

1 **SENATE FLOOR VERSION**

2 February 20, 2019

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 261

6 By: Daniels and Boren

7 [ election security - security of election materials  
8 - confidential information - - codification -  
9 effective date ]

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

12 SECTION 1. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 3-130 of Title 26, unless there  
14 is created a duplication in numbering, reads as follows:

15 A. The Secretary of the State Election Board shall have the  
16 authority to direct the secretary of a county election board to  
17 conduct a post-election audit of election results, for the purpose  
18 of maintaining the security of the election system by ensuring that  
19 voting devices and software used in a particular election correctly  
20 tabulated votes.

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

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

4 D. The Secretary of the State Election Board may promulgate  
5 policies, rules and procedures to implement the requirements of this  
6 section.

7 E. For the purposes of this title, a "post-election audit" is  
8 defined as a manual or electronic examination of a limited number of  
9 ballots by a secretary of a county election board or other  
10 authorized election officials following an election. A post-  
11 election audit shall be conducted only at the direction of the  
12 Secretary of the State Election Board and only subject to the  
13 Secretary's previously promulgated policies, rules or procedures.

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

17 Subject to available funding, the Secretary of the State  
18 Election Board is authorized to employ such security measures as may  
19 be necessary to protect the voting devices, election system or voter  
20 registration system, and any associated hardware, software or  
21 networks of these systems, from cyber security threats or physical  
22 security threats. The Secretary may promulgate rules and procedures  
23 to implement the requirements of this section.

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

3 Section 2-121. A. It shall be the mandatory duty of the county  
4 commissioners of each county to furnish, at county expense, in each  
5 county seat a suitable office for the county election board. ~~Said~~  
6 The office shall provide adequate space for storage of election  
7 records and supplies, voting devices, ballot boxes and adequate  
8 space for the exercise of other functions required by law of the  
9 county election board and shall be equipped with suitable furniture  
10 and office equipment and a telephone. ~~Said~~ The office shall be  
11 convenient to the public, shall have furniture, furnishings and  
12 fixtures and other equipment comparable to other county offices  
13 within the county, and necessary to the operation of ~~said the~~ the  
14 office.

15 B. The county commissioners of each county shall, at county  
16 expense, take necessary security measures to ensure the county  
17 election board office is adequately protected from physical  
18 intrusions and attacks and to provide cybersecurity for county-owned  
19 computer systems operated by the county election board. In the  
20 event of a cybersecurity concern, the Secretary of the State  
21 Election Board shall be notified immediately.

22 C. To ensure the security of election records, equipment,  
23 computers, software, ballots, supplies and other materials necessary  
24 to conduct elections:

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

5       2. No county personnel other than those employed by the county  
6 election board shall be assigned workspace within the physical  
7 offices that are assigned to the county election board.

8       Provided, nothing in this subsection shall prohibit the county  
9 election board office from being located within the county  
10 courthouse or another county-owned building shared by multiple  
11 county agencies, nor shall it restrict the county election board  
12 from utilizing common areas intended for use by multiple county  
13 agencies other than as specifically prohibited in this subsection.

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

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

19       Section 7-134. The county election board shall not disturb  
20 anything in the transfer case, and the case shall remain sealed and  
21 retained by the secretary of the county election board until opened  
22 by court order or until it is necessary to open same for use at  
23 another election, at which time the ballots shall be destroyed;  
24 provided, however, that in no case shall the ballots be destroyed

1 until thirty (30) days after the election at which they were cast.  
2 Provided, the secretary of the county election board shall be  
3 authorized to open a sealed transfer case for the purpose of  
4 conducting a post-election audit as described in Section 1 of this  
5 act.

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

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

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

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

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

4 Any person who accesses or attempts to access without  
5 authorization, or who tampers with or attempts to tamper with, any  
6 hardware, software, application, network or any part of an election  
7 management system, election results tabulation system, voter  
8 registration system or other election-related system of the State  
9 Election Board or a county election board, shall be deemed guilty of  
10 a felony.

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

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

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

4        2. Interference with election technology or election computer  
5 systems or networks;

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

8        4. A security threat verified by federal or state security  
9 officials;

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

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

14       The declaration must be made in writing and must specify the  
15 county or counties, election or elections and dates covered by the  
16 emergency.

17       B. The Secretary of the State Election Board ~~and the Adjutant~~  
18 ~~General~~ shall coordinate with the Oklahoma National Guard, the State  
19 Chief Information Officer, the Office of Emergency Management, the  
20 Oklahoma Office of Homeland Security and such other federal or state  
21 security officials the Secretary deems appropriate, to develop a  
22 contingency plan for a major election emergency. ~~The plan shall be~~  
23 ~~developed not later than January 1, 2014, and shall be updated~~

1 ~~thereafter as deemed necessary by the Secretary and the Adjutant~~  
2 ~~General. The plan shall provide procedures for the Secretary to~~

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

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

13 SECTION 9. AMENDATORY 51 O.S. 2011, Section 24A.28, as  
14 last amended by Section 1, Chapter 231, O.S.L. 2016 (51 O.S. Supp.  
15 2018, Section 24A.28), is amended to read as follows:

16 Section 24A.28. A. The following information may be kept  
17 confidential:

18 1. Investigative evidence of a plan or scheme to commit an act  
19 of terrorism;

20 2. Assessments of the vulnerability of government facilities or  
21 public improvements to an act of terrorism and work papers directly  
22 related to preparing the assessment of vulnerability;

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



1 4. Records including details for response or remediation after  
2 an act of terrorism;

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

5 a. design or functional schematics that demonstrate  
6 the relationship or connections between devices  
7 or systems,

8 b. system configuration information,

9 c. security monitoring and response equipment  
10 placement and configuration,

11 d. specific location or placement of systems,  
12 components or devices,

13 e. system identification numbers, names, or  
14 connecting circuits,

15 f. business continuity and disaster planning, or  
16 response plans, or

17 g. investigative information directly related to  
18 security penetrations or denial of services;

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

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

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

5 9. Records received, maintained or generated by the Department  
6 of Environmental Quality that contain information regarding sources  
7 of radiation in quantities determined by the United States Nuclear  
8 Regulatory Commission to be significant to public health and safety,  
9 by whomever possessed, whether in transit or at fixed sites, when  
10 the information could reasonably be expected to have an adverse  
11 effect on the health and safety of the public by increasing the  
12 likelihood of theft, diversion or sabotage of the radiation sources  
13 or facilities. The information may include but is not limited to  
14 information:

- 15 a. from or relating to radioactive material licensees  
16 identifying the exact location of the radioactive  
17 material,
- 18 b. describing how the radioactive material is secured  
19 from unauthorized removal or access when it is in  
20 storage,
- 21 c. describing the control and maintenance of constant  
22 surveillance of the radioactive material when it is  
23 not in storage,

- 1 d. describing specific policies and procedures for  
2 actions to physically protect the radioactive  
3 material,  
4 e. identifying possession limits or actual inventories of  
5 radionuclides,  
6 f. containing or describing assessments or analyses that  
7 could reveal vulnerabilities,  
8 g. identifying specific locations of safety and security  
9 equipment,  
10 h. describing emergency planning, emergency response and  
11 fire protection, and  
12 i. containing or describing other information that could  
13 reasonably be expected to be useful to persons with  
14 malevolent intent; ~~and~~

15 10. The names of school district personnel who have been  
16 designated to carry a firearm pursuant to Section 5-149.2 of Title  
17 70 of the Oklahoma Statutes; and

18 11. Information technology of the State Election Board or a  
19 county election board which is determined jointly by the Secretary  
20 of the State Election Board and the State Chief Information Officer  
21 to be technology that could reasonably be expected to be useful to  
22 persons with intent to interfere with the conduct of an election,  
23 voter registration or other election processes.

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

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

4           2. Records related to the receipt and expenditure of public  
5 funds; or

6           3. Records related to the financial performance or financial  
7 administration of the Oklahoma Office of Homeland Security or the  
8 Department of Environmental Quality.

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

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

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

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

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

4 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS  
5 February 20, 2019 - DO PASS AS AMENDED  
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