

SESSION OF 2017

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2158

As Amended by Senate Committee of the Whole

Brief*

HB 2158 would revise deadlines regarding advance voting ballots and amend law regarding notice of polling places.

Advance Voting Ballot Deadlines

The bill would do the following:

- Add a requirement that all advance voting ballots received at any polling place in the county not later than the hour for closing of the polls on any election date for all elections specified in KSA 25-1122(f) [all primary, general, and question submitted elections, special elections of officers, and presidential preference primaries] be delivered by the county election officer to the appropriate special election board. Current law requires only those advance ballots received in the county election office to be treated in this manner (Section 1);
- Add requirements for the receipt by mail of advance ballots, as follows (Section 1):
 - Deliver to a special election board or the county board of canvassers, in a manner as consistent as possible with canvassing of other advance ballots, those received after

*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>

the closing of the polls on the date of any election specified in KSA 25-1122(f), and which are postmarked before the close of the polls on the election date;

- Establish the deadline for receipt by mail of advance ballots by the county election officer as the last mail delivery by the U.S. Postal Service (USPS) on the third day following the election date, unless additional time is permitted by the Secretary of State; and
 - Require the Secretary of State to adopt rules and regulations to implement these provisions;
- Authorize a special election board to meet as provided by rules and regulations to be adopted by the Secretary of State, in addition to meeting as provided in current law (Section 2), and make technical and conforming changes (Sections 3 through 5). This would include requiring that procedures for canvassing and challenging advance ballots received by mail after polls close be set forth in rules and regulations adopted by the Secretary of State (Section 4); and
 - Revise the deadlines for transmittal by mail of applications for advance ballots as follows (Section 6):
 - For all elections occurring on the date of a primary or general election, from the last business day of the week preceding the election to the Tuesday of the week preceding the election; and
 - For question submitted elections not held on the date of a primary or general election, from the last business day of the week preceding the election to the Tuesday of the week preceding the election (the same requirement

as for those occurring on primary or general election dates), except if such an election is held on a day other than a Tuesday. In these instances, the change would be from not more than three business days before the election to one week before the election.

Notices Regarding Polling Place Changes

The bill would prohibit a county election officer from changing a polling place prior to an election without providing mailed notice at least 30 days prior to the election. A waiver from this requirement would be authorized if the county election officer declares an emergency.

The bill would further state failure to receive notice of a change in the voting place shall not give rise to a cause of action challenging the election results. Finally, the bill would require the Secretary of State issue a press release and post a notice on the Secretary of State's website notifying the public whenever the online voter registration website is unavailable for a period of 24 hours or more (Section 7).

Background

As it left the Senate Committee on Ethics, Elections and Local Government, the bill contained only the provisions regarding advance ballot deadlines. The Senate Committee of the Whole added the contents of SB 78, as amended by the House Committee on Elections, regarding notice of polling place changes.

HB 2158—Advance Ballot Deadlines

The bill was introduced by Representative Miller. In the House Committee on Elections hearing, proponents included Representative Miller, representatives of the League of Women Voters of Kansas and the Office of the Secretary of

State, and the Douglas County Clerk. Conferees stated the bill, as introduced, was identical to 2017 SB 8, which was assigned to a subcommittee of the Senate Committee on Ethics, Elections and Local Government and for which a subcommittee report has been issued.

Proponents also noted, in 2011-2012, the USPS began reducing the number of mail processing centers and making other service reductions, resulting in mail being routed to larger regional centers. According to the testimony, a number of Kansas processing centers were closed and this has affected several Kansas areas. For example, the processing of Topeka-area mail was moved from north Topeka to Kansas City, Missouri. Conferees indicated mail processing changes in other Kansas areas include the following:

- The cities of Hays, Salina, Dodge City, and Hutchinson – moved to Wichita;
- Liberal – moved to Abilene, Texas; and
- Colby – moved to North Platte, Nebraska.

Proponents noted moves such as these result in mail delays, which have affected whether advance ballots are being counted. According to the testimony, 94 ballots postmarked by November 8, 2016, in Shawnee County were not counted for the general election.

Also, according to the testimony, seven other states have enacted laws that provide for advance ballots postmarked on or before election day to be counted after election day.

The Douglas County Clerk encouraged the House Committee to consider the following additional changes:

- Change the deadline to apply for a mail ballot (currently, KSA 2016 Supp. 25-1122 establishes the Friday before an election as the application

deadline, which the USPS has indicated is an unserviceable deadline); and

- Amend KSA 2016 Supp. 25-2908(f) to allow mail ballots to be returned to the polling place on election day. The statute currently requires the polling place clerk or judge to void a mail ballot returned to a polling place and the voter be issued a provisional ballot, which increases the number of provisional ballots processed and causes voter confusion.

No neutral or opponent testimony was provided.

The House Committee amended the bill to do the following:

- Change the deadline for receipt by the county election office of mailed advance ballots, from the last USPS mail delivery on the *fourth* day following the date of the election, to the last USPS mail delivery on the *third* day following the date of the election; and
- Clarify the indication by the USPS that an advance ballot was mailed on or before the date of the election could include a USPS indication other than the traditional postmark.

The House Committee of the Whole amended the bill by adding the requirement that all advance voting ballots received at the polling place not later than the hour for closing of the polls on any election date for all specified elections be delivered by the county election officer to the appropriate special election board.

In the Senate Committee on Ethics, Elections and Local Government hearing, proponents included Representative Miller; the Director of Elections, Office of the Secretary of State; and a representative of the League of Women Voters

of Kansas. Representative Miller requested an amendment that would make the bill similar to Sub. for SB 8, as amended by the Senate Committee of the Whole, by adding the revisions regarding deadlines for application of advance ballots by mail, and that would add a clarification amendment. He discussed two other clarification amendments in his testimony.

The Senate Committee amended the bill to adopt the amendments requested by Representative Miller, specifically addressing the following:

- Add the revisions regarding deadlines for application of advance ballots by mail, as contained in Sub. for SB 8, as amended by the Senate Committee of the Whole; and
- Add the following clarification amendments:
 - Specify that the “polling place,” from which advance ballots received would be delivered to the appropriate special election board, would be “any such polling place within the county”;
 - Clarify that the deadline for receipt of advance ballots by mail included those postmarked or otherwise indicated by the USPS to have been mailed by “the close of the polls” on election day; and
 - Eliminate a reference to the presidential preference primary since the statute allowing for such was repealed in 2015.

As stated previously, the Senate Committee of the Whole amended the bill to add the provisions of SB 78, as amended by the House Committee on Elections, relating to notice regarding polling place changes.

According to the fiscal note prepared by the Division of the Budget on HB 2158, as introduced, the Secretary of State

indicates enactment of the bill would have no fiscal effect on the agency but could have a fiscal effect on Kansas counties that need to create a special election board. According to the agency, the Secretary of State and most county election offices would prefer that a special election board be appointed to handle ballots appropriately, since county boards of canvassers are not trained to handle actual ballots. However, the Kansas Association of Counties (KAC) stated enactment of the original bill would have no fiscal effect on Kansas counties. No revised fiscal note was available at the time of the Senate Committee action.

SB 78—Notice of Polling Place Changes

The bill was introduced by the Senate Committee on Ethics, Elections and Local Government at the request of Senator Faust-Goudeau. In the Senate Committee hearing, Senator Faust-Goudeau, along with former Representative Mah, the Director of Elections, Office of the Secretary of State, and a representative of the American Civil Liberties Union of Kansas testified in favor of the bill. Proponents indicated there have been complaints and confusion regarding the changing of polling places, hence providing an obstacle to voter participation. The Director of Elections also noted his opinion that failure to receive such a notice should not give rise to challenging election results. No neutral or opponent testimony was provided.

In the House Committee on Elections hearing, proponents included Senator Faust-Goudeau; former Representative Mah; the Director of Elections, Office of the Secretary of State; and a representative of the League of Women Voters of Kansas. No neutral or opponent testimony was provided.

The House Committee amended the bill to state failure to receive notice of a change in the voting place would not give rise to a cause of action challenging the election results and to require the Secretary of State to notify the public in the

ways specified above if the online voter registration website is unavailable for 24 hours or more.

According to the fiscal note prepared by the Division of the Budget on SB 78, as introduced, the League of Kansas Municipalities indicates enactment of the bill would have no fiscal effect on cities. KAC indicates enactment of the bill could increase county expenditures, as they relate to the cost of printing and mailing notices, by an inestimable amount. No fiscal note on the amended bill was available at the time the Senate Committee of the Whole took action on HB 2158.