

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS AND LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Barbara P. Allen at 1:30 p.m. on March 5, 2003 in Room 245-N of the Capitol.

All members were present except:

Committee staff present: Ken Wilke, Revisor of Statutes  
Dennis Hodgins, Legislative Research  
Nancy Kirkwood, Committee Secretary

Conferees appearing before the committee: Brad Bryant, Deputy Assistant, Secretary of State  
Mindy Miller, Legal Associate on Elections and Legislative Matters

Others attending: see attached list

**Hearing on HB 2288 - Elections; changes to comply with Help America Vote Act of 2002**

Chairperson Allen recognized Brad Bryant, Deputy Assistant, Secretary of State to provide an update on federal funding for the Help America Vote Act of 2002 (HAVA) to the committee (Attachment 1).

Mindy Miller, Legal Associate on Elections and Legislative Matters, provided testimony in support of **HB 2288**. **HB 2288** is an election reform bill proposed by the Secretary of State to implement election administration changes required by the federal Help America Vote Act of 2002 (HAVA). Mindy explained the main provisions of **HB 2288** (Attachment 2).

A proposed amendment to **HB 2288** from the Secretary of State's office was distributed to committee. It has three amendments to Section 10 and 11 of **HB 2288** (Attachment 3).

There being no others to testify on **HB 2288**, Chairperson Allen closed the hearing.

**Adjournment**

The meeting was adjourned at 2:30 p.m.



RON THORNBURGH  
Secretary of State



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## STATE OF KANSAS

### Senate Committee on Elections and Local Government

#### Testimony on HB 2288

Brad Bryant, Deputy Assistant Secretary of State  
Elections and Legislative Matters

March 5, 2003

Madam Chairman and Members of the Committee:

Thank you for the opportunity to provide an update on federal funding for the Help America Vote Act of 2002 (HAVA). This legislation represents significant costs to the state and county governments of Kansas. HAVA authorizes, but does not appropriate, \$3.86 billion over the next four years to reimburse the states and their respective counties for the implementation costs. The funds must be appropriated separately.

Recently Congress appropriated \$1.5 billion in the omnibus appropriations bill, which is not full funding, but it is a good start. We hope to see further appropriations next year. Most of the \$1.5 billion goes for funding Title 1 and Title 2, as follows.

1. Title 1 Funds--\$650 million

Of the \$1.5 billion, \$325 million was for improvements to election administration. Money may be received by the states in late May, 2003. Kansas' share will be \$5 million. The other \$325 million is for punch card and lever machine buyouts. Kansas is not eligible for any of that money.

2. Title 2 Funds—approximately \$839 million

If the funding formulas are maintained, Kansas' share could be \$7.5 million. The state's 5% matching funds obligation would be approximately \$375,000. These funds might be received by the states late in 2003 or early in 2004.

#### State Obligations

1. 5% match of Title 2 funds
2. Maintenance of effort—the state must maintain FY 2000 levels of spending on election administration.
3. Certify compliance with certain requirements of HAVA
4. Submit to the federal government a state plan for full implementation

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Attachment 1

Other Federal Funds

HAVA authorizes other funds available to states on a competitive grant basis for such purposes as disability assistance and implementation of the HAVA Foundation, a program to recruit high school and college students to serve as precinct poll workers.

We have provided two charts summarizing the federal funding formulas.

# PURPOSES OF FUNDS AUTHORIZED BY HELP AMERICA VOTE ACT

The table below lists the purposes, amounts and timing of funding authorized by the Help America Vote Act. The Election Assistance Commission (EAC) is responsible for distributing the money unless another agency is indicated below.

The government is currently operating in FY 2003 under a continuing resolution. As of the date of this publication, no funds authorized in FY 2003 have yet been appropriated. The omnibus appropriation bill *H. J. Res. 2*, as passed by the Senate last week contains \$1.5 billion for election reform but amounts are not designated by purpose. See story on page one.

TITLE	Section	Purpose	FY 2003	FY 2004	FY 2005	FY 2006	Total	Agency
ONE	101	"Early Money" for election administration improvements, funding state plan	\$325 mil.				\$325 mil.	GSA
	102	"Early Money" for punch card and lever machine buyout	\$325 mil.				\$325 mil.	GSA
	103	Minimum of \$5 million per State -- remainder allocated according to VAP%						
TWO	210	Operation of Election Assistance Commission	\$10 mil.	\$10 mil.	\$10 mil.		\$30 mil.	
	257	"Requirements Payments" to States	\$1.4 bil.	\$1 bil.	\$600 mil.		\$3 bil.	
	264	Grants to assure access for the disabled	\$50 mil.	\$25 mil.	\$25 mil.		\$100 mil.	HHS
	271	Research grants to improve voting technology	\$20 mil.				\$20 mil.	
	283	Pilot program for testing equipment and technology	\$10 mil.				\$10 mil.	
	292	Payments for protection and advocacy systems	\$10 mil.	\$10 mil.	\$10 mil.	\$10 mil.	\$40 mil.	HHS
	295	National Student and Parent Mock Election*	\$200,000	*	*	*	\$200,000	
FIVE	503	Help America Vote College Program *	\$5 mil.	*	*	*	\$5 mil.	
SIX		Help America Vote Foundation *	\$5 mil.	*	*	*	\$5 mil.	Direct to Foundation
* - plus funds as may be necessary in other years.								
TOTALS			\$2.162 bil	\$1.045 bil	\$645 mil	\$10 mil.	\$3.862 bil	

NOTE: "Pending Election Legislation" will again appear on Page Eight after important bills are introduced.

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PLEASE NOTE: Fiscal year in the following charts refers to the federal fiscal year, not the state fiscal year.

TOTAL HELP AMERICA VOTE ACT FUNDING

SOURCE	PURPOSE	FY 2003	FY 2004	FY 2005	FY 2006
Title I §101	Early money for election administration improvements	\$325 million	----	----	----
Title II §257	Requirements payments	\$1.4 billion	\$1 billion	\$600 million	----
Title II §264	Grants to assure access for the disabled	\$50 million	\$25 million	\$25 million	----

FEDERAL MONEY AVAILABLE TO KANSAS

SOURCE	PURPOSE	FY 2003	FY 2004	FY 2005	FY 2006
Title I §101	Early money for election administration improvements	\$5 million*			
Title II §257	Requirements payments \$27,169,594.00**	\$	\$	\$	
Title II §264	Grants to assure access for the disabled***	?	?	?	

\*An omnibus bill, including an appropriation to partially fund Title I, is currently being considered in Congress. At this time we are unsure when we will receive federal funding and how much of the \$5 million we may receive. In order to receive these funds once they are appropriated, Kansas must certify that the funds will be used solely for HAVA-related election administration improvements. Kansas is responsible for implementing the HAVA mandates regardless of federal funding.

\*\*Under HAVA, Kansas is scheduled to receive Title II requirements payments in FY 2003, FY 2004, and FY 2005 after submitting a state plan each year. The over \$27 million due Kansas will be allocated over the three year period. We are unaware at this time when these funds will be appropriated and if it will be a full appropriation. If we do receive requirements payments, the state must provide a 5% match on funds received. Any funds Kansas receives from Title II requirements payments will not be received until Kansas' FY 2004. Due to the fact we do not know how much money Kansas may receive in FY 2004, it seems premature to pursue the matching funds at this time. However, a request for matching funds seems imminent during the next legislative session if federal funds are appropriated. If the state does not provide matching funds, we will not receive the federal funds. The state would then be responsible for funding the entire election reform project as mandated by HAVA. **In addition, the state is currently responsible for maintaining the state's FY 2000 level of funding for election administration which falls within the scope of Title II.**

\*\*\*Kansas must apply for these grants. If our application is accepted, and federal funds have been appropriated, the amount we receive is determined at the discretion of the Secretary of Health and Human Services.

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STATE OF KANSAS  
Senate Committee on Elections and Local Government

**Testimony on HB 2288**  
Mindy Miller, Legal Associate  
Elections and Legislative Matters  
Office of the Secretary of State

March 5, 2003

Madam Chair and Members of the Committee:

Thank you for the opportunity to testify in support of House Bill 2288. This is an election reform bill proposed by the Secretary of State to implement election administration changes required by the federal Help America Vote Act of 2002 (HAVA). The main provisions of this bill are as follows:

- (1) Individuals voting provisional ballots will be required to execute an affidavit, therein attesting to registration and eligibility.
- (2) Individuals who, pursuant to court or other order, vote after the prescribed polling place hours, may only cast a provisional ballot. Such ballots must be separated from other provisional ballots.
- (3) Every voter, voting at the polling place or by advance ballot, will be required to provide identification when voting.
- (4) Applications from federal services voters will be valid for the next two general elections.
- (5) Revisions regarding citizenship, age and voter identification will be made to the voter registration form.
- (6) Sample ballots, the date of the election, and polling place hours must be posted at each polling place.

**(1) Provisional voter affidavit – Sections 1 and 2 of HB 2288**

- HAVA requires an individual casting a provisional ballot at the polling place to sign an affirmation that they are a registered voter in the jurisdiction and eligible to vote in the election. While individuals voting a provisional ballot in a primary election must currently execute an affidavit regarding party affiliation, in current law there is no required affidavit applicable to every person voting a provisional ballot.
- The proposed change to Section 2 is a new affidavit to be executed by all provisional voters. Language has been added to Section 1, the statute including the current affidavit for provisional voters in primary elections, in reference to the new requirement provided in Section 2. Additional changes to the current affidavit in Section 1 have been proposed to comply with unsworn declaration requirements prescribed in K.S.A. 53-601.

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Attachment 2

**(2) Ballots cast after statutory polling place hours pursuant to a court or other order – Sections 3 and 9 of HB 2288**

- If polling hours are extended by a court or other order, HAVA requires voters to cast a provisional ballot during the extended hours. Such ballots must be separated from other provisional ballots cast during normal polling hours.
- Section 3 would allow such individuals to cast only a provisional ballot. Section 9 would require such provisional ballots to be separated from other provisional ballots cast during regular polling hours.

**(3) Voter identification requirements – Sections 4 and 8 of HB 2288**

- At minimum, HAVA requires Kansas to implement voter identification requirements for first time voters registering by mail whose identities cannot be verified. We believe it is crucial that identification requirements be enacted for all voters. On that basis, we are proposing changes to the advance ballot application procedure and the election day voting procedure so that every voter will be required to provide current and valid identification.
- In Section 4, we propose that advance voters be required to provide identification when submitting their applications. The success of the advance voting program is directly related to the ease and convenience of the application process. Requiring every applicant to submit a copy of a form of valid identification seems unduly burdensome. Our proposal would allow applicants an alternative – submitting a Kansas driver’s license number, a non-driver identification card number, or the last four digits of the individual’s social security number. The identity of the individual could be verified by the county election officer and the ease of advance voting would be retained.
- In Section 8, we propose that all voters at the polling place be required to provide identification before casting a ballot. While identifying our friends and neighbors at the polling place may seem unnecessary, the diverse demographics of our state require us to enact statewide measures designed to prevent voter fraud. Providing identification at the polling place would be no more restrictive than modern day requirements to rent a movie, check out a library book, or write a check. We believe our proposal strikes a balance – it protects the security of the electoral process while maintaining the ease of voting. If identification cannot be provided, a voter may cast a provisional ballot and present or submit valid identification to the county election officer after election day, but before the meeting of the county board of canvassers. In addition, individuals who have previously voted in the county may verbally provide a driver’s license number, a non-driver’s identification card number, or the last four digits of his or her social security number at the polling place if a tangible form of identification cannot be produced. First time voters who registered by mail would be required, pursuant to federal law, to provide a tangible form of identification at the polling place or to the county election officer after election day. HB 2288 reorganizes K.S.A. 25-2408, the voting procedure statute, to clarify the process and incorporate new requirements while maintaining existing requirements.

***Amendments by the House Committee on Ethics and Elections:*** The word “my” was substituted for “a” in Section 4, line 27, to specify that it must be the applicant’s identification number. The words “or refuses” in Section 8, line 22, were removed.



**(4) Federal services absentee ballot application – Section 5 of HB 2288**

HAVA requires a change in the application procedure for a federal services absentee ballot. Under the federal law, such applications are considered effective for two general elections for national or state office. Currently Section 5 requires an individual to apply for a federal services absentee ballot each year. Our proposal strikes the language requiring an annual application and inserts language making such applications effective for the next two general elections.

**(5) Additions to the voter registration form – Section 6 of HB 2288**

HAVA requires questions and statements regarding citizenship, age, and voter identification to be on the voter registration form. If the citizenship question is not answered, HAVA mandates that the applicant be notified and given the opportunity to answer the question. An individual cannot be registered unless the citizenship question has been answered.

**(6) Posting in the polling place – Section 7 of HB 2288**

HAVA requires that sample ballots, the date of the election, and polling place hours be posted in every polling place.

**(7) Amendment by the House Committee of the Whole – Sections 10 and 11 of HB 2288**

This was a floor amendment and is unrelated to the HAVA. It codifies a long standing election practice – allowing individuals in line at the end of polling place hours to vote. If the committee wishes to amend Sections 10 and 11, we request the opportunity to submit three amendments to clarify the procedure.

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During the 2002 legislative session, we took anticipatory steps toward implementation of the Help America Vote Act. For instance, a Democracy Fund was established as a depository for potential federal funds. In addition, a list of voter's rights and responsibilities must now be posted in every voting place. While these were important accomplishments, most HAVA mandates did not come to light until October 2002 when the legislation was finalized.

HB 2288 embodies federal mandates which require implementation by January 1, 2004. Regardless of federal funding, it is vital that our proposed changes be implemented this year. President Bush recently signed an omnibus bill which includes partial HAVA funding and it is anticipated that we may receive federal funds this spring.

We anticipate that anything less than full compliance with the federal mandates will have an adverse and long-lasting effect on our state. Potential ramifications include the following:

- litigation initiated by the U.S. Department of Justice;
- denial of federal funds for HAVA implementation; and
- classification as a pre-clearance state by the U.S. Department of Justice.

We recommend the committee report HB 2288 favorably for passage to implement the requirements of the Help America Vote Act of 2002 and prevent the consequences of noncompliance. Thank you for your consideration.



STATE OF KANSAS

Proposed Amendment to HB 2288

We propose the following three amendments to Sections 10 and 11 of HB 2288:

1. It is unclear what is meant by the phrase "individuals remaining at such polling place". It would be more instructive for precinct judges to include all voters who are "in line" at the time the polls close.

On page 11, line 33:

Strike "remaining" and insert "in line"

On page 12, line 9:

Strike "remaining" and insert "in line"

2. As drafted, the House amendment could be construed to remove the authority of election boards to challenge (or make provisional) any ballot. Their authority to challenge a voter's qualifications for other reasons should be preserved.

On page 11, line 36:

After "provisional ballot" insert "unless the ballot is challenged for a separate reason pursuant to K.S.A. 25-414"

On page 12, line 12:

After "provisional ballot" insert "unless the ballot is challenged for a separate reason pursuant to K.S.A. 25-414"

3. It is unnecessary to include this lengthy section in the postings at every polling place. Any voter who is at the polling place and in a position to read the notice would already be eligible to vote.

On page 11, lines 39 and 40:

Strike all of subsection (d)

On page 12, lines 15 and 16:

Strike all of subsection (c)

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Attachment 3