

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 12, 2007 in Room 231-N of the Capitol.

All members were present except:

Representative Mike Peterson- 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

Others attending:

See attached list.

**SB 158** Elections; optical scanning voting equipment

Chairman Burgess opened the hearing on **SB 158**.

Brad Bryant, Deputy Assistant Secretary of State, testified in support of the bill (Attachment 1). He explained that the bill was proposed by the Secretary of State to update laws governing optical scan voting systems.

Chairman Burgess closed the hearing on **SB 158**.

**SB 133** Election crimes; advance voting ballot suppression

Chairman Burgess opened the hearing on **SB 133**.

Brad Bryant, Deputy Assistant Secretary of State, testified in support of the bill (Attachment 2). He explained that the Senate Committee on Judiciary made several amendments to the bill.

Chairman Burgess closed the hearing on **SB 133**.

The meeting was adjourned.

The next meeting is scheduled for Tuesday, March 13, 2007.



**RON THORNBURGH**  
Secretary of State



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## STATE OF KANSAS

### House Committee on Elections and Governmental Organization

#### Testimony on Senate Bill 158

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

March 12, 2007

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill 158. This bill was proposed by the Secretary of State to update laws governing optical scan voting systems. It would accomplish two general objectives:

- Update and modernize statutory language, much of which has not been amended since 1982.
- Bring the laws into compliance with the federal Help America Vote Act of 2002 (HAVA).

This bill is a companion bill to Senate Bill 160, which updated laws governing electronic voting equipment. That bill was heard in this committee on March 7, 2007.

We have attached a section by section summary of Senate Bill 158 for the committee's review.

We urge the committee to recommend Senate Bill 158 favorably for passage. Thank you for your consideration.

House Elections & Gov. Org.  
Date: 3-12-2007  
Attachment # 1

## Summary of Senate Bill 158

### Section 1

This section revises definitions of terms related to optical scanning voting systems. It borrows standard definitional language from the Federal Election Commission's 2002 Voting Systems Performance and Test Standards.

One important change is the recognition of the two types of optical scanning systems—precinct count and central count—in Subsections (d) and (e).

### Section 2

This section deletes language providing for the voters of a given county to petition and vote on whether to adopt a new voting system. This provision has not been used to our knowledge. The authority to make this decision should be left to the board of county commissioners and the county election officer, who are familiar with the needs of the county and the budget.

### Section 3

This section amends the law to recognize the fact that voting systems include software, firmware and operating systems to tabulate votes. They are an integral part of any voting system.

### Section 4

This section updates language governing the process for manufacturers to submit voting equipment to the Secretary of State for certification. The section also requires optical scanning systems to comply with federal law.

### Section 5

This section updates language in the optical scan ballot design statute to allow the use of ovals instead of squares for the voter to make his/her marks. Most optical scanning systems use ovals. We have added a sentence to explain the purpose of the box printed on the ballot for insertion of a unique mark.

### Section 6

This section clarifies the law prescribing the process for instructing voters on how to mark an optical scan ballot.

### Section 7

This section deals with the public testing of voting equipment before and after each election.

### Section 8

This section requires the precinct election board to ensure that the number of ballots cast matches the number of voters who voted.

### Section 9

This section updates the language defining the crime of fraud in optical scanning systems. Once again, the language of the law has been updated to reflect the fact that the systems incorporate operating systems, firmware and software, and unauthorized possession of or tampering with the system is a crime.

Section 10

This section deals with the general requirements of voting systems.

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

Subsection (h) has been revised in accordance with HAVA's so-called "second chance voting" requirement that a system must provide notification of overvotes.

Subsection (i) has been added to provide a general provision in Kansas law that all voting systems must meet the requirements of HAVA.

New Section 11

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

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## STATE OF KANSAS

### House Committee on Elections and Governmental Organization

#### Testimony on Senate Bill 133

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

March 12, 2007

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill 133. This bill was proposed in its original form by the Secretary of State to improve the security of the electoral process by creating a crime of advance voting suppression. Under this legislation it would be illegal to destroy or alter ballots, to fail to deliver ballots, obstruct or delay their delivery, exercise undue influence on an advance voter, and open an envelope or disclose the contents of a ballot.

We offer this bill for the following reasons:

- It is a tool needed by local and state prosecutors to curtail improper activities.
- It mirrors a law passed in 2001 creating the crime of voter registration suppression. If it is illegal to destroy or fail to deliver a person's *voter registration application*, it should be illegal to destroy or fail to deliver the *ballot*.

Our office receives complaints about all the activities detailed in Senate Bill 133. Although we do not investigate or prosecute, we sometimes work with local and state authorities who have that authority. We have discovered that many of the improper activities are not technically illegal, and law enforcement authorities have nothing to base their cases on. Senate Bill 133 seeks to address that situation.

This bill was heard by two Senate committees: Elections and Local Government and Judiciary. The Committee on Judiciary made several amendments to the bill, some of which are discussed on the attached page.

We urge the committee to report Senate Bill 133 favorably and give election officials and law enforcement officials a much-needed tool to improve the security and integrity of the ballot.

Thank you for your consideration.

## Amendments to Senate Bill 133

1. Section 1, Subsection (c)—

This subsection was written to make it a crime to fail to deliver another voter's advance ballot. Subsection (g) was added to provide a safe harbor for a person who made a good faith effort to mail the ballot but the ballot was not delivered timely due to factors beyond the person's control.

2. Section 1, Subsection (h)(1)—

The Senate added this subsection to provide prosecutors with definitions of key terms. The definition of undue influence contains the word "coercion," which is already contained in an existing statute on voter intimidation (K.S.A. 25-2415) and which represents a higher level of influence on the voter than originally intended.

The Secretary of State prefers a definition of undue influence from Black's Law Dictionary. If this definition were used, Subsection (h)(1) would read as follows:

As used in this section, "undue influence" means the improper use of power or trust in a way that deprives the voter of free will and substitutes the other person's objective.

We offer this definition as a preferable alternative to the definition contained in the current version of the bill.