

SESSION OF 2021

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2183**

As Agreed to April 8, 2021

Brief*

Senate Sub. for HB 2183, as amended, would amend and create law pertaining to elections and voting, including advance mail ballots, registered voter information reporting, assistance with the return of advance ballots, advance ballot return deadlines, the authority of the Secretary of State, duties of election officials, electioneering, and election funding. The bill would also create the crime of false representation of an election official.

The bill would also make technical amendments.

Alteration of Advance Mail Ballot Postmark

The bill would amend election law to make it unlawful for any person to knowingly backdate or otherwise alter a postmark or other official indication of the date of mailing of an advance mail ballot if the intent is to make the mailing date appear different from the actual date of mailing by the voter or voter's designee. A violation would carry the same criminal penalty as other violations concerning advanced voting, a level 9 nonperson felony.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

Signature Matching on Advanced Ballots

The bill would prohibit a county election officer from accepting an advance voting ballot transmitted by mail unless they first verify the signature on an advance voting ballot envelope matches the signature on file in the county voter registration records. If the signature of a person on the advance voting ballot envelope did not match the signature on file, the ballot would not be counted. Verification could occur by electronic device or human inspection.

The bill would specify that such verification would not be required if the voter has a disability that prevents them from signing the ballot or that prevents them from signing the ballot in a way that matches the signature on file in the county voter registration records.

Authority to Extend Advance Mail Ballot Deadline

The bill would remove the authority of the Secretary of State (Secretary) to extend the deadline for receiving advance mail ballots. Under current law, the deadline for a county election office to receive advance voting ballots is the last mail delivery on the third day following an election, unless extended by the Secretary.

False Representation of an Election Official

The bill would create the crime of false representation of an election official, defined as knowingly engaging in any of the following by phone, mail, email, website, or other online activity or other means of communication while not holding a position as an election official:

- Representing oneself as an election official;
- Engaging in conduct that gives the appearance of being an election official; or

- Engaging in conduct that would cause another person to believe a person engaging in such conduct is an election official.

The bill would define an “election official” to mean the Secretary, any employee of the Secretary, any county election commissioner or county clerk, any employee of any county election commissioner or county clerk, or any other person employed by a county election office.

False representation of an election official would be a level 7 nonperson felony.

Registered Voter Reporting Requirements

The bill would direct the Secretary to publish the following information on the official website of the Secretary each month:

- The total number of registered voters in each county;
- The total number of registered voters in each county who have been identified by the county election office as having mail that is undeliverable and the number of such voters as a percentage of all registered voters in the county; and
- The total number of registered voters for each political party.

The bill would require the Secretary, on the tenth day prior to any election, to publish on the official website of the Secretary, the total number of registered voters in each voting precinct, including the total number of such registered voters affiliated with each political party on the official website of the Secretary.

Delivering or Assisting with Advance Voting Ballots

The bill would prohibit any person from delivering an advance voting ballot on behalf of another person, unless the person submits an accompanying written statement at the time of delivery, signed by both the voter and the person delivering the ballot. The bill would specify that only the person delivering such ballot could deliver the written statement.

The bill would require the statement to be on a form established by the Secretary containing:

- A sworn statement from the person delivering the ballot affirming they have not exercised undue influence on the voting decision of the voter, nor delivered more than ten advance voting ballots on behalf of other persons during the election; and
- A sworn statement by the voter affirming the authorization of the person to deliver the ballot, and the person has not exercised undue influence on the voting decision of the voter.

The bill would prohibit:

- A candidate for office from delivering an advance voting ballot on behalf of another voter unless it is on behalf of an immediate family member [*Note:* the candidate could return no more than ten advance voting ballots total]; and
- An individual from delivering more than ten advance voting ballots on behalf of other voters during an election.

Each person would be prohibited from delivering more than ten advance voting ballots on behalf of others during an election.

A violation of these provisions would be a class B misdemeanor.

The bill would prohibit a candidate for office from assisting any voter in marking an advance ballot or signing an advance ballot form, except it would not be a violation for the Secretary, an election official, or county election office to assist a voter while in the performance of the duties of such office. A violation of this provision would be a class C misdemeanor.

Electioneering

The bill would expand the definition of electioneering in continuing law to include a candidate:

- Touching or handling a voter's ballot during the voting process, unless it is on behalf of an immediate family member;
- Distributing or counting ballots;
- Hindering or obstructing a voter from voting, entering, or leaving a polling place; or
- Hindering or obstructing an election board worker from performing election duties.

The new electioneering provisions would not apply to the Secretary, an election official, or county election office.

Under continuing law, electioneering is a class C misdemeanor.

Transparency in Revenues Underwriting Act

The bill would create the Transparency in Revenues Underwriting Act (Act), prohibiting election officials from

knowingly accepting moneys, directly or indirectly, for any expenditures related to conducting, funding, or facilitating election administration.

The bill would not apply to:

- Acts of appropriation;
- Any moneys collected by an election official from the payment of fees or assessed costs;
- Any monetary campaign contributions for any candidate for the office of county clerk; or
- Moneys otherwise provided by law.

A violation of the Act would be a level 9 nonperson felony.

Severability

The bill would contain a severability clause regarding all provisions.

Conference Committee Action

The second Conference Committee agreed to the provisions of the bill as amended by the Senate, and adopted amendments to:

- Increase the number of advance voting ballots an individual may return on behalf of other voters from five ballots to ten ballots;
- Change the penalty for violation of the limit of ten ballots that may be returned on behalf of other voters from a level 9 nonperson felony to a class B misdemeanor;

- Clarify the verification that the signature on an advance voting ballot envelope matches the signature on file in the county voter registration records would not be required if a voter has a disability that prevents them from signing the ballot in a way that would match such county voter registration records;
- Change from the 20th day prior to the election to the 10th day prior to the election the requirement for the Secretary of State to publish the total number of registered voters in each voting precinct;
- Insert a severability clause to apply to all provisions of the bill;
- Adopt a technical amendment to clarify candidates for office could deliver advance voting ballots for up to ten immediate family members; and
- Clarify the crime of false representation of an election official is knowingly engaging in certain conduct.

Background

The Senate Committee on Federal and State Affairs removed the contents of HB 2183, as amended by the House Committee on Elections, and inserted the provisions of SB 11, SB 35, SB 292, and SB 293, all as introduced. The Senate Committee amended the bill to add provisions regarding signature matching and advance ballot marking and recommended a substitute bill.

[*Note:* The Senate Committee reconsidered its action on the substitute bill and restored language in current law pertaining to the number of days before an election an individual can submit an advance voting ballot to the county election officer.]

The Senate Committee of the Whole amended the bill by adding provisions that would:

- Create the crime of false representation of an election official [*Note*: The second Conference Committee amended this to include knowingly engaging in certain conduct], and
- Require the Secretary to report certain information about registered voters both each month and on the 20th day before any election. [*Note*: The second Conference Committee amended this to the tenth day before any election.]

HB 2183, as amended by the House Committee, would have created law to prohibit the Governor, Executive Branch, and the Judicial Branch from altering election laws. [*Note*: The contents of HB 2183, as amended by the House Committee, were not retained by the Senate Committee in HB 2183; however, those previous contents were amended by the Senate Committee and included in HB 2332, as recommended by the Senate Committee.]

Fiscal Information

No fiscal information was available on the provisions added by the Senate Committee of the Whole.

SB 11 (Alteration of Advance Mail Ballot Postmark)

SB 11 was prefiled for introduction by Senators Hilderbrand, Baumgardner, Claeys, Erickson, Fagg, Kloos, Peck, Steffen, Straub, Thompson, and Wilborn.

Senate Committee on Federal and State Affairs

In the Senate Committee hearing, Senator Hilderbrand provided **proponent** testimony, indicating the bill would help ensure the integrity of elections in Kansas.

No other testimony was provided.

The Senate Committee amended the bill to change the period during which an advance voting ballot could be returned. [*Note:* The Senate Committee removed this amendment from Sub. for HB 2183.]

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on SB 11, the Kansas Association of Counties (KAC) indicates enactment of the bill would have no fiscal effect on the counties, as postal crimes would likely be prosecuted at the federal level. The Secretary indicates enactment of the bill would have no fiscal effect on the agency budget.

SB 35 (Authority to Extend Advance Mail Ballot Deadline)

SB 35 was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Hilderbrand.

Senate Committee on Federal and State Affairs

In the Senate Committee hearing, Senator Hilderbrand provided **proponent** testimony on the bill, stating one person should not have unilateral ability to change the due date of an election. Written-only proponent testimony was provided by four private citizens, who indicated the bill was an improvement to election integrity in the state.

Neutral testimony was provided by a representative of the Secretary, indicating concern with current law that grants the Secretary unrestricted discretion on extending the receipt date for advance ballots returned by mail.

A representative of the American Civil Liberties Union of Kansas testified as an **opponent** of the bill, stating the bill diminishes public trust in elections and is an act of voter suppression.

No other testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on SB 35, the provisions of the bill would have no fiscal impact on the Office of the Secretary of State. The KAC indicates it is unable to speculate whether enactment of the bill would have any fiscal effect on Kansas counties.

SB 292 (Delivering or Assisting with Advance Voting Ballots)

SB 292 was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Alley on behalf of Opportunity Solutions Project.

Senate Committee on Federal and State Affairs

In the Senate Committee hearing, a representative of Opportunity Solutions Project provided **proponent** testimony, indicating the bill would make assisting a non-disabled voter with delivering an advance voting ballot a crime unless certain requirements are followed, and the requirements would provide additional accountability and require the clear indication of a voter's consent.

Representatives of Loud Light Civic Action and the Mainstream Coalition provided **opponent** testimony, indicating the bill would restrict voting access, would criminalize Kansans trying to help their neighbors vote, and would be a broad action taken without a justifiable reason. Written-only opponent testimony was provided by representatives of the Disability Rights Center of Kansas, the Kansas Appleseed Center for Law and Justice, Kansas Interfaith Action, and NAACP Kansas State Conference; a former Johnson County Election Commissioner; and two private citizens.

No other testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on SB 292, the Secretary indicates enactment of the bill would have no fiscal effect on the agency. The Office of Judicial Administration (OJA) indicates enactment of the bill could increase the number of cases filed in district courts because it creates a new crime. This would increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. Since the crime carries a severity level 9 nonperson felony penalty, there could also be more supervision of offenders required to be performed by court services officers. In addition, enactment of the bill could result in the collection of additional docket fees, supervision fees, and fines assessed in those cases filed under the provisions of the bill; however, a fiscal effect for the Judicial Branch cannot be estimated. Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

SB 293 (Transparency in Revenues Underwriting Act)

SB 293 was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Alley on behalf of Opportunity Solutions Project.

Senate Committee on Federal and State Affairs

In the Senate Committee hearing, a representative of Opportunity Solutions Project provided **proponent** testimony, indicating third-party entities have provided grant funding in past elections with conditions placed on the funding, and the practice creates public distrust in the election process.

A representative of Loud Light Civic Action provided **opponent** testimony, indicating grants for public services are commonplace, and restricting funding would necessitate state support to ensure adequate funding of elections. The conferee further stated the Kansas Legislative Division of Post Audit is currently auditing grant funds received by local election officials, and recommended the Legislature wait until the audit is finished before acting. A representative of NAACP Kansas State Conference provided written-only opponent testimony.

No other testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on SB 293, the OJA indicates enactment of the bill could increase the number of cases filed in district courts because it creates a new crime. This would increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. Since the crime carries a severity level 9 nonperson felony penalty, there could also be more supervision of offenders required to be performed by court services officers. In addition, enactment of

the bill could result in the collection of additional docket fees, supervision fees, and fines assessed in those cases filed under the provisions of the bill; however, a fiscal effect for the Judicial Branch cannot be estimated.

According to the Office of the Secretary of State, enactment of the bill would have no fiscal effect on the agency. The KAC indicates enactment of the bill could have a fiscal effect on counties. During the COVID-19 pandemic, elections officials received some funds to help prepare polling sites for social distancing and to provide personal protective equipment and sanitizing equipment. These funds were not included in the appropriated budget and under the provisions of the bill could not have been received or expended by the counties.

Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Elections; Secretary of State; advance mail ballots; registered voter information

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