

SESSION OF 2023

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2086

As Amended by Senate Committee on Federal
and State Affairs

Brief*

HB 2086, as amended, would amend law on election-related subjects including election administration, qualifications for office, dates and deadlines, notices, certain election crimes, and equipment.

Election Administration

County Election Officer (Sections 1, 3, 11, 27, and 42)

The bill would state each county election officer is the sole public officer responsible for planning, conducting, and coordinating elections within that county, responsible for ensuring the elections comply with federal and state laws and rules and regulations.

The bill would prohibit any county election office or county election office employee or agent from creating, or permitting any other person to create, an image of the hard drive of any voting system, optical scanning equipment, or any other voting system that contains a hard drive component without the written consent of the Secretary of State (Secretary). The bill would also require each county election officer to create a back-up copy of the hard drive of any electronic or electromechanical voting system, optical scanning equipment, or any other voting system that contains a hard drive component immediately before and after each system updates, repairs, or improvements, and after each

*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>

general election. County election officers would be required to maintain such back-up copies in a secured location for not less than 22 months.

The bill would require any appointed election commissioner, not just a commissioner in a county of a certain population size, to be responsible for establishing precinct boundaries.

The bill would permit a county election officer to mail a notice to a voter on the permanent advance voting list who fails to vote in 2 consecutive general elections informing the voter that the voter's name will be removed from the permanent advance voting list unless the voter renews their application for permanent advance voting status within 30 days after the notice is mailed. [Note: Current law states notice may be mailed to a voter who fails to vote in four consecutive general elections.]

The bill would prohibit a county election officer from mailing a ballot to a voter unless that voter has submitted an application for an advance voting ballot or has permanent advance voting ballot status, or the election is conducted pursuant to the Mail Ballot Election Act.

The bill would require the county election officer to publish on the website of the county election office, as well as furnish to election boards as required by continuing law, printed instructions to voters, a list of voters' rights and responsibilities, a sample ballot, notification of the date of the election, and polling place hours.

Secretary of State (Sections 16, 18, 19, 24, 51, and 63)

The bill would give the Secretary discretion as to whether to order all counties or designated counties of a district to rotate the names of candidates for a district office on primary and general election ballots.

The bill would add a deadline – the date of the meeting of the State Board of Canvassers – by which the Secretary must determine the validity of independent nominating petitions. If any independent nominating petitions are found to be invalid, the bill would require the Secretary to notify the candidate on whose behalf the petitions were filed of that finding and the reason for it. The bill would authorize the candidate to object to the finding in accordance with procedures in continuing law.

The bill would authorize designees of the Lieutenant Governor, the Attorney General, and the Secretary, as well as those state officers, to determine the validity of any certificate of nomination, nomination petition, or declaration of intention to become a candidate for a national or state office and to constitute the State Board of Canvassers.

The bill would authorize the Secretary, after consulting with the Attorney General, to dismiss a complaint alleging violation of federal voting equipment requirements as specified in Title III of the Help America Vote Act (HAVA), if the complaint fails to allege facts.

Other (Sections 22, 37, 38, 46-48, 50, and 52)

Curing a ballot. In the Mail Ballot Election Act, the bill would add signature verification requirements to match those applicable to advance voting by mail ballots, to require the county election office to attempt to contact each person who submits a ballot for which the signature does not match the signature on file and allow the voter the opportunity to correct the deficiency before the county canvass. Signature verification would not be required if the voter has a disability preventing signature or having a signature consistent with the voter's registration form. The bill would authorize signature verification by electronic device or human inspection. [*Note:* These provisions are present in continuing law for advance voting ballots.]

Poll book. In election definitions of general application, the bill would amend the definition of “registration book” to require each page of the book contain a specified declaration regarding voter identity and compliance with election laws. The bill would add a definition of “abstract,” to mean a list of election results for a particular precinct or district with the total votes for each candidate and for or against each constitutional amendment or question submitted.

Provisional partisan primary ballots. In law regarding the original canvass of elections, the bill would require canvassers to count votes for those offices or issues for which an unaffiliated voter may cast a vote if a registered voter who is unaffiliated with a political party has cast a provisional partisan ballot in a primary election.

Poll agents. The bill would authorize an authorized poll agent to be present and observe the proceedings at all recounts and post-election audits.

Ballot images. In law regarding post-election audits, the bill would specify a ballot image may be reviewed as well as a paper ballot and that one constitutional amendment question, if any, must be audited.

Recounts. In law regarding recount procedures, the bill would:

- If the recount is regarding a constitutional amendment, authorize any registered elector who cast a ballot for a constitutional amendment submitted to request a recount in one or more counties;
- Change the deadline for filing a request for a recount with the Secretary from the second Friday following the election to the day following the last meeting of the county board of canvassers applicable to the election for which the recount is requested;

- Require a person requesting a recount, who must file a bond to pay costs of the recount, to file that bond contemporaneously with a request for a recount; and
- Specify that no bond is required for a recount when the election returns find a candidate was defeated by no more than 0.5 percent of the votes.

Open primaries. The bill would require each political party entitled to nominate candidates by primary election to notify the Secretary in writing on or before January 15 of any year in which a partisan general election is to be held whether voters who are unaffiliated with that party may vote in the party's primary election.

Qualifications for Office (Sections 2, 6-8, and 33)

County election officer. The bill would prohibit anyone convicted of an election-related crime described in Chapter 25, Elections, of the *Kansas Statutes Annotated*, or a crime substantially the same in any other jurisdiction, from serving as a county election officer.

The bill would authorize filling a vacancy in the office of county clerk by appointment of a qualified elector of the state, replacing a requirement that the qualified elector live in the county at the time of appointment. [*Note:* Continuing law requires the Governor to appoint the person elected at a district convention of precinct committeemen and precinct committeewomen.]

Sheriff. In law regarding appointment of a sheriff as a result of a vacancy, the bill would require any individual appointed to the office of sheriff be a qualified elector of the county on the day the individual is sworn in as sheriff.

School and community college boards. In the School Election Act and the Community College Election Act, the bill

would require a candidate whose name is inserted on the ballot by the voter to be a qualified elector residing in the district.

Adjusting Election-related Dates and Deadlines
(Sections 4, 5, 12, 15, 19, 29, 38)

The bill would amend several election-related dates. [Note: Generally, these amendments would remove conflicts with advance voting statutes and allow ballots to conform with a requirement in the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to transmit absentee ballots to UOCAVA voters no later than 45 days before an election.]

Election dates. In law regarding municipal elections required for the issuance of bonds, the bill would require the election to be held within 60 days, rather than 45 days, after compliance with other legal requirements. [Note: The statute provides exceptions for irrigation districts or when another procedure is specified.]

In law applicable to an election in a city of the third class regarding whether to sell any municipally owned utility, the bill would require the election to be held within 60 days, rather than 40 days, of the passage of the ordinance.

Notifications regarding candidates. In general election law, the bill would change the deadline by which the county election officer must notify each person nominated for public office from 25 days to 50 days prior to the general election.

The bill would also move from 2 weeks to 50 days before a primary election the deadline by which the county election officer must send a list of candidates to each candidate, and it would add a requirement that the list also be sent to the chairpersons of the political parties of the county. The bill would require the list to include the office, the

candidate's name, the city where the candidate resides, and the candidate's political party, as that information will appear on the primary election ballot. The bill would authorize a candidate, as well as the party chairperson, to suggest changes regarding the list to the county election officer, and it would change the deadline for those suggestions, from on or before the 11th day before the election to on or before 45th day.

Candidacy deadlines. In the State Board of Education Election Act, the bill would change the deadline for filing a petition or declaration of intention by noon on June 1, the deadline for filing for other offices, rather than June 10.

Initiating a proceeding. The bill would change from 45 days to 60 days before the election the deadline to commence a mandamus or injunction proceeding to compel an election officer to or restrain an officer from placing a name on a ballot.

Establishing precinct boundaries. In law regarding precinct boundaries, the bill would require precinct boundaries to be reestablished the sooner of June 1, replacing June 10, or 45 days after the Legislature has been redistricted in a year ending in "2."

Require Website Notices (Sections 4, 5, 10, 12, 32, 35, 39 49)

The bill would require election-related notices to be published on the county election office website, in addition to publication in newspapers as in continuing law, as specified below.

Notices of upcoming elections. The bill would require notice of the election to be published on the county election website at least 21 days before the election and remain until the day after the election for municipal bond elections and for

elections in a city of the third class on whether to sell a utility owned by the city.

The bill would require an appointed election commissioner to give notice of an upcoming election on the website of the county election office of any county where the election is to be conducted, as well as in the official county newspaper, at least 15 days before the election.

The bill would require the county election officer to publish notice of any general election on the county election office website at least 30 days before the election and remain on the website until the day after the election. The bill would require notice in one or more newspapers to be published at least 30 days, rather than 15 days as in current law, before the general election.

In the School Election Act, the bill would require notice of the primary election to be published on the website of the county election office of any county where the election is to be conducted, from June 10 until the day after the election. The bill also would require notice of the general election to be published on the website of the county election office at least 21 days before the election and remain on the website until the day after the election.

In law authorizing the county election officer to establish or divide a township precinct, the bill would require notice of the election to be published on the website of the county election office.

Voter registration. The bill would require notice of the places and dates for voter registration for each election to be published on the website of the county election office and remain on the website until the day after registration closes.

Canvass. The bill would require notice of the original canvass of every election to be published on the website of the county election office.

Election of Precinct Committeemen and Precinct Committeewomen (Sections 14, 17, and 55)

Eligibility. The bill would require the county election officer to verify the party affiliation of the candidate when a declaration of intention is filed to become a candidate for precinct committeeman or committeewoman.

Continuing law requires a person elected to the office of precinct committeeman or precinct committeewoman if no nomination petitions or declarations have been filed to receive at least five write-in votes. The bill would add the requirements that the person live in the precinct, be a qualified elector, and be a member of such party as shown by the party affiliation list maintained in the county election office.

The bill would prohibit a candidate for precinct committeeman or committeewoman from filing a declaration of intention to be a candidate unless that person lives in the precinct.

Term of office. The bill would specify each precinct committeeman and committeewoman will assume the duties of those offices on the day after the primary election and will not be required to take an oath required of all officers elected or appointed under Kansas law before beginning their duties.

Contact information. The bill would require contact information for precinct committeepersons. It would require the county election officer to send to the Secretary, within seven days after each primary election in even-numbered years, a list of those who hold the office of precinct committeeman or committeewoman and to notify the Secretary of any updates. The bill would require the county chairperson to notify the county election officer of the name, address, email address (if available) and a phone number or phone numbers (including a mobile phone number, if available), of each elected or appointed precinct committeeman or committeewoman and to report any

changes in that information to the county election officer within ten days after the change. The bill would require the Secretary to keep an updated list of all precinct committeepersons and their contact information.

Election Crime (Sections 60 and 62)

The bill would amend the definition of electronic or electromechanical voting system or electronic poll book fraud to add accessing without authorization or facilitating unauthorized access to voting system equipment, electronic poll book equipment, computer programs, operating systems, firmware, software, or ballots, and knowingly publishing or causing to be published any password or other confidential information relating to voting system equipment, electronic poll book equipment, computer programs operating systems, firmware, or software.

The bill would amend the definition of optical scanning equipment fraud to add accessing without authorization or facilitating the unauthorized access to optical scanning equipment, and knowingly publishing or causing to be published any password or other confidential information relating to optical scanning equipment.

Election Equipment (Sections 40, 41, 44, and 45)

Only for elections conducted in counties that do not use tabulators or optical scanners to count votes, the bill would require:

- The use of separate ballot boxes for various types of elections;
- Ballot boxes to be opened, emptied, and relocked at the time a voting place is opened; and
- A ballot to be folded and the number clipped in the presence of the voter and the election board.

The bill would clarify any voting equipment, as well as facility ballots and voting records and materials as in continuing law, used at a nursing facility, assisted living facility, or hospital-based long-term care unit must be returned to the county election officer.

Additional Provisions

County population. In law regarding when an election commissioner is appointed by the Secretary, the bill would specify how the Secretary would determine the population of a county has exceeded 100,000, the threshold for such appointment. The bill would similarly amend a related statute transferring election-related duties from county clerks and other municipal officers to the appointed election commissioner.

Audits and reports. In a statute regarding elections in a city of the third class; unified school district (except a district with at least 35,000 students); any community college, township, or county office; or a question submitted, the bill would remove a requirement for an annual audit of the accounts of the state committee of each political party.

The bill would require the treasurer of a party committee or political committee to file a report of contributions during regular business hours if the report is delivered by hand or express delivery service.

Definitions of general, primary, and special elections. In statutes applicable to advance voting and in election definitions of general applicability, the bill would add a definition of “special election” and clarify the definitions of “general election” and “primary election.” The bill would define a special election as one that is not a general or primary election, including but not limited to any mail ballot election. The definition would specify that a special election may not be held within 45 days of a general or primary election but may be held on the same day as a general or primary

election. The bill would make conforming amendments to an additional statute.

Petition signer address. The bill would require each signer of a nomination petition for governor and lieutenant governor to provide the street and number, if any, of the signer's residence. Current law requires street and number to be provided only if the signer's residence is in a city.

Recall. In a statute addressing recall of a local official, the bill would specify the appropriate attorney must determine the sufficiency of the grounds stated in the petition for recall within five business days, rather than within five days as in current law.

Other. The bill would remove a requirement that an application for an advance ballot transmitted to the voter in person be transmitted in the office of the county election officer.

The bill would remove a provision allowing voters present to select election judges and clerks if none are present for more than an hour after notice to the county election officer.

Technical Amendments

The bill would make technical amendments to standardize terms, remove outdated language, remove references to provisions no longer in law, eliminate a redundant provision, update federal citations, and standardize references, correct errors, and update terms. The bill also would repeal a statute requiring certain types of corporations (generally, utilities, financial institutions, and railroads) to comply with the Campaign Finance Act.

Background

HB 2086 was introduced by the House Committee on Elections at the request of a representative of the Secretary.

House Committee on Elections

In the hearing of the House Committee on Elections on February 7, 2023, a representative of the Secretary of State provided **proponent** testimony. He reviewed the provisions and described the reasons for them. A representative of the Elections Committee of the Kansas County Clerks and Elections Officials Association (KCCEOA) also provided proponent testimony, stating the bill would clean up multiple election statutes and timelines, enhance security, clarify roles of election officials, and increase transparency.

A representative of American Civil Liberties Union (ACLU) of Kansas provided neutral testimony that stated opposition to removal of a voter from the advance voting list and prohibiting mailing of a ballot unless the voter submits an advance ballot application.

Opponent testimony was provided by representatives of the Disability Rights Center of Kansas and Loud Light Civic Action, and written-only opponent testimony was provided by three private citizens. Opponents explained their opposition to specific portions of the bill.

The House Committee on Elections amended the bill to remove a provision regarding removal of a voter from the advance voting list; add contents of HB 2270 regarding information identifying precinct committeemen and committeewomen; add provisions from Sections 4 and 13 of HB 2190 regarding definitions of general, primary, and special elections; and require a newly appointed election commissioner to become a qualified elector of that county within six months of taking the oath of office. [Note: The Senate Committee on Federal and State Affairs did not retain

the provisions concerning residency of the newly appointed election commissioner.]

House Committee of the Whole

The House Committee of the Whole amended the bill to remove responsibility for an appointed election commissioner, not just a commissioner in a county of a certain population size, to be responsible for establishing ward boundaries.

Senate Committee on Federal and State Affairs

In the hearing of the Senate Committee on Federal and State Affairs on March 20, 2023, representatives of the Secretary and KCCEOA provided **proponent** testimony. The proponents reviewed provisions of the bill and stated the changes would improve the administration of elections, clarify vague or outdated terms, improve transparency, enhance election security, and provide consistency between various election statutes.

Opponent testimony was provided by the Johnson County Sheriff, the Chairperson of the Kansas Republican Party, a representative of the Johnson County Republican Party, and five private citizens. The opponents generally stated concerns about how the changes would affect election security, processes, and transparency.

Written-only opponent testimony was provided by a representative of the Norton County Republican Party and 19 private citizens.

Neutral testimony was provided by a private citizen.

The Senate Committee amended the bill to:

- Remove a provision stating the Secretary would oversee the conduct of statewide elections and specifying the advisory role of the Secretary;
- Add back-up requirements of the hard drive of any electronic or electromechanical voting system and its components before certain events;
- Change the county population threshold required for appointment of an election commissioner by the Secretary from 130,000 to 100,000;
- Remove provisions regarding filing affidavits of write-in candidacy [*Note*: Similar provisions may be found in SB 221];
- Restore a proposed amendment to the number of consecutive general elections a person may fail to participate before receiving notice they may be removed from the permanent advanced voting list;
- Remove provisions authorizing the chairperson of a state or county political party to challenge the eligibility of a person to be a candidate for or serve as a precinct committeeperson;
- Add a requirement that the Secretary consult with the Attorney General before dismissing for failure to allege facts a complaint alleging violation of federal voting equipment requirements and require the voting equipment requirements to be as specified in Title III of HAVA; and
- Remove statutes from the repealer and proposed amendments to current law (leaving in place continuing law) concerning:
 - Presidential preference primaries;
 - The authority of supervising judges regarding voting booth buffers;

- The definition of “authorized poll agents”; and
- The residency requirement for county election commissioners.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on HB 2086, as introduced, the Kansas Sentencing Commission estimates enactment of the bill could have an effect on prison admissions, bed space, and workload of the Commission, but any fiscal effect would be negligible. The Department of Corrections indicates enactment of the bill would have no fiscal effect on that agency.

The Judicial Branch indicates enactment of the bill could increase the number of cases filed in district courts because it expands the definition of election fraud; violation would carry a severity level 9 nonperson felony penalty for which additional supervision of offenders would be required. The bill could increase the collection of docket fees, fines, and supervision fees that would be deposited into the State General Fund. The Judicial Branch indicates it is unable to estimate a fiscal effect.

The Department of Administration indicates enactment of the bill would have no fiscal effect.

The Kansas Association of Counties reports enactment of the bill could have a fiscal effect on counties that do not regularly update their websites, but it is unable to estimate any fiscal effect.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2024 Governor’s Budget Report*.

HB 2270 (Precinct Committeeperson Contact Information)

HB 2270 was introduced by the House Committee on Elections at the request of Representative Waggoner on behalf of Representative Fairchild. [Note: HB 2270 contains provisions similar to those of HB 2119, introduced by the House Committee at the request of Representative Neighbor, and 2021 HB 2326.]

No hearing was held on its provisions.

Fiscal Information

No fiscal note was available for HB 2270 when the House Committee added its provisions to HB 2086. According to the fiscal note prepared by the Division of the Budget on HB 2119, the Office of the Secretary of State indicates that enactment of the bill would not have a fiscal effect on its operations. The Kansas Association of Counties indicates the protection of the personal information required to be gathered under the bill would be provided within counties' cybersecurity budgets.

Elections; ballots; advance voting; voting equipment; election officer; election procedures; Secretary of State