

# KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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**To:** 2012 Special Committee on Elections  
**From:** Martha Dorsey, Principal Analyst, and Jill Shelley, Principal Analyst  
**Re:** Research Regarding Ballot Language Explanation Statements

Based on a request signed by the chairpersons of the Senate Committee on Ethics and Elections and the House Committee on Elections, the Legislative Coordinating Council has tasked the Special Committee to study whether ballot language explanation statements (or, explainers) are needed or advisable. The Special Committee was given the following study guidelines:

- If the explanation statements are advisable, should they be required?
- If not required for every ballot issue, how will it be determined or who should determine which issues require a ballot language explanation statement?
- Does Kansas currently prohibit cities from making ballot language explainers?
- What do other states require regarding ballot language explanation statements?
- If deemed advisable, how should ballot language explanation statements be drafted to control for bias? The analysis should consider the possibility of:
  - Selecting a board or committee for each such ballot language explanation statement, how and who would select members, and whether there is further review; or
  - Requiring, instead, a mechanism such as those outlined in 2012 HB 2780, as introduced, and 2012 HB 2425, as amended by the House Committee of the Whole.
- If deemed advisable, how should ballot language explanation statements be made available to all voters?

## Research Regarding Other States

Most of the questions asked of the Special Committee may be answered by examining what other states do. KLRD staff conducted a limited analysis of other states found to have

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authorized the use of ballot language explanations. States may use explainers for local ballot issues, for statewide issues, or for both.

While our search was not exhaustive, we were able to find ten states that have authorized the use of explainers for local ballot issues. Those states are California, Colorado, Connecticut, Iowa, Maryland, Nebraska, Nevada, Ohio, Oregon, and Utah. A different set of ten states have authorized explainers for statewide ballot issues: Florida, Georgia, Illinois, Maryland, Missouri, Montana, Nebraska, Ohio, Utah, and Washington.

Attached to this memorandum are Tables 1 and 2, summarizing the details from states that use explainers for local and statewide issues, respectively. Figure 1 (Pages 3-4) summarizes information from the two tables.

### **Kansas Governmental Entities' Current Authority to Provide Explanation Statements**

**Statewide Ballot Measures**—Article 14, Section 1 of the *Kansas Constitution* allows constitutional amendments be made only by the Legislature, via a two-thirds vote of all members on a concurrent resolution. Once approved, any amendment must be submitted to Kansas voters, "both by title and by the amendment as a whole. . . ." The section further states, "The title by which a proposition is submitted shall be specified in the concurrent resolution making the proposition and shall be a brief nontechnical statement expressing the intent or purpose of the proposition and the effect of a vote for and a vote against the proposition."

KSA 25-605 prescribes the ballot form for constitutional amendments. KSA 25-620 requires a separate ballot be provided when a proposition or question *other than* a constitutional amendment is to be submitted to the voters of the state.

**Local Ballot Measures**—Article 12, Section 5 of the *Kansas Constitution* addresses city charter ordinance ballots by stating, in part (from subsection (c), paragraph (3)):

The proposition shall be: "Shall charter ordinance No. \_\_\_\_\_ entitled (title of ordinance) take effect?" The governing body [of a city, under its home rule powers] may submit any charter ordinance to a referendum without petition by the same publication of the charter ordinance and the same publication of the ordinance calling the election as for ordinances upon petition and such charter ordinance shall then become effective when approved by a majority of the electors voting thereon.

Conferees have disagreed about a municipality's current authority to explain ballot measures. A number of statutes address the wording of local ballot issues. For example, KSA 12-144 requires the wording for a local vehicle or stamp tax to be "Shall the city levy a tax on motor vehicles of \$ \_\_\_\_\_, the revenue to be used for street improvements and traffic control purposes?" KSA 12-3904 requires the wording submitted to electors on consolidating any operations of a taxing subdivision, such as a city or county, or of two or more taxing subdivisions to be "expressed in general terms."

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FIGURE 1: SUMMARY OF SELECTED STATES' USAGE OF BALLOT EXPLAINERS

What States are Doing	Number of States— for Local Ballot Issues	Number of States— for Statewide Ballot Issues
<i>States in this group</i>	CA, CO, CT, IA, MD, NE, NV, OH, OR, UT	FL, GA, IL, MD, MO, MT, NE, OH, UT, WA
<b>Required of all ballot issues</b>	Eight (all but California and Connecticut)	Ten (all states analyzed)
<b>Authorize/require someone to choose whether to use explainer on a particular ballot issue</b>	Two California ("governing body may direct . . . city attorney to prepare impartial analysis"); and Connecticut (by vote of a city's legislative body)	None
<b>Who prepares the explainer</b>	<b>Governing body—Two</b> Oregon -option; and Utah -OR- proposition sponsor	<b>Legislature—One</b> Illinois (or principal proponents as approved by Attorney General for those initiated by petition)
	<b>Elections official/clerk—Five</b> Colorado (election officer); Connecticut (municipal clerk); Iowa (county commissioner of elections); Nebraska (city clerk); and Nevada (governing body in consultation with clerk)	<b>State Official(s)—Five</b> Georgia (Attorney General, Legislative Counsel, and Secretary of State (SOS)); Maryland, Ohio (SOS); Missouri (SOS within 20 days); and Nebraska (SOS; proponents and opponents may provide information)
	<b>Municipal attorney—Five</b> California (city attorney, if directed by governing body); Maryland (county attorney -OR- clerk of circuit court); Nevada (option; clerk in consultation with city attorney); Oregon (if not prepared by governing body); and Utah (if referendum)	<b>Proponents/opponents—Four</b> Florida (sponsor); Illinois (proponents, as approved by Attorney General, or legislature); Montana (proponent—reviewed by Legislative Services Division); and Washington (petitioner; must be reviewed by Office of Code Reviser but petitioner can reject recommendations)
	<b>Proponents/Opponents—Three</b> Colorado (proponent/opponent); Oregon (if requested by petition) and Utah (sponsor)	
	<b>Board/ Committee—Three</b> Maryland (State Board of Elections if a legislative act); Nevada (committees appointed by governing body in consultation with clerk); and Ohio (board of elections that approves the ballot)	
<b>Statement description</b>	<b>Impartial Analysis—Seven</b> California ("impartial"); Colorado (no names, other such restrictions); Connecticut (no advocacy); Nebraska ("concise and impartial"); Ohio ("condensed text that will properly describe"); Oregon ("impartial"); and Utah ("true and impartial")	<b>Impartial Analysis—Three</b> Missouri; Montana; and Utah

What States are Doing	Number of States— for Local Ballot Issues	Number of States— for Statewide Ballot Issues
	<b>Limit on Number of Words—Five</b> California (500), Colorado (500 for, 500 against); Nebraska (75); Oregon (125); Utah (500)	<b>Limit on Number of Words— One</b> Florida (75)
		<b>Chief Purpose—One</b> Florida
	<b>Arguments For and Against—Two</b> Colorado and Nevada	<b>Arguments For and Against—Three</b> Missouri; Nebraska; and Utah
	<b>Anticipated Fiscal Effect—One</b> Nevada	
<b>Who reviews statement</b>	<b>Election Officer/Clerk—Three</b> California (during ten-day review period may seek injunction requiring amendment or deletion of any or all materials); Colorado; and Nevada	<b>Secretary of State—Three</b> Florida; Montana (followed by Attorney General who may revise); and Ohio
	<b>Municipal Attorney—One</b> Connecticut	<b>Attorney General—Two</b> Missouri; and Montana (after SOS)
	<b>Elections Board—One</b> Ohio	
	<b>The Public—One</b> California (during ten-day review period any voter may seek injunction requiring amendment or deletion of any or all materials)	
<b>Where statement must be posted</b>	<b>Election Official/Clerk's Office—Two</b> California; and Nevada (also mailed)	<b>Informational Pamphlet—One</b> Nebraska (at least six weeks before election S.O.S. provides to election officials, who then make them available in their offices and at least three other locations)
	<b>Mailed—Two</b> Colorado - 30 days before; and Nevada - with sample ballot (also posted in multiple locations)	
	<b>On the Ballot—Four</b> Iowa; Maryland (also at voting center); Nebraska; and Oregon (also in newspaper)	<b>On the Ballot—Three</b> Florida (after candidates); Illinois (separate constitutional ballot); and Montana (also on petition)
	<b>In Each Polling Place—Four</b> Connecticut (also provided to applicants for absentee ballot); Maryland (also on ballot); Nevada; and Ohio	<b>In Each Polling Place—Two</b> Missouri (next to sample ballot); and Ohio
	<b>Newspaper—One</b> Oregon (also on ballot)	

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What States are Doing	Number of States— for Local Ballot Issues	Number of States— for Statewide Ballot Issues
<i>Appeal, Other Corrective Action</i>	<b>Court—Four</b> California (by voter or elections official); Nevada (if clerk rejects, committee creating statement may appear in district court); Oregon (by voter); and Utah (by at least 3 petition sponsors or a majority of governing body)	

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OTHER STATES' USAGE OF BALLOT LANGUAGE EXPLANATORY STATEMENTS

TABLE 1: LOCAL ELECTIONS		Colorado		Connecticut		Iowa	
		Alameda County					
Which elections	Any city measure qualifying for a place on the ballot	Local ballot issue election		Any municipality may, by vote of its legislative body, authorize the preparation and printing of concise explanatory texts of local proposals or questions approved for submission to the electors of a municipality at a referendum; also applicable to referendum called for by a regional school district.	Public measures including bond issues		
Who prepares the statement	Governing body may direct the city elections official to transmit a copy of the measure to the city attorney, unless the organization or salaries of the office of the city attorney are affected; the city attorney shall prepare an impartial analysis of the measure	Proprietor statement; petition representatives; opponent statement; not specified; "The election officer shall maintain and accurately summarize all other relevant written comments"	Municipal clerk		County commissioner of elections (usually the county auditor)		
Description of the statement	An impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure; shall not exceed 500 words	No summary shall mention names of persons or private groups, nor any endorsements or resolutions against the proposal - limit of 500 words for 500 words against	Shall specify the intent and purpose of each such proposal or question; shall not advocate either the approval or disapproval of the proposal or question				
Who reviews the statement	Officials and the public; see below	The election officer	Municipal attorney				
Where the statement must be posted	available for public examination in the elections official's office during the review period	Mailed to registered voters at least 30 days before such an election	Printed in sufficient supply for public distribution; provided to each applicant for an absentee ballot; at least three posters with the information shall be posted at each polling place		On the ballot		
Appeal	During the 10-calendar-day public examination period provided by this section for the summary and arguments for and against the measure to be included in the ballot pamphlet, any voter of the jurisdiction in which the election is being held, or the elections official, may seek a writ of mandate or an injunction requiring any or all of the materials to be amended or deleted		The State Elections Enforcement Commission, after providing an opportunity for a hearing... may impose a civil penalty on any person who violates the provisions (including the prohibition on advocacy)				
Statutory and Constitutional references	Elections Code § 9230, Analysis of measure; notice of availability of copy; Elections Code § 9295, official election materials	Colorado Constitution, Article 10, § 20(3)	§ 9-559b, Local questions and proposals; Explanatory text		§ 225, Summary of amendment or public measure; 472 County Commissioner of Elections		
Regulatory references							

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OTHER STATES' USAGE OF BALLOT LANGUAGE EXPLANATORY STATEMENTS

A Limited Analysis

TABLE 1. LOCAL ELECTIONS		Maryland	Nebraska	Nevada	Ohio
Which elections	Questions referred to the voters of one county or part of one county pursuant to an enactment of the General Assembly	Other questions to be voted upon in one county	Any city measure to be initiated or referred	Ballot question submitted by a political subdivision, public or quasi-public corporation, or other local agency authorized to submit questions	Local questions and issues
Who prepares the statement	State Board of Elections	County attorney assigned to the county's legislative body; if county attorney doesn't complete that before the third Monday in August, the clerk of the circuit court will prepare before the fourth Monday in August	The city clerk	Arguments prepared by committees appointed by the governing body in consultation with the clerk; if no committees appointed, prepared by clerk in consultation with governing body's attorney	The board of elections approving the ballot
Description of the statement			(1) The ballot title of any measure to be initiated or referred shall consist of: (a) a concise and impartial statement, of not more than seventy-five words, of the chief purpose of the measure.	Explanation, argument for and against, anticipated financial effect on the local government if the question is an advisory question that proposes a bond, tax, fee or expense	Condensed text that will properly describe the question, issue, or an amendment proposed by other
Who reviews the statement			"(1) - However, All Initiative and referendum measures shall be submitted in a nonpartisan manner without indicating or suggesting on the ballot that they have or have not been approved or endorsed by any political party or organization."	Clerk may reject a statement the clerk believes is "inaccurate or factually inaccurate"	board of elections
Where the statement must be posted	On the ballot, posted at voting center	On the ballot, posted at voting center	In the ballot (as part of the ballot title, all of which must be contained in the ballot)	Mailed with each sample ballot, posted in a conspicuous place in the city clerk's office, at least 2 posted in each precinct	In each polling place in some spot that is easily accessible to the voters
Appeal			N/A	If the clerk rejects a statement prepared by a committee, the committee may appear in district court	
Statutory and Constitutional references	7-403	7-403	Nebr. Rev. St. §18-2511; §18-2513; §18-2512	NRS 293.481; 293.121; 293.217	§305.06(C) and (E)
Regulatory references	Code of Maryland Regulations 33.17.06.06 Information for Voters at Early Voting Centers.			Nevada Administrative Code 293C.120, Sample ballots, General elections	

OTHER STATES' USAGE OF BALLOT LANGUAGE EXPLANATORY STATEMENTS

A Limited Analysis

TABLE 1: LOCAL ELECTIONS		Oregon	Utah
Which elections	Ballot title <sup>1</sup> includes explanation County/city measure requested by petition	County measure referred by county/city governing body	Referendum petition, Initiative petition Ballot proposition
Who prepares the statement	Petitioner gives to county clerk/city elections officer, copies to district/city attorney, district/city attorney has 5 business days to prepare the ballot title and return to the county clerk	May be prepared by the governing body, if not prepared by the district attorney within five business days of referral from the county clerk	Local clerk shall deliver a copy of the petition and the proposed law to the local attorney, local attorney shall prepare ballot title Governing body or proposition sponsor
Description of the statement	A concise and impartial statement of not more than 125 words summarizing the measure and its major effect	Title and impartial statement of the purpose of the measure	Arguments for and against the law referred to voters; pamphlet must note that opinions are those of the authors; no more than 500 words
When reviews the statement			
Where the statement must be posted	in the official newspaper and on the ballot		
Appeal	Any elector dissatisfied with the ballot title may petition the circuit court, stating the reasons the title filed with the court is insufficient, not concise or unclear, the ruling of the circuit court is final	May be appealed by a petition to the Supreme Court that is brought by at least three sponsors of the referendum petition or by a majority of the local legislative body for the jurisdiction where the referendum petition was circulated	
Statutory and Conditional references	250.035. Form of ballot titles for state and local measures; 250.275. Preparation of ballot titles for certain county measures; 250.275. Preparation of ballot titles for certain city measures; 250.0296. Dissatisfaction with title of city measure	250.185. Preparation of ballot titles by county governing body; 250.235. Preparation of ballot titles by city governing body	20A-7-508. Ballot title—Duties of local clerk and local attorney; 20A-7-508. Ballot title—Duties of local clerk and local attorney
Regulatory references			20A-7-403 Local voter information pamphlet



OTHER STATES' USAGE OF BALLOT LANGUAGE EXPLANATORY STATEMENTS

A Limited Analysis

TABLE 2: STATEWIDE ELECTIONS		Florida	Georgia	Illinois	Maryland	Missouri	Montana
Which elections	A Constitutional amendment or other public measure submitted to the vote of the people	A proposal by the General Assembly to amend or replace the Constitution	Constitutional amendment	Statewide ballot questions and all questions relating to an enactment of the General Assembly which is petitioned to referendum	Any statewide ballot measure	Statewide ballot issue	Statewide ballot issue
Who prepares the statement	Sponsor (Secretary of State rules apply)	The Attorney General, the Legislative Council, and the Secretary of State	The General Assembly, or in the case of a proposed amendment initiated by petition . . . by the principal proponents of the amendment as approved by the Attorney General	Secretary of State	Secretary of State prepares, within 20 days of receiving the measure	Proponent drafts, submits it to Secretary of State; Secretary of State sends it to the Legislative Services Division for review and recommendations (14-day turnaround); proponents submit revised language to Secretary of State	Proponent drafts, submits it to Secretary of State; Secretary of State sends it to the Legislative Services Division for review and recommendations (14-day turnaround); proponents submit revised language to Secretary of State
Description of the statement	An explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure, plus a separate financial impact statement, concerning the measure prepared by the financial impact Estimating Conference			Statements . . . shall be true and impartial statements of the effect of a vote for and against the measure in language neither intentionally argumentative nor likely to create prejudice for or against the proposed measure. In addition, such fair ballot language shall include a statement as to whether the measure will increase, decrease, or have no impact on taxes, including the specific category of tax" (language used in 2012 Hb 2780, Sec. 1A(13))	Statements . . . shall be true and impartial statements of the effect of a vote for and against the measure in language neither intentionally argumentative nor likely to create prejudice for or against the proposed measure. In addition, such fair ballot language shall include a statement as to whether the measure will increase, decrease, or have no impact on taxes, including the specific category of tax" (language used in 2012 Hb 2780, Sec. 1A(13))	Must provide "clarity, consistency, and conformity"; "must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the issue"	Must provide "clarity, consistency, and conformity"; "must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the issue"
Who reviews the statement	Secretary of State			The Attorney General, who "shall within ten days approve the legal content and form of the proposed statements"	The Attorney General, who "shall within ten days approve the legal content and form of the proposed statements"	Secretary of State, followed by Attorney General, who shall endeavor to seek out parties on both sides of the issue and obtain their advice"; Attorney General may order a fiscal note from the budget director; the Attorney General may revise the statement if the submitted statement does not comply with requirements	Secretary of State, followed by Attorney General, who shall endeavor to seek out parties on both sides of the issue and obtain their advice"; Attorney General may order a fiscal note from the budget director; the Attorney General may revise the statement if the submitted statement does not comply with requirements
Where the statement must be posted	On the ballot after the list of candidates		On the separate Constitutional ballot (separate from the ballots for electing people)	In each polling place next to the sample ballot	In each polling place next to the sample ballot	On petition; on ballot	On petition; on ballot
Statutory and Constitutional references	§ 101.151	GA CONST. Art. 10, § 1, ¶III	10 ILCS 5/16-6	7-7-303	116.025; 116.190	13-27-202; 13-27-312	13-27-202; 13-27-312

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OTHER STATES' USAGE OF BALLOT LANGUAGE EXPLANATORY STATEMENTS

A limited analysis

TABLE 2: STATEWIDE ELECTIONS		Nebraska	Ohio	Utah	Washington
Which elections	Statewide initiative to amend the Nebraska Constitution; statewide referendum on any act or part of any act by the Legislature	Statewide measure or Constitutional amendment	Statewide	Statewide	"ballot title" includes explanation proposed initiative measure, to petition the Legislature to enact a proposed measure, or submit a proposed initiative measure to the people, or order that a referendum of all or part of any act, bill, or law, passed by the Legislature be submitted to the people
Who prepares the statement	Secretary of State (information for the arguments may be provided by the sponsors of the measure, opponents to the measure, and other sources.)	Secretary of State			Petitioner must be reviewed by the Office of the Code Reviser but the petitioner can reject. Reviser recommendations; Office of Financial Management. In consultation with the Secretary of State, the Attorney General, and any other appropriate state or local agency, shall prepare a fiscal impact statement for certain state ballot measures
Description of the statement	Arguments both for and against each measure	"Condensed text that will properly describe the question, issue, or an amendment proposed by other than the general assembly"	The impartial analysis of the measure prepared by the Office of Legislative Research and General Counsel; the arguments in favor of the measure, the rebuttal to the arguments against the measure, and the rebuttal to the arguments against the measure, with the name and title of the authors at the end of each argument or rebuttal		
Who reviews the statement	N/A (see above)	Secretary of State			
Where the statement must be posted	Informational pamphlet: at least six weeks prior to election Secretary of State makes pamphlets available to election commissioners and county clerks, who then make them available in their offices and at least three other public locations that will facilitate distribution to the public	In each polling place in some spot that is easily accessible to the voters			
Statutory and Constitutional references	32-1401; 32-1402; 32-1405.01	3506.06(B); 3509.01C Duties and powers of Secretary of State	20A-7-722	29A-72, 62B 24A-72, 85D	

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