

SESSION OF 2013

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2162

As Amended by Senate Committee of the Whole

Brief*

HB 2162 would create new law concerning ballot language statements. The bill would permit county election officials to request the preparation of a ballot language statement to explain the language of any municipal ballot question. The procedure would depend somewhat on whether the ballot question language was derived from a petition.

If such a request was made and the ballot question language was derived from a petition submitted to a county attorney, district attorney, or county counselor, the election officer would be required, within ten days of certification of the petition, to request the applicable office prepare the ballot language. Within 15 days of a county election officer's request for a ballot language explainer, the office drafting the language would be required to prepare and forward the language to the Secretary of State's office for approval. After receiving the language, the Secretary of State would have five days to provide approved language to county officials.

If the request was made and the ballot question language did not derive from a petition submitted to a county attorney, district attorney, or county counselor, the county election officer would be required, within ten days of publication of the local government resolution, to request the Secretary of State's office to prepare the language. Within 15 days of a county election officer's request for a ballot language explainer, the Secretary of State's Office would be required to prepare and forward the language to the Attorney

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

General for approval. After receiving the language, the Attorney General would have five days to provide the approved language to county officials.

Ballot language statements would be required to fairly and accurately explain what a vote for and a vote against the question represents. Such statements would be required to be true and impartial and could not be intentionally argumentative or likely to create prejudice for or against a proposed measure. Statements would be required to be prepared and transmitted in good faith and without malice.

Ballot language statements would be required to be:

- Posted in each polling place, but could not be placed on the ballot;
- Provided to registered voters voting by advance ballot, but could not be placed on advance ballots; and
- Made available for public inspection at the county election office, and could be posted on the county website.

The bill would expressly provide that there would be no legal cause of action to challenge the validity of the form of a ballot explainer. The bill also would provide that there would be no liability for the Attorney General, Assistant Attorney General, Secretary of State, Secretary of State's employees, county election officers, county attorneys, district attorneys, or county counselors who prepare ballot language explainers.

Preparation of ballot language statements could not form the basis for an election contest and would not result in the waiver of state immunity.

Background

During the 2012 Interim, the Special Committee on Elections reviewed the topic of ballot explanation statements. At the close of its hearing, the Special Committee requested an Attorney General opinion on whether various types of local governments had authority to provide ballot explanation statements under current law. No such opinion had been issued at the time of House or Senate committee action.

Representative Howell testified in support of the bill at the House Committee on Elections hearing, describing an example of a confusing ballot question from a Wichita election and saying he thought local officials were best able to determine when a ballot explainer is required.

Secretary of State Kris Kobach also testified in favor of the bill. He stated his office receives multiple requests each year for clarification on the meaning of ballot measures. He also said the requirement that the language be reviewed and approved by two different bodies would help prevent bias and mistakes to aid in creating neutral and accurate explanations. There was no neutral or opponent testimony on the bill.

The House Committee on Elections amended the bill to require county election officers to request ballot language explainers for ballot questions. The bill as introduced would have allowed county officials to request an explainer, but would not have required a request. The House Committee also amended the bill to specify a ten-day window for the count election officer to request ballot language from the Secretary of State or Attorney General.

The House Committee of the Whole amended the bill by changing the effective date from publication in the *Kansas Register* to publication in the statute book.

The single proponent at the Senate Committee hearing was a representative of the Secretary of State's Office. The single opponent was a representative of the League of

Kansas Municipalities (LKM). Both requested an amendment to allow for permissive language rather than a requirement that county election officers prepare ballot language statements. The LKM representative indicated the organization would no longer oppose the bill if this change were made.

The Senate Committee on Ethics, Elections and Local Government amended the bill to revert back to its original language in the first sentence, to allowing, instead of requiring, state county election officers to request ballot language explainers for ballot questions.

The Senate Committee of the Whole adopted a clarifying amendment.

According to the fiscal note prepared by the Division of the Budget on the original bill, the Secretary of State's Office has indicated any costs associated with the bill would be negligible and could be absorbed within existing resources. The Office indicated there may be an increase in expenses if the number of special elections exceeds expectations and additional part-time legal staff is hired. The Secretary of State's Office also indicated there would be a cost to the counties, but could not provide an specific cost, as the increase in cost will depend on the number of jurisdictions choosing to hold special elections.