

SESSION OF 2014

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2130**

As Agreed to April 2, 2014

Brief*

HB 2130 addresses elections issues regarding petition circulators and ballot language statements. The bill would be effective upon publication in the *Kansas Register*.

Petition Circulators

The bill would remove the requirement that a petition circulator be a resident of the State of Kansas and possess the qualifications of an elector.

It would create a definition of "petition circulator" as a person who is a U.S. citizen, is at least 18 years of age, and has not been convicted of a felony or, if convicted of a felony, has been pardoned or restored to that person's civil rights. In addition, all petition circulators would be required to submit to the jurisdiction of the state for purposes of subpoena enforcement regarding the integrity and reliability of the petition process.

Ballot Language Statements

The bill would create new law concerning ballot language statements. It would allow county election officials to request the preparation of a ballot language statement to

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explain the language of any municipal ballot question. If a request is submitted, the next steps would depend somewhat on whether the ballot question language was derived from a petition.

- If the ballot question language was derived from a petition submitted to a county attorney, district attorney, or county counselor, the election officer would be required, within ten days of certification of the petition, to request the applicable office prepare the ballot language statement. Within 15 days of a county election officer's request for a ballot language statement, the office drafting the language would be required to prepare and forward the language to the Secretary of State's office for approval. After receiving the language, the Secretary of State would have five days to provide approved language to county officials.
- If the ballot question language did not derive from a petition submitted to a county attorney, district attorney, or county counselor, the county election officer would be required, within ten days of publication of the local government resolution, to request the Secretary of State's office to prepare the statement. Within 15 days of a county election officer's request for a ballot language statement, the Secretary of State's Office would be required to prepare and forward the language to the Attorney General for approval. After receiving the language, the Attorney General would have five days to provide the approved language to county officials.

Ballot language statements would be required to fairly and accurately explain what a vote for and a vote against the question represents. Such statements would be required to be true and impartial and could not be intentionally argumentative or likely to create prejudice for or against a proposed measure. Statements would be required to be

prepared and transmitted in good faith and without malice.

Ballot language statements would be required to be:

- Posted in each polling place, but could not be placed on the ballot;
- Provided to registered voters voting by advance ballot, but could not be placed on advance ballots; and
- Made available for public inspection at the county election office, but could be posted on the county website.

The bill would expressly provide that there would be no legal cause of action to challenge the validity of the form of a ballot language statement. The bill also would provide that there would be no liability for the Attorney General, assistant Attorney General, Secretary of State, Secretary of State's employees, county election officers, county attorneys, district attorneys, or county counselors who prepare ballot language statements.

Preparation of ballot language statements could not form the basis for an election contest and would not result in the waiver of state immunity.

If a ballot language statement is not available to insert with advance ballots, it would not be prepared or otherwise made available.

The Secretary of State would be authorized to promulgate rules and regulations addressing the rights and responsibilities of elections officials.

Conference Committee Action

The Conference Committee agreed to the Senate version of HB 2130 and inserted the provisions of HB 2518.

Background

HB 2130 includes provisions of HB 2130 and HB 2518.

HB 2130

Secretary of State Kobach testified in support of the bill at its hearing before the House Committee on Elections. He stated the statute, as currently written, which prohibits non-residents from circulating petitions within Kansas, was challenged as unconstitutional in 2010. Attorney General Six and Secretary of State Biggs agreed with the challenger, and joined in an order permanently enjoining enforcement of the non-resident restriction. The District Court subsequently held that the statute, as currently written, is in violation of the First Amendment of the *U.S. Constitution*. No other conferees testified on the bill. The Committee recommended the bill be placed on the Consent Calendar.

Before the Senate Committee on Ethics and Elections, a representative of the Office of the Secretary of State testified in support of the bill and stated the Office of the Attorney General supports it. No other conferees testified.

The Senate Committee amended the bill to allow a person who was pardoned of a felony or whose civil rights had been restored after conviction for a felony to meet the definition of “petition circulator.”

The fiscal note submitted by the Division of the Budget on the original bill indicated the Office of the Secretary of State said any fiscal effect resulting from the passage of the bill would be negligible.

HB 2518

During the 2012 Interim, the Special Committee on Elections reviewed the topic of ballot explanation statements. At the close of its hearing, the Special Committee requested an Attorney General opinion on whether various types of local governments had authority to provide ballot explanation statements under current law.

HB 2162, as introduced during the 2013 Session, was very similar to the introduced version of 2014 HB 2518. The House Committee on Elections amended HB 2162 to require county election officers to request ballot language statements, and to specify a ten-day window for the county election officer to request ballot language from the Secretary of State or Attorney General. The Senate Committee on Ethics, Elections and Local Government amended the bill to allow, rather than require, state and county election officers to request ballot language statements. A Conference Committee removed the contents of HB 2162 related to ballot language statements and replaced them with content related to a prohibition on using state moneys to lobby for gun control.

The House Committee on Elections received a copy of the recently issued Attorney General's Opinion on ballot statements (2014-04) at its 2014 hearing on HB 2518. In brief, the Attorney General opined that the governing body of a municipality was authorized to develop a ballot explanatory statement, and to post the statement on the municipality's website and to provide it at the county election office. Authority to post the statement at polling places and to distribute it at polling places or with advance ballots was either unclear (for cities) or lacking (for counties and school boards). Representative Howell testified in support of the bill, describing an example of a confusing ballot question from a Wichita election and saying he thought local officials were best able to determine when a ballot language statement is needed. He also suggested the Committee consider amendments that would shorten the length of the process, give the Secretary of State rule and regulation authority,

specify that no liability is attached to the determination of whether a ballot language statement is needed, and not allow the use of a ballot language statement if it could not be completed in time to include with advance ballots. The Shawnee County Election Commissioner testified in support of the bill, and the Secretary of State's Office provided written testimony in support of the bill. There was no testimony in opposition to the bill, nor any neutral testimony.

The House Committee on Elections amended the bill to specify that ballot language statements would not be utilized in an election if they are not available to insert with advance ballots, and to authorize the Secretary of State to promulgate rules and regulations on the rights and responsibilities of elections officials. The bill was referred to, but did not have a hearing in, the Senate Committee on Ethics and Elections.

According to the fiscal note prepared by the Division of the Budget on the original bill, the Secretary of State's Office indicated any costs associated with the bill would be negligible and could be absorbed within existing resources. The Office indicated there may be an increase in expenses if the number of special elections exceeds expectations and additional part-time legal staff is hired. The Secretary of State's Office also indicated there would be a cost to the counties, but could not provide an specific cost, as the increase in cost will depend on the number of jurisdictions choosing to hold special elections.

Petition; petition circulator; elections; ballot language statement; ballot explanation; Secretary of State; civil rights restored; advance ballots; ballot question; county election officer

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