

SESSION OF 2024

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2603

As Amended by House Committee on Elections

Brief*

HB 2603, as amended, would establish the Citizens' Election Oversight Board (Board) and authorize the Board to review, investigate, and report on citizen complaints pertaining to elections and election procedures.

***Membership of the Citizen's Election Oversight Board
(Section 1)***

The Board would consist of the following members:

- One member appointed by each political party that:
 - Is recognized as a political party in accordance with continuing law; and
 - Has had a candidate in at least one congressional race or statewide race in the last even-year general election;
- Two members appointed by the Speaker of the House of Representatives, one of whom must be unaffiliated with any political party;
- Two members appointed by the Minority Leader of the House of Representatives, one of whom must be unaffiliated with any political party;
- One member appointed by the President of the Senate;

*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>

- One member appointed by the Minority Leader of the Senate; and
- The following nonvoting, ex officio members:
 - The Secretary of State (Secretary), or the Secretary's designee;
 - The Attorney General, or the Attorney General's designee; and
 - One member appointed by Kansas County Clerks and Election Officials Association (KCCEOA).

Qualifications

The bill would require all members of the Board to be registered to vote in the State of Kansas. The bill would also prohibit the appointment of any person who has held an elected office at any time during the three years immediately preceding such appointment. The bill would define "elected office" to include any federal, state, or county office that is filled by an election of a candidate for such office.

Terms

The bill would provide the length of the initial term for each member of the Board as follows:

- Members appointed by a political party would serve an initial term of two years;
- Members appointed by the Speaker and Minority Leader of the House of Representatives would serve an initial term of three years;
- Members appointed by the President and Minority Leader of the Senate would serve an initial term of four years; and

- The member appointed by the KCCEOA would serve an initial term of four years. All succeeding terms would be four years. The bill would specify no member may serve more than two consecutive terms.

Vacancies on the Board

Any vacancy would be filled by appointment in the same manner as the original appointment as prescribed by the bill.

Meetings of the Board (Section 1)

The bill would require the Board to hold an organizational meeting each year for the purpose of electing a chairperson and vice-chairperson, the first of which would be required to be called by the Secretary, or the Secretary's designee, on or before August 1, 2024.

The bill would also permit the Board to meet at the following times:

- Within 45 days after the date of any primary or general election, if needed; and
- At any time and at any place within the state on the call of the chairperson.

The bill would provide that a majority of the members constitutes a quorum of the Board, and all actions taken by the Board would be by motion adopted by a majority of the members present when there is a quorum.

The bill would require expenses, mileage, and subsistence to be paid to Board members attending authorized Board meetings in accordance with continuing law.

Powers and Duties of the Board (Section 2)

Complaints

The bill would require the Board to receive and review complaints on the conduct of elections held in Kansas and election procedures. Any person would be able to submit a complaint to the Board in such form and manner prescribed by the Board.

Hearings

The bill would authorize the Board to conduct a hearing on a complaint, upon a majority vote of the members, within 60 days of the decision to conduct such hearing. The bill would require the Board to provide not less than 30 days written notice of such hearing to the complainant and any persons named in the complaint and to provide opportunity for the following parties to be heard at the hearing:

- The complainant;
- Any person named in the complaint; and
- Any other interested party.

The bill would also require the Board to conduct a hearing upon the request of the Secretary or the Attorney General.

Unsubstantiated Complaints

If the Board determines that a complaint cannot be substantiated, the bill would permit the Board to either:

- Dismiss the complaint and notify the complainant in writing within ten days of the Board's decision; or

- Refer the complaint to the appropriate authority with the recommendation that additional information or clarification of the applicable federal or state law or rules and regulations be provided to the complainant.

Substantiated Complaints

If the Board determines that a complaint is substantiated, the bill would require the Board to refer the complaint to the appropriate authority, which may include the Secretary, the Attorney General, the appropriate county election officer, the appropriate county or district attorney, or any combination as determined by the Board.

Violations of the Help America Vote Act (HAVA)

The bill would require the Board to immediately refer to the Secretary any complaint alleging a violation of the Voting System Standards as provided for in Title III of HAVA.

Recommendations Included with Referral of Complaint to Appropriate Authority

The bill would authorize the Board to include with a referral any recommendations regarding the disposition of a complaint. The Board would be able to make the following recommendations, among others:

- Providing additional information or clarification of applicable federal or state law or rules and regulations to the complainant;
- Providing additional information or clarifying information provided to the public;
- Additional training be provided for employees, election judges, or volunteer poll workers;

- Auditing and testing of election equipment;
- Review of and changes to election policies and procedures;
- Additional training and oversight by the Secretary's Office;
- Disciplinary action against one or more individuals; or
- Prosecution of one or more individuals for violations of federal or state law.

Reports Following Referred Complaints

The bill would require the Board to monitor and record the progress and disposition of any referred complaint.

The bill would require the officer or agency to whom a referral is made to submit a report on the progress and disposition, if any, of a complaint within 90 days. The bill would allow for an extension of not more than 60 days upon written notice to the Board prior to the initial report's deadline. If the matter is not resolved at the time the report is submitted, the officer or agency would continue to submit a report on the progress and disposition of a complaint every 90 days. If the officer or agency does not submit a report as required by the bill, the Board would be required to send notice of the failure to the House Committee on Elections and the Senate Committee on Federal and State Affairs.

Upon final disposition of a complaint, the bill would require the Board to provide written notice describing the disposition within ten days of the Board's receipt of the final disposition. The bill would require a copy of the written notice to be sent to the Secretary.

Tracking System

The bill would require the Board to develop and implement a tracking system for all complaints, which would record the following information:

- The names and contact information of the complainant;
- The names and contact information of any persons named in the complaint;
- The county in which the complaint originated;
- Any written notices issued by the Board;
- The name and contact information of the officer or agency to whom the matter was referred;
- Progress reports submitted to the Board; and
- The disposition of the complaint.

The bill would require the Secretary to maintain the system and make it publicly available on the Secretary's website.

Policies and Procedures (Section 4)

The bill would require the Board to adopt policies and procedures to implement the provisions of the bill.

Limitation of Board (Section 2)

The bill would specify the Board would not have the power to overturn any election results.

Additional Duties of the Secretary (Section 1)

In addition to the other duties of the Secretary prescribed in the bill, the Secretary would also be required to provide technical and clerical staff assistance as requested by the Board, including sending notices on behalf of the Board when required by the bill.

Duties of the Attorney General (Section 1)

The bill would require the Attorney General to provide investigatory services as requested by the Board, not to exceed ten hours per month, unless otherwise agreed to by the Attorney General.

Report to Legislature (Section 3)

The bill would require the Board, with assistance from the Secretary, to prepare and submit a report to the Legislature and the Governor summarizing the activities of the Board during the immediately preceding calendar year. The report would include:

- The number of complaints received;
- The number of complaints dismissed by the Board;
- The number of complaints referred by the Board;
- The total number of complaints sorted by the county in which the complaint originated; and
- Any recommendation by the Board to improve elections in Kansas or the election process, including any recommendations for the Legislature.

Sunset (Section 5)

The bill would expire on July 1, 2029. On or before the first Monday of January 2029, the Secretary would be required to submit notice of the pending expiration of the bill to the Legislature.

Background

The bill was introduced by Representatives Howerton and Underhill.

House Committee on Elections

In the House Committee hearing, **proponent** testimony was provided by Representative Howerton and a representative of the KCCEOA. Representative Howerton explained the background of the bill and stated that the bill aims to improve transparency and voter confidence, define a process for hearing election fraud complaints, create a tracking and reporting system, and provide an opportunity for citizens to be involved in the process. The representative of the KCCEOA also stated the bill would help improve transparency and voter confidence in Kansas elections, and that the KCCEOA supports having a member on the Board.

A representative of Loud Light Civic Action provided **opponent** testimony, stating concern that the bill could be used as a platform to spread misinformation, and encouraged an interim committee to study the topic.

Written-only opponent testimony was provided by three private citizens.

Neutral testimony was provided by a representative of the Secretary's Office. The representative commented on various provisions of the bill, including how a political party qualifies to appoint a member to the Board, meetings of the

Board, the subject of a complaint, and the ability of the Board to recommend additional ballot audits.

Written-only neutral testimony was provided by two private citizens.

The House Committee amended the bill to:

- Add additional criteria for how a political party would be eligible to appoint a member to the Board;
- Remove the requirement for the Board to meet within 45 days of an election and permit the Board to meet within 45 days of an election, if needed;
- Remove a provision specifying the Board may recommend additional auditing of election results; and
- Add a provision stating the Board would not have the power to overturn any election.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of the Attorney General states the investigatory services the agency would provide to the Board would be absorbed within existing resources.

The Secretary's Office states it would hire a 0.50 FTE position at a cost of \$55,000 in FY 2025 that would be dedicated to assisting the Board as outlined in the bill. The Secretary's Office would also use existing resources to assist the Board with various other requests not performed by the new position.

The Office of Judicial Administration indicates it would implement the bill using existing resources.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

The Kansas Association of Counties indicates the fiscal effect from enactment of the bill would depend on the number of complaints the Board receives and the agency is unable to estimate the effect.

Elections; Citizens' Election Oversight Board; Secretary of State; Attorney General; election procedures