

SESSION OF 2024

SUPPLEMENTAL NOTE ON SENATE BILL NO. 365

As Amended by Senate Committee of the Whole

Brief*

SB 365, as amended, would amend various provisions of election law, including, but not limited to, changing the deadline for the receipt of all advance voting ballots, requiring voting and canvassing to be done by hand, prohibiting the use of electronic or electromechanical voting systems and electronic poll books, and prohibiting the use of remote ballot boxes.

Deadline for Advance Voting Ballots

The bill would change the deadline for all advance voting ballots to be received by the county election officer from the third day following the date of the election to 7:00 p.m. on the date of the election.

Remote Ballot Boxes

The bill would prohibit the use of remote ballot boxes for the return of advance voting ballots. The bill would define a "remote ballot box" as any form of a locked ballot box designated by the county election officer as available for use for depositing advance voting ballots, but would not include any ballot boxes located in a county election office or satellite advance voting site. The bill would require the Secretary of State (Secretary) to adopt rules and regulations necessary to implement and enforce these provisions.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Voter Identification

The bill would require a voter to vote a provisional ballot if such voter is unable or refuses to provide current and valid identification or if the voter's name and address does not match the voter's name and address on the registration book or poll book.

Duplicate Voter Registration

The bill would require county election officers to remove duplicate voter registrations from the registration books and party affiliation lists, with the last inactive registration of the voter being the one removed. Duplicates would be determined via the existing annual registration record check against the National Change of Address files (KSA 25-2354).

Certification of Voting Machines and Equipment

The bill would require the Secretary, prior to certifying any system or electronic poll book for use in an election occurring prior to January 1, 2025, to cause the system or electronic poll book to be examined by a qualified, independent third party. The bill would require such examination to include inspection of the hardware, software, firmware, and source code. The Secretary would also be required to review any previously approved electronic or electromechanical voting system, electronic poll book, and their equipment and operation.

The bill would require any person, firm, or corporation desiring to sell any kind of electronic or electromechanical voting system or electronic poll book in Kansas to request, in writing, that the Secretary examine the kind or make of the system to be sold. The Secretary would require such person, firm, or corporation to explain the system or electronic poll book and provide a demonstration showing the system or electronic poll book complies with applicable state and federal

laws and regulations. The Secretary would be required to employ an independent, qualified, and competent person or persons to assist in the examination and advise the Secretary.

If a vendor declines to permit or make available an electronic or electromechanical voting system or electronic poll book to a complete examination, the bill would prohibit the Secretary from certifying that electronic or electromechanical voting system or electronic poll book would not be certified by the Secretary and prohibit its purchase and use.

Help America Vote Act

Prior to January 1, 2025, the bill would remove provisions requiring voting equipment to comply with the Help America Vote Act of 2002 (HAVA) and other federal law. The bill would replace a provision regarding HAVA in a statute authorizing the Secretary to provide voting equipment in certain circumstances with a reference to such provision as the Secretary deems necessary.

Paper Ballots and Hand Counting in Elections After January 1, 2025

The bill would make the following changes to election law beginning on or after January 1, 2025.

Serial Number

The bill would require all voting systems in Kansas to use a paper ballot with a serial number established by the Secretary as well as the distinctive watermark required in continuing law.

Voting

The bill would require ballots to only be marked by hand and would require manual hand counting of the ballots cast.

Canvass

The bill would require all ballots to be canvassed by hand.

The bill would also require the supervising judge to promptly transmit the number of votes received by each candidate or for or against a question submitted to the voters to the Secretary or the Secretary's designee. If the canvass is not completed on the night of the election, the supervising judge would be required to report the votes counted at the end of canvassing each day until the canvass is completed. The bill would require all vote counts to be agreed upon by the supervising judge and all judges and clerks at the voting place before the vote counts and results are reported to the Secretary.

The bill would state the reports transmitted to the Secretary would be utilized solely for the purposes of providing current election vote count information for the interest of the public by the Secretary. The reports would not be considered in determining the official abstract or be considered as evidence in any proceeding challenging the results of any election.

The Secretary would be required to publish the unofficial vote counts when reported and the final unofficial results on the Secretary's website by voting area or precinct, county, and aggregate totals.

Recounts

The bill would require paper ballots be counted by hand in any recount conducted. [*Note*: Current law provides, if the

county uses optical scanning systems, that the requestor of a recount may choose how the recount is conducted.]

The bill would require a special election board conducting a recount to report the results of a recount at the close of each day and upon completion of the recount to the Secretary and when requested by the Secretary for the purposes of publishing the results of the recount on the Secretary's website. The bill would require all vote counts to be agreed upon by all members of the special election board before the vote counts and results are reported to the Secretary.

The bill would state the reports transmitted to the Secretary would be utilized solely for the purposes of providing current election vote count information for the interest of the public by the Secretary. The reports would not be considered in determining the official abstract or be considered as evidence in any proceeding challenging the results of any election.

The Secretary would be required to publish the unofficial vote counts when reports and the final unofficial results on the Secretary's website by voting area or precinct, county, and aggregate totals.

Voting Machines and Equipment

On and after January 1, 2025, the bill would prohibit the use of electronic or electromechanical voting or tabulation systems and electronic poll books or polls books that do not require a hand-written signature.

The bill would also prohibit the use of any of the following on and after January 1, 2025:

- Electronic poll books;
- Electromechanical vote tabulating equipment;

- Electronic or electromechanical voting systems; and
- Optical scanning equipment.

The bill would prohibit any board of county commissioners or county election officer of a county from purchasing, leasing, renting, or using any of the following on and after January 1, 2025:

- Electronic poll books;
- Electromechanical vote tabulating equipment;
- Electronic or electromechanical voting systems; and
- Optical scanning equipment.

Further, the bill would prohibit the use of bonds to finance and pay for the purchase, lease, or rental of an electronic or electromechanical voting system or electronic poll books on and after July 1, 2024.

The bill would also specify that provisions regarding electronic or electromechanical voting system or electronic poll book fraud apply only if occurring prior to the prohibition of the use of such systems on January 1, 2025.

Rules and Regulations

The bill would require the Secretary to adopt rules and regulations necessary to implement provisions of the bill regarding serial numbers on ballots, marking and canvassing ballots only by hand by January 1, 2025.

Technical Amendments

The bill would also make technical and conforming amendments.

Background

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Thompson.

[*Note:* Provisions of the bill are similar to those of several bills introduced during the 2023 Session: HB 2056 and SB 209 (requiring all advance voting ballots to be returned by 7 p.m. on election day); and SB 262, as introduced (requiring voting and vote tabulation by hand and prohibiting electronic or electromechanical voting systems); and SB 208, as amended by the Senate Committee of the Whole (prohibiting the use of remote ballot boxes for the return of advance voting ballots).]

Senate Committee on Federal and State Affairs

In the Senate Committee hearing, **proponent** testimony was provided by Senator Masterson, Senator Steffen, and a private citizen. The proponents generally stated the bill would improve election security and integrity, increase voter confidence in election results, and provide results more quickly.

Written-only proponent testimony was provided by nine private citizens.

Neutral testimony was provided by a representative of the Secretary, who discussed the reasons why unofficial election night vote counts might differ from the official final count and stated that around 0.25 percent of ballots counted

after election day are advance voting ballots received by mail within the 3-day period.

Opponent testimony was provided by representatives of the Disability Rights Center of Kansas, Loud Light Civic Action, and League of Women Voters of Kansas; the Speaker of the Silver Haired Legislature; and a private citizen. The opponents generally stated the bill would have an adverse effect on rural voters, voters with disabilities, senior citizens, and voters that are out of town, such as college students. Further, the opponents stated the U.S. Postal Service is still moving slower than it was before the grace period was enacted in 2017.

Written-only opponent testimony was provided by representatives of the American Civil Liberties Union of Kansas, Climate + Energy Project, Health Forward Foundation, Kansas African American Affairs Commission, Kansas County Clerks and Elections Officials Association, Kansas Farmers Union, Kansas Interfaith Action, Kansas National Education Association, Mainstream Coalition, NAACP, Sierra Club Kansas, and Voter Rights Network of Wyandotte County, and 37 private citizens.

Senate Committee of the Whole

The Senate Committee of the Whole amended the bill to:

- Prohibit the use of remote ballot boxes for the return of advance voting ballots and require the Secretary to adopt rules and regulations necessary to implement and enforce the provisions of the bill related to remote ballot boxes;
- Require a voter to vote a provisional ballot if such voter is unable or refuses to provide current and valid identification or if such voter's name and address on the registration book or poll book;

- Require county election officers to remove duplicate voter registrations from the registration books and party affiliation lists;
- Require reporting of vote counts by the supervising judge when the canvass is completed on the night of the election or at the completion of the canvass each day;
- Require a special election board conducting a recount to report vote counts, as agreed upon by the members of the special election board, when requested by the Secretary and upon completion of the recount;
- Require the Secretary to examine and certify voting machines and equipment for use in elections occurring prior to January 1, 2025;
- Remove provisions requiring voting equipment to comply with HAVA and other federal law;
- On and after January 1, 2025:
 - Require all ballots be marked, counted, and canvassed by hand;
 - Require each ballot to have a serial number;
 - Require all ballots be counted by hand in any recount;
 - Prohibit any board of county commissioners or county election officer from purchasing, leasing, renting, or using any electronic poll book, electromechanical vote tabulating equipment, electronic or electromechanical voting system, and optical scanning equipment;
 - Prohibit the use of bonds to finance and pay for the purchase, lease, or rental of an electronic or electromechanical voting system or electronic poll books; and

- Prohibit the use of any electronic poll book, electromechanical vote tabulating equipment, electronic or electromechanical voting system, and optical scanning equipment;
- Require the Secretary to adopt rules and regulations necessary to implement provisions of the bill; and
- Make technical and conforming amendments.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Secretary would use existing resources to update training materials for county election officials and update educational and promotional materials for the public. Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor's Budget Report*. [Note: The fiscal notes for HB 2056 and SB 209 are substantially similar.]

According to the fiscal note prepared by the Division of the Budget on SB 262 as introduced (requiring voting and vote tabulation by hand and prohibiting electronic or electromechanical voting systems), the Kansas Association of Counties (KAC) indicates prohibiting the use of electronic poll books and electromechanical vote tabulating equipment would result in a monetary loss and the counties could experience increased labor expenses to count votes by hand, but the KAC is unable to estimate the fiscal effect.

Fiscal information provided for SB 208 as introduced is not relevant to the provisions prohibiting the use of remote ballot boxes included in this bill.

Elections; advance voting ballots; county election office; Secretary of State; mail-in ballots; advance voting ballot deadline; remote ballot boxes