

SESSION OF 2022

SUPPLEMENTAL NOTE ON SENATE BILL NO. 438

As Amended by Senate Committee of the Whole

Brief*

SB 438, as amended, would create and amend law related to election audits.

Biannual Elections Audit

The bill would create an election audit procedure to be conducted by the Secretary of State (Secretary) in the calendar year following the general election of an even-numbered year.

The Secretary would select four counties at random to be audited under the bill, pursuant to the following:

- One county would be required to have a voting-age population of more than 90,000;
- One county would be required to have a voting-age population of more than 20,000 but less than 90,000; and
- Two counties would be required to have voting-age populations of less than 20,000.

The bill would specify that voting-age populations shall be set by the most recent federal decennial census.

The bill would require the Secretary to adopt rules and regulations necessary to implement the audits, including

*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>

specifying the specific records and procedures to be examined.

Audit of Elections Within One Percent

Current law requires that in order for an election to be certified, a manual audit or tally of each vote cast in an election, regardless of voting method, in one percent of all precincts, with a minimum of one randomly selected precinct per county, must be conducted by a sworn election board.

The bill would amend current law to require such an audit to be conducted in any even-numbered year federal, statewide, or state legislative race where the margin of victory is within one percent. The county election officer would be required to audit ten percent of all county precincts, with a minimum of one precinct, in the same manner as existing audit requirements. The precincts audited would be in addition to precincts audited under existing law.

Canvass Abstracts Available for Review

The bill would require, upon the publication of the notice of the time and location of the audit required by the bill, that the abstracts of original canvass be made available for review by authorized poll agents. The bill would require the abstracts from all precincts to be made available for review, not just those precincts subject to the audit.

[*Note:* Under current law, a county election board, upon completion of its canvass, makes and certifies abstracts of the votes cast for each precinct and each voting machine.]

Technical Changes

The bill would also make technical changes to ensure consistency in statutory phrasing and to remove an outdated reference to the effective date of the election audit statute.

Background

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Warren on behalf of the Secretary.

[*Note:* The bill contains provisions similar to those of HB 2570, as introduced.]

Senate Committee on Federal and State Affairs

In the Senate Committee hearing, **proponent** testimony was provided by a representative of the Secretary. The proponent stated there is a constant need to improve and enhance the election audit process, and local election officials were involved in the development of this legislation to ensure unattainable mandates would not be imposed.

Neutral testimony was provided by a representative of Loud Light Civic Action and a private citizen, indicating the bill would lack procedural specificity and expand the traditional audit procedure, rather than utilizing alternative audit procedures that can provide greater overall certainty. A representative of the Kansas County Clerks and Election Officials Association provided written-only neutral testimony.

No other testimony was provided.

The Senate Committee amended the bill to require county election offices to make certified official abstracts available for review by authorized poll agents.

Senate Committee of the Whole

On March 22, 2022, the Senate Committee of the Whole amended the bill to remove the requirement that a county could not be selected for audit if it had been selected in the three most recent audit cycles.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Secretary indicates the bill would have no fiscal effect on the Office of the Secretary of State. The bill would require the agency to develop training, education, documentation, and implementation of the new audit process.

The Kansas Association of Counties indicates the bill would increase labor costs necessary for conducting the additional audits. The costs associated with the audits are unknown as they would vary depending on how many personnel are necessary to conduct the audits based upon each county's population size.

Elections; audits; election procedures; abstracts; poll agents