

## MINUTES OF THE HOUSE ELECTIONS AND GOVERNMENTAL ORGANIZATION COMMITTEE

The meeting was called to order by Chairman Mike Burgess at 3:30 P.M. on March 7, 2007 in Room 231-N of the Capitol.

All members were present except:

Representative Harold Lane- excused  
Representative Mike Peterson- excused  
Representative Sue Storm- excused

Committee staff present:

Martha Dorsey, Legislative Research Department  
Matt Spurgin, Legislative Research Department  
Mike Heim, Revisor of Statutes Office  
Maureen Stinson, Committee Assistant

Conferees appearing before the committee:

Brad Bryant  
Donald Merriman  
Kevin Siek  
Rocky Nichols

Others attending:

See attached list.

**SB 159 Elections; security of advance voting ballots**

Chairman Burgess opened the hearing on **SB 159**.

Brad Bryant, Deputy Assistant Secretary of State, testified in support of the bill (Attachment 1). He explained that Section 2 contains cleanup language to update references to voters with disabilities or lack of proficiency in reading the English language. He said that change does not affect the substance of the bill or the voting procedures used by voters with disabilities.

Donald Merriman, Saline County Clerk, testified in support of the bill (Attachment 2). He explained that they have had several instances over the past years where someone with a Power of Attorney has over stepped their role as a P.O.A. in signing for the ill or disabled voter.

Kevin Siek, Topeka Independent Living Resource Center, submitted written testimony in support of the bill (Attachment 3).

Rocky Nichols, Disability Rights Center of Kansas, testified neutral to the bill (Attachment 4). He said the overarching concern is that it puts a new requirement and new burden (albeit potentially a small one) on the person with a disability in regards to voting.

Chairman Burgess closed the hearing on **SB 159**.

**SB 160 Elections; Direct recording electronic voting systems**

Chairman Burgess opened the hearing on **SB 160**.

Brad Bryant, Deputy Assistant Secretary of State, testified in support of the bill (Attachment 5). He urged the Committee to pass **SB 160** to make state laws governing the certification and use of electronic voting machines consistent with the Help America Vote Act, and to bring the language of the laws up to date.

Chairman Burgess closed the hearing on **SB 160**.

Rep. Brunk made a motion for the favorable approval of minutes for March 6, 2007. Rep. Horst seconded the motion. The motion carried.

The meeting was adjourned.

The next meeting is scheduled for Thursday, March 8, 2007.



**RON THORNBURGH**  
Secretary of State



Memorial Hall, 1st Floor  
120 S.W. 10th Avenue  
Topeka, KS 66612-1594  
(785) 296-4564

## STATE OF KANSAS

### House Committee on Elections and Governmental Organization

#### Testimony on Senate Bill 159

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

March 7, 2007

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill 159. This bill was proposed by the Secretary of State as an advance ballot security bill. It contains two main provisions:

- It would prohibit anyone from signing another person's application for an advance voting ballot, but it would maintain current exceptions for voters with disabilities.
- If a voter wishes to designate another person to mail or deliver his/her ballot to the election office, the voter must designate the person in writing and the person designated must sign a statement that he/she has not exercised undue influence on the voter's decisions.

Section 2 also contains some cleanup language to update references to voters with disabilities or lack of proficiency in reading the English language. This is consistent with updates of similar language in other statutes made in recent years. It does not affect the substance of the bill or the voting procedures used by voters with disabilities.

We have security procedures and chain of custody for voting machines and ballots in all other aspects of the electoral process. Advance voting by mail is one part of the process where election officials do not have control over who handles ballots. Senate Bill 159 will create a record of who has handled a ballot in the event of an investigation about improper activities.

The Senate amended this bill as proposed by the Secretary of State to reflect language agreed upon by conferees representing the disabilities community last year during discussions on SB 142. We support the amended version of the bill. We believe this bill contains language acceptable to all who expressed opinions on it during the past two legislative sessions, and it represents an important step in improving the security of advance voting by mail.

Senate Bill 159 is very similar to House Bill 2281, which this committee discussed on February 19 this year.

We urge the committee to report Senate Bill 159 favorably for passage. Thank you for your consideration.

House Elections & Gov. Org.  
Date: 3-7-2007  
Attachment # 1



# Saline County Clerk

Donald R. Merriman - County Clerk  
Phone: (785) 309-5820  
FAX: (785) 309-5826  
E-mail: don.merriman@saline.org  
www.saline.org

P.O. Box 5040  
300 West Ash  
Salina, Kansas 67402-5040

March 7, 2007

Honorable Mike Burgess  
Chairperson – Elections and Governmental Organization Committee  
and Committee Members

Re: S.B. #159 for Advance Voting Security

Chairman Burgess and Committee Members:

As Saline County Election Officer and County Clerk, I am concerned about the Advance Voting security for mail-out and hand transmitted ballots. I believe S.B. #159 would help in that regard.

We have had several instances over the past years where someone with a Power of Attorney has overstepped their role, I feel, as a P.O.A. in signing for the ill or disabled voter. As in most communities there are organizations which care for the disabled, such as Community Service Providers and Independent Living Specialists and help with voting for those in their care. I would agree then that the amendment to extend the voter's designee, as to be any person for ballot delivery.

Currently, the Advance Voter envelope has designated areas for the voter signature and "Affidavit of Assistance", so I believe this amendment of K.S.A. 25-1121 and K.S.A. 2006 Supp. 25-1124 and 25-1128 is warranted.

Thank you for the time allotted today.

Sincerely,

Donald R. Merriman  
Saline County Election Officer and County Clerk  
(Chair of the Election Committee – KCCEOA)

DRM: *ll*

House Elections & Gov. Org.  
Date: 3-7-2007  
Attachment # 2

# Written Testimony



## Topeka Independent Living Resource Center

785-233-4572 V/TTY • FAX 785-233-1561 • TOLL FREE 1-800-443-2207  
501 SW Jackson Street • Suite 100 • Topeka, KS 66603-3300

### Testimony on SB 159 before the House Committee on Elections and Governmental Organization March 7, 2007

Chairman Burgess and members of the committee, thank you for the opportunity to appear before you today. My name is Kevin Siek and I am a disability rights advocate for the Topeka Independent Living Resource Center. Our agency is a civil and human rights organization with a mission to advocate for justice, equality and essential services for all people with disabilities.

I am here today to provide testimony in support of SB 159, which would clarify who may assist voters with disabilities that cast an advance ballot.

SB 159 has been amended to use the language that we and other disability rights advocates worked out with the conference committee on SB 142 during the 2006 session. It is the same language that is used in this committee's HB 2281.

In their testimony, the Disability Rights Center of Kansas (DRC) advocates amending SB 159 to require the state to provide a postage-paid, return envelope for advanced voters. Topeka Independent Living Resource Center agrees that this would reduce the number of ballots returned by hand. We also believe this would simplify the process for advance voters and would likely encourage more Kansans to vote using advance ballots.

SB 159 also includes the following additional language, which we feel may be a bit too restrictive and is not necessary to insure the integrity of the advance voting process:

*"Any person designated by a voter to deliver such voter's advance voting ballot shall mail or deliver the ballot and the designation and statement required by this section to the county election office. Such delivery shall occur within two business days after receiving the ballot from the voter but not later than the close of polls on election day."*

We would like to see SB 159 amended to mirror HB 2281 and would regard the postage-paid envelope amendment requested by DRC as a positive change to the bill.



## Disability Rights Center of Kansas

Rocky Nichols, Executive Director

635 SW Harrison, Ste 100 ♦ Topeka, KS 66603

785.273.9661 ♦ 877.776.1541 (Voice)

877.335.3725 (TDD) ♦ 785.273.9414 FAX

*rocky@drckansas.org* ♦ Telephone Ext. #106

### Testimony Regarding SB 159

#### To The House Elections and Governmental Organization Committee

March 7, 2007

Chairman Burgess and the honorable members of the committee, my name is Rocky Nichols. I am the Executive Director of the Disability Rights Center of Kansas, formerly Kansas Advocacy and Protective Services (KAPS). The Disability Rights Center of Kansas (DRC) is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for Kansans with disabilities. As such, DRC is the officially designated protection and advocacy system for Kansans with disabilities. DRC is a private, 501(c) (3) nonprofit corporation, organizationally independent of both state government and disability service providers. As the federally designated protection and advocacy system for Kansans with disabilities our task is to advocate for the legal and civil rights of persons with disabilities as promised by federal, state and local laws, including the right to vote.

I am here to testify concerning the effect of SB 159 on voting by people with disabilities. For those citizens of Kansas who have a disability, the right to vote is a fundamental concern. People with disabilities have been dramatically disenfranchised when it comes to participating in society, including voting. Until recently, many polling places were not accessible to people with disabilities, etc. Is it any wonder that in the 2000 elections 27 million Americans with disabilities did not vote?

It is in this light of the historic discrimination against people with disabilities that DRC must express concern about the language in SB 159. Before I talk about our concern regarding new requirements, let me start on a positive note. DRC is pleased with the language change in the bill where the words "sick, physically disabled or illiterate" are replaced with the more accurate language "has a temporary illness or disability or

who is not proficient in reading the English language.” This clear non-judgmental language is an improvement in the statute.

The new language in section (g), however, raises some concerns. I want to preface my remarks, that when compared to 2005’s SB 142, which thankfully the Governor vetoed, that 2007’s SB 159 is an improvement, if for no other reason that it only deals with the transportation of ballots issue. I do want also to acknowledge that this language is also an improvement upon the transportation of ballots language in the original SB 142 as introduced. The overarching concern regarding SB 159 is that it puts a new requirement and new burden (albeit potentially a small one) on the person with a disability in regards to voting. Many people with disabilities already have a huge barrier placed on them in the form of poverty because government generally forces people with disabilities to live in poverty in order to receive life saving services and supports. People with disabilities who receive SSI receive only around \$620 per month. In order to qualify to Medicaid, Kansas adults with disabilities are generally not allowed to make or retain over \$716 a month. Could you live on \$7,400 to \$8,500 per year? When you are living on around \$600 a month, the \$60 or so cents it takes to mail back the advance ballot is a barrier. Some Kansans with disabilities get around that barrier by having someone drop the ballot off for them and return it to the election office.

SB 159 puts new requirements on the person with a disability and on the person who is transporting their ballot. Remember, many times the person with a disability is forced by the government to live in poverty and the person dropping off their ballot is doing them a favor (saving them postage, ensuring that their vote counts if its too late to mail, etc.). SB 159 makes the voter with a disability fill out additional paperwork “by written designation on the ballot envelope” that they are having the person deliver the ballot for them. Though this may not be a huge burden, it puts the new requirement back on the voter. The person doing them a favor and delivering the ballot must also fill out additional information. What happens if it’s Election Day or it’s too late to mail the ballot. The voter with a disability leaves the ballot at their house with a roommate – because the voter went to a doctor’s visit – the ballot is to be picked up and the volunteer, but the voter didn’t fill out the additional information on the ballot? Can the person still deliver ballot for the person with a disability? Is it a provision ballot? Does the vote count? **If the person who is doing the voter with a disability a favor hand-returns**

their ballot for them and the voter has not filled this new required information, has that good Samaritan just committed a level 9 non-person felony? Has the voter unknowingly committed a felony? What if the voter forgets to fill out the new sections on the ballot? Are they a felon? Are there protections in this bill to absolutely ensure these votes will be counted when the voter left the ballot to be dropped off and didn't fill out the additional sections on the ballot? If there are these protections, we don't see them.

Our biggest problem is that SB 159 puts the requirement back on the voter with a disability. We think that voting is such a fundamental right that SB 159 is going about this issue all wrong. Instead of having the voter sign additional statements, and adding requirements on the voter, why not have government break down barriers and simply pay the postage for returning the advance ballot? That would put the requirement on the government, not the person with a disability. Some counties already pay for the return postage. Shawnee County has done this. Paying the return postage can be done simply by a return pre-printed postage paid indicia. Doing this would have the government help break down a barrier instead of erecting a new requirement on the voter with a disability (albeit, though, this perhaps a minor barrier/requirement). If the government would pay for the return postage, then you would most likely take much of this entire issue of handling of advance votes and personal delivery of advance votes off the table. People would avail themselves of the paid return postage, and more of them would drop the ballot in the mail. This would, we believe, greatly reduce the number of ballots delivered by hand. If the postage was paid by government to mail back the ballot, that positive step forward could justify the additional requirements in SB 159 of having the voter fill out the additional information on the ballot to allow their ballot to be returned, etc.

Government could pay for the return postage by either the State of Kansas paying for it as a provision of this bill, or requiring the Counties to pay for it in this bill. The State of Kansas provides funding to counties and broad latitude in the area of taxation authority (no longer have the strict tax lids, etc.). Paying for the return postage for ballots should simply be a cost of doing business that the government pays. Who can more afford it? State/local governments or a person with a disability living on \$7,000 a year?

We do appreciate the progress made on this issue. We hope you will agree that if new requirements are going to be placed on voting, that the State should start with



requiring government to pay for the return postage of advance voting before it places new requirements on voters with disabilities and those who are doing them a favor by returning their ballot by hand.

Thank you for your attention to our concerns.

**RON THORNBURGH**  
Secretary of State



Memorial Hall, 1st Floor  
120 S.W. 10th Avenue  
Topeka, KS 66612-1594  
(785) 296-4564

## STATE OF KANSAS

### House Committee on Elections and Governmental Organization

#### Testimony on Senate Bill 160

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

March 7, 2007

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify on behalf of the Secretary of State in support of Senate Bill 160. This bill was proposed by the Secretary of State to:

- (1) update the laws governing the requirements and certification of direct recording electronic (DRE) voting systems,
- (2) bring them into compliance with the Help America Vote Act of 2002 (HAVA), and
- (3) repeal outdated laws in Article 13 of Chapter 25 that provided for lever machines and punch card ballots.

This bill is nearly identical to legislation proposed in 2005 that was passed by both houses of the legislature but was vetoed last year after being amended into a large package of bills. We urge the committee to pass Senate Bill 160 to make state laws governing the certification and use of electronic voting machines consistent with the Help America Vote Act and to bring the language of the laws up to date.

The Senate added a technical amendment in Section 9 on page 8. This amendment does not change the substance of the bill.

We have attached a section by section summary of Senate Bill 160. We urge the committee to recommend Senate Bill 160 favorably for passage. Thank you for your consideration.

House Elections & Gov. Org.  
Date: 3-7-2007  
Attachment # 5

## Summary of Senate Bill 160

### Section 1

This section defines several terms related to electronic voting. It deletes references to ballot cards, labels and marking devices which are relevant only to outdated voting technology. The language we have proposed is based on the Federal Election Commission's 2002 Voting Systems Performance and Test Standards.

### Section 2

This section removes language providing for a petition and election process for counties to change their voting equipment. We have not heard of this process ever being used. The decision as to what type of voting system to use, if any, should be left to the board of county commissioners and the county election officer, who know the needs of the county and the county's budget.

### Section 3

This section would amend the general statute that requires certification by the Secretary of State to include operating systems, firmware and software in the process of reviewing voting systems. It is important that the law recognize the fact that automated systems are not limited to hardware.

### Section 4

This section also deals with the review and certification process. It removes the requirement that certification hearings be conducted in the Capitol, although they may be done here. Since the Secretary of State moved to Memorial Hall the hearings most often occur in our office there. Also, the proposed new language of Section 4 recognizes that voting systems must meet the requirements of state laws and federal laws such as HAVA.

### Section 5

Subsection (a) has been revised to remove an unnecessary limit on the number of political parties which may appear on the ballot.

Subsection (d) has been revised to provide more flexibility in partisan primary elections.

Subsection (h) has also been revised to provide flexibility in the voting process. HAVA requires each polling place to have at least one fully accessible, ADA-compliant voting device to allow voters with disabilities to vote independent and secret ballots. However, if some voters with disabilities prefer to receive assistance from persons of their choice or from election board members, their right to receive assistance is preserved.

Subsection (k) requires all electronic voting systems certified for use in Kansas to meet the requirements of HAVA.

### Section 6

Subsection (a) is amended two ways: (1) complementing the language of Section 2 of the bill, it removes language referring to an election process to select voting systems for counties, and (2) it removes an unnecessary ten-year limit on county contracts for the purchase, lease or rental of voting systems.

Subsection (c) has been added to authorize the Secretary of State to acquire electronic voting systems for counties to meet the requirement in HAVA that each polling place be equipped with

at least one fully accessible voting device.

#### Section 7

This section has been revised to remove language referring to paper ballots, labels, ballot cards, marking devices, and holes, and insert updated language consistent with the electronic display of ballots. It preserves the requirement that voting equipment be able to rotate candidates' names on ballots.

Subsection (b) preserves the requirement that sample ballots be provided at the polling place, which is required by HAVA and existing Kansas law, and that the sample ballots match the ballots on the voting equipment.

#### Section 8

This section deals with the voting process.

Subsection (b) preserves the requirement that sample ballots be provided at the polling place, which is required by HAVA and existing Kansas law as mentioned in Section 7 above.

Subsection (c) is deleted. This subsection required the posting of voter instructions in addition to the instructions on the ballot. HAVA and another Kansas law already require the posting of voting instructions at the polling place, and the instructions appear on each ballot. References to ballot cards, punching and marking devices are deleted.

Subsection (d) is deleted. The requirement that voters receive instruction before voting is retained in the new language.

Subsection (f) is deleted. It deals with the process for a voter receiving a replacement ballot if the first one is spoiled or mismarked. This process is done on the voting device in an electronic or electromechanical voting system.

Subsection (g) is deleted. It contained references to ballot cards, ballot stubs and envelopes that are not part of the electronic voting process.

#### Section 9

This section deals with the public testing of voting equipment before and after each election. A public test is required in the county election office during the week before the election and again after the election.

#### Section 10

This section deals with the procedure for closing the polling place and securing the voting devices when the polls close. It requires a check to ensure that the number of votes cast, including write-in votes, equals the number of voters on the poll book. References to ballot cards have been deleted.

If paper ballots are used at a location that normally votes on an electronic system, and ballots cannot be tabulated automatically using an optical scanner, they are required to be counted manually.

#### Section 11

In this section, a reference to ballot cards has been removed from a statute requiring a recount procedure.

Section 12

This section defines voting system fraud. It removes references to ballot cards and labels and includes voting equipment, operating systems, firmware, software and ballots.

New Section 13

This section authorizes the Secretary of State to adopt rules and regulations.

New Section 14

This section provides a name for the series of laws governing electronic and electromechanical voting systems.

Section 15

This is the standard repealer section of the bill, but it should be pointed out that in addition to repealing the statutes amended by SB 160, it repeals all of Article 13 in Chapter 25, which provided for lever machines and punch card ballots. Lever machines have not been used in Kansas since 1995, and to our knowledge, punch card ballots have never been used. These systems have been phased out nationwide by HAVA.