

SESSION OF 2018

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2333

As Further Amended by Senate Committee on
Ethics and Elections

Brief*

HB 2333, as amended, would create law requiring manual audits of elections and would amend law related to the timing of the election canvasses and electronic voting machines.

Election Audit Requirements

The bill would require, after any election in which the county board of canvassers certifies the results, the county election officer to conduct a manual audit or tally of each vote cast in 1 percent of all precincts, with a minimum of one precinct located within the county. The precinct(s) audited would be selected randomly after the election. The requirement for audit or tally would apply regardless of the method of voting used.

The audit would review all races, with the exception of races involving judges, uncontested races, and races with a margin of more than 30 percent. Only one local race would be audited in odd-numbered year elections. Races to be audited would be selected randomly after the election.

The audit would be required to take place before the county board of canvassers meets to certify the election results. The bill would require the audit be performed manually and review all paper ballots selected for audit in accordance with the provisions of the bill. A sworn election

*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>

board of bipartisan trained members would be required to perform the audit in a public setting. The county election officer would determine the members of the board. The bill would state any candidate or entity authorized to appoint a poll agent could appoint a poll agent for the audit.

The bill would require notice of the time and location of the audit be provided on the official county website at least five days before the audit takes place.

The results of the audit would be compared to the unofficial election night returns, and the bill would require a report be submitted to the county election officer and the Office of the Secretary of State before the county board of canvassers meets. In the case of a discrepancy between the audit and the unofficial returns that could not be resolved, the county election officer or Secretary of State would be authorized to require audits of additional precincts.

The Secretary of State would be required to adopt rules and regulations governing the conduct and procedure of election audits, including the random selection of precincts and offices involved in audits.

The bill would specify the audit requirement would apply to all counties for elections occurring after January 1, 2019.

Timing of Election Canvasses

The bill would allow the county election officer to move the canvass for any election held on a Tuesday to any business day not later than 13 days after any election. The bill would require notice of the time and place of the canvass be published in a newspaper of general circulation in the county prior to the canvass. The bill would authorize the canvass of any election not held on a Tuesday to be held not later than the 13th day following the election. Current law allows the canvass for elections held on Tuesday to be moved to the second Thursday following the election with

prior notice, and requires the canvass for any election not held on Tuesday be held no later than the fifth day following the election.

Requirements for Electronic Voting Systems

The bill would prohibit any board of county commissioners from purchasing, leasing, or renting any direct recording electronic voting system after the effective date of the bill.

Any electronic or electromechanical voting system purchased, leased, or rented by a board of county commissioners after the effective date of the bill would be required to:

- Provide a paper record of each vote cast at the time the vote is cast; and
- Have the ability to be tested both before an election and prior to the canvass date. The ability to match the paper record of the machine to the vote total contained in the machine would be included in the testing.

The bill would not amend additional requirements in current law for electronic or electromechanical voting systems.

Background

The bill was introduced by the House Committee on Elections at the request of the Office of the Secretary of State, during the 2017 Legislative Session. In the House Committee hearing, the Secretary of State and a representative of the League of Women Voters appeared in support of the bill. They testified the bill would help ensure election results are accurate and noted Kansas is in the minority of states that do not require post-election audits of

election results. A citizen testified in opposition to the bill, stating his concern the bill did not require sufficiently extensive audits of election results. No other testimony was provided.

The House Committee amended the bill to add language requiring review of all races except races involving judges, uncontested races, and races where the margin was more than 30 percent. The House Committee also adopted an amendment requiring only one local race be selected for audit in even-numbered years.

Proponents at the March 15, 2017 hearing before the Senate Committee on Ethics, Elections and Local Government included the Secretary of State and a representative of the League of Women Voters of Kansas. A private citizen testified neutrally. There was no other testimony.

On March 24, 2017, the Senate Committee amended the bill to further limit the races audited to two contested races: one federal and one state legislative race.

The bill was rereferred from the Senate Committee of the Whole to the Senate Committee on Ethics, Elections and Local Government on May 8, 2017.

The Senate Committee on Ethics, Elections and Local Government held a second hearing on the bill on January 24, 2018. A Sedgwick County commissioner appeared in support of the bill. He stated his support for the random selection of precincts and races to be audited but that counties should be permitted to expand the audits if they found it necessary and appropriate. A representative for the League of Women Voters of Kansas testified in support of the bill, specifically the extension of the deadline for canvassing and banning electronic and electromechanical voting systems that do not produce a paper record of each vote cast and cannot be tested. The League of Women Voters of Kansas representative suggested an amendment to include odd-

numbered year elections in the auditing requirements. The Director of Elections, Kansas Secretary of State's Office, also provided proponent testimony. He stated Kansas is in the minority of states that do not require post-election audits and a manual review of election results, including ballots cast on electronic machines, would increase public confidence in the accuracy of the state's voting systems.

Neutral testimony was provided by Representative Ousley. He stated he supported election audits, but he was opposed to the narrowing of the bill to audits of only one federal office and one contested Kansas legislative race. A private citizen also presented neutral testimony to the committee. He stated the proposed scope of the audit is limited and a full audit within the 1.0 percent scope would be more appropriate. A representative of the Kansas County Clerks and Election Officials Association (KCCEOA) provided written-only neutral testimony stating the organization supported the bill with a few exceptions. The KCCEOA representative suggested audits be conducted on a small random sampling of total precincts and races and allowing counties to audit more precincts or races if irregularities are found.

No further testimony was provided.

The Senate Committee amended the bill to change the effective date to January 1, 2019, as well as to return the races reviewed in the audits to those recommended by the House Committee on Elections: all races except those involving judges, uncontested races, and races where the margin was more than 30 percent. The amendment also stated only one local race would be audited in odd-numbered year elections.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Kansas Association of Counties (Association) indicated enactment of the bill would likely increase expenditures for county governments by requiring them to hire workers and purchase supplies to

conduct audits. There could also be increased costs associated with printing paper ballots; however, the Association was unable to estimate the total costs. A revised fiscal note was not available on the amended bill at the time of the Senate Committee's action.