HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 53rd Legislature

ENGROSSED SENATE
BILL NO. 328 By: Ford of the Senate

and

Banz of the House

An Act relating to election procedures; amending 26 O.S. 2001, Sections 6-102.1, as amended by Section 11, Chapter 189, O.S.L. 2010, 6-105, 6-106, as amended by Section 12, Chapter 189, O.S.L. 2010, 6-107, 6-110, 6-114, 6-117, 7-120, as amended by Section 15, Chapter 189, O.S.L. 2010, 7-122, 7-129.2, 7-134, 7-134.1, 8-114, as last amended by Section 1, Chapter 151, O.S.L. 2009, 9-115, 14-125, 22-101, 22-102, 22-104, 22-105, 22-109 and 22-110 (26 O.S. Supp. 2010, Sections 6-102.1, 6-106, 7-120 and 8-114), which relate to conduct of elections; stating legislative intent and findings; prohibiting local elections on certain dates; modifying and deleting definitions; changing references to ballot cards; modifying ballot contents; modifying procedure for determination of order of names on ballot; modifying requirements for identification of bound ballots; modifying requirements relating to sample ballots; providing that certain procedures relating to substitute ballots apply to absentee ballots; modifying election officials required to record certain action; modifying circumstances under which recount occurs; requiring recount on election night; providing that certain procedures apply to voting device testing; modifying circumstances under which election emergency may be declared; modifying duties of Secretary of State Election Board; modifying provisions applicable in election emergency; providing for counting of ballots if no counters authorized; specifying duties of secretary of county

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election board; repealing 26 O.S. 2001, Sections 3-101.1, 22-103, 22-107, 22-108, 22-111, 22-112, 22-113, 22-114, 22-115 and 22-116, which relate to the Oklahoma Election Management System and declared election emergency procedures; providing for noncodification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

It is the intent of the Legislature that the current Oklahoma Election Management System be replaced with a new system consistent with the requirements of the federal Help America Vote Act. For this purpose, the Legislature finds that several amendments to current law are necessary to conform with federal law and to enable the new system to be implemented in time to be used for the 2012 election cycle. The Legislature further finds that it is necessary to suspend the holding of local elections in the months of December of 2011 and January of 2012 to permit an orderly transition to the new system.

SECTION 2. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

Notwithstanding the provisions of Section 3-101 of Title 26 of the Oklahoma Statutes or any other provision of state law, no county, school district, municipality, or other local entity shall be permitted to schedule regular or special elections to be

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conducted by the county election board on the second Tuesday of December 2011 or on the second Tuesday of January 2012, in order that the State Election Board and county election boards may complete the installation of a new computer hardware, software, and voting device system.

SECTION 3. AMENDATORY 26 O.S. 2001, Section 6-102.1, as amended by Section 11, Chapter 189, O.S.L. 2010 (26 O.S. Supp. 2010, 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 printed paper document upon which votes <u>for various offices or measures</u> 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.~~ <u>3.</u> "Election results storage medium" means the apparatus which contains electronic instructions for a voting device and in which electronic results are stored;

~~5.~~ <u>4.</u> "Results" means the manual or electronic tabulation of the votes counted for a candidate or issue;

~~6.~~ <u>5.</u> "Seal" means a device or devices prescribed by the Secretary of the State Election Board to permit detection of opening

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or tampering with contents of voting devices, ballot boxes, transfer cases and election results storage media;

~~7.~~ 6. "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; and

~~8.~~ 7. "Voting device" means an optical scanning apparatus that electronically counts votes marked on ~~ballot cards~~ ballots and produces printed results.

SECTION 4. AMENDATORY 26 O.S. 2001, Section 6-105, is amended to read as follows:

Section 6-105. At the General Election, each ballot ~~card~~ shall contain a separate ~~ballot~~ section for the following: ~~(1)~~

1. Electors for President and Vice President; ~~(2)~~

2. United States Senators and United States Representatives; ~~(3) state~~

3. State officers; ~~(4)~~

4. Justices of the Supreme Court, Judges of the Court of Criminal Appeals and Judges of the Court of Appeals; ~~(5) district~~

5. District judges and associate district judges; ~~(6) state~~

6. State questions; and ~~(7)~~

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7. State Senators, State Representatives, district attorneys and county officers.

SECTION 5. AMENDATORY 26 O.S. 2001, Section 6-106, as amended by Section 12, Chapter 189, O.S.L. 2010 (26 O.S. Supp. 2010, 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 order as determined according to this section. For each section of the ballot for which there are partisan candidates, the candidates of the recognized parties shall be printed first 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 the change by the Secretary from the state central committee of a party.

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At the top of each ballot on which there are partisan candidates shall appear the name of each recognized party with the emblem of the party in lot order as prescribed by the Secretary of the State Election Board. ~~Below the name and emblems shall be a line extending across the entire ballot.~~ The name of the office entitled to the first place, 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, 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 ~~ballots~~ <u>sections of the ballot</u> shall be set off with well-defined lines or by other means as prescribed by the Secretary of the State Election Board.

SECTION 6. AMENDATORY 26 O.S. 2001, Section 6-107, is amended to read as follows:

Section 6-107. Immediately following the close of the ~~contest~~ <u>filing</u> period prescribed by law, the <u>Secretary of the</u> State Election Board shall determine the order in which the name of each candidate for each of the offices shall appear on the absentee ballots printed ~~by said Board~~ for the Primary Election. The determination shall be at a drawing conducted in a public meeting in which the names of all candidates for each office of each political party shall be drawn

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from a receptacle. In the event that a candidate withdraws or is removed from the ballot as a result of a successful contest of candidacy after the drawing is conducted, the withdrawn or removed candidate shall be deleted and the order of any remaining candidates in the race shall be adjusted accordingly. The determination of the order of names of candidates on absentee ballots printed by county election boards shall be made in the same manner as provided heretofore for the State Election Board.

SECTION 7. AMENDATORY 26 O.S. 2001, Section 6-110, is amended to read as follows:

Section 6-110. The names of candidates of the several political parties shall be printed on separate ~~ballot cards~~ ballots for the Primary and Runoff Primary Elections, and each ballot ~~card~~ shall be a different color.

SECTION 8. AMENDATORY 26 O.S. 2001, Section 6-114, is amended to read as follows:

Section 6-114. All ballots for a precinct shall be bound in a book or books~~, with the precinct identified on the cover of same, or~~ and must be designated in such a manner as the Secretary of the State Election Board may prescribe to achieve ~~the same~~ identification of a book for a particular precinct.

SECTION 9. AMENDATORY 26 O.S. 2001, Section 6-117, is amended to read as follows:

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Section 6-117. Sample ~~ballot cards~~ ballots for all elections conducted by any county election board shall be prepared as prescribed by the Secretary of the State Election Board and the words "Sample Ballot" shall be printed ~~in letters at least one half (1/2) inch high across~~ on the face of the ballot ~~card~~. Sample ~~ballot cards~~ ballots shall be printed in a sufficient number to be used at each precinct polling place and as otherwise provided by law.

SECTION 10. AMENDATORY 26 O.S. 2001, Section 7-120, as amended by Section 15, Chapter 189, O.S.L. 2010 (26 O.S. Supp. 2010, Section 7-120), is amended to read as follows:

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

SECTION 11. AMENDATORY 26 O.S. 2001, Section 7-122, is amended to read as follows:

Section 7-122. Should a voter spoil any ballot in ~~his~~ an effort to vote the same, ~~he~~ the voter shall fold the ballot ~~card~~ and return it to the clerk. The clerk shall destroy ~~said~~ the ballot ~~card or cards~~ in the presence of the voter and shall issue ~~said~~ the voter another ballot ~~card~~ in the same manner that the first one was provided. The voter must execute an affidavit prescribed by the

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Secretary of the State Election Board in which the voter swears or affirms that he or she spoiled ~~his~~ the original ballot ~~card or cards~~, returned ~~said~~ the ballot ~~card or cards~~ to the clerk, that the clerk destroyed the ballot ~~card or cards~~ in ~~his~~ the voter's presence and that ~~he~~ the voter was issued a new ballot ~~card or cards~~.

SECTION 12. AMENDATORY 26 O.S. 2001, Section 7-129.2, is amended to read as follows:

Section 7-129.2 In the event ~~a~~ an absentee ballot ~~card~~ is mutilated by the voting device and thus not counted during the counting process, then two members of the ~~precinct or~~ county election board of different political party affiliations shall be authorized to mark a substitute ballot ~~card~~ in identical fashion, insofar as is possible. In the event a ballot ~~card~~ is mutilated to such an extent that the two members cannot agree upon how it was marked, it shall be invalidated. Once so marked, the substitute ballot ~~card~~ shall be entered for counting into the voting device. A written record of such action shall be made by the two ~~precinct or~~ county election board members.

SECTION 13. AMENDATORY 26 O.S. 2001, Section 7-134, is amended to read as follows:

Section 7-134. The county election board shall not disturb anything in the transfer case, and the case shall remain sealed and retained by the secretary of the county election board until opened by court order or until it is necessary to open same for use at

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another election, at which time the ballots shall be destroyed; provided, however, that in no case shall the ~~ballot cards~~ ballots be destroyed until thirty (30) days after the election at which they were cast.

SECTION 14. AMENDATORY 26 O.S. 2001, Section 7-134.1, is amended to read as follows:

Section 7-134.1 In counties using voting devices, if on election night the uncounted ~~ballot cards~~ ballots in a precinct exceed two percent (2%) of the total number of persons voting in the precinct or if the voting device has malfunctioned in such a way that there are no totals on the printout or if the printout is illegible or if, due to the malfunction, properly cast ballots placed in the emergency bin were not processed through the device, the county election board is authorized to open the transfer case and to recount the ballots on election night using a preassigned voting device in public view and in the presence of a representative of the sheriff's office. Upon completion of the recount the transfer case shall be resealed by members of the county election board.

SECTION 15. AMENDATORY 26 O.S. 2001, Section 8-114, as last amended by Section 1, Chapter 151, O.S.L. 2009 (26 O.S. Supp. 2010, 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

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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~~ the ballots 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. The county election board shall have the authority, by a majority vote, to determine if a ballot is valid and if the ballot should be counted. Each contestant is entitled to have a watcher present at each place where a voting device is being used. ~~Said~~ The 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~~ the 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~~ the ballots 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

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in Primary, Runoff Primary and General Elections. The county election board shall supervise such counting and its decision shall be final in all cases. The county election board shall have the authority, by a majority vote, to determine if a ballot is valid and if the ballot should be counted. 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~~ The 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~~ the challenge shall be final. Each group of counters shall have representation of at least two political parties, where possible. ~~Said~~ The 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 16. AMENDATORY 26 O.S. 2001, Section 9-115, is amended to read as follows:

Section 9-115. Not less than ten (10) days prior to the ~~preparation~~ testing of the voting devices for any partisan election, the secretary of the county election board shall mail a notice to the county ~~chairman~~ chair of each political party stating the time

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and place the voting devices will be ~~prepared~~ tested for the election and stating a time at which one representative of each political party shall be afforded an opportunity to see that the voting devices are in proper condition for use in the election. The representatives may observe the ~~programming~~ testing of the voting devices but shall not interfere with the employees or assume any of their duties.

SECTION 17. AMENDATORY 26 O.S. 2001, Section 14-125, is amended to read as follows:

Section 14-125. A. On the day of the election at such time as the secretary of the county election board may prescribe, the county election board shall meet at the county courthouse or at the offices of the county election board if located elsewhere to count absentee ballots in the following manner:

The ballot box containing the plain opaque envelopes shall be shaken to mix the envelopes, after which the box shall be opened, the envelopes removed, and the ballots counted by a voting device assigned to count absentee ballots and operated by persons appointed by the secretary of the county election board.

B. The procedure described in this section shall be repeated as is necessary until all ballots have been counted. In no event shall fewer than twelve ~~ballot cards~~ ballots be counted at any time, unless fewer than twelve ~~ballot cards~~ ballots are received in total or after the first count is made. The results of ~~said~~ the absentee

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ballots shall not be announced earlier than 7:00 p.m. on the day of the election.

SECTION 18. AMENDATORY 26 O.S. 2001, Section 22-101, is amended to read as follows:

Section 22-101. The Secretary of the State Election Board is authorized to declare an election emergency for any area of the state if it becomes impossible to conduct one or more elections using voting devices or in the event that a national or local emergency, either natural or manmade, makes substantial compliance with state and federal election laws impossible or unreasonable. ~~Said~~ The declaration must be made in writing and must specify the county or counties, election or elections and dates covered by the emergency. The Secretary of the State Election Board is authorized to ~~prescribe~~ promulgate rules and procedures for elections conducted under ~~said~~ a declaration consistent with purposes of ~~the General Election~~ state and federal election laws.

SECTION 19. AMENDATORY 26 O.S. 2001, Section 22-102, is amended to read as follows:

Section 22-102. In ~~a declared~~ an election emergency declared by the Secretary of the State Election Board ~~shall declare that either this section or Section 6-106~~, the provisions of Section 6-101 et seq. of this title shall govern ~~General Election~~ ballot printing. ~~The official ballot for the General Election shall be printed so that the nominees of the various political parties and nonpartisan~~

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~~candidates will appear in columns, a column being given to the nominees of each party, and a column being given to nonpartisan candidates. The candidates of the Democratic party shall be printed in the first column, those of the Republican party in the second position column and those of other parties as the State Election Board may direct, giving preference to the party which had the largest number of registered voters in the latest January 15 report. 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 change by said Secretary from the state central committee of a party. At the top of the column shall appear the name of the recognized party; directly below the name of the party the emblem of said party; and directly below said emblem a circle at least one half (1/2) inch in diameter. The name of the office entitled to the first place in the column, preceded by the word "for", shall next appear in bold type, as "For Governor". Immediately after same shall be the names of the party's nominees for such office, preceded by a square one fourth~~

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~~(1/4) inch in size. The initial or the first letter of the name of a candidate shall have only the space of an "em" between it and this square, and there shall be no line between the name of an office and that of such candidate; but there shall be a line following the name of a candidate and the name of the next office in order down the column. 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. No party's list of candidates shall occupy more than one column, and the columns shall be setoff with well defined lines. At the top of the column designated for nonpartisan candidates, except in the case of judicial officers, shall appear the word "Independent"; provided further, that no party emblem and no circle shall appear between the word "Independent" and the line below same. Each type of ballot may be printed on a different color of paper, said color to be designated by the Secretary of the State Election Board.~~ The Secretary of the State Election Board shall be authorized to permit any changes to the ballot format necessary as a result of the election emergency.

SECTION 20. AMENDATORY 26 O.S. 2001, Section 22-104, is amended to read as follows:

Section 22-104. A. In a declared election emergency when the ballots are counted manually, the counting of ballots shall be conducted in accordance with the requirements of Sections 7-127 and

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22-105 of this title and the procedure prescribed by the Secretary of the State Election Board so as to ensure accuracy and promptness in determining the result. Provided, however, that the following provisions shall be incorporated into ~~said~~ the prescribed procedure:

1. In elections for which counters have been authorized, two counters, of different political parties if possible, shall call from the ballots the names of the candidates voted for, while two other counters, also of different political parties if possible, shall record the votes upon the official tally sheets. Only pencils may be used in recording the vote~~.~~;

2. If only two counters are authorized for an election, they shall be of different political parties, if possible. Both counters shall examine the ballots at the same time, while calling out the vote and recording ~~said~~ the vote upon the tally sheets in the manner prescribed by the Secretary of the State Election Board; and

3. If no counters are authorized for an election, the judge and clerk shall count the ballots cast in the precinct, and the county election board chair and vice-chair shall count the absentee ballots.

B. In a declared election emergency when ballots are to be counted with voting devices, the counting of ballots shall be conducted in accordance with the requirements of Sections 7-127 and 22-105 of this title and the procedures prescribed by the Secretary

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of the State Election Board so as to ensure the accuracy and promptness in determining the result.

C. It shall be unlawful for any person to divulge the progress of the count until after all ballots have been counted and the results of ~~said~~ the count have been certified.

SECTION 21. AMENDATORY 26 O.S. 2001, Section 22-105, is amended to read as follows:

Section 22-105. In a declared election emergency, the Secretary of the State Election Board shall ~~declare that either this section or Section 7-107 of this title shall~~ prescribe procedures to govern the counting and recounting of votes~~:~~

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

~~2. An "X", cross, or two lines that meet, including the so-called "check mark", the intersection or point of meeting of which shall be within or on the line of the proper circle or square, 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. Such valid markings shall include a circle or square which has been blackened in ink, even if the entire circle or square is not filled and even if the blackened portion may extend beyond the boundaries of the circle or square;~~

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

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~~4. Valid markings shall be counted even though one or both lines thereof shall be duplicated, provided that the lines intersect or meet within or on the line of the proper circle or square;~~

~~5. 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, unless such improper marking shall constitute a distinguishing mark;~~

~~6. A valid marking marked in the circle under the emblem of a political party shall be counted as a vote for each of said political party's candidates on that ballot card, except that a valid marking marked in the square beside a candidate's name shall take precedence, for that office, over a valid marking in the circle under the emblem of a political party. Provided, further, that if valid markings are marked in the circles under the emblems of more than one political party on a ballot, said ballot shall not be counted for any offices thereon; and~~

~~7. 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~~. Such procedures for the counting or recounting of ballots shall follow, as nearly as is practicable, the provisions set forth in Section 7-127 of this title.

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SECTION 22. AMENDATORY 26 O.S. 2001, Section 22-109, is amended to read as follows:

Section 22-109. A. In a declared election emergency when the ballots are to be counted manually, at the conclusion of the official count, the counters shall execute certificates of vote wherein ~~said~~ the counters attest to the correctness of the totals. 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. The secretary of the county election board shall cause one copy of each absentee certificate of vote to be posted on the door of the county election board office.

B. In a declared election emergency when ballots are to be counted with voting devices, the certificates of vote shall be produced as required by Section 7-132 of this title and the procedures prescribed by the Secretary of the State Election Board.

SECTION 23. AMENDATORY 26 O.S. 2001, Section 22-110, is amended to read as follows:

Section 22-110. In a declared election emergency, all ballots and all materials used in conducting the official count shall be placed in ~~the~~ a ballot transfer box. ~~Said~~ The ballot transfer box shall be ~~locked~~ sealed in the manner prescribed by the Secretary of the State Election Board, and the inspector shall return it, along

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with all other election materials and a copy of each certificate of vote, forthwith to the county election board.

SECTION 24. REPEALER 26 O.S. 2001, Sections 3-101.1, 22-103, 22-107, 22-108, 22-111, 22-112, 22-113, 22-114, 22-115 and 22-116, are hereby repealed.

SECTION 25. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 04-07-2011 - DO PASS.

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