

1 ENGROSSED SENATE
2 BILL NO. 261

By: Daniels and Boren of the
Senate

3 and

4 Wright of the House

5
6
7 An Act relating to election security; amending 26
8 O.S. 2011, Sections 2-121, 7-134, 8-110, 16-109 and
22-101, as amended by Section 1, Chapter 114, O.S.L.
2013 (26 O.S. Supp. 2018, Section 22-101), which
9 relate to security of election materials, coercion
and election emergencies; authorizing post-election
10 audits for certain purpose; providing procedures;
specifying duties of Secretary of State Election
11 Board and secretary of county election board;
defining term; authorizing Secretary to employ
12 certain security measures; specifying duties of
county commissioners; requiring certain notification
13 to Secretary of State Election Board; specifying
requirements relating to office space and
14 arrangements for county election boards; prohibiting
providing false or misleading information to prevent
15 registration or voting; prohibiting accessing or
attempting to access election systems; providing
16 penalties; modifying circumstances under which
election emergency may be declared; modifying
17 entities with which Secretary may coordinate
emergency contingency plan; updating statutory
18 language; amending 51 O.S. 2011, Section 24A.28, as
last amended by Section 1, Chapter 231, O.S.L. 2016
19 (51 O.S. Supp. 2018, Section 24A.28), which relates
to confidential information; providing that certain
20 information technology be kept confidential upon
certain determination by Secretary of State Election
21 Board and Chief Information Officer; providing for
codification; and providing an effective date.
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24 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 3-130 of Title 26, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The Secretary of the State Election Board shall have the
5 authority to direct the secretary of a county election board to
6 conduct a post-election audit of election results, for the purpose
7 of maintaining the security of the election system by ensuring that
8 voting devices and software used in a particular election correctly
9 tabulated votes.

10 B. The method, timing and procedures for conducting a post-
11 election audit shall be determined by the Secretary of the State
12 Election Board.

13 C. The secretary of a county election board shall report the
14 findings of a post-election audit to the Secretary of the State
15 Election Board, and such report shall be available to the public.

16 D. The Secretary of the State Election Board may promulgate
17 policies, rules and procedures to implement the requirements of this
18 section.

19 E. For the purposes of this title, a "post-election audit" is
20 defined as a manual or electronic examination of a limited number of
21 ballots by a secretary of a county election board or other
22 authorized election officials following an election. A post-
23 election audit shall be conducted only at the direction of the
24

1 Secretary of the State Election Board and only subject to the
2 Secretary's previously promulgated policies, rules or procedures.

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 3-131 of Title 26, unless there
5 is created a duplication in numbering, reads as follows:

6 Subject to available funding, the Secretary of the State
7 Election Board is authorized to employ such security measures as may
8 be necessary to protect the voting devices, election system or voter
9 registration system, and any associated hardware, software or
10 networks of these systems, from cyber security threats or physical
11 security threats. The Secretary may promulgate rules and procedures
12 to implement the requirements of this section.

13 SECTION 3. AMENDATORY 26 O.S. 2011, Section 2-121, is
14 amended to read as follows:

15 Section 2-121. A. It shall be the mandatory duty of the county
16 commissioners of each county to furnish, at county expense, in each
17 county seat a suitable office for the county election board. ~~Said~~
18 The office shall provide adequate space for storage of election
19 records and supplies, voting devices, ballot boxes and adequate
20 space for the exercise of other functions required by law of the
21 county election board and shall be equipped with suitable furniture
22 and office equipment and a telephone. ~~Said~~ The office shall be
23 convenient to the public, shall have furniture, furnishings and
24 fixtures and other equipment comparable to other county offices

1 within the county, and necessary to the operation of ~~said~~ the
2 office.

3 B. 1. The county commissioners of each county shall, at county
4 expense, implement security measures at the county election board
5 that are equivalent to security measures the county provides to its
6 other county agencies, in order to ensure the county election board
7 office is adequately protected from physical intrusions or attacks
8 and to provide cybersecurity for county-owned computer systems
9 operated by the county election board.

10 2. County officials shall immediately notify the Secretary of
11 the State Election Board upon learning of an attempted or successful
12 physical or cyber attack or intrusion committed against the county
13 election board.

14 C. To ensure the security of election records, equipment,
15 computers, software, ballots, supplies and other materials necessary
16 to conduct elections:

17 1. The county election board shall not share storage space
18 where ballots, voter registration records or election equipment are
19 stored with any other county agency unless authorized by the
20 Secretary of the State Election Board; and

21 2. No county personnel other than those employed by the county
22 election board shall be assigned workspace within the physical
23 offices that are assigned to the county election board.
24

1 Provided, nothing in this subsection shall prohibit the county
2 election board office from being located within the county
3 courthouse or another county-owned building shared by multiple
4 county agencies, nor shall it restrict the county election board
5 from utilizing common areas intended for use by multiple county
6 agencies other than as specifically prohibited in this subsection.

7 D. The Secretary of the State Election Board shall have the
8 authority to enforce the requirements of, and may promulgate
9 administrative rules to implement the provisions of, this section.

10 SECTION 4. AMENDATORY 26 O.S. 2011, Section 7-134, is
11 amended to read as follows:

12 Section 7-134. The county election board shall not disturb
13 anything in the transfer case, and the case shall remain sealed and
14 retained by the secretary of the county election board until opened
15 by court order or until it is necessary to open same for use at
16 another election, at which time the ballots shall be destroyed;
17 provided, however, that in no case shall the ballots be destroyed
18 until thirty (30) days after the election at which they were cast.
19 Provided, the secretary of the county election board shall be
20 authorized to open a sealed transfer case for the purpose of
21 conducting a post-election audit as described in Section 1 of this
22 act.

23 SECTION 5. AMENDATORY 26 O.S. 2011, Section 8-110, is
24 amended to read as follows:

1 Section 8-110. It shall be the duty of the sheriff in each
2 county to provide security for the ballot boxes or transfer cases
3 from the time ~~said~~ the ballot boxes or transfer cases are stored by
4 the county election board following an election until the election
5 results have been certified or, in the event a recount contest is
6 filed, until such time as ~~said~~ the ballot boxes or transfer cases
7 are delivered to the district courtroom. Provided, ballot boxes or
8 transfer cases may be returned to the custody of the secretary of
9 the county election board for the purpose of conducting a post-
10 election audit as described in Section 1 of this act.

11 SECTION 6. AMENDATORY 26 O.S. 2011, Section 16-109, is
12 amended to read as follows:

13 Section 16-109. Any person who, by means of coercion, providing
14 false or misleading information or any other method, knowingly
15 attempts to prevent a qualified elector from becoming registered, or
16 a registered voter from voting, shall be deemed guilty of a felony.

17 SECTION 7. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 16-124 of Title 26, unless there
19 is created a duplication in numbering, reads as follows:

20 Any person who accesses or attempts to access without
21 authorization, or who tampers with or attempts to tamper with, any
22 hardware, software, application, network or any part of an election
23 management system, election results tabulation system, voter
24 registration system or other election-related system of the State

1 Election Board or a county election board, shall be deemed guilty of
2 a felony.

3 SECTION 8. AMENDATORY 26 O.S. 2011, Section 22-101, as
4 amended by Section 1, Chapter 114, O.S.L. 2013 (26 O.S. Supp. 2018,
5 Section 22-101), is amended to read as follows:

6 Section 22-101. A. The Secretary of the State Election Board
7 is authorized to declare an election emergency for any area of the
8 state ~~if it becomes impossible to conduct one or more elections~~
9 ~~using voting devices or~~ in the event that a one or more of the
10 following circumstances has occurred or is imminent, and such
11 circumstances could make substantial compliance with state and
12 federal election laws impossible or unreasonable, or could disrupt
13 voter registration, voting, the tabulation of votes or the
14 certification of election results:

15 1. A national or local emergency, either natural or manmade,
16 ~~makes substantial compliance with state and federal election laws~~
17 ~~impossible or unreasonable;~~

18 2. Interference with election technology or election computer
19 systems or networks;

20 3. A physical attack or physical threat to polling places,
21 election offices, election officials or voters;

22 4. A security threat verified by federal or state security
23 officials;
24

1 5. A criminal threat or activity verified by federal, state or
2 local law enforcement officials; or

3 6. A major failure of voting hardware, software or computer
4 systems or networks.

5 The declaration must be made in writing and must specify the
6 county or counties, election or elections and dates covered by the
7 emergency.

8 B. The Secretary of the State Election Board ~~and the Adjutant~~
9 ~~General~~ shall coordinate with the Oklahoma National Guard, the State
10 Chief Information Officer, the Office of Emergency Management, the
11 Oklahoma Office of Homeland Security and such other federal or state
12 security officials the Secretary deems appropriate, to develop a
13 contingency plan for a major election emergency. The plan shall be
14 developed not later than January 1, 2014, and shall be updated
15 thereafter as deemed necessary by the Secretary and the Adjutant
16 General. The plan shall provide procedures for the Secretary to

17 C. The Secretary of the State Election Board may request the
18 assistance of the Oklahoma National Guard in the conduct of an
19 election during a declared election emergency, upon approval of the
20 Governor. Such assistance shall not be deemed to be in violation of
21 the provisions of Section 16-113 of this title or Section 4 of
22 Article II or Section 5 of Article III of the Oklahoma Constitution.

23 ~~C.~~ D. The Secretary of the State Election Board is authorized
24 to promulgate rules and procedures for elections conducted under a

1 an election emergency declaration consistent with purposes of state
2 and federal election laws.

3 SECTION 9. AMENDATORY 51 O.S. 2011, Section 24A.28, as
4 last amended by Section 1, Chapter 231, O.S.L. 2016 (51 O.S. Supp.
5 2018, Section 24A.28), is amended to read as follows:

6 Section 24A.28. A. The following information may be kept
7 confidential:

8 1. Investigative evidence of a plan or scheme to commit an act
9 of terrorism;

10 2. Assessments of the vulnerability of government facilities or
11 public improvements to an act of terrorism and work papers directly
12 related to preparing the assessment of vulnerability;

13 3. Records including details for deterrence or prevention of or
14 protection from an act or threat of an act of terrorism;

15 4. Records including details for response or remediation after
16 an act of terrorism;

17 5. Information technology of a public body or public official
18 but only if the information specifically identifies:

19 a. design or functional schematics that demonstrate
20 the relationship or connections between devices
21 or systems,

22 b. system configuration information,

23 c. security monitoring and response equipment
24 placement and configuration,

- d. specific location or placement of systems,
components or devices,
- e. system identification numbers, names, or
connecting circuits,
- f. business continuity and disaster planning, or
response plans, or
- g. investigative information directly related to
security penetrations or denial of services;

6. Investigation evidence of an act of terrorism that has
already been committed;

7. Records received, maintained or generated by the Oklahoma
Office of Homeland Security which include confidential private
business information or an individual's private records;

8. Records received by the Oklahoma Office of Homeland Security
from the United States Department of Homeland Security or records
maintained or generated by the Oklahoma Office of Homeland Security
involving the United States Department of Homeland Security;

9. Records received, maintained or generated by the Department
of Environmental Quality that contain information regarding sources
of radiation in quantities determined by the United States Nuclear
Regulatory Commission to be significant to public health and safety,
by whomever possessed, whether in transit or at fixed sites, when
the information could reasonably be expected to have an adverse
effect on the health and safety of the public by increasing the

1 likelihood of theft, diversion or sabotage of the radiation sources
2 or facilities. The information may include but is not limited to
3 information:

- 4 a. from or relating to radioactive material licensees
5 identifying the exact location of the radioactive
6 material,
- 7 b. describing how the radioactive material is secured
8 from unauthorized removal or access when it is in
9 storage,
- 10 c. describing the control and maintenance of constant
11 surveillance of the radioactive material when it is
12 not in storage,
- 13 d. describing specific policies and procedures for
14 actions to physically protect the radioactive
15 material,
- 16 e. identifying possession limits or actual inventories of
17 radionuclides,
- 18 f. containing or describing assessments or analyses that
19 could reveal vulnerabilities,
- 20 g. identifying specific locations of safety and security
21 equipment,
- 22 h. describing emergency planning, emergency response and
23 fire protection, and

1 i. containing or describing other information that could
2 reasonably be expected to be useful to persons with
3 malevolent intent; ~~and~~

4 10. The names of school district personnel who have been
5 designated to carry a firearm pursuant to Section 5-149.2 of Title
6 70 of the Oklahoma Statutes; and

7 11. Information technology of the State Election Board or a
8 county election board which is determined jointly by the Secretary
9 of the State Election Board and the State Chief Information Officer
10 to be technology that could reasonably be expected to be useful to
11 persons with intent to interfere with the conduct of an election,
12 voter registration or other election processes.

13 B. The following information shall not be kept confidential:

14 1. Records related to federal grants administered by the
15 Oklahoma Office of Homeland Security or the Department of
16 Environmental Quality;

17 2. Records related to the receipt and expenditure of public
18 funds; or

19 3. Records related to the financial performance or financial
20 administration of the Oklahoma Office of Homeland Security or the
21 Department of Environmental Quality.

22 C. For the purposes of this section, the term "terrorism" means
23 any act encompassed by the definitions set forth in Section 1268.1
24 of Title 21 of the Oklahoma Statutes.

1 D. 1. Public educational institutions may keep confidential
2 campus security plans. An institution or agency may in its
3 discretion release information contained in or related to the campus
4 security plan in order to design or implement the plan.

5 2. Nothing in this subsection shall preclude an institution or
6 agency within The Oklahoma State System of Higher Education from
7 collecting and releasing information relating to campus crime
8 statistics and campus security policies as is required pursuant to
9 the Jeanne Clery Disclosure of Campus Security Policy and Campus
10 Crime Statistics Act, 20 U.S.C. 1092(f).

11 3. For purposes of this subsection, "campus security plan"
12 shall include, but is not limited to, prevention and response
13 procedures to and notification procedures for perceived or actual
14 security threats and incidents on or impacting the campus.

15 SECTION 10. This act shall become effective November 1, 2019.

16 Passed the Senate the 11th day of March, 2019.

17 _____
18 Presiding Officer of the Senate

19 Passed the House of Representatives the ____ day of _____,
20 2019.

21 _____
22 Presiding Officer of the House
23 of Representatives
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