

An Act

ENROLLED SENATE
BILL NO. 261

By: Daniels and Boren of the
Senate

and

Wright of the House

An Act relating to election security; amending 26 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 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; specifying duties of county commissioners; requiring certain notification to Secretary of State Election Board; specifying requirements relating to office space and arrangements for county election boards; 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.

SUBJECT: Election security

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 8-110. It shall be the duty of the sheriff in each county to provide security for the ballot boxes or transfer cases from the time ~~said~~ the ballot boxes or transfer cases are stored by the county election board following an election until the election

results have been certified or, in the event a recount contest is filed, until such time as ~~said~~ the ballot boxes or transfer cases are delivered to the district courtroom. Provided, ballot boxes or transfer cases may be returned to the custody of the secretary of the county election board for the purpose of conducting a post-election audit as described in Section 1 of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 9. AMENDATORY 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), is amended to read as follows:

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

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

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

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

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

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

- a. design or functional schematics that demonstrate the relationship or connections between devices or systems,
- 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 the information could reasonably be expected to have an adverse effect on the health and safety of the public by increasing the likelihood of theft, diversion or sabotage of the radiation sources or facilities. The information may include but is not limited to information:

- a. from or relating to radioactive material licensees identifying the exact location of the radioactive material,
- b. describing how the radioactive material is secured from unauthorized removal or access when it is in storage,
- c. describing the control and maintenance of constant surveillance of the radioactive material when it is not in storage,

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

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

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

B. The following information shall not be kept confidential:

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

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

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

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

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

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

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

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

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

Presiding Officer of the Senate

Passed the House of Representatives the 18th day of April, 2019.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____