

Approved: 3/22/07  
Date

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Tim Huelskamp at 1:30 P.M. on January 30, 2007 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Martha Dorsey, Kansas Legislative Research Department  
Ken Wilke, Revisor of Statutes  
Zoie Kern, Committee Secretary

Conferees appearing before the committee:

Brad Bryant - Secretary of States Office  
Elizabeth Ensley - Shawnee Elections Commission  
Woody Moses - Lobbyist

Others attending:

See attached list.

Senator Reitz introduced bills **SB195 ,Concerning automated telephone calls, for political purposes ,and SB196 Elections; establishing requirements for reporting independent contributions,** to Elections and Local Government committee.

Motion was made by Senator Francisco and second by Senator Wilson to accept SB195 that was discussed last week and SB 196 as committee bills.

Motion carried.

Motion was made by Senator Petersen and second by Senator Lynn to request a bill to authorize hand counting of ballots that won't scan.

Motion carried.

Woody Moses introduced a bill to Committee on Natural resource development districts.

Motion was made by Senator Donovan and second by Senator Reitz to sponsor the bill.

Motion carried.

Ken Wilke of the Revisor of Statues office gave a summary on **SB 133 Election crimes; advanced voting ballot suppression.**

Brad Bryant of the Secretary of States office gave testimony in favor of **SB 133 (Attachment 1).**

There were no opponents present.

Hearing closed **SB 133.**

Ken Wilke of the Revisor of States office gave summary of **SB 160 Elections; direct recording electronic voting systems.**

Brad Bryant of the Secretary of States office gave testimony in favor of **SB 160 (Attachment 2).**

There were no opponents.

Hearing closed on **SB 160.**

Brad Bryant of Secretary of States office gave testimony in favor of **SB 158 Elections; optical scanning voting equipment (Attachment 3).**

Elizabeth Ensley from Shawnee Elections Commission gave favorable testimony on **SB 158 (Attachment 4).**

There were no opponents.

Hearing closed on **SB 158.**

Meeting adjourned.

Respectfully submitted,

Zoie C. Kern, Committee Secretary

**Senate Elections and Local Government Committee**

Daily, 1:30 - 2:30 p.m. Room 423S

**Senator Tim Huelskamp, Chair**

Guest List for 1/30-07, 2007

Please print in BLACK ink.

Name

Representing

*Woody Messer*

*KAPPA*

*Brad Bryant*

*Sec. of State*

*Elyahwah Easley*

*Shawnee Co*

*Regina Kluges*

*Huelskamp*

**RON THORNBURGH**  
Secretary of State



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**STATE OF KANSAS**  
**Senate Committee on Elections and Local Government**

**Testimony on Senate Bill 133**

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

January 30, 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 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 stop 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.

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.

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**STATE OF KANSAS**  
**Senate Committee on Elections and Local Government**

**Testimony on Senate Bill 160**

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

January 30, 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.

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 draws heavily from 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 143, 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.

#### Proposed Amendment

We recommend the following amendment in Section 9, page 8, lines 29-32:

Break the sentence into two sentences by inserting a period after “canvass” and capitalizing the word “the”, then striking the words “sealed, retained and disposed of in the same manner as paper ballots”.

The passage would read as follows:

*The test shall be repeated after the completion of the canvass. The equipment and ballots shall be secured and retained by the county election officer.*

We urge the committee to amend Senate Bill 160 as proposed and to recommend it favorably, as amended, for passage. Thank you for your consideration.

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Secretary of State



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**STATE OF KANSAS**  
**Senate Committee on Elections and Local Government**

**Testimony on Senate Bill 158**

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

January 30, 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).

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 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.



### 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 proposed 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.

### Proposed Amendments

We offer two proposed amendments for the committee's consideration:

1. Section 7, page 5, line 5—Add an "s" to the word "canvas".
2. Section 8, page 5, line 9—Delete the words "open the ballot box and". This is an outdated remnant of language that applies only to central count optical scan systems where the ballots are scanned at the central election office. Today, many optical scan systems are precinct-based systems where the voter deposits the ballot directly into the scanner and it drops into the ballot box. It is unnecessary and a potential breach of security to open the box.

We urge the committee to amend SB 158 as proposed and to recommend it favorably, as amended, for passage. Thank you for your consideration.



## Shawnee County Commissioner of Elections

Elizabeth Ensley  
Election Commissioner  
Norine Staab  
Asst. Election Commissioner

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### M E M O R A N D U M

TO: Senator Huelskamp, Chairman  
Committee on Elections and Local Government

FROM: Elizabeth Ensley  
Shawnee County Election Commissioner

DATE: January 30, 2007

RE: SB 158

Thank you for allowing me to appear before your committee regarding Senate Bill 158 clarifies the difference between precinct count and central count optical scan vote tabulators. Shawnee County has over 104,000 registered voters and uses a blended system of 180 precinct count optical scan machines and 180 new touch screen machines.

The current statute, K.S.A. 25-4611, is written for central count equipment since it was in use long before precinct count optical scan. When a central count machine is used, the precincts are sent an empty ballot box and a certain number of ballots. At the end of the night, the ballots are brought back to the County Clerks' office to be run through the central count machine. The ballots are voted but not tallied when they are transported. Central count machines have been in use in most counties of small or medium size in the state.

Precinct count tabulators, have the ballots run through the optical scan counter *one at a time*, at the precinct. As each ballot is deposited, the number of ballots is displayed on a counter in full view of the voter and election workers. If more than one ballot is attempted to be run through the machine, it will jam. At the end of the night, the election workers shutdown the machine and the ballots are tallied there at the precinct. The results of the vote is then announced or given to poll agents there at the precinct. The voted and tallied ballots are then sealed for return. Precinct count machines have been in use in Kansas since the early 1990s.

In both cases, the election workers must account for all ballots throughout the day. There are several security features built into the statutes including receipts for ballots, voters' signatures in the Poll Book, election workers must verify that the ballot box is empty at the beginning of the day, locks on the ballot box and the unique mark on each ballot. These security requirements protect against stuffing the ballot box or other ballot fraud. Obviously, it is necessary for the election workers to verify the number of voted ballots in order to match the number on the Poll Book. Maintaining election security is very important to all election officials.

The only issue with SB 158 is simply that it requires a hand count of the ballots. Hand counts are time consuming and can be very inaccurate, particularly when dealing with large quantities. Precinct counters have been counting individual ballots throughout the day and show the number on the front of the machine. The machine is less likely to yawn, laugh, get interrupted, mix up the stacks or forget what number it is on than very tired election workers. ***Please strike the words "open the ballot box" from SB 158.*** If for some reason a hand count is needed, voted ballots are sealed at the precinct and are available for a recount by the Board of Canvassers or a Recount Board.

Thank you for your time and consideration.

Senate Elections and Local  
Government Committee

1-30-07

Attachment

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