

## **Elections and Voting; Senate Sub. for HB 2138**

**Senate Sub. for HB 2138** amends and creates law pertaining to elections and voting, including voter registration, election audits, distinctive watermarks on paper ballots, electronic or electromechanical voting systems, electronic poll books, an affidavit system for transferring ballots, duties of the Secretary of State (Secretary) and election officials, electronic poll book fraud, exemptions from election crimes for poll workers, and providing electronic election results.

### ***Affidavit System***

The bill requires the Secretary, in consultation with county election officers, to develop an affidavit system to be utilized for the transfer of ballots. The bill requires each person who handles ballots to sign an affidavit listing, if applicable, the:

- Number of blank ballots;
- Number of spoiled ballots;
- Number of provisional ballots;
- Number of counted ballots;
- Number of advanced ballots in envelopes;
- Name of the person to whom such ballots were delivered; and
- Location of where the ballots were delivered.

The affidavit system developed by the bill applies to all ballots received, handled, and collected by county election offices prior to, on, and after the date of an election. The affidavit system will operate in conjunction with statutory provisions regarding transporting, preserving, and destroying ballots and election records.

Violations of the bill include altering any information provided in an affidavit or providing false information in an affidavit with the intent to hinder, prevent, or defeat a fair election. Such violations constitute a severity level 9 nonperson felony.

### ***Biannual Elections Audit***

The bill creates an election audit procedure to be conducted by the Secretary in the calendar year following the general election of an even-numbered year.

The Secretary will select four counties at random to be audited under the bill, pursuant to the following:

- One county must have a voting-age population of more than 90,000;
- One county must have a voting-age population of more than 20,000 but less than 90,000; and
- Two counties must have voting-age populations of less than 20,000.

The bill specifies that voting-age populations shall be set by the most recent federal decennial census.

The bill requires the Secretary to adopt rules and regulations necessary to implement the audits, including specifying the specific records and procedures to be examined.

### ***Watermarks***

The bill requires all voting systems in Kansas to use a paper ballot with a distinctive watermark as established by the Secretary, for elections on and after January 1, 2024.

The bill requires the ballot to be:

- Marked by the voter, or person assisting the voter as permitted by law, by hand or by use of a voting machine that is a non-tabulating paper ballot marking or printing device;
- Subject to inspection and verification by the voter after marking and before the vote is cast and counted; and
- Canvassed by hand or by vote-tabulating equipment.

The bill requires the voting system to provide the voter an opportunity to correct any error on the paper ballot before it is secured and preserved.

The bill prohibits a voting system from preserving paper ballots in a manner that would associate a voter with the record of their vote without the voter's consent.

The bill requires the paper ballot to be preserved and constitute the official ballot for audit and recount purposes. The bill requires each paper ballot to be counted by hand in a recount unless the recount requestor elects not to have the ballots counted by hand. In the event of any inconsistencies in vote tallies, the vote tallies of the paper ballots counted by hand will be the true and correct record of votes cast.

The bill prohibits the use of poll books not requiring a hand-written signature.

The bill requires the Secretary to adopt rules and regulations to implement these provisions by January 1, 2023.

### ***Exemptions from Certain Election Crimes for Poll Workers***

#### ***Assisting Voters in Marking or Signing Advanced Voting Ballots***

The bill amends law to specify a county election officer assisting voters with marking or signing an advance ballot as part of the duties of the county election office would not be a violation of the bill. The bill also adds an exemption to a prohibition on a candidate for office

similarly assisting a voter for candidates for office employed by a county election office who are assisting voters in marking or signing such voters' advance voting ballots as employees of that office. The exemption does not apply if the candidate's name appears on the ballot being marked or signed.

With regard to this exemption, the bill defines "candidate for office" to mean an individual who has declared such individual's candidacy pursuant to provisions pertaining to primary elections, ballots, and procedures (KSA 25-205 *et seq.*) or has been nominated for elected office pursuant to provisions governing independent nominations, terms of office (KSA 25-301 *et seq.*) in the election for which the voter applied for an advance ballot. This definition also applies to candidates for office who transmit advance voting ballots on behalf of other voters.

### ***Confirmation Notices***

The bill allows a county election officer to remove a registered voter from the registration list if such registrant has had no election-related activity for any four-calendar-year period and the confirmation notice sent by the county election officer is returned as undeliverable.

Under current law, a county election officer must send a confirmation notice to a registrant within 45 days of the following events:

- A notice of disposition of a voter registration application is returned as undeliverable;
- Change of address information identifies a registrant whose address may have changed; or
- The U.S. Postal Service provides information that a registrant has moved to a different address inside or outside the registrant's current county of registration.

The bill defines "no election related activity" to mean such registrant has not voted, attempted to vote, requested or submitted an advance ballot application, filed an updated voter registration card, signed a petition required by law to be verified by the county election officer or the Secretary, or responded to any official election mailing transmitted by the county election office.

### ***Crime of Electioneering***

The bill adds exemptions from the crime of electioneering by a candidate for:

- Any county election officer (under continuing law, this exemption also applies to the Secretary and election officials);
- A candidate for precinct committeeman or committeewoman who is:
  - Employed by a county election office; and

- Engaged in the performance of such employee's duties; and
- A candidate for any office, not including candidates for Secretary of State, any election official or any county election officer, or precinct committeeman or committeewoman, who is:
  - Employed by a county election office;
  - Engaged in the performance of such employee's duties; and
  - Not appearing as a candidate for office on any ballot such employee touches, handles, distributes, or counts.

In regard to electioneering, the bill defines “candidate” to mean an individual who has declared their candidacy or has been nominated for elected office in the election for which the individual is charged with having violated the electioneering provisions of the bill.

### ***Audit of Elections Within One Percent***

Continuing law requires, for an election to be certified, a manual audit or tally of each vote cast in an election, regardless of voting method, in one percent of all precincts, with a minimum of one randomly selected precinct per county, to be conducted by a sworn election board.

The bill amends law to require such an audit to be conducted in any even-numbered year federal, statewide, or state legislative race where the margin of victory is within one percent. The county election officer will be required to audit ten percent of all county precincts, with a minimum of one precinct, in the same manner as existing audit requirements. The precincts audited will be in addition to precincts audited for any election to be certified.

### ***Canvass Abstracts Available for Review***

The bill requires, upon the publication of the notice of the time and location of the audit required by the bill, that the abstracts of original canvass be made available for review by any authorized poll agent. The bill requires the abstracts from all precincts to be made available for review, not just the abstracts of precincts subject to the audit.

[*Note:* Under current law, a county election board, upon completion of its canvass, makes and certifies abstracts of the votes cast for each precinct.]

### ***Elections Results—State Board of Canvassers***

The bill requires each county election officer to provide precinct-level election results electronically in machine-readable format for all federal offices, statewide offices, legislative offices, and local offices not later than 30 days after the final canvass of general election results.

## ***Electronic Poll Books***

### *Definition*

The bill defines “electronic poll book” as a list of registered voters for a particular precinct or polling location that may be transported to a polling location and on which each voter may sign their signature. The bill clarifies “electronic poll book” would not include automatic tabulating equipment or data processing equipment, including a direct recording electronic system, that are components of an electronic or electromechanical voting system.

### *Board of County Commissioners and County Election Officer Provisions*

The bill permits a board of county commissioners (board) and county election officer (officer) to provide electronic poll books to be used at voting places, or for advance voting, at national, state, county, township, city, and school primary and general elections and in question submitted elections. Such board and officer are permitted to issue bonds to finance and pay for the purchase, lease, or rental of such electronic poll books. Such board and officer are permitted to adopt, experiment with, or abandon any electronic poll book authorized for use in the state. If the Secretary rescinds approval of any electronic poll book, the board and officer will be required to abandon such electronic poll book until changes required by the Secretary are made; if such changes cannot be made, the abandonment would be permanent.

### *Prohibitions*

The bill prohibits, beginning July 1, 2022, the board and officer from purchasing, leasing, or renting any electronic poll book, unless such poll book has been certified by the Secretary. The bill also prohibits the operation of any electronic poll book with network connectivity that does not meet security standards established by the Secretary.

### *Secretary of State Responsibilities*

The bill requires the Secretary to examine and approve the kinds or makes of electronic poll books; no kind or make of electronic poll book will be permitted to be used at any election until it receives certification by the Secretary.

### *Sale of Electronic Poll Books*

The bill permits any person, firm, or corporation that desires to sell electronic poll books to political subdivisions in the state to request in writing for the Secretary to examine such poll books. The bill requires any such written request to include a certified check for \$250 to defray costs for the Secretary to provide the examination. [Note: Such examination will follow the guidelines for examination of electronic or electromechanical voting systems in KSA 25-4405.]

### ***Electronic or Electromechanical Voting Systems***

The bill requires that any electronic or electromagnetic voting system approved by the Secretary shall not have the capability of, or any component thereof shall not have the capability of, connecting to the internet or any other communications or computer network. The bill specifies such networks include, but are not limited to, a local area network, wireless network, cellular network, or satellite network, or the use of Bluetooth or any other wireless communications technology.

### ***Use of Electronic Poll Books and Electronic or Electromechanical Voting Systems***

The bill requires the board and officer to provide the number of units of electronic or electromechanical voting systems or electronic poll books as necessary to equip voting places, if such board and officer have determined a kind or make of such voting systems or poll books shall be used in the county.

If the Secretary has rescinded the approval of any electronic poll book, the bill prohibits any tax from being levied, or any moneys being paid from any fund, for the purchase, lease, or rent or such poll book. [Note: This adds to the prohibition in KSA 25-4407 for electronic or electromechanical voting systems.]

The bill adds electronic poll books to electronic or electromechanical voting systems as equipment for which the board must provide for storage and for which the officer must be in complete charge of its safekeeping, repair, and delivery. The bill requires the officer to see that such poll books, in addition to voting systems, are returned to their storage after any election.

The bill requires election judges before, during, and after the operation of the polling place, to make all electronic or electromechanical voting systems and vote tabulating equipment available to any candidate or any authorized poll agent for review to ensure there is no connectivity to the internet or to any other communications or computer network.

### ***Testing of Vote Tabulation Equipment***

To law requiring officers to have testing conducted of automatic tabulating equipment within five days prior to the date of an election, the bill adds a requirement for public notice of such test to be published on the county website, if the county has a website.

The bill amends law requiring such testing to be repeated after the completion of the canvass to require such repeat testing to be conducted within five business days after the completion of the canvass.

### ***Electronic Poll Book Fraud***

The bill expands the current crime of electronic or electromechanical voting system fraud to include electronic poll book fraud, defined as:

- Being in unlawful or unauthorized possession of electronic poll books; or

- Intentionally tampering with, altering, disarranging, defacing, impairing, or destroying any electronic poll book, or component thereof.

Electronic poll book fraud is a severity level 9 nonperson felony.

### ***Optical Scanning Equipment***

To law requiring officers to have testing conducted of optical scanning equipment within five days prior to the date of an election, the bill adds a requirement for public notice of such test to be published on the county website, if the county has a website.

The bill amends law requiring such testing to be repeated after the completion of the canvass to require such repeat testing to be conducted within five business days after the completion of the canvass.

The bill prohibits any optical scanning equipment and systems using optical scanning equipment approved by the Secretary from having the capability of, or any component having the capability of, being connected to the internet or any other communications or computer network, including a local area network, wireless network, cellular network, satellite network, or using Bluetooth or any other wireless communications technology.