

SESSION OF 2021

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2332**

As Agreed to April 8, 2021

Brief*

HB 2332 would create and amend law concerning addresses maintained for registered voters, solicitation of advanced voting ballot applications, alteration of election laws, and the crime of election tampering.

The bill would establish a process for the handling of temporary vacancies created by officers or employees of the State or political subdivisions of the State due to military service.

The bill would also make technical amendments.

Addresses Maintained for Registered Voters

The bill would require each county election officer to maintain a residential address and mailing address for each registered voter if the mailing address is different from the residential address.

The bill would require the residential address of a registered voter to correspond to a physical location where the voter resides and could not be a post office box or other address that does not correspond to a physical location that can be occupied. If the residential address does not meet these requirements, the voter would not be validly registered.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

The bill would require this information to be recorded in any electronic database maintained by each county election officer.

Solicitation of Advanced Voting Ballot Applications

The bill would require any individual who solicits by mail a registered voter to file an application for an advance voting ballot, and in such mailing includes an application for an advance voting ballot, to include in such mailing:

- The name of the individual or organization causing such solicitation to be mailed;
- The name of the president, chief executive officer, or executive director, if an organization;
- The address of such individual or organization; and
- The statement: “Disclosure: This is not a government mailing. It is from a private individual or organization.”

The bill would require all such information to be included on both the exterior of the mailing and on each page contained within the mailing (except on the application for the advance voting ballot) in a clear and conspicuous label in 14-point or larger font.

The bill would require the advance voting ballot application included in such a mailing to:

- Be the official application for advance voting ballot by mail provided by the Secretary of State;
- Not have any portion of such application form completed prior to mailing; and

- Contain an envelope addressed to the appropriate county election office for the mailing of such application.

The bill would prohibit the person mailing the application to the voter from directing the completed application be returned to such person.

The bill would provide a violation of such requirements would be a class C nonperson misdemeanor.

The bill would exempt from such requirements the Secretary of State, any election official, county election offices, and the official protection and advocacy for voting access system for the State as provided in the Help America Vote Act of 2002, or any other entity required by federal law to provide information concerning elections and voting procedures. [Note: The Disability Rights Center of Kansas is the designated protection and advocacy system in Kansas.]

Additionally, the bill would prohibit any person not a resident of Kansas or domiciled in Kansas from mailing or causing to be mailed an application for an advance voting ballot. The bill would provide individuals may file a complaint with the Attorney General alleging a violation of this provision; such complaint must include the name of the person alleged to have violated this provision. The bill would require the Attorney General to investigate any allegations of violations under this provision and would permit an action to be filed against any person found to have violated this provision. The bill would provide any person who violates this provision would be subject to a civil penalty of \$20, and each mailing of an application for an advance voting ballot would constitute a separate violation.

These provisions of the bill would go into effect January 1, 2022.

Alteration of Election Laws

The bill would create law to prohibit the Governor, the Executive Branch, and the Judicial Branch from altering election laws.

The bill would also require approval from the Legislative Coordinating Council prior to the Secretary of State entering into consent decrees with any court. The bill would specify that it could not be construed to limit or otherwise restrict the judicial power of the state government in the exercise of any of its constitutional powers.

The bill would contain a severability clause regarding these provisions.

Election Tampering

The bill would expand the crime of election tampering to include:

- Changing or attempting to change, alter, destroy, or conceal any vote cast by paper ballot or computer;
- Changing or attempting to change any vote by manipulating computer hardware or software, election machines, wireless or cellular transmissions, or vote tabulation methods; or
- Knowingly producing false vote totals.

The bill would clarify the crime of election tampering by making or changing any election record would not include making or changing any election record by a person who is lawfully carrying out an election duty.

Temporary Vacancy Appointment Process

If a temporary vacancy would be created by officers or employees of the State or political subdivisions of the State due to military service, the bill would require, upon a determination by such officer that such officer's military service requires a temporary appointment for such officer's vacancy, such officer to submit an approved form to be filed:

- With the Secretary of State, if the officer is an elected state official;
- With the county clerk containing the largest portion of the territory of the political subdivision, if the officer is an elected official of a political subdivision; or
- With their human resources department or other official as determined by the officer's employer, if the officer is an employee who is not an elected official.

The bill would also require such officer to submit an approved form with the respective official or department upon such officer's return from military service.

The bill would state, if the officer's military service creates a temporary vacancy and the officer has filed the approved form as outlined above:

- Such temporary vacancy must be appointed and temporarily filled by the appointive authority for the partisan elective office, if the officer is an elected official; and
- Such temporary vacancy may be appointed and temporarily filled by the appointive authority for the employee, if the employee is not an elected official.

The bill would state individuals appointed by the process outlined above would hold the office or position they are appointed to during the temporary vacancy.

The bill would expand the definition of “military service” to include active service in the Air Force, Coast Guard, Kansas Air National Guard, Kansas Army National Guard, Space Force, or any branch of the U.S. military reserves. [Note: “Military service” as defined in current law includes active service in the Army, Navy, and Marine Corps.]

Conference Committee Action

The Conference Committee agreed to the provisions of HB 2332 as passed by the Senate and to amend the bill to require county election officers, rather than the Secretary of State, to maintain registered voter residential and mailing address information and to add the contents of HB 2090, as amended by the House Committee on Elections.

Background

The bill contains the provisions of HB 2332, as passed by the Senate, and HB 2090, as amended by the House Committee on Elections. The Conference Committee further amended the provisions of HB 2332.

[Note: HB 2332, as passed by the Senate, includes the contents of HB 2183, HB 2339, and HB 2332, as amended by the Senate Committee on Federal and State Affairs.]

HB 2332 (Soliciting Applications for Advanced Voting Ballots)

HB 2332 was introduced by Representative Toplikar.

House Committee on Elections

In the House Committee hearing on the bill, Representative Toplikar testified as a **proponent**, stating the bill was introduced to address voter confusion and as a result of certain voters receiving multiple applications for advance voting ballots during the 2020 election cycle.

A representative of the Disability Rights Center of Kansas testified as an **opponent**, stating the organization is required by federal law to provide certain information and to help people register and vote and requested the organization be exempted from provisions of the bill.

Representatives of the Kansas County Clerks and Election Officials Association, Loud Light Civic Action Group, and the Office of the Secretary of State provided neutral testimony. A representative of the League of Women Voters of Kansas provided written-only neutral testimony.

The House Committee amended the bill to:

- Exempt from the bill the Secretary of State, any elected official, county election offices, and the official protection and advocacy system for the State designated pursuant to federal law;
- Provide that violations of the provisions requiring disclosure on mailed solicitations would be a class C nonperson misdemeanor;
- Prohibit persons not residents of or domiciled in Kansas from mailing an application for an advance voting ballot and provide any such violation would result in a \$20 civil penalty per violation; and
- Change the effective date of the bill from upon publication in the statute book to January 1, 2022.

[*Note:* The Conference Committee retained these amendments.]

Senate Committee on Federal and State Affairs

In the Senate Committee hearing, Representative Toplikar provided **proponent** testimony. He stated the bill was intended to address voter confusion at receiving multiple advanced voting applications from entities other than election officials.

A representative of the Office of the Secretary of State provided neutral testimony. A representative of the Office noted an increase in solicitations regarding advanced voting ballots from third parties during the 2020 election cycle.

No other testimony was provided.

The Senate Committee amended the bill to:

- Require the Secretary of State to maintain residential and mailing addresses for registered voters in an electronic database;
- Require the advance voting ballot included in such a mailing to:
 - Be the official application for advance voting ballot by mail provided by the Secretary of State;
 - Not have any portion of such application form completed prior to mailing; and
 - Contain an envelope addressed to the appropriate county election office for the mailing of such ballot and not direct the application be returned to the sender;
- Insert the provisions of HB 2183, as passed by the House with additional Senate Committee

amendments, regarding alteration of election laws;
and

- Insert the provisions of HB 2339, as passed by the House, with an additional Senate Committee amendment, regarding the crime of election tampering.

[*Note:* The Conference Committee retained these amendments.]

Senate Committee of the Whole

The Senate Committee of the Whole adopted amendments to language pertaining to the application process for an advance voting ballot, to clarify that the residential address of a registered voter shall not be an address that does not correspond to a physical location that can be occupied, and to make technical amendments related to applications for advanced mail ballots. [*Note:* The Conference Committee retained these amendments.]

HB 2183 (Alteration of Election Laws)

HB 2183 was introduced by the House Committee on Elections at the request of Representative Blake Carpenter.

House Committee on Elections. In the House Committee hearing on February 2, 2021, Representative Blake Carpenter provided written-only **proponent** testimony stating the bill would ensure the power to alter laws rests solely with the Legislative Branch and would ensure the Legislative Branch has the ability to “weigh-in on” legal matters that could impact current laws.

A representative of Loud Light Civic Action Group provided **opponent** testimony.

The Deputy Assistant Secretary of State for Communications and Policy provided neutral testimony.

The House Committee amended the bill to remove a provision to repeal a statute related to the ability of the Secretary of State to distribute ballots during disasters or emergencies. [Note: The Conference Committee retained this amendment.]

Senate Committee on Federal and State Affairs. In the Senate Committee hearing, Representative Blake Carpenter provided **proponent** testimony. He stated the bill was intended to prevent election laws from being changed by any entity other than the Legislature, in response to issues he identified during the 2020 elections.

A representative of Loud Light Civic Action Group provided **opponent** testimony, indicating concerns about separation of powers issues related to judicial review and executive enforcement and resulting potential litigation.

No other testimony was provided.

The Senate Committee amended the bill to include language specifying the bill would not limit or otherwise restrict the Judicial Branch in the exercise of its constitutional powers and a severability clause. [Note: The Conference Committee retained this amendment.]

HB 2339 (Election Tampering)

HB 2339 was introduced by Representative Toplikar.

House Committee on Elections. In the House Committee hearing on the bill, Representative Toplikar provided **proponent** testimony, stating the bill would further define the crime of election tampering and would help improve voter confidence in the integrity of Kansas elections.

Written-only **opponent** testimony was provided by representatives of the League of Women Voters of Kansas.

Written-only neutral testimony was provided by a representative of Loud Light Civic Action Group.

The House Committee amended the bill to:

- Prohibit any person from making or changing any election record, unless such person making or changing any election record is lawfully carrying out an election duty;
- Prohibit any person from attempting to destroy any vote cast by paper ballot, election machine, or computer; and
- Prohibit any person from changing or attempting to change any vote by manipulating an election machine or wireless or cellular transmission.

House Committee of the Whole. The House Committee of the Whole amended the bill to remove the word “intentionally” before the phrase “producing false vote totals.” [Note: The Conference Committee retained this amendment.]

Senate Committee on Federal and State Affairs. In the Senate Committee Hearing, Representative Toplikar provided **proponent** testimony. He stated his belief that the legislation could help with voter confidence in voting system integrity.

A representative of Loud Light Civic Action Group provided neutral testimony, stating concerns about potential ambiguities in the wording of the bill, whether the bill was needed, and potential unintended consequences of passing the bill. No other testimony was provided.

The Senate Committee amended the bill to specify election tampering would be “knowingly” providing false vote

totals. [Note: The Conference Committee retained this amendment.]

HB 2090 (Temporary Vacancy Appointment Process)

The bill was introduced by the House Committee on Elections at the request of Representative Croft.

House Committee on Elections

In the House Committee hearing, Representative Proctor testified as a **proponent**, stating the current law governing military service was enacted in 1941, before certain branches of the military were created. He noted those officers serving in the other branches of the military deserve the same process for handling a temporary vacancy from their jobs due to military service as those officers serving in branches included in current law.

A representative of the League of Kansas Municipalities testified as neutral, asking for clarification for the temporary vacancy appointment process for officers that are city-elected officials or employees.

The House Committee amended the bill to clarify the process for temporary vacancy appointments for statewide and local elected officials. [Note: The Conference Committee retained this amendment.]

Senate Committee on Transparency and Ethics

In the Senate Committee hearing, Representative Proctor testified as a **proponent**, stating the bill would make clear the procedure for servicemembers to notify the State of their vacancy and for employers to temporarily fill such vacancy.

No other testimony was provided.

The Senate Committee amended the bill to insert a provision requiring precinct committeemen, committeewomen, and appointees to report their address, phone number, and email address (if available) to the county election officer. [Note: The Conference Committee did not retain this provision.]

Fiscal Information

HB 2332 (Soliciting Applications for Advanced Voting Ballots)

According to the fiscal note prepared by the Division of the Budget on HB 2332, as introduced, the Secretary of State indicates enactment of the bill would have no fiscal effect on the agency, and the Kansas Association of Counties indicates enactment of the bill would have no fiscal effect on counties or county election officers.

HB 2183 (Alteration of Election Laws)

According to the fiscal note prepared by the Division of the Budget on HB 2183, as introduced, the Office of the Secretary of State indicates enactment of the bill would have no fiscal effect on the agency.

HB 2339 (Election Tampering)

According to the fiscal note prepared by the Division of the Budget on HB 2339, as introduced, the Secretary of State indicates enactment of the bill would have no fiscal effect on the agency. The Kansas Association of Counties indicates enactment of the bill would be unlikely to have any fiscal effect on Kansas counties.

HB 2090 (Temporary Vacancy Appointment Process)

According to the fiscal note prepared by the Division of the Budget on HB 2090, as introduced, the Department of Administration indicates enactment of the bill would have no fiscal effect, as the bill would establish a process in statute that already takes place on a regular basis.

Advanced voting ballots; election laws; Secretary of State; election tampering; temporary vacancy; military service; state and local government

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