

MINUTES OF THE HOUSE ELECTIONS COMMITTEE

The meeting was called to order by Chairperson Keith Esau at 1:30 pm on Monday, February 15, 2016, 281-N of the Capitol.

All members were present except:

- Representative Larry Campbell – Excused
- Representative Joseph Scapa – Excused
- Representative John Alcala – Excused
- Representative Mark Kahrs – Excused
- Representative Jarrod Ousley, appointed substitute member to the committee

Committee staff present:

- Ruth Mahner, Kansas Legislative Committee Assistant
- Daniel Yoza, Office of Revisor of Statutes
- Mike Heim, Office of Revisor of Statutes
- Cindy Lash, Legislative Research Department
- Martha Dorsey, Legislative Research Department

Conferees appearing before the Committee:

- Secretary of State Kris Kobach;
- Andrew Howell, Shawnee County Election Commissioner;
- Tabitha Lehman, Sedgwick County Election Commissioner;
- Bruce Newby, Wyandotte County Election Commissioner;
- Dr. Beth Clarkson;
- Rep. Jarrod Ousley, KS House of Representatives;
- James Howell, Chairman, Sedgwick County Board of Commissioners (written only)

Others in attendance:

[See Attached List](#)

Meeting call to order

Vice-Chairman Esau, acting in place of Chairman Kahrs, called the meeting to order at 1:30 pm. He welcomed Representative Jarrod Ousley, who took the place of Representative Alcala at today's meeting.

Approval of minutes

Vice-Chairman Esau called attention to the minutes from committee meetings on January 20, January 25, and January 27. Representative Sawyer moved that the minutes be approved; Representative O'Brien seconded the motion. The minutes were approved.

Hearing on: HB2543 — Elections; manual audit of certain election results by county election officer prior to canvass.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES of the Committee on Elections at 1:30 pm on Monday, February 15, 2016 in Room 281-N of the Capitol.

Daniel Yoza of the Office of Revisors stood to give a description of the bill. This bill lays out a procedure for audit of an election. It provides that after an election and prior to the meeting of the Board of Canvassers, 1% of the precincts located in a county or district, to be designated by the Secretary of State, would be audited. The audit would compare the paper ballot (or paper ballot equivalent) to the results of the election. The audit would be conducted in public, and if there was a discrepancy, the Secretary of State would order additional precincts to be audited.

Mr. Yoza answered several questions regarding current statute and the definition of certain terms contained in the bill.

Proponents:

Secretary of State Kris Kobach testified that this bill is the result of a ruling by a Sedgwick County judge that election audits are not legal under current statute. Twenty states, including Kansas, currently outlaw election audits; this bill would move Kansas forward among the majority of states allowing audits, with the goal that at the time of election, no person could make a credible claim that the results were inaccurate. It is not offered to address any pervasive problem but should give added confidence regarding vote integrity.

The Secretary of State asserted that the provisions in the bill are intended to keep the cost of implementation as close to zero as possible and to ensure that county officials have sufficient time to adjust their procedures as necessary. Many experts have been consulted on how to improve this process, and it will be important to receive suggestions and input from individual counties as new system is put into place. ([Attachment 1](#))

In answer to questions, Secretary Kobach reiterated the fiscal and administrative burden it would place on counties to attempt to implement audits for 2016 elections. He also addressed the difficulty of standardizing a 1% sample over counties of disparate size and population, how this change would affect existing regulations, and the types of voting machines that would best support an audit.

Andrew Howell, Shawnee County Election Commissioner, stated that he fully supports this bill. He presented a fiscal estimate that he had compiled from his own data of what an audit sample might cost. ([Attachment 2](#)) He expressed the importance of maintaining regulatory authority, as each county has different requirements regarding manpower, size, number of precincts and space constraints. In Shawnee County, new equipment is being acquired which will necessitate extra time for set-up and training. He said that he cannot implement post-election audits until 2017. ([Attachment 3](#))

In answer to questions about whether it would be possible to audit the 2016 election, Mr. Howell said that if you introduce too many changes in one election cycle, you increase the possibility of error. He also said that although voting machines are currently tested both before and after each election, this does not amount to an audit as it simply verifies that the machines are working properly and does not match ballots.

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Tabitha Lehman, Sedgwick County Election Commissioner, testified that this bill will add integrity while still protecting confidence in voter privacy. She mentioned that she would support changing to a 13-day waiting period between election and canvass, a suggestion that had been mentioned by the Secretary of State, over the shorter period now in place. ([Attachment 4](#)) She then stood for questions.

Bruce Newby, Wyandotte County Election Commissioner, testified that he sees three factors affecting cost: The number of ballots audited, the number of board members involved, and the number of days allotted for the audit. He also stated that many voters prefer touch screen machines; it may take some "reconditioning" as we return to paper ballots. ([Attachment 5](#)) In answer to questions, he pointed out that provisional ballots would not be affected by the audit, as they are worked by a separate board; a record is kept of these votes.

Vice-Chairman Esau mentioned the written testimony from James Howell, Chairman, Sedgwick County Board of Commissioners. ([Attachment 6](#))

Opponents:

Dr. Beth Clarkson testified that she isn't a true opponent; she supports the intent of the proposed law but not some of the phrasing. She emphasized the necessity of a random sampling, to be selected after the election but before the canvass. She also disagreed with the reference to a "paper ballot equivalent", saying that there is no equivalent. It must be a paper ballot, created at the time the vote is cast. ([Attachment 7](#)) In response to questions, she addressed the inappropriateness of proprietary software for use in election audits.

Neutral Testimony:

Representative Jarrod Ousley spoke briefly in support of the intent of this bill. He stated that there is room for improvement and hopes the committee will move forward on it. ([Attachment 8](#)) There were no questions.

Announcements

Vice-Chairman Esau called for announcements. Representative Carmichael asked if there was still time to submit amendments for this bill, with the answer that there is still a full day available to propose amendments.

Adjournment

Vice-Chairman Esau adjourned the meeting at 2:55 p.m.