

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 SENATE BILL 869

By: Bingman

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5  
6 AS INTRODUCED

7 An Act relating to voting; amending 26 O.S. 2011,  
8 Sections 6-107, 6-108, 6-109, 6-116, 7-129.2, 14-105,  
14-110.1, 14-115.4, 14-118, 14-118.1, 14-123 and 14-  
9 125, which relate to ballots and voting procedures;  
10 modifying procedures for determination of order of  
names on ballots; specifying authority and duties of  
11 Secretary of the State Election Board; modifying  
procedures relating to ballots that cannot be read by  
12 voting device; requiring certain matters to be  
brought before election board; modifying procedures  
13 to apply for absentee ballot; allowing certain  
registered voters to request emergency absentee  
14 ballots and providing procedures; modifying days and  
hours during which in-person absentee voting allowed;  
15 allowing designation of additional polling places;  
modifying references to vote data packs; modifying  
16 statutory references; modifying date upon which  
counting of absentee ballots may begin; providing  
17 procedures; specifying duties of county sheriff;  
providing for codification; and providing an  
effective date.

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

21 SECTION 1. AMENDATORY 26 O.S. 2011, Section 6-107, is  
22 amended to read as follows:

23 Section 6-107. ~~Immediately following~~ Following the close of the  
24 filing period prescribed by law, the Secretary of the State Election

1 Board shall determine the order of rotation in which the ~~name~~ names  
2 of each candidate for each of the offices shall appear on the  
3 ~~absentee~~ ballots printed for the Primary Election. The  
4 determination shall be at a drawing conducted in a public meeting in  
5 which the names of all candidates for each office of each political  
6 party shall be drawn from a receptacle. In the event that a  
7 candidate withdraws or is removed from the ballot as a result of a  
8 successful contest of candidacy after the drawing is conducted, the  
9 withdrawn or removed candidate shall be deleted and the order of any  
10 remaining candidates in the race shall be adjusted accordingly. The  
11 determination of the order of rotation of names of candidates on  
12 ~~absentee~~ ballots printed by county election boards shall be made in  
13 the same manner as provided heretofore for the State Election Board.

14 SECTION 2. AMENDATORY 26 O.S. 2011, Section 6-108, is  
15 amended to read as follows:

16 Section 6-108. The name of the candidate receiving the highest  
17 number of votes for each office in the Primary Election, whose name  
18 is required by law to be placed on the Runoff Primary Election  
19 ballot, shall ~~have his name~~ be placed first ~~on absentee~~ on the first  
20 order of rotation of names for ballots for ~~said~~ the Runoff Primary  
21 Election.

22 SECTION 3. AMENDATORY 26 O.S. 2011, Section 6-109, is  
23 amended to read as follows:

24

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 4. 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  
12 by 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 at any election.

19 SECTION 5. AMENDATORY 26 O.S. 2011, Section 7-129.2, is  
20 amended to read as follows:

21 Section 7-129.2. A. In the event an absentee ballot is  
22 mutilated, defaced or damaged in a manner that it cannot be read by  
23 the voting device and thus not counted during the counting process,  
24 then two members of the county election board of different political

1 party affiliations, or two members of an absentee voting board under  
2 the supervision of the county election board, shall be authorized to  
3 mark a substitute ballot in identical fashion, insofar as is  
4 possible. ~~In the event a ballot is mutilated to such an extent that~~  
5 ~~the two members cannot agree upon how it was marked, it shall be~~  
6 ~~invalidated.~~ Once so marked, the substitute ballot shall be entered  
7 for counting into the voting device. A written record of such  
8 action shall be made by the two county election board members.

9 B. In the event of an absentee ballot that was delivered  
10 electronically to a voter as described in Section 14-118 of this  
11 title, or an absentee ballot that was received from a voter by  
12 facsimile device as described by Section 14-118.1 of this title, and  
13 the ballot cannot be read by the voting device, then two members of  
14 the county election board of different political party affiliations,  
15 or two members of an absentee voting board under the supervision of  
16 the county election board, shall be authorized to mark a substitute  
17 ballot in identical fashion, insofar as is possible. Once so  
18 marked, the substitute ballot shall be entered for counting into the  
19 voting device. A written record of such action shall be made by the  
20 two county election board members.

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

1 SECTION 6. AMENDATORY 26 O.S. 2011, Section 14-105, is  
2 amended to read as follows:

3 Section 14-105. Any registered voter may apply for an absentee  
4 ballot in person at the county election board, by United States  
5 mail, by telegraph ~~or~~, by facsimile device as defined in Section  
6 1862 of Title 21 of the Oklahoma Statutes, or by a means of  
7 electronic communication designated by the Secretary of the State  
8 Election Board. The Secretary of the State Election Board shall  
9 prescribe a form to be used for ~~said~~ the application, although any  
10 application setting forth substantially the same facts shall be  
11 valid.

12 SECTION 7. AMENDATORY 26 O.S. 2011, Section 14-110.1, is  
13 amended to read as follows:

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

- 17 1. Physically incapacitated; or
- 18 2. Charged with the care of another person who is physically  
19 incapacitated and who cannot be left unattended;

20 may apply for an absentee ballot by United States mail, by telegraph  
21 ~~or~~, by facsimile device as defined by Section 1862 of Title 21 of  
22 the Oklahoma Statutes, or by a means of electronic communication  
23 designated by the Secretary of the State Election Board. The  
24 Secretary of the State Election Board shall prescribe a form to be

1 used for ~~said~~ the application, although any application setting  
2 forth substantially the same facts shall be valid.

3 SECTION 8. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 14-115.2 of Title 26, unless  
5 there is created a duplication in numbering, reads as follows:

6 A. A registered voter who, within ten (10) days preceding an  
7 election, is deployed as a first responder or emergency worker to  
8 assist with the rescue, recovery, or relief efforts of a declared  
9 natural disaster or state of emergency, may make a written request  
10 for an emergency absentee ballot in a form prescribed by the  
11 Secretary of the State Election Board. The request shall be signed  
12 by the voter and shall be provided by the voter to the secretary of  
13 the county election board in the county where the voter is  
14 registered.

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

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

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

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

6 SECTION 9. AMENDATORY 26 O.S. 2011, Section 14-115.4, is  
7 amended to read as follows:

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

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

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

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

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

17 If the secretary of a county election board receives an application  
18 from a registered voter requesting to vote by in-person absentee  
19 ballot the secretary shall cause to be implemented the following  
20 procedures:

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

24

1           2. The voter must sign an in-person absentee voter record, and  
2 the signature of the voter on such record must be certified by both  
3 members of the absentee voting board, except that the secretary of  
4 the county election board and one other member of the absentee  
5 voting board may certify the signature of another member of the  
6 absentee voting board;

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

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

16           5. When the in-person polling place is closed on each day of  
17 in-person absentee voting the in-person absentee voting board shall,  
18 without obtaining a printout of results, remove the ~~vote data pack~~  
19 electronic results storage media from the voting device and seal  
20 ballots counted that day in a transfer case which shall be secured  
21 by the sheriff of the county in the same manner as provided in  
22 Section 8-110 of this title. The ~~vote data pack~~ electronic results  
23 storage media shall be sealed in a container prescribed by the  
24 Secretary of the State Election Board. The sheriff shall secure the

1 sealed ~~vote data pack~~ electronic results storage media container and  
2 return it to the in-person absentee voting board no later than 7:45  
3 a.m. on the next day of in-person absentee voting or to the  
4 secretary of the county election board at the time of the county  
5 election board meeting to count absentee ballots on election day;  
6 and

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

11 7. If there is a malfunction in such a way that the ~~vote data~~  
12 ~~pack~~ electronic results storage media used for in-person absentee  
13 voting will not function, the sheriff is authorized to return the  
14 transfer cases containing in-person absentee ballots to the county  
15 election board to be recounted as provided in Section 7-134.1 of  
16 this title.

17 SECTION 10. AMENDATORY 26 O.S. 2011, Section 14-118, is  
18 amended to read as follows:

19 Section 14-118. A. When an application for an absentee ballot  
20 pursuant to Section ~~14-117~~ 14-142 of this title is received by the  
21 secretary of a county election board, it shall be the duty of the  
22 secretary to transmit by United States mail, by facsimile device as  
23 defined in Section 1862 of Title 21 of the Oklahoma Statutes, or as  
24 provided in subsection B of this section the ballots which the

1 elector has requested and is entitled to receive. When an  
2 application for an absentee ballot is received at least forty-five  
3 (45) days before an election involving state or federal offices, the  
4 absentee ballot shall be transmitted by mail, by electronic mail, or  
5 by other means of electronic communication, as provided in this  
6 section, or by facsimile device as provided in Section 14-118.1 of  
7 this title, not less than forty-five (45) days preceding the  
8 election. When an application for an absentee ballot for an  
9 election involving state or federal offices is received less than  
10 forty-five (45) days preceding the election, the absentee ballot  
11 shall be transmitted by mail, by electronic mail, or by other means  
12 of electronic communication, as provided in this section, or by  
13 facsimile device as provided in Section 14-118.1 of this title,  
14 within forty-eight (48) hours of receipt of the application.

15 B. The secretary of the county election board may transmit  
16 balloting materials for any state or federal election, or for any  
17 other election as designated by the Secretary of the State Election  
18 Board as provided in subsection D of this section, by electronic  
19 mail or by other means of electronic communication in a form and  
20 manner prescribed by the Secretary of the State Election Board, if  
21 the voter:

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

24 2. Provides an electronic mail address; and

1           3. Requests that balloting materials be sent by electronic  
2 mail.

3           If the secretary of the county election board transmits a ballot  
4 to a voter by electronic mail or by other means of electronic  
5 communication as provided in this subsection, the secretary shall  
6 amend the voter's federal postcard application for future elections  
7 to include the voter's electronic mail address.

8           C. An electronic mail address provided under this section is  
9 confidential and does not constitute public information for purposes  
10 of the Oklahoma Open Records Act. The secretary of the county  
11 election board shall ensure that an electronic mail address provided  
12 under this section is excluded from disclosure.

13           D. The Secretary of the State Election Board shall determine if  
14 balloting materials for any election other than a state or federal  
15 election may be produced in a form which would allow them to be  
16 transmitted by electronic mail or by other means of electronic  
17 communication. If so, the Secretary shall so designate them. If  
18 such designation is not made, the balloting materials may be  
19 transmitted to the voter as provided in subsection A of this  
20 section.

21           E. All other provisions of this title that would normally apply  
22 to a ballot voted under this title apply to a ballot provided  
23 pursuant to the provisions of subsection B of this section.

24

1 F. The Secretary of the State Election Board may suspend the  
2 provisions of subsection B of this section if the Secretary  
3 determines that electronic transmission of balloting materials is  
4 not in the best interest of the people of this state due to a  
5 potential problem with the security of the balloting materials.

6 SECTION 11. AMENDATORY 26 O.S. 2011, Section 14-118.1,  
7 is amended to read as follows:

8 Section 14-118.1. In the event that an absentee ballot mailed  
9 to a voter identified by Section ~~14-116~~ 14-142 of this title or  
10 otherwise transmitted to a voter as provided by law cannot be  
11 received by the voter, voted and returned to the secretary of the  
12 county election board in the county of the residence of the voter in  
13 time to be counted, the secretary shall be authorized to transmit a  
14 ballot for federal offices by facsimile device as defined in Section  
15 1862 of Title 21 of the Oklahoma Statutes, provided that the voter  
16 has made a timely application for an absentee ballot. ~~Instructions~~  
17 ~~and an affidavit as required by paragraph 2 of Section 14-119 of~~  
18 ~~this title and a statement waiving the right to a secret ballot also~~  
19 ~~shall accompany the ballot that was transmitted by facsimile device.~~  
20 The voter may transmit by facsimile device the voted ballot only to  
21 the location designated by the Secretary of the State Election  
22 Board. Regular absentee ballots also shall be mailed to the voter,  
23 and if the regular ballots are returned by the voter and received by  
24 the secretary of the county election board in time to be counted,

1 the ballot transmitted by facsimile device shall not be counted.  
2 The Secretary of the State Election Board shall promulgate rules  
3 setting forth procedures and prescribe appropriate forms to transmit  
4 and to receive absentee ballots pursuant to this section.

5 SECTION 12. AMENDATORY 26 O.S. 2011, Section 14-123, is  
6 amended to read as follows:

7 Section 14-123. At 10 a.m. on Thursday preceding the election,  
8 or at such time thereafter as the county election board may desire,  
9 the county election board may meet and publicly remove the outer  
10 envelopes from all absentee ballots then received, examine and  
11 remove properly executed affidavits and place the plain opaque  
12 envelopes in a ballot box, locked with three locks. ~~Said~~ The  
13 procedure shall be repeated until such time as all ballots have been  
14 received. Provided, such procedure may begin at an earlier date  
15 upon the written approval of the Secretary of the State Election  
16 Board.

17 SECTION 13. AMENDATORY 26 O.S. 2011, Section 14-125, is  
18 amended to read as follows:

19 Section 14-125. A. On the day of the election at such time as  
20 the secretary of the county election board may prescribe, the county  
21 election board shall meet at the county courthouse or at the offices  
22 of the county election board if located elsewhere to count absentee  
23 ballots in the following manner:  
24

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

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

13 C. 1. Upon written approval by the Secretary of the State  
14 Election Board, the county election board may begin the process of  
15 counting absentee ballots as described in this section on a date  
16 earlier than the day of the election. The results of the absentee  
17 ballots shall not be printed, made known to any person, nor  
18 announced earlier than 7:00 p.m. on the day of the election.

19 2. When the counting of absentee ballots occurs on a date prior  
20 to the day of the election, the county election board shall, without  
21 obtaining a printout of results, remove the election results storage  
22 media from the voting device and seal ballots counted that day in a  
23 transfer case which shall be secured by the sheriff of the county in  
24 the same manner as provided in Section 8-110 of this title. The

1 election results storage media shall be sealed in a container  
2 prescribed by the Secretary of the State Election Board. The  
3 sheriff shall secure the sealed election results storage media  
4 container and return it to the county election board at the time the  
5 county election board next meets for the purpose of counting  
6 absentee ballots.

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

12 SECTION 14. This act shall become effective November 1, 2013.

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