STATE OF OKLAHOMA

2nd Session of the 52nd Legislature (2010)

SENATE BILL 1910 By: Ford

AS INTRODUCED

An Act relating to elections; amending 26 O.S. 2001, Sections 2-111, 3-104, 4-110.1, 4-114, 4-115.1, 4-116, 4-120.1, 4-120.2, 4-120.3, as last amended by Section 3, Chapter 307, O.S.L. 2004, 6-102.1, 6-106, 6-111, 7-107, 7-120, 7-127, 7-130, as amended by Section 7, Chapter 307, O.S.L. 2004, 7-132, 7-132.2 and 14-107 (26 O.S. Supp. 2009, Sections 4-120.3 and 7-130), which relate to county and precinct election boards, election administration, voter registration, ballots, conduct of elections and absentee voting; providing alternate procedure for nominations for county election boards; updating statutory references; deleting and modifying references to Oklahoma Election Management System; modifying procedures for removal of voter name from registration database; specifying requirements for removal notice; modifying voters required to be sent address confirmation; modifying procedures for cancellation of voter registration of deceased voter; granting certain authority to funeral director; modifying definition; modifying manner of printing ballot cards for General Election; modifying reference to device for obtaining ballot totals and printouts; allowing voter to insert ballot card into secrecy folder; modifying rules governing ballot counting; recodifying language relating to notary fees for certifying absentee ballots; modifying procedures for certification of voting results; requiring certain notice to accompany absentee ballot; amending 49 O.S. 2001, Section 5, as last amended by Section 2, Chapter 101, O.S.L. 2004 (49 O.S. Supp. 2009, Section 5), which relates to notaries public; prohibiting charging of fee for notarization of official absentee ballot affidavit; repealing 26 O.S. 2001, Sections 7-125, 7-132.1 and

7-133.1, which relate to counting of ballots; and providing an effective date.

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

SECTION 1. AMENDATORY 26 O.S. 2001, Section 2-111, is amended to read as follows:

Section 2-111. The State Election Board shall appoint two members of each county election board, and two alternates, to serve terms of four (4) years each. No later than April 15, 1975, and every four (4) years thereafter, the county central committees of the two political parties with the largest number of registered voters in the state, based upon the latest January 15 registration report, shall each submit to the State Election Board a nominee for membership on the county election board and a nominee to serve as the alternate. The nominations must be submitted in writing and signed by at least two members of each county central committee. <u>If the county central committee for a party in a county fails to submit a nominee or if there is no county central committee for a party in a county, the state central committee for the party may submit to the State Election Board a nominee for membership on the county election board and a nominee to serve as the alternate.</u> The State Election Board shall be confined to the nominees in making appointments, one from each party, to the county election board and one from each party to serve as the alternate. The appointments

shall be made no later than May 1, 1975, and every four (4) years thereafter. If a county or state central committee fails to submit nominees by April 15, the State Election Board shall appoint a member and alternate to the county election board from the ranks of such party within the county. Alternates shall serve on the county election board at any meeting that the member for whom the person is an alternate is unable to attend. In the event of a vacancy, the State Election Board shall, within sixty (60) days after such vacancy occurs, appoint a member of the same party to fill the unexpired term, based on a nomination submitted by the party's county central committee in the manner hereinbefore provided within thirty (30) days after the vacancy occurs. Should a county or state central committee fail to submit a nominee within the prescribed period of time, the State Election Board shall appoint a member of the county election board from the ranks of ~~said~~ the party within the county. Vacancies shall occur when a member fails to attend five consecutive meetings of the board or when a member changes the member's party affiliation. It shall be the duty of the other two members of the board to notify the Secretary of the State Election Board should ~~such~~ a vacancy occur. ~~Said~~ A vacancy shall be filled in the manner hereinbefore provided.

SECTION 2. AMENDATORY 26 O.S. 2001, Section 3-104, is amended to read as follows:

Section 3-104. The cost of rent for polling places, absentee ballot boxes, locks and keys, voting booths and United States flags shall be paid from county funds. The costs of notice and acknowledgement mailings as required in Sections ~~8 and 14~~ 4-103.1 and 4-113 of this ~~act~~ title shall be paid from county funds. The cost of central registries, maps and other materials required to be maintained by the county election board shall be paid from county funds. The cost of other supplies necessary for the conduct of state elections shall be paid from state funds. The purchase and maintenance of computer hardware, software, voting devices and related supplies used in the Oklahoma Election Management System shall be paid from state funds. The cost of confirmation mailings required in Section ~~21~~ 4-120.2 of this ~~act~~ title shall be paid from state funds.

SECTION 3. AMENDATORY 26 O.S. 2001, Section 4-110.1, is amended to read as follows:

Section 4-110.1 A. Voter registration applications may be submitted at any time. However, completed applications received by the State Election Board, any county election board, any agency designated to accept voter registration applications or any motor license agent as part of a driver's license or identification card application twenty-four (24) days prior to an election; any mail application postmarked twenty-four (24) days or less prior to an election or any mail application received without a postmark

nineteen (19) days or less prior to an election shall not be approved for that election if the applicant's residence is located within the geographical boundaries of the entity for which the election is being conducted.

B. No more than seven (7) days after any election, each county election board secretary for the county of the applicant's residence shall mail a notice of disposition as required in Section ~~8~~ 4-103.1 of this ~~act~~ title to all persons whose voter registration applications were received twenty-four (24) days or less prior to the election.

C. Registration for voting purposes occurs when a completed voter registration application is approved by the county election board secretary for the county ~~or~~ of the applicant's residence and on the date that the information is entered into the ~~Oklahoma Election Management System~~ voter registration database for the county of the applicant's residence.

D. Registration for candidate filing or party affiliation purposes occurs at the earliest time the completed voter registration application is received at the State Election Board, any county election board, any agency designated to accept voter registration applications or any Motor License Agent as part of a driver's license or identification card application provided that the application subsequently is approved by the secretary of the county election board for the county of the applicant's residence;

or, in the case of mail applications, registration for candidate filing or party affiliation purposes shall occur at the time when the completed voter registration application is postmarked provided that the application subsequently is approved by the secretary of the county election board for the county of the applicant's residence; or in the case of a mail application received without a postmark, registration for candidate filing or party affiliation purposes shall occur at the earliest time when the completed application is received by the State Election Board or any county election board provided that the application is subsequently approved by the secretary of the county election board for the county of the applicant's residence.

SECTION 4. AMENDATORY 26 O.S. 2001, Section 4-114, is amended to read as follows:

Section 4-114. The secretary of each county election board shall cause the registration information of every registered voter in ~~said~~ the county to be entered into the ~~Oklahoma Election Management System~~ voter registration database.

SECTION 5. AMENDATORY 26 O.S. 2001, Section 4-115.1, is amended to read as follows:

Section 4-115.1 The secretary of each county election board is authorized to correct clerical or administrative errors in the ~~Oklahoma Election Management System~~ voter registration database and to conform voter registration information to recognized standards,

as determined by the Secretary of the State Election Board, for promotion of uniformity and consistency in address designations. No corrections shall be made to the original registration form signed by the voter except as provided by law or rule of the State Election Board.

SECTION 6. AMENDATORY 26 O.S. 2001, Section 4-116, is amended to read as follows:

Section 4-116. If a registered voter of a county changes his or her residence to another precinct within the same county, he or she shall be entitled to transfer his or her registration in a manner prescribed by the Secretary of the State Election Board. The secretary of the county election board shall change the registration information of such registered voter in the ~~Oklahoma Election Management System~~ voter registration database and shall issue a new voter identification card to the voter. Information given by the voter shall be under oath.

SECTION 8. AMENDATORY 26 O.S. 2001, Section 4-120.1, is amended to read as follows:

Section 4-120.1 A registered voter may have his or her name removed from the ~~registries of a county~~ voter registration database by executing a ~~personally signed and notarized~~ written notice for same to the Secretary of the State Election Board or any county election board. Such written notice shall be personally signed by

the voter and either shall be notarized or shall be witnessed by two persons whose names and addresses shall be included on the notice.

SECTION 9. AMENDATORY 26 O.S. 2001, Section 4-120.2, is amended to read as follows:

Section 4-120.2 A. No later than June 1 of each odd-numbered year and for the previous twenty-four (24) months, any voter for whom a first-class mailing from the county election board was returned, any voter identified by the Secretary of the State Election Board as a potential duplicate voter in another county in this state or in another state, any voter who has surrendered his or her Oklahoma driver license to the Department of Public Safety upon being issued a driver license in another state, and any active registered voter who did not vote in the second previous general election or any election conducted by a county election board since the second previous general election and who has initiated no voter registration change, shall be sent an address confirmation mailing prescribed by the Secretary of the State Election Board and paid for by the state. Voters who do not respond to the confirmation mailing or whose mailing is returned as nonforwardable shall be designated as inactive sixty (60) days after the mailing. An inactive voter's status shall be changed to active under the following conditions:

1. With any registration change initiated by the voter; or

2. By voting in any election conducted by a county election board.

An inactive voter who does not vote in any election conducted by a county election board during the period beginning on the date of the confirmation mailing and ending on the day after the date of the second successive general election for federal office shall be removed as a registered voter and all the information on that voter shall be destroyed. Each county election board secretary shall maintain a list of the names and addresses of all persons sent a confirmation mailing as described in this section and information on whether or not each such person has responded to the notice. ~~Said~~ The list shall be maintained for twenty-four (24) months following the date of the second successive federal general election after the date of the confirmation mailing.

B. The secretary of each county election board shall cause all inactive voters in a precinct to be identified on the precinct registry.

C. No later than June 1 of each odd-numbered year, the Secretary of the State Election Board shall identify duplicate voter registrations in the state and shall direct appropriate county election board secretaries to cancel the voter registration of all but the latest registration of duplicate voter registrations. Each county election board secretary shall maintain for twenty-four (24) months a list of the names and addresses of all canceled duplicate voter registrations. For the purposes of this subsection, duplicate

voter registrations are those registrations which contain the following identical information on more than one registration:

1. First name, middle name or initial, last name, and date of birth;

2. Driver license or social security number; or

3. Last name, date of birth, and the last four digits of the social security number.

SECTION 10. AMENDATORY 26 O.S. 2001, Section 4-120.3, as last amended by Section 3, Chapter 307, O.S.L. 2004 (26 O.S. Supp. 2009, Section 4-120.3), is amended to read as follows:

Section 4-120.3 The State 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~~ voter registration database. 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 receipt of a certified copy of a death certificate or 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 or witnessed by two persons whose signatures and addresses shall appear on the form, 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, or the administrator of a veterans center established pursuant to Title 72 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 or shall be witnessed by two persons whose signatures and addresses shall appear on the form. A funeral director, as defined in Section 396.2 of Title 59 of the Oklahoma Statutes, 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 resident of the county. The funeral director's signature on such form either shall be notarized or shall be witnessed by two persons whose signatures and addresses shall appear on the form. Upon receipt of such form or any notice setting forth substantially the same facts and witnessed or notarized as provided in this section, the secretary of the county election board shall be authorized to cancel the voter registration of such deceased person.

SECTION 11. AMENDATORY 26 O.S. 2001, Section 6-102.1, is amended to read as follows:

Section 6-102.1 As used in this title, the following definitions shall apply to counties using voting devices:

1. "Ballot card" means a ~~card~~ printed paper document upon which votes may be marked;

2. "Ballot" means a category of offices or measures, one or more of which can appear on a ballot card;

3. "Count" means the process by which votes marked on a ballot card are examined manually or electronically by a voting device and a determination is made as to whom or for what the votes are cast;

4. "Election results storage medium" means the apparatus which contains electronic instructions for a voting device and in which electronic results are stored;

5. "Results" means the manual or electronic tabulation of the votes counted for a candidate or issue;

~~5.~~ 6. "Seal" means a device or devices prescribed by the Secretary of the State Election Board to permit detection of opening or tampering with contents of voting devices, ballot boxes, transfer cases and ~~vote data packs~~ election results storage media;

~~6.~~ 7. "Transfer case" means a container, prescribed by the Secretary of the State Election Board, which can be closed and sealed and is constructed so as to, when sealed, prevent accidental opening or opening by any other reasonable means, except by removing, breaking, tearing or otherwise damaging the seal so if opened by any means it would be obvious in the normal situation that the container had been subject to tampering;

~~7. "Vote data pack" means the apparatus which contains electronic instructions for a voting device and in which electronic results are stored;~~ and

8. "Voting device" means an optical scanning apparatus that electronically counts votes marked on ballot cards and produces printed results.

SECTION 12. AMENDATORY 26 O.S. 2001, Section 6-106, is amended to read as follows:

Section 6-106. The official ballot card for the General Election shall be printed so that the nominees of the various political parties and nonpartisan candidates will appear in ~~columns~~ order as determined according to this section. For each ballot for which there are partisan candidates, the candidates of the

recognized parties shall be printed ~~in the~~ first ~~position~~ in lot order followed by candidates of unrecognized parties in lot order followed by independent candidates in lot order. Candidates of recognized and unrecognized parties shall be printed in the lot order of their respective party. Each political party shall have the right to select an emblem to be used in designating its candidates on the ballot; provided, however, that no party shall be allowed to use the coat of arms or seal of Oklahoma or of the United States, or the respective flags thereof. Until changed by resolution of a political party, in state convention, the emblem of the Democratic party shall be a rooster and that of the Republican party an eagle. Change in a party emblem shall be authorized by the Secretary of the State Election Board only after receipt of written notice of ~~said~~ the change by ~~said~~ the Secretary from the state central committee of a party. At the top of each ballot on which there are partisan candidates shall appear the name of each recognized party with the emblem of ~~said~~ the party in lot order as prescribed by the Secretary of the State Election Board. Below ~~said~~ the name and emblems shall be a line extending across the entire ballot. The name of the office entitled to the first place ~~in the column~~, preceded by the word "for~~,"~~ ", shall appear in bold type, as "For Governor". Immediately after same shall be the names of the nominees for such office printed with the name of the nominee's party followed by candidates who file as Independents for such

office printed with the word "Independent". The list shall be continued ~~down each column~~, naming the officers in the order in which they are set out by the Constitution and statutes, until all the nominees are given space. The ~~columns~~ ballots shall be ~~setoff~~ set off with well-defined lines or by other means as prescribed by the Secretary of the State Election Board.

SECTION 13. AMENDATORY 26 O.S. 2001, Section 6-111, is amended to read as follows:

Section 6-111. All ballots for Primary, Runoff Primary and General Elections shall be printed with a stub so perforated that the ballot may be easily detached ~~therefrom~~ from the stub. Upon the stub shall be printed the number of the stub and the words, "Primary Election Ballot", "Runoff Primary Election Ballot" or "General Election Ballot", as the case may be; in the event of Primary and Runoff Primary Elections, the name of the political party shall be printed above ~~said~~ the words.

SECTION 14. AMENDATORY 26 O.S. 2001, Section 7-107, is amended to read as follows:

Section 7-107. When all else is in readiness for the opening of the polls, the inspector shall, in view of the judge, clerk and any registered voters at the polling place, confirm that the ballot box is empty and locked and shall cause the voting device to print out a paper tape to verify that no votes have been counted. This tape shall remain attached to the voting device and in evidence

throughout the voting process. The key or other device used for obtaining printed totals shall be retained by the inspector.

SECTION 15. AMENDATORY 26 O.S. 2001, Section 7-120, is amended to read as follows:

Section 7-120. Before leaving the voting booth, the voter may insert ~~his~~ the ballot card into a secrecy ~~envelope~~ folder in such a manner that ~~his~~ the voter's votes cannot be seen. The voter then shall insert ~~his~~ the ballot card in the voting device. The voter thereupon shall immediately leave the polling place.

SECTION 16. AMENDATORY 26 O.S. 2001, Section 7-127, is amended to read as follows:

Section 7-127. The following rules shall govern the counting and recounting of votes:

1. If the name of any person is written on a ballot, ~~said~~ the name shall not be counted;

2. ~~Any~~ A valid vote shall be any mark prescribed by the Secretary of the State Election Board made by voters indicating the voter's choice of party, candidate or issue on a ballot ~~shall be valid~~. Such marking shall be hereinafter referred to as "valid markings". Such valid markings located otherwise on the ballot shall not be counted;

3. Marks used to designate the intention of the voter, other than those herein defined as valid markings, shall not be counted;

4. Failure to properly mark a ballot as to one or more candidates or questions shall not of itself invalidate the entire ballot if the same has been properly marked as to other candidates or questions;

5. A valid marking marked for a political party shall be counted as a vote for each of ~~said~~ the political party's candidates on that ballot, except that a valid marking marked for a candidate's name shall take precedence, for that office, over a valid marking for a political party. Provided, further, that if valid markings are marked for more than one political party on a ballot, ~~said~~ the ballot shall not be counted for any party offices thereon; and

6. Any ballot or part of a ballot on which it is impossible to determine the voter's choice of candidate shall be void as to the candidate or candidates thereby affected.

SECTION 17. AMENDATORY 26 O.S. 2001, Section 7-130, as amended by Section 7, Chapter 307, O.S.L. 2004 (26 O.S. Supp. 2009, 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. 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. 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. 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 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. ~~Each absentee ballot shall state clearly that it is illegal to charge a fee for the use of a notary public for certifying an absentee ballot.~~

SECTION 17. AMENDATORY 26 O.S. 2001, Section 7-132, is amended to read as follows:

Section 7-132. After the last voter has voted, the inspector shall insert the key <u>or other device</u> in the voting device and obtain ~~a number, prescribed by the Secretary of the State Election Board, of~~ printouts of results from the ~~vote data pack~~ <u>election results storage medium. The Secretary of the State Election Board shall prescribe the number of such printouts to be obtained</u>. The

inspector, judge and clerk shall each sign all printouts which shall be certificates that the results of the precinct are true and correct. The printed certificate of vote and electronic results of the ~~vote data pack~~ election results storage medium shall be official results of the precinct. The inspector shall cause one copy of each certificate to be posted on the door or entrance of the polling place and shall cause one copy of each certificate to be transmitted forthwith to the Secretary of the State Election Board.

SECTION 18. AMENDATORY 26 O.S. 2001, Section 7-132.2, is amended to read as follows:

Section 7-132.2 ~~In counties using voting devices, after vote data pack~~ After the results have been printed from the election results storage medium, the voting device shall be unlocked and the seal removed from the ~~vote data pack~~ election results storage medium compartment. The ~~vote data pack~~ election results storage medium shall be removed and prepared for transfer to the county election board as prescribed by the Secretary of the State Election Board.

SECTION 20. AMENDATORY 26 O.S. 2001, Section 14-107, is amended to read as follows:

Section 14-107. ~~Said~~ Absentee ballots must be accompanied by:

1. A plain opaque envelope in which voted ballots must be placed by the voter;

2. An envelope bearing an affidavit stating that the voter is qualified to vote, that ~~he~~ the voter has personally marked the

ballots, and has not exhibited the marked ballots to any other person; ~~and~~

3. A return envelope addressed to the secretary of the county election board; and

4. A notice that it is illegal for a Notary Public in this state to charge a fee to notarize an official absentee ballot affidavit.

SECTION 22. AMENDATORY 49 O.S. 2001, Section 5, as last amended by Section 2, Chapter 101, O.S.L. 2004 (49 O.S. Supp. 2009, Section 5), is amended to read as follows:

Section 5. Every notary shall obtain a notarial seal containing the words "State of Oklahoma" and "Notary Public" and the notary's name. This seal may be either a metal seal which leaves an embossed impression or a rubber stamp used in conjunction with a stamp pad and ink. Each notary shall authenticate all official acts, attestations, and instruments with this seal; and shall add to the notary's official signature, the commission number of the notary and the date of expiration of the commission of the notary. Failure to add the commission number or the date of expiration of the commission shall not affect the recordability of the instrument or the notice given by such recording. This date and commission number may be a part of the stamp or seal. If any notary public shall neglect or refuse to attach to the notary's official signature the date of expiration of the notary's commission, the notary shall be

deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding Fifty Dollars ($50.00). The maximum fee a notary may charge and collect for each notarial act is Five Dollars ($5.00), except no fee shall be charged for the notarization of an official absentee ballot affidavit.

SECTION 23. REPEALER 26 O.S. 2001, Sections 7-125, 7-132.1 and 7-133.1, are hereby repealed.

SECTION 24. This act shall become effective January 1, 2011.

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