event a recount contest is filed, until such times as ~~said~~ the transfer cases are delivered  
2 to the district courtroom.

3 E. In the event that the secretary of any county election board is unable to complete  
4 the investigation and verification of provisional ballots by 1:00 p.m. on Friday following  
5 the election, the Secretary of the State Election Board shall be authorized to extend the  
6 period for the investigation and verification of provisional ballots. When such an  
7 extension is required by any county for a statewide election, the extension shall apply  
8 statewide. The Secretary shall promulgate rules establishing procedures for requesting  
9 and granting such extensions.

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

13 SECTION 4. AMENDATORY 26 O.S. 2001, Section 14-115.4, as last amended  
14 by Section 8, Chapter 307, O.S.L. 2004 (26 O.S. Supp. 2008, Section 14-115.4), is  
15 amended to read as follows:

16 Section 14-115.4 A. A registered voter may apply for an in-person absentee ballot  
17 at a location designated by the secretary of the county election board from 8 a.m. to 6  
18 p.m. on Friday and Monday immediately preceding any election and from 8 a.m. to 1 p.m.  
19 on Saturday immediately preceding a state or federal election. As part of the application  
20 for an in-person absentee ballot such registered voter shall swear or affirm that the voter  
21 has not voted a regular mail absentee ballot and that the voter will not vote at the  
22 regular polling place in the election for which the in-person absentee ballot is requested.

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

1           B. 1. The voter also shall provide proof of identity as defined in Section 7-114 of  
2 this title. If the voter declines to or is unable to produce proof of identity, the voter may  
3 sign a statement under oath, in a form approved by the Secretary of the State Election  
4 Board, swearing or affirming that the person is the person identified on the precinct  
5 registry, and shall be allowed to cast a provisional ballot as provided in Section 7-116.1 of  
6 this title.

7           2. False swearing or affirming under oath shall be punishable as a felony as  
8 provided in Section 16-103 of this title, and the penalty shall be distinctly set forth on the  
9 face of the statement.

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

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

19           2. The voter must sign an in-person absentee voter record, and the signature of the  
20 voter on such record must be certified by both members of the absentee voting board,  
21 except that the secretary of the county election board and one other member of the

1 absentee voting board may certify the signature of another member of the absentee  
2 voting board;

3 3. The voter must mark the ballots of the voter in the manner provided by law in  
4 the presence of the absentee voting board, but in such a manner as to make it impossible  
5 for any person other than the voter to ascertain how ~~said~~ such ballots are marked.

6 Insofar as is possible, the voting procedure shall be the same as if the voter were casting  
7 a vote in person at a precinct;

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

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

20 6. The vote data pack or packs used for in-person absentee voting shall be used by  
21 the county election board to count absentee ballots on election day as provided in Section  
22 14-125 of this title; and

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

5           SECTION 5. AMENDATORY 26 O.S. 2001, Section 14-121, as last amended by  
6 Section 23, Chapter 545, O.S.L. 2004 (26 O.S. Supp. 2008, Section 14-121), is amended to  
7 read as follows:

8           Section 14-121. Any person eligible to register, who has been honorably discharged  
9 or is on officially authorized leave from the Uniformed Services of the United States, or  
10 who has been terminated in such service or employment overseas, or who is the spouse or  
11 dependent of a person who has been honorably discharged, is on authorized leave from  
12 the Uniformed Services of the United States or who has been terminated in such service  
13 or employment overseas, and returned home ~~too late to register at the time when, and at~~  
14 ~~the place where, registration is required, to vote at the next ensuing election~~ within  
15 ninety (90) days preceding an election, shall be entitled to vote a provisional ballot at  
16 such election in the precinct for which the person is a qualified elector without being  
17 registered. Such person shall be required to provide proof of identity as required in  
18 Section 7-114 of this title and shall be entitled to cast ~~the~~ a provisional ballot and to have  
19 the provisional ballot counted upon completion of an affidavit as required by Section ~~8~~ 7-  
20 116.1 of this ~~aet~~ title.

21           SECTION 6. AMENDATORY 26 O.S. 2001, Section 16-120, is amended to read  
22 as follows:

1 Section 16-120. Any person who causes to be printed, or who has in his or her  
2 possession ballots or blank or fraudulent voter identification cards not authorized by law  
3 shall be deemed guilty of a ~~misdemeanor~~ felony.

4 SECTION 7. REPEALER Section 7, Chapter 545, O.S.L. 2004 (26 O.S. Supp.  
5 2008, Section 7-115.2), is hereby repealed.

6 SECTION 8. This act shall become effective July 1, 2011, upon approval by the  
7 people.

8 SECTION 9. The Ballot Title for the proposed act shall be in the following form:

9 BALLOT TITLE

10 Legislative Referendum No. \_\_\_\_

State Question No. \_\_\_\_

11 THE GIST OF THE PROPOSITION IS AS FOLLOWS:

12 This measure would require each person appearing to vote to provide proof of  
13 identity. Proof of identity would mean a document that shows the name and a  
14 photograph of the person. The document would have to have an expiration date,  
15 except for certain identification cards issued to persons 65 years of age or older.

16 The document would have to be issued by the federal or state government or a tribal  
17 government. A voter identification card issued by the county election board could  
18 also be used. A person who declines to or cannot produce proof of identity could sign  
19 a sworn statement and cast a provisional ballot. False swearing would be a felony  
20 and the penalty would be set forth on the statement. Several sections of law would  
21 be amended or repealed to conform with these requirements. The measure would  
22 be effective July 1, 2011.

1           SHALL THE PROPOSAL BE APPROVED?  
2           FOR THE PROPOSAL — YES           \_\_\_\_\_

3           AGAINST THE PROPOSAL — NO       \_\_\_\_\_

4           SECTION 10. The President Pro Tempore of the Senate shall, immediately after  
5 the passage of this order for legislative referendum, prepare and file in accordance with  
6 Section 3 of Article V of the Oklahoma Constitution, one copy of this order for legislative  
7 referendum, including the Ballot Title set forth in SECTION 9, with the Secretary of  
8 State and one copy with the Attorney General.

9           COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 03-26-09 - DO PASS.