

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL 261

By: Daniels and Boren

AS INTRODUCED

An Act relating to election security; amending 26 O.S. 2011, Sections 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 relate to security of election materials, coercion and election emergencies; authorizing post-election audits for certain purpose; providing procedures; specifying duties of Secretary of State Election Board and secretary of county election board; defining term; authorizing Secretary to employ certain security measures; prohibiting providing false or misleading information to prevent registration or voting; prohibiting accessing or attempting to access election systems; providing penalties; modifying circumstances under which election emergency may be declared; modifying entities with which Secretary may coordinate emergency contingency plan; updating statutory language; amending 51 O.S. 2011, Section 24A.28, as last amended by Section 1, Chapter 231, O.S.L. 2016 (51 O.S. Supp. 2018, Section 24A.28), which relates to confidential information; providing that certain information technology be kept confidential upon certain determination by Secretary of State Election Board and Chief Information Officer; providing for codification; and providing an effective date.

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 shall report the findings
14 of a post-election audit to the Secretary of the State Election
15 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
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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 is authorized to employ such security measures as may be
8 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 7-134, is
14 amended to read as follows:

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

1 SECTION 4. AMENDATORY 26 O.S. 2011, Section 8-110, is
2 amended to read as follows:

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

13 SECTION 5. AMENDATORY 26 O.S. 2011, Section 16-109, is
14 amended to read as follows:

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

19 SECTION 6. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 16-124 of Title 26, unless there
21 is created a duplication in numbering, reads as follows:

22 Any person who accesses or attempts to access without
23 authorization, or who tampers with or attempts to tamper with, any
24 hardware, software, application, network or any part of an election
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1 management system, election results tabulation system, voter
2 registration system or other election-related system of the State
3 Election Board or a county election board, shall be deemed guilty of
4 a felony.

5 SECTION 7. AMENDATORY 26 O.S. 2011, Section 22-101, as
6 amended by Section 1, Chapter 114, O.S.L. 2013 (26 O.S. Supp. 2018,
7 Section 22-101), is amended to read as follows:

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

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

20 2. Interference with election technology or election computer
21 systems or networks;

22 3. A physical attack or physical threat to polling places,
23 election offices, election officials or voters;
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1 4. A security threat verified by federal or state security
2 officials;

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

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

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

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

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

1 ~~C.~~ D. The Secretary of the State Election Board is authorized
2 to promulgate rules and procedures for elections conducted under ~~a~~
3 an election emergency declaration consistent with purposes of state
4 and federal election laws.

5 SECTION 8. AMENDATORY 51 O.S. 2011, Section 24A.28, as
6 last amended by Section 1, Chapter 231, O.S.L. 2016 (51 O.S. Supp.
7 2018, Section 24A.28), is amended to read as follows:

8 Section 24A.28. A. The following information may be kept
9 confidential:

10 1. Investigative evidence of a plan or scheme to commit an act
11 of terrorism;

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

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

17 4. Records including details for response or remediation after
18 an act of terrorism;

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

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

24 b. system configuration information,

- c. security monitoring and response equipment 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

1 the information could reasonably be expected to have an adverse
2 effect on the health and safety of the public by increasing the
3 likelihood of theft, diversion or sabotage of the radiation sources
4 or facilities. The information may include but is not limited to
5 information:

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

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

6 10. The names of school district personnel who have been
7 designated to carry a firearm pursuant to Section 5-149.2 of Title
8 70 of the Oklahoma Statutes; and

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

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

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

19 2. Records related to the receipt and expenditure of public
20 funds; or

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

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

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

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

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

18 SECTION 9. This act shall become effective November 1, 2019.
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