

1 **SENATE FLOOR VERSION**

2 February 20, 2013

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 869

By: Bingman of the Senate

and

Watson of the House

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8
9 An Act relating to voting; amending 26 O.S. 2011,
10 Sections 6-109, 6-116, 7-129.2, 14-105, 14-110.1, 14-
11 115.4, 14-118, 14-118.1, 14-123 and 14-125, which
12 relate to ballots and voting procedures; modifying
13 procedures for determination of order of names on
14 ballots; specifying authority and duties of Secretary
15 of the State Election Board; modifying procedures
16 relating to ballots that cannot be read by voting
17 device; requiring certain matters to be brought
18 before election board; modifying procedures to apply
19 for absentee ballot; allowing certain registered
20 voters to request emergency absentee ballots and
21 providing procedures; modifying days and hours during
22 which in-person absentee voting allowed; allowing
23 designation of additional polling places; modifying
24 references to vote data packs; modifying statutory
references; modifying date upon which counting of
absentee ballots may begin; providing procedures;
specifying duties of county sheriff; providing for
codification; and providing an effective date.

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

SECTION 1. AMENDATORY 26 O.S. 2011, Section 6-109, is
amended to read as follows:

1 Section 6-109. On all Primary and Runoff Primary Election
2 ballots, except absentee ballots, the names of the candidates for
3 each office shall be rotated in such a manner that all candidates'
4 names appear in each position on ~~said~~ the ballots an equal number of
5 times, to the extent practicable. Provided, however, the names of
6 candidates for judicial, school, city and town offices shall be
7 placed on the ballot according to lot.

8 SECTION 2. AMENDATORY 26 O.S. 2011, Section 6-116, is
9 amended to read as follows:

10 Section 6-116. A. As soon as practicable, the State Election
11 Board ~~and~~ or each county election board, when ballots are printed by
12 a county election board, shall cause to be printed a sufficient
13 number of absentee ballots, prepared as nearly as ~~practical~~
14 practicable in the same manner as provided for other ballots for the
15 Primary, Runoff Primary and General Elections, in time for ~~said~~ the
16 ballots to be issued during the time prescribed by law.

17 B. The Secretary of the State Election Board may authorize the
18 use of regular ballots as absentee ballots in any county for any
19 election. In the event that regular ballots are authorized for use
20 as absentee ballots at any election, the first order of rotation of
21 candidate names for all partisan offices in Primary Elections shall
22 be determined as outlined in Section 6-107 of this title and the
23 candidate names shall be rotated to the extent practicable on all
24 ballots printed for the election. The first order of rotation of

1 candidate names for all partisan offices in the Runoff Primary
2 Election shall be determined as outlined in Section 6-108 of this
3 title and the candidate names shall be rotated to the extent
4 practicable on all ballots printed for the election. Regular
5 ballots used as absentee ballots shall not be required to be
6 designated on their face as absentee ballots.

7 SECTION 3. AMENDATORY 26 O.S. 2011, Section 7-129.2, is
8 amended to read as follows:

9 Section 7-129.2. A. In the event an absentee ballot is
10 mutilated, defaced or damaged in a manner that it cannot be read by
11 the voting device and thus not counted during the counting process,
12 then two members of the county election board of different political
13 party affiliations or two members of an absentee voting board under
14 the supervision of the county election board shall be authorized to
15 mark a substitute ballot in identical fashion, insofar as is
16 possible. ~~In the event a ballot is mutilated to such an extent that~~
17 ~~the two members cannot agree upon how it was marked, it shall be~~
18 ~~invalidated.~~ Once so marked, the substitute ballot shall be entered
19 for counting into the voting device. A written record of such
20 action shall be made by the two county election board members.

21 B. In the event of an absentee ballot that was delivered
22 electronically to a voter as described in Section 14-118 of this
23 title, or an absentee ballot that was received from a voter by
24 facsimile device as described by Section 14-118.1 of this title, and

1 the ballot cannot be read by the voting device, then two members of
2 the county election board of different political party affiliations
3 or two members of an absentee voting board under the supervision of
4 the county election board shall be authorized to mark a substitute
5 ballot in identical fashion, insofar as is possible. Once so
6 marked, the substitute ballot shall be entered for counting into the
7 voting device. A written record of such action shall be made by the
8 two county election board members.

9 C. In the event there is a disagreement about how a substitute
10 ballot should be marked for any race, the matter shall be brought
11 immediately before the full county election board, which shall vote
12 to decide how to mark the ballot.

13 SECTION 4. AMENDATORY 26 O.S. 2011, Section 14-105, is
14 amended to read as follows:

15 Section 14-105. Any registered voter may apply for an absentee
16 ballot in person at the county election board, by United States
17 mail, by telegraph ~~or~~, by facsimile device as defined in Section
18 1862 of Title 21 of the Oklahoma Statutes or by a means of
19 electronic communication designated by the Secretary of the State
20 Election Board. The Secretary of the State Election Board shall
21 prescribe a form to be used for ~~said~~ the application, although any
22 application setting forth substantially the same facts shall be
23 valid.

24

1 SECTION 5. AMENDATORY 26 O.S. 2011, Section 14-110.1, is
2 amended to read as follows:

3 Section 14-110.1. A registered voter who swears or affirms that
4 the voter is physically unable to vote in person at the precinct on
5 the day of the election because the voter is:

- 6 1. Physically incapacitated; or
 - 7 2. Charged with the care of another person who is physically
8 incapacitated and who cannot be left unattended;
- 9 may apply for an absentee ballot by United States mail, by telegraph
10 ~~or,~~ by facsimile device as defined by Section 1862 of Title 21 of
11 the Oklahoma Statutes or by a means of electronic communication
12 designated by the Secretary of the State Election Board. The
13 Secretary of the State Election Board shall prescribe a form to be
14 used for ~~said~~ the application, although any application setting
15 forth substantially the same facts shall be valid.

16 SECTION 6. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 14-115.6 of Title 26, unless
18 there is created a duplication in numbering, reads as follows:

19 A. A registered voter who, within ten (10) days preceding an
20 election, is deployed as a first responder or emergency worker to
21 assist with the rescue, recovery, or relief efforts of a declared
22 natural disaster or state of emergency, may make a written request
23 for an emergency absentee ballot in a form prescribed by the
24 Secretary of the State Election Board. The request shall be signed

1 by the voter and shall be provided by the voter to the secretary of
2 the county election board in the county where the voter is
3 registered.

4 B. Upon receipt of the voter's request, the secretary of the
5 county election board shall issue to the voter the appropriate
6 ballots and envelopes required for voting an emergency absentee
7 ballot. Provided, the voter shall present proof of identity as
8 required by Section 7-114 of this title.

9 C. The ballots must be returned in person by the voter, by
10 United States mail, or by other means of delivery approved by the
11 Secretary of the State Election Board, to the secretary of the
12 county election board no later than 7:00 p.m. on the day of the
13 election.

14 D. Upon return of the absentee ballots, the secretary of the
15 county election board shall cause the ballots to be processed in the
16 same manner as is prescribed for other absentee ballots.

17 E. The Secretary of the State Election Board shall promulgate
18 rules to implement the procedures described in this section.

19 SECTION 7. AMENDATORY 26 O.S. 2011, Section 14-115.4, is
20 amended to read as follows:

21 Section 14-115.4. A. 1. A registered voter may apply for an
22 in-person absentee ballot at a location designated by the secretary
23 of the county election board from 8 a.m. to 6 p.m. on Thursday and
24 Friday ~~and Monday~~ immediately preceding any election and from ~~8~~ 9

1 a.m. to ± 2 p.m. on Saturday immediately preceding a state or
2 federal election. As part of the application for an in-person
3 absentee ballot such registered voter shall swear or affirm that the
4 voter has not voted a regular mail absentee ballot and that the
5 voter will not vote at the regular polling place in the election for
6 which the in-person absentee ballot is requested.

7 2. The secretary of the county election board in counties with
8 one hundred thousand (100,000) or more registered voters may
9 designate more than one location as an in-person absentee polling
10 place for an election, subject to the approval of and pursuant to
11 the rules and procedures prescribed by the Secretary of the State
12 Election Board.

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

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

24

1 C. One or more absentee voting boards shall be on duty ~~from 8~~
2 ~~a.m. to 6 p.m.~~ at the in-person absentee polling place on ~~Friday and~~
3 ~~Monday immediately preceding any election and from 8 a.m. to 1 p.m.~~
4 ~~on Saturday immediately preceding a state or federal election~~ the
5 days and during the hours set forth in subsection A of this section.

6 If the secretary of a county election board receives an application
7 from a registered voter requesting to vote by in-person absentee
8 ballot the secretary shall cause to be implemented the following
9 procedures:

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

13 2. The voter must sign an in-person absentee voter record, and
14 the signature of the voter on such record must be certified by both
15 members of the absentee voting board, except that the secretary of
16 the county election board and one other member of the absentee
17 voting board may certify the signature of another member of the
18 absentee voting board;

19 3. The voter must mark the ballots of the voter in the manner
20 provided by law in the presence of the absentee voting board, but in
21 such a manner as to make it impossible for any person other than the
22 voter to ascertain how such ballots are marked. Insofar as is
23 possible, the voting procedure shall be the same as if the voter
24 were casting a vote in person at a precinct;

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

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

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

23 ~~7.~~ If there is a malfunction in such a way that the ~~vote data~~
24 ~~pack~~ electronic results storage media used for in-person absentee

1 voting will not function, the sheriff is authorized to return the
2 transfer cases containing in-person absentee ballots to the county
3 election board to be recounted as provided in Section 7-134.1 of
4 this title.

5 SECTION 8. AMENDATORY 26 O.S. 2011, Section 14-118, is
6 amended to read as follows:

7 Section 14-118. A. When an application for an absentee ballot
8 pursuant to Section ~~14-117~~ 14-142 of this title is received by the
9 secretary of a county election board, it shall be the duty of the
10 secretary to transmit by United States mail, by facsimile device as
11 defined in Section 1862 of Title 21 of the Oklahoma Statutes, or as
12 provided in subsection B of this section the ballots which the
13 elector has requested and is entitled to receive. When an
14 application for an absentee ballot is received at least forty-five
15 (45) days before an election involving state or federal offices, the
16 absentee ballot shall be transmitted by mail, by electronic mail, or
17 by other means of electronic communication, as provided in this
18 section, or by facsimile device as provided in Section 14-118.1 of
19 this title, not less than forty-five (45) days preceding the
20 election. When an application for an absentee ballot for an
21 election involving state or federal offices is received less than
22 forty-five (45) days preceding the election, the absentee ballot
23 shall be transmitted by mail, by electronic mail, or by other means
24 of electronic communication, as provided in this section, or by

1 facsimile device as provided in Section 14-118.1 of this title,
2 within forty-eight (48) hours of receipt of the application.

3 B. The secretary of the county election board may transmit
4 balloting materials for any state or federal election, or for any
5 other election as designated by the Secretary of the State Election
6 Board as provided in subsection D of this section, by electronic
7 mail or by other means of electronic communication in a form and
8 manner prescribed by the Secretary of the State Election Board, if
9 the voter:

10 1. Is a Federal Post Card Application registrant and is
11 eligible to receive an absentee ballot as provided by law;

12 2. Provides an electronic mail address; and

13 3. Requests that balloting materials be sent by electronic
14 mail.

15 If the secretary of the county election board transmits a ballot
16 to a voter by electronic mail or by other means of electronic
17 communication as provided in this subsection, the secretary shall
18 amend the voter's federal postcard application for future elections
19 to include the voter's electronic mail address.

20 C. An electronic mail address provided under this section is
21 confidential and does not constitute public information for purposes
22 of the Oklahoma Open Records Act. The secretary of the county
23 election board shall ensure that an electronic mail address provided
24 under this section is excluded from disclosure.

1 D. The Secretary of the State Election Board shall determine if
2 balloting materials for any election other than a state or federal
3 election may be produced in a form which would allow them to be
4 transmitted by electronic mail or by other means of electronic
5 communication. If so, the Secretary shall so designate them. If
6 such designation is not made, the balloting materials may be
7 transmitted to the voter as provided in subsection A of this
8 section.

9 E. All other provisions of this title that would normally apply
10 to a ballot voted under this title apply to a ballot provided
11 pursuant to the provisions of subsection B of this section.

12 F. The Secretary of the State Election Board may suspend the
13 provisions of subsection B of this section if the Secretary
14 determines that electronic transmission of balloting materials is
15 not in the best interest of the people of this state due to a
16 potential problem with the security of the balloting materials.

17 SECTION 9. AMENDATORY 26 O.S. 2011, Section 14-118.1, is
18 amended to read as follows:

19 Section 14-118.1. In the event that an absentee ballot mailed
20 to a voter identified by Section ~~14-116~~ 14-142 of this title or
21 otherwise transmitted to a voter as provided by law cannot be
22 received by the voter, voted and returned to the secretary of the
23 county election board in the county of the residence of the voter in
24 time to be counted, the secretary shall be authorized to transmit a

1 ballot for federal offices by facsimile device as defined in Section
2 1862 of Title 21 of the Oklahoma Statutes, provided that the voter
3 has made a timely application for an absentee ballot. ~~Instructions~~
4 ~~and an affidavit as required by paragraph 2 of Section 14-119 of~~
5 ~~this title and a statement waiving the right to a secret ballot also~~
6 ~~shall accompany the ballot that was transmitted by facsimile device.~~
7 The voter may transmit by facsimile device the voted ballot only to
8 the location designated by the Secretary of the State Election
9 Board. Regular absentee ballots also shall be mailed to the voter,
10 and if the regular ballots are returned by the voter and received by
11 the secretary of the county election board in time to be counted,
12 the ballot transmitted by facsimile device shall not be counted.
13 The Secretary of the State Election Board shall promulgate rules
14 setting forth procedures and prescribe appropriate forms to transmit
15 and to receive absentee ballots pursuant to this section.

16 SECTION 10. AMENDATORY 26 O.S. 2011, Section 14-123, is
17 amended to read as follows:

18 Section 14-123. At 10 a.m. on Thursday preceding the election,
19 or at such time thereafter as the county election board may desire,
20 the county election board may meet and publicly remove the outer
21 envelopes from all absentee ballots then received, examine and
22 remove properly executed affidavits and place the plain opaque
23 envelopes in a ballot box, locked with three locks. ~~Said~~ The
24 procedure shall be repeated until such time as all ballots have been

1 received. Provided, such procedure may begin at an earlier date
2 upon the written approval of the Secretary of the State Election
3 Board.

4 SECTION 11. AMENDATORY 26 O.S. 2011, Section 14-125, is
5 amended to read as follows:

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

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

16 B. The procedure described in this section shall be repeated as
17 is necessary until all ballots have been counted. In no event shall
18 fewer than twelve ballots be counted at any time, unless fewer than
19 twelve ballots are received in total or after the first count is
20 made. The results of the absentee ballots shall not be printed,
21 made known to any person nor announced earlier than 7:00 p.m. on the
22 day of the election.

23 C. 1. Upon written approval by the Secretary of the State
24 Election Board, the county election board may begin the process of

1 counting absentee ballots as described in this section on a date
2 earlier than the day of the election. The results of the absentee
3 ballots shall not be printed, made known to any person nor announced
4 earlier than 7:00 p.m. on the day of the election.

5 2. When the counting of absentee ballots occurs on a date prior
6 to the day of the election, the county election board shall, without
7 obtaining a printout of results, remove the election results storage
8 media from the voting device and seal ballots counted that day in a
9 transfer case which shall be secured by the sheriff of the county in
10 the same manner as provided in Section 8-110 of this title. The
11 election results storage media shall be sealed in a container
12 prescribed by the Secretary of the State Election Board. The
13 sheriff shall secure the sealed election results storage media
14 container and return it to the county election board at the time the
15 county election board next meets for the purpose of counting
16 absentee ballots.

17 3. If there is a malfunction in such a way that the election
18 results storage media used for absentee voting will not function,
19 the sheriff is authorized to return the transfer cases containing
20 absentee ballots to the county election board to be recounted as
21 provided in Section 7-134.1 of this title.

22 SECTION 12. This act shall become effective November 1, 2013.

23 COMMITTEE REPORT BY: COMMITTEE ON RULES
24 February 20, 2013 - DO PASS AS AMENDED