

SESSION OF 2015

**SECOND CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2104**

As Agreed to May 11, 2015

**Brief\***

HB 2104 would make changes and additions to election law. The bill would address the reasons for and filling of party candidacy vacancies for any national, state, county, or township office; repeal the presidential primary law and replace it with a new requirement on political parties; and move election dates for certain offices and make related changes.

**FILLING PARTY CANDIDACY VACANCIES**

The bill would delete language allowing a candidate to withdraw his or her candidacy after the primary election due to being incapable of fulfilling the duties of office, replace it with the ability to withdraw a nominee's name for medical reasons or because the nominee does not live in Kansas, revise law addressing removal of the name of a nominee who has died, and more clearly state the meaning of the word "shall" in the statutes dealing with the requirement that a party fill a vacancy on the ballot for several offices. The bill would make deadline and other related changes as well.

***Reasons Allowed for Vacancies (Section 2)***

The bill would replace the reason of incapability to fulfill office duties by doing the following:

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- Deleting current law requiring the Secretary of State, for national and state offices, or the county election officer, for county and township offices, to remove from the ballot the name of any nominee who declares he or she is incapable of fulfilling duties of office if elected, and then withdraws; and
- Replacing the deleted portion with language stating a person who has been nominated may be withdrawn from nomination under the following circumstances:
  - The nominee must certify to the Secretary of State a notice he or she is withdrawing because of a severe medical hardship to self or immediate family, with certification of medical hardship signed by a doctor; or
  - The nominee must certify to the Secretary of State a notice he or she does not reside in the state of Kansas.

The bill would revise the provision in law addressing removal of the name of a nominee who has died, by doing the following:

- Eliminating the requirement that a request to remove the name from the ballot come from the chairperson of the county party committee before a replacement can be named, instead leaving the fact of the death as the notification;
- Requiring the Secretary of State (for national and state offices) or the county election officer (for county or township offices) notify the chairperson or vice-chairperson of the appropriate party committee within 48 hours of receiving the notification of death;
- Making the name removal a requirement, instead of an option; and
- Adjusting related deadlines as necessary.

### ***“Shall” Means “Shall” (Sections 3, 4, and 5)***

The bill would require, with respect to the sections of law addressing filling a party candidacy vacancy in a district office, on the State Board of Education, and in all other congressional district, county, or state offices: (a) the certificate executed under oath by the convention chairperson or vice-chairperson also state the person elected agrees to accept the nomination; and (b) the person elected execute a notarized statement stating he or she agrees to accept the nomination. The bill would require such certification be transmitted within 21 days of receipt of notice the vacancy has occurred or will occur for a district vacancy and within 14 days for other vacancies addressed by the bill.

In all three of these sections, with respect to the use of the word “shall,” the bill would state: “[T]he word ‘shall’ imposes a mandatory duty and no court may construe that word in any other way.”

### ***Deadline and Related Changes***

The bill would make the following deadline changes:

- For the office of district attorney, change the date of filing for candidacy from June 10 to the date specified in KSA 2014 Supp. 25-205(a), which is June 1 with alternate provisions if that date falls on a weekend or holiday (Section 1); and
- Regarding the deadline by which a district convention must fill a vacancy:
  - For a district office, reduce from 21 to 14 the number of days after receipt of the notice of vacancy to call or convene a convention; and reduce from 14 to 6 the number of days, after adjournment of a convention in which a

- quorum was not present, by which a new convention must be held (Section 3); and
- For the State Board of Education, reduce from 21 to 10 the number of days after receipt of the notice of vacancy to call or convene a convention and from 14 to 3 the number of days, after adjournment of a convention in which a quorum was not present, by which a new convention must be held (Section 4).

### **PRESIDENTIAL PREFERENCE PRIMARY**

The bill would repeal the statute calling for a presidential preference primary election and replace it with new law requiring each recognized political party to select a presidential nominee in accordance with party procedures, also required to be developed by the bill, for every presidential election beginning with the 2016 election. (Section 6)

### **MOVING ELECTION DATES**

The bill would move all elections for office holders of local governments currently held in the spring of odd-numbered years to the fall of odd-numbered years, with one exception (described below). In general, the elections would remain nonpartisan, although a city could choose to make its elections partisan. Sections to be added to the law, Sections 7, 8, and 13 through 16, would be cited as the Help Kansas Vote Act.

Beginning in 2017, the election dates for the specified units of local government would mirror the election dates for the elections held in even-numbered years. That is, the primary election would be held on the first Tuesday in August, and the general election would be held on the Tuesday

following the first Monday in November. The elections, to be administered by the county election officers, would be consolidated into one ballot, which would be prescribed by the Secretary of State through rules and regulations. Those entities currently with district method elective offices (*i.e.*, cities and school districts) would retain that authority.

Local units of government affected are included in the definition of municipalities as the following (Section 7):

- Cities;
- The consolidated city-county governments of Wyandotte County and Kansas City, Kansas, and Greeley County;
- School districts;
- The Kansas City Board of Public Utilities;
- Community colleges;
- Drainage districts;
- Extension districts formed pursuant to KSA 2-623 *et seq.*;
- Irrigation districts;
- Improvement districts formed pursuant to KSA 19-2753 *et seq.*;
- Water districts formed pursuant to KSA 19-3501 *et seq.* (Water One); and
- Hospital districts formed pursuant to KSA 2014 Supp. 80-2501 *et seq.*

Not included is any ***special district*** where governing body member elections are conducted at a meeting of the special district. (Section 7)

### ***Provisions Specific to Cities***

The bill would make these changes specific to cities:

- The one exception to elections being in odd-numbered years would be the option the bill would provide cities to also have elections in even-numbered years, for the purpose of staggering terms or having three-year terms of office (Section 7);
- All existing ordinances and charter ordinances, except those relating to the timing of primary and general elections, would remain in effect until amended or repealed by the city (Section 8);
- Provisions would be added to clarify the forms of government any city could adopt and how frequently a city could change its form of government (Sections 9-12);
- Numerous statutes would be changed and some new sections added to make city election law uniform and not differ by class of city. (Numerous sections contain stricken language for this purpose; additionally, Section 74 would repeal 58 statutes not replaced—all of Chapter 12, Article 10, as well as KSA 19-2762 and 71-1417);
- A city governing body would be authorized to determine whether that city's elections will be non-partisan or partisan (Section 54); and
- A vacancy on the governing body of any city or consolidated city and county would have to be filled by special election when the following conditions exist:
  - The municipality does not have its own procedure for filling vacancies and has not filled any such vacancies within 60 days; and

- The governing body has not made an appointment to fill the vacancy within 60 days of the vacancy. (Sections 71-73)

### ***Provision Specific to School Districts***

All unified school districts would be required to make available, upon request of the county election officer, suitable school buildings for polling places. The county election officer would be required to notify the school district superintendent on January 1. (Section 13)

### ***Voter Education, Official Municipal Ballot, Declaration of Intent, Ballot Length***

#### ***Voter Education***

The Secretary of State would be required to develop a public information program to inform the public of the changes related to moving elections from spring to fall, including an explanation of which offices' elections are involved. The information program would be required to use advertisements and public service announcements, in addition to posting information on the official websites of the Secretary of State and county election officers. The bill would require the Secretary of State and county election officers to develop dedicated websites to provide voter education and sample ballots. (Section 14)

#### ***Official Ballot, Declaration of Intent, and Election Procedures***

The bill would require the Secretary of State to prescribe the official ballot style and form for municipal offices and the declaration of intent to become a candidate. Candidates would be required to file the declarations with the county election officer no later than noon, June 1, in even- and odd-

numbered years, with an exception provided if that date falls on a weekend or a holiday. For entities where a primary election is not authorized or otherwise required, the declaration of intent would have to be filed no later than noon on September 1, with a similar exception provided. The Secretary of State also would be required to establish primary and general election procedures for municipalities, and to adopt rules and regulations to implement this section on or before July 1, 2016. County election officers, in consultation with the Secretary, would be required to develop ways to reduce ballot length and expedite the voting process. (Section 15)

The county election officers would be required to arrange and print the official primary election ballot for municipal elections in odd-numbered years. (Section 31)

The Secretary of State would be required (for various elections) to establish the arrangement of names and offices on ballots, develop ballots, and establish ballot styles, all in accordance with rules and regulations adopted by July 1, 2016. (Sections 32-36)

#### *Other Changes*

The bill would specify expiration dates for the terms of members of governing bodies and other elected officials of all municipalities. Under the bill, those that would expire at any time in 2017 would expire on the second Monday in January of 2018. (Section 7)

The bill would delete or replace several provisions in existing law to comport with the bill's intent of consolidating all spring elections for officials to the fall. This includes changes in primary and general election filing deadlines and procedures, terms of office, ballot creation and canvassing, periods of time when school and community college districts could change their methods of election, and notices of elections.

The bill would increase each voter's time limit in the voting booth from five minutes to ten minutes, when other voters are waiting. (Section 61)

The bill would increase candidate filing fees from \$5 or \$10 to \$20 and would specify a \$20 filing fee for any municipal office included in the bill. (Sections 7, 25, 29, 46, 67, and 70)

The bill would require the county election officer to notify each person on the permanent advance voting list who has failed to vote in four (increased from two) general elections that the person must renew the application for permanent advance voting status or be removed from the permanent advance voting list; the general elections would include those held in odd-numbered years. (Section 38)

The bill would change the number of 16- or 17-year-olds who would be allowed to serve on each election board, from 1 to 1/3 of those appointed to the election board. It also would require each 16- or 17-year-old so appointed to have a letter of recommendation from a school teacher, counselor, or administrator. (Section 60)

### **Conference Committee Action**

The second Conference Committee agreed to accept the provisions of HB 2104, as amended by the Senate Committee of the Whole, and add the following provisions:

- The contents of Sub. for SB 171, as amended by the House Committee on Elections, regarding moving election dates, with two changes: (1) The elections for cities, consolidated city-county governments, and school districts would be held in the fall of odd-numbered years rather than in even-numbered years (which as a result eliminates the requirement to place local elections at the top of the ballot); and (2) the requirement that county

election officers notify school superintendents of the need for a school building as a polling place 365 days in advance was changed to notification on January 1; and

- The contents of SB 239, as amended by the Senate Committee of the Whole, regarding elimination of the presidential preference primary.

## **Background**

### ***HB 2104, Filling Candidate Vacancies***

KSA 25-306b provides two reasons to withdraw a name from candidacy for any national, state, county, or township office. Subsection (b) of that statute allows any such candidate “who declares that they are incapable of fulfilling the duties of office if elected” to withdraw. Subsection (c) allows the name of a candidate who has died to be withdrawn. KSA 25-3905 states, in part, “When a vacancy occurs after a primary election in a party candidacy, such vacancy shall be filled by the party committee of the congressional district, county, or state. . . .”

The August 2014 primary election resulted in the election of Shawnee County District Attorney Chad Taylor as the Democratic candidate in the U.S. Senate race against incumbent Senator Pat Roberts. Following the primary election, on September 3, Mr. Taylor submitted a letter to the Secretary of State indicating he was withdrawing his name as a candidate. The Secretary of State refused to remove Mr. Taylor’s name from the ballot. This refusal resulted in a lawsuit, *Taylor v. Kobach*, which eventually was decided by the Kansas Supreme Court in favor of Mr. Taylor, whose name was ordered removed from the ballot.

The *Taylor v. Kobach* decision ultimately resulted in a separate lawsuit, *Orel v. Kansas Democratic Party*, when the

Kansas Democratic Party failed to fill the vacancy left by Mr. Taylor. A three-judge panel of the Shawnee County District Court ruled in favor of the Kansas Democratic Party. The ruling read, in part, "The use of the word 'shall' in legislation, however, 'is not plain, and construction is required.' . . ." Memorandum Opinion, p. 14 (quoting *State v. Raschke*, 289 Kan. 911, 914-15, 219 P.3d 481 (2009)).

The Secretary of State, who requested the bill, was the sole conferee before both the House and the Senate Election Committees. The Secretary opined both court decisions were erroneous and stated his office drafted the bill to prevent such actions in the future.

The Senate Committee on Ethics and Elections amended the bill to add the ability of a nominee to withdraw either for medical reasons or because the nominee does not reside in Kansas.

The Senate Committee of the Whole returned one deadline change back to current law. For a vacancy in a district office in a multi-county district, the deadline to call a district convention by mailing a notice would be changed back to at least ten days prior to the convention, instead of reducing this to seven days.

According to the fiscal note prepared by the Division of the Budget, the bill, as introduced, would have no fiscal effect on the state or its counties.

### ***SB 239, Presidential Preference Primary***

The bill was introduced by the Senate Committee on Federal and State Affairs and would have canceled the 2016 presidential primary and postponed the next one until 2020. A representative of the Office of Secretary of State was the sole conferee, testifying favorably. The conferee stated 1992 was the last time a presidential preference primary election was held in Kansas. The primary, however, would entail a

Secretary of State budget amendment request for approximately \$1.75 million. While the conferee indicated the Secretary of State is not taking a stand with respect to the advisability of holding such a primary election, the cost prompted the Office to propose the bill.

The Senate Committee of the Whole amended the bill to repeal law requiring a presidential preference primary and replace it with the requirement for each recognized political party to select its nominee.

The fiscal note prepared by the Division of the Budget on the bill, as introduced, essentially reflects the testimony, *i.e.*, if the bill were not to be adopted there would be an additional cost of approximately \$1.8 million for the presidential preference primary election.

#### ***Sub. for SB 171, Changing Certain Election Dates***

##### *The Constitution and Current Law*

Article 4, Section 2 of the *Kansas Constitution* states, "General elections shall be held biennially on the Tuesday succeeding the first Monday in November in even-numbered years. Not less than three county commissioners shall be elected in each organized county in the state, as provided by law." No further constitutional direction is given regarding specific types of elections or timing.

Kansas statutes require federal, state, and county elections be held in the fall of even-numbered years. Elections for officials of cities, school districts, and additional political subdivisions holding elections to be voted on by the electorate are held in the spring of odd-numbered years. Special elections may be held at other times.

### *Recent History of the Issue*

Legislation proposing to move spring elections to the fall was introduced in the 2010 Legislative Session. At least ten bills have been introduced on or amended to include the topic, with seven of those offered in the 2013-2014 biennium. At the end of the 2014 Legislative Session, a study was requested on the topic and assigned to the Special Committee on Ethics, Elections and Local Government. The Special Committee heard directly from three other states' experts on the challenges and benefits of combining elections, either completely or partially, in those states. The Committee also received a presentation from a staff representative of the National Conference of State Legislatures, regarding the history and current practice of election scheduling in the nation, and from Kansas election officials.

The Special Committee also heard from the author of purportedly the only scholarly book published on the subject, *Timing and Turnout: How Off-Cycle Elections Favor Organized Groups*. The author's work concluded off-cycle election timing enhances the effectiveness of organized groups' mobilization efforts.

Following this review and Committee discussion, no recommendations were made. However, the Special Committee Chairperson indicated a bill would be presented and considered during the 2015 Session. SB 171, as introduced, was that bill.

### *Senate Action on the Bill*

The bill was introduced by the Senate Committee on Ethics and Elections.

Proponents who testified to the Senate Committee were city commissioners from Larned and Pratt, a former school board member from Winfield, a Wichita school board

member, and a former member of the State Board of Education, each testifying as an individual. The Executive Director of the Kansas Republican Party testified on behalf of the party.

Written testimony in support of the bill was received from a representative of Kansans for Liberty and a past city council candidate.

Testimony in support of the bill focused primarily on increasing voter turnout. Increasing the pool of candidates was another reason mentioned, as was the short time between a fall election and a subsequent spring election, the higher probability of poor spring weather, and the opportunity for school board members to have additional time in office prior to voting on the school district budget.

Neutral testimony on behalf of the Secretary of State was provided by the Assistant State Election Director.

Opponents who testified before the Senate Committee were Senator Francisco; a school board member from Rush County; the superintendent of USD 208 (Trego County); a city commissioner from Wichita; the Douglas County Clerk, as president of the Kansas County Clerks and Election Officials Association; and representatives of the League of Kansas Municipalities (LKM) and the Kansas Association of School Boards (KASB).

Written testimony in opposition to at least one aspect of the bill was received from individuals and organizations in the categories listed below:

- Cities: representatives of the cities of Colby, Edwardsville, Garden City, Hutchinson, Lawrence, Lecompton, Lenexa, Manhattan, Marysville, Neodesha, Ottawa, Overland Park, Paola, Prairie Village, Salina, Shawnee, Topeka, and Wakefield; the president of the Kansas Mayors Association; the chairman of the Johnson and Wyandotte

Counties Council of Mayors; individual city council members from Chanute and Maize; and the mayors of Derby and Overbrook;

- Counties: representatives of Coffey and Johnson counties and the Kansas Association of Counties (KAC), the Crawford County Clerk and Election Officer, and the Norton County Clerk and Election Officer;
- School boards: representatives of USD 229 (Blue Valley), USD 233 (Olathe), USD 475 (Geary County), the Shawnee Mission Board of Education, the Board of Wichita Public Schools, Game On for Kansas Schools, Kansas PTA, and the KASB, as well as school board members from USD 108 (Washington County), USD 204 (Bonner Springs), USD 214 (Ulysses), USD 226 (Meade), USD 233 (Olathe), USD 327 (Ellsworth), USD 383 (Manhattan-Ogden), USD 446 (Independence), USD 458 (Basehor-Linwood), and USD 509 (South Haven);
- Community colleges: the Executive Director of the Kansas Association of Community College Trustees; and
- Other organizations: representatives of the Kansas City, Kansas Chamber of Commerce, the Mainstream Coalition and Education Foundation, and Sunflower Community Action.

Three individuals—an attorney for several local governments, a former school board member, and an individual who did not cite a connection to any local government—also submitted written opponent testimony.

Reasons most cited by opponents were a desire to keep local elections non-partisan, a concern the bill erodes home rule, a concern partisan elections would mean military and

federal workers could not run for office, a concern combined elections would reduce interest in local issues, and concerns the changes in term dates would adversely impact the local government.

The Senate Committee amended the bill to do the following:

- Move elections for cities, consolidated city-county governments, and school districts from the fall of even-numbered years to the fall of odd-numbered years and return them to being nonpartisan elections;
- Remove the category of “special districts” and include all within the definition of “municipality”;
- Delete the mandate for a school district to provide an in-service (professional development) day on an election day when the county election officer has called for use of a school building as a polling place and increase the minimum notice from 60 days to 90 days;
- Clarify the city manager, as well as any other, a form of government that would be allowed under the bill;
- Change the ballot rotation procedure to delete the randomized alphabetical rotation method and instead reflect current requirements for the municipalities affected;
- Return ballot rotation procedures to those in current law for national and state offices; and
- Increase each voter’s time limit in the voting booth from five minutes to ten minutes, when other voters are waiting.

The substitute bill reflects those amendments.

The Senate Committee of the Whole amended the bill to do the following:

- Add an expiration date for terms of members of governing bodies and other elected officials of all municipalities who have been elected to four-year terms that would expire at any time in 2019;
- Add the requirement that certain tax levy and bond elections be held at the next primary or general election;
- Increase, from 60 to 365, the number of days' required notice when a county election officer needs to use a school building as a polling place;
- Add a date certain for adoption of the rules and regulations that the Secretary of State must adopt regarding the development of the official municipality primary election ballot and prescribing the declaration of intent;
- Amend the number of persons under the age of 18 who may be appointed to each election board; and
- Add the requirement for a special election to fill a vacancy on the governing body of any city or consolidated city and county, under certain circumstances (contents of 2015 SB 10, as amended by the Senate Committee on Ethics and Elections).

#### *House Action on the Bill*

Proponents who testified in the House Committee on Elections included Senator Holmes and representatives of Educational Management Consultants, Kansans for Liberty, the Kansas Republican Party, and the Sedgwick County Commission.

Written proponent testimony was received from the Coffey County Commission and current or former members of the Kansas State Board of Education, the Larned City Council, Wichita USD 259 Board of Education, and Winfield USD 396 Board of Education.

Neutral testimony was provided by a representative of the KAC.

Opponents testifying included representatives of the Kansas Association of City/County Management, KASB, Kansas County Clerks and Election Officials Association, LKM, Water One, and the City of Wichita, as well as by a Topeka USD 501 former Board of Education member.

Written testimony in opposition was received from county clerks from the following counties: Allen, Cherokee, Coffey, Cowley, Crawford, Derby, Harvey, Hodgeman, Labette, Seward, Smith, and Trego; representatives of the following cities: Chanute, Lawrence, Leawood, Mission Hills, Shawnee, and Topeka; representatives of the following unified school districts: Lawrence USD 497, Shawnee Mission USD 512, Wichita USD 259; and representatives of the Kansas Association of Community College Trustees and the Kansas City, Kansas Chamber of Commerce.

Several proponents and opponents tied their support or opposition to a specific version, or specific provisions, of the bill.

The House Committee on Elections amended the bill to do the following:

- Change the timing of city, consolidated city-county, and school district elections from the fall of odd-numbered years to the fall of even-numbered years;
- Remove "county adopting a charter under KSA 19-2680 *et seq.*" (Johnson County) from the definition of "municipality";

- Require candidates for municipal (cities, consolidated city-counties, and school districts) offices be placed at the top of the fall ballots in even-numbered years;
- Eliminate the Senate Committee of the Whole amendment that would have required certain tax levy and bond elections be held at the next primary or general election;
- Require a city continue to operate under its current form of government until the city's form of government is changed as provided by law;
- Eliminate the change in precinct committee person terms to four years and return these positions to two-year terms; and
- Make numerous technical changes.

#### *Fiscal Effects*

A fiscal note was prepared by the Division of the Budget on the bill, as introduced, which would have required all city, county, and school district elections to be held in even-numbered years (with one exception) and to be partisan. The fiscal note on the bill, as introduced, indicated there would be revenue increases or savings as follows:

- Unspecified increased revenues to county general funds due to increased candidate filing fees;
- Savings in ballot production due to the elimination of the rotation of candidates' names on ballots; and
- Savings in preparing ballots for the August primary in each even-numbered year due to the increased term for precinct committee persons (from two to four years).

However, any savings would be offset by an increase in ballot production due to the addition of city and school board elections to the ballot in even-numbered years. The Office of the Secretary of State also indicates SB 171 would increase its expenditures by \$15,000 from the State General Fund in FY 2016 to implement a voter education program. According to the LKM, the bill would increase expenditures for cities related to informing and educating electors on the changes in the bill; explaining changes in filing locations and deadlines to voters; updating literature; staff time to review and revise existing information packets; staff time devoted to reviewing, revising, repealing and adopting city ordinances and codes; and publication costs. The LKM indicates holding special elections in odd-numbered years also would increase costs. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor's Budget Report*.

No fiscal note was available on the substitute bill.

elections; moving election dates; local elections; cities; school districts; special districts; nonpartisan; polling places; city or consolidated city-county governing body vacancy; ballots; presidential primary

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