

SESSION OF 2018

**SECOND CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2539**

As Agreed to April 6, 2018

**Brief\***

HB 2539 would amend the qualifications for candidacy for several statewide elected offices, create law requiring manual audits of elections, amend law related to the timing of the election canvasses and to electronic voting machines, and amend provisions in election law concerning signatures if the voter has a disability that prevents the individual from signing.

***Candidacy Qualifications for Certain Statewide Offices***

The bill would require every candidate for the office of Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, or State Commissioner of Insurance to be a qualified elector of Kansas by the deadline for filing for such office.

The bill would also add these requirements for certain candidates:

- Age 25 or older when becoming a candidate for the office of Governor and Lieutenant Governor; and
- Licensed to practice law in Kansas to be a candidate for the Office of Attorney General.

These provisions would take effect January 1, 2019.

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

## ***Advance Voting Signatures and Forms***

**Signature verification.** The bill would state verification of the voter's signature by the county election official on an application for an advance ballot shall not be required if the voter has a disability preventing the voter from signing.

**Assistance with voting.** Voters with any disability that prevents them from being able to provide a signature would be able to request assistance in signing an application for or marking an advance ballot, or signing an application or the form on the ballot envelope. The bill would also exempt an individual with a disability that prevents the person from writing or signing from providing written permission for another individual to return the person's ballot to the county election officer.

The bill would require the individual providing assistance to submit a written statement, signed by the individual, to the county election officer with the application or ballot. This statement would affirm that the assisting individual has not influenced the voter and the assisting individual has completed the application, ballot, or signed the application or ballot form as the voter instructed.

Failure of the assisting individual to complete or sign these documents as the voter instructed would be a level 9, nonperson felony.

**Advance ballot envelopes.** The bill would require the Office of the Secretary of State to prescribe the general format for advance voting ballot envelopes. The bill would require the envelope to include a signature block for the advance voter; a signature block for the person, if any, assisting the advance voter; and a signature block for a person, if any, who signs the advance voting ballot envelope on behalf of an advance voter, when the advance voter is physically unable to sign the envelope.

The bill would require the advance ballot envelope contain the following statement after the signature block provided for the person who signs the advance ballot envelope on behalf of an advance voter who is physically unable to do so:

My signature constitutes an affidavit that the person for whom I signed the envelope is a person who is physically unable to sign such envelope. By signing this envelope, I swear this information is true and correct, and that signing an advance ballot envelope under false pretenses shall constitute the crime of perjury.

The bill would include signing the above statement under false pretenses in the crime of perjury.

### ***Election Audit Requirements***

The bill would require, after any election in which the county board of canvassers certifies the results, the county election officer to conduct a manual audit or tally of each vote cast in 1 percent of all precincts, with a minimum of one precinct located within the county. The precinct(s) audited would be selected randomly after the election. The requirement for audit or tally would apply regardless of the method of voting used.

The bill would specify these contested races would be audited:

- In presidential election years: one federal race, one state legislative race, and one county race;
- In even-numbered, non-presidential election years: one federal race, one statewide race, one state legislative race, and one county race; and

- In odd-numbered election years: two local races, selected randomly after the election.

The bill would require the audit take place before the county board of canvassers meets to certify the election results. The bill would require the audit be performed manually and review all paper ballots selected for audit in accordance with the provisions of the bill. A sworn election board of bipartisan trained members would be required to perform the audit in a public setting. The county election officer would determine the members of the board. The bill would state any candidate or entity authorized to appoint a poll agent could appoint a poll agent for the audit.

The bill would require notice of the time and location of the audit be provided on the official county website at least five days before the audit takes place.

The results of the audit would be compared to the unofficial election night returns, and the bill would require a report be submitted to the county election officer and the Office of the Secretary of State before the county board of canvassers meets. In the case of a discrepancy between the audit and the unofficial returns that could not be resolved, the county election officer or Secretary of State would be authorized to require audits of additional precincts.

The Secretary of State would be required to adopt rules and regulations governing the conduct and procedure of election audits, including the random selection of precincts and offices involved in audits.

The bill would specify the audit requirements would apply to all counties for elections occurring after January 1, 2019.

### ***Timing of Election Canvasses***

The bill would allow the county election officer to move the canvass for any election held on a Tuesday to any business day not later than 13 days after any election. The bill would require notice of the time and place of the canvass be published in a newspaper of general circulation in the county prior to the canvass. The bill would authorize the canvass of any election not held on a Tuesday to be held not later than the 13<sup>th</sup> day following the election. Current law allows the canvass for elections held on Tuesday to be moved to the second Thursday following the election with prior notice, and requires the canvass for any election not held on Tuesday be held no later than the fifth day following the election.

### ***Requirements for Electronic Voting Systems***

The bill would prohibit any board of county commissioners from purchasing, leasing, or renting any direct recording electronic voting system after the effective date of the bill.

The bill would require any electronic or electromechanical voting system purchased, leased, or rented by a board of county commissioners after the effective date of the bill to:

- Provide a paper record of each vote cast at the time the vote is cast; and
- Have the ability to be tested both before an election and prior to the canvass date. The ability to match the paper record of the machine to the vote total contained in the machine would be included in the testing.

The bill would not amend additional requirements in current law for electronic or electromechanical voting systems.

### **Conference Committee Action**

The second Conference Committee agreed to the contents of HB 2539, as amended by the Senate Committee on Ethics, Elections and Local Government; House Sub. for SB 264; and HB 2333, as further amended by the Senate Committee, with the following modifications:

- Reduce the minimum age of a candidate for Governor or Lieutenant Governor from 30 to 25 years of age (HB 2539);
- Specify the eligibility for candidacy provisions would apply on and after January 1, 2019;
- Provide more specificity in the races to be audited (HB 2333);
- Remove a provision allowing an application for an advance voting ballot to include an option for requesting permanent advance voting status (House Sub. for SB 264); and
- Make various technical amendments.

### **Background**

The Conference Committee report contains provisions of HB 2539, HB 2333, and House Sub. for SB 264.

### ***HB 2539 (Qualifications for Candidacy)***

HB 2539 was introduced by Representative Carpenter.

In the House Committee on Elections hearing, Representative Carpenter provided proponent testimony stating current Kansas law includes no age or residency requirements for candidates for Governor or Lieutenant Governor. The Director of Elections (Director), Office of the Secretary of State, also appeared as a proponent, testifying in favor of adding minimal age and residency requirements for candidates for statewide elected offices. The Director stated the effective date of the bill should be after the 2018 elections so as to avoid a conflict concerning current candidates who may not meet these requirements.

A current candidate for the Office of the Governor provided opponent written-only testimony to the House Committee, which stated the bill would discourage political participation and block potentially qualified candidates based on age.

No further testimony was provided.

The House Committee voted to pass the bill without recommendation.

The House Committee of the Whole amended the bill to require a candidate for the office of Attorney General to be licensed to practice law in Kansas. The House Committee of the Whole also amended the bill to remove the four-year residency requirement for candidates for the office of Governor and Lieutenant Governor present in the bill as introduced. [*Note:* The Conference Committee retained these amendments.]

In the Senate Committee on Ethics, Elections and Local Government hearing, Representative Carpenter and the Director provided proponent testimony. A private citizen who said he is a candidate for Governor provided opponent testimony. No other testimony was provided.

The Senate Committee amended the bill to require a candidate for Governor and Lieutenant Governor to be 30

years of age or older [*Note:* The Conference Committee changed this to 25 or older.] and a qualified elector in Kansas and to require candidates required to be qualified electors to be so by the deadline for filing for the office. [*Note:* The Conference Committee retained the latter amendments.]

According to the fiscal note prepared by the Division of the Budget on HB 2539, as introduced, enactment of the bill would have no fiscal impact.

### ***HB 2333 (Election Audits, Voting Machines)***

During the 2017 Legislative Session, HB 2333 was introduced by the House Committee on Elections at the request of the Office of the Secretary of State. In the House Committee hearing, the Secretary of State and a representative of the League of Women Voters appeared in support of the bill. They testified the bill would help ensure election results are accurate and noted Kansas is in the minority of states that do not require post-election audits of election results. A citizen testified in opposition to the bill, stating his concern the bill did not require sufficiently extensive audits of election results. No other testimony was provided.

The House Committee amended the bill to add language requiring review of all races except races involving judges, uncontested races, and races where the margin was more than 30 percent. The House Committee also adopted an amendment requiring only one local race be selected for audit in even-numbered years. [*Note:* The Conference Committee further modified the list of races to be audited, as described above.]

In the Senate Committee on Ethics, Elections and Local Government hearing on March 15, 2017, proponents included the Secretary of State and a representative of the League of Women Voters of Kansas. A private citizen provide neutral testimony. No other testimony was provided.



On March 24, 2017, the Senate Committee amended the bill to further limit the races audited to two contested races: one federal and one state legislative race. [Note: The Conference Committee further modified the list of races to be audited, as described above.]

The bill was rereferred from the Senate Committee of the Whole to the Senate Committee on Ethics, Elections and Local Government on May 8, 2017.

The Senate Committee on Ethics, Elections and Local Government held a second hearing on the bill on January 24, 2018. A Sedgwick County commissioner appeared in support of the bill. He stated his support for the random selection of precincts and races to be audited but that counties should be permitted to expand the audits if they found it necessary and appropriate. A representative for the League of Women Voters of Kansas testified in support of the bill, specifically the extension of the deadline for canvassing and banning electronic and electromechanical voting systems that do not produce a paper record of each vote cast and cannot be tested. The League of Women Voters of Kansas representative suggested an amendment to include odd-numbered year elections in the auditing requirements. The Director also provided proponent testimony. He stated Kansas is in the minority of states that do not require post-election audits and a manual review of election results, including ballots cast on electronic machines, would increase public confidence in the accuracy of the state's voting systems.

Neutral testimony was provided by Representative Ousley. He stated he supported election audits, but he was opposed to the narrowing of the bill to audits of only one federal office and one contested Kansas legislative race. A private citizen also presented neutral testimony to the committee. He stated the proposed scope of the audit is limited and a full audit within the 1.0 percent scope would be more appropriate. A representative of the Kansas County Clerks and Election Officials Association (KCCEO) provided

written-only neutral testimony stating the organization supported the bill with a few exceptions. The KCCEOA representative suggested audits be conducted on a small random sampling of total precincts and races and allowing counties to audit more precincts or races if irregularities are found.

No further testimony was provided.

The Senate Committee amended the bill to change the effective date to January 1, 2019, as well as to return the races reviewed in the audits to those recommended by the House Committee on Elections: all races except those involving judges, uncontested races, and races where the margin was more than 30 percent. The amendment also stated only one local race would be audited in odd-numbered year elections. [Note: The Conference Committee further modified the list of races to be audited, as described above.]

According to the fiscal note prepared by the Division of the Budget on HB 2333, as introduced, the Kansas Association of Counties (Association) indicated enactment of HB 2333 would likely increase expenditures for county governments by requiring them to hire workers and purchase supplies to conduct audits. There could also be increased costs associated with printing paper ballots; however, the Association was unable to estimate the total costs. A revised fiscal note was not available on the amended bill at the time of the Senate Committee's action.

***House Sub. for SB 264 (Advance Voting Ballot Signatures)***

SB 264 was introduced by the Senate Committee on Ethics, Elections and Local Government at the request of Senator Faust-Goudeau. In the Senate Committee hearing, Senator Faust-Goudeau testified as a proponent of the bill. Representatives for the American Civil Liberties Union (ACLU) Kansas, the Cerebral Palsy Research Foundation of

Kansas, and the Disability Rights Center of Kansas provided proponent testimony. Proponents stated current law requires signatures and some people with disabilities cannot physically sign documents, leading to votes of people with disabilities not being counted. Further proponent testimony was provided by the Director.

Written-only proponent testimony was provided by a researcher at Wichita State University and a private citizen. No neutral or opponent testimony was provided.

In the House Committee on Elections hearing, proponent testimony was provided by Representative Landwehr, Senator Faust-Goudeau, the Director, and representatives of ACLU Kansas and the Disability Rights Center of Kansas. Written-only testimony was provided by the Cerebral Palsy Research Foundation of Kansas and the Office of the Sedgwick County Counselor. No other testimony was provided.

The House Committee amended the bill to require the Office of the Secretary of State to prescribe formats for the advance voter ballot envelope. The House Committee also amended the bill to include substantially similar language to that of HB 2225, to allow anyone who requests an advance voting ballot to have the option to request permanent advance voting status. [Note: The Conference Committee did not retain the provisions relating to permanent advance voting status. Background information on HB 2225 is provided below.] The Committee placed the amended contents into a substitute bill.

The fiscal note prepared by the Division of the Budget states that, although enactment of SB 364, as introduced, would require modification of existing ballot applications, ballot envelopes, training guides, and manuals, the Office of the Secretary of State indicates the changes may be made from existing resources. However, there could be a fiscal effect on county election offices, which may need to submit replacement orders if these documents had already been

ordered. No estimates for such re-orders were available. An updated fiscal note was not available at the time the House Committee took action on House Sub. for SB 364.

*HB 2225*

The bill was introduced in the House Committee on Elections during the 2017 Legislative Session. In the February 2017 House Committee hearing, Representative Parker and a representative from the League of Women Voters of Kansas provided proponent testimony. Written-only proponent testimony was provided by election officials of Marshall and Pottawatomie counties.

Opponent testimony was provided by the Director and the Shawnee County Elections Commissioner. No other testimony was provided.

The House Committee took no action on the bill during the 2017 Legislative Session.

elections; candidate qualifications; advance voting; election audits; perjury

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