

SESSION OF 2011

**SUPPLEMENTAL NOTE ON HOUSE
SUBSTITUTE FOR SENATE BILL NO. 129**

As Recommended by House Committee on
Elections

Brief*

House Sub. for SB 129 would make several changes in election laws relating to filling a vacated state Senate office, providing voter identification at every election and a photo identification when voting in person, supplying evidence of citizenship when registering to vote, and increasing penalties for and prosecuting election crimes.

Details of the bill follow.

Filling a Vacated Senate Office (Section 2)

The bill would change election requirements for filling a vacated Senate office. If the vacancy occurred before May 1, changed by the bill from October 15, in the second year of the term, a senator would be elected in the next general election. Anyone appointed to the office would serve until that election. The bill would specify that the nomination and election process of the successor senator would be the same as that for a regular Senate term. A person appointed to a Senate office vacated after May 1 in the second year of a term would stay in the office for the remainder of the term.

Free Nondriver's Identification Cards (Section 1)

The bill would prohibit the Kansas Department of Revenue Division of Motor Vehicles (DMV) from requiring or

*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>

accepting payment for a nondriver's ID card issued to anyone 18 or older for purposes of meeting the voter identification requirements (KSA 25-2908). Each such individual would be required to swear under oath on an affidavit that an identification card is needed in order to vote, and none of the required identification forms is in the voter's possession. The voter also must produce evidence of being registered to vote in Kansas. Any person signing such an affidavit of eligibility knowing the information is false would be deemed guilty of a Class C misdemeanor. The bill requires the Secretary of Revenue to adopt rules and regulations needed to implement these provisions.

Identification Requirements for Voting at the Polls on Election Day (Sections 16, 17)

The bill would:

- Eliminate the current provision that only first-time voters who did not provide ID when they registered must provide ID, and eliminate the current list of acceptable ID forms.
- Require every person voting at the polls on election day (with some exceptions; see below) to provide one ID form from a specified list of ID forms, if the ID contains the name and photograph of the voter and has not expired. (Expired documents would be valid if the bearer is 65 years of age or older.) The bill would authorize the Secretary of State to define the types of acceptable identification with greater specificity using rules and regulations. Following are the specified ID forms allowed:
 - A driver's license, whether issued by Kansas or by another state or district of the United States;
 - A state ID card, whether issued by Kansas or by another state or district of the United States;
 - A concealed carry of handgun or weapon license, whether issued by Kansas or by another state or district of the United States;

- A United States passport;
 - An employee badge or ID document issued by a municipal, county, state, or federal government office or agency;
 - A military ID document issued by the United States;
 - A student ID card issued by an accredited postsecondary education institution in Kansas; or
 - A public assistance ID card issued by a municipal, county, state, or federal government office or agency.
- Exempt the following persons from the photo ID requirement when voting at the polls on election day:
 - Those with a permanent physical disability that makes it impossible for them to travel to obtain a qualifying ID form and are qualified for permanent advance voting status;
 - Members of the uniformed service on active duty who, if on duty, are absent from the county on election day;
 - Members of the merchant marine who are absent from the county on election day;
 - The spouse or dependent of a member of either the uniformed service or merchant marine (under the above-named circumstances) who, by reason of the member's duty or service, is absent from the county on election day; and
 - Any voter whose religious beliefs prohibit photographic identification. Any person seeking this exemption must complete a declaration concerning their religious beliefs and transmit it to the county election officer or the Secretary of State. The declaration form must be made available on the official Secretary of State website.
 - Revise the Secretary of State's authority to adopt rules by making clarifications and by stating that the requirement that a voter provide one of the specified ID forms may not be altered.

**Identification Requirements for Voting by Advance Ballot
(Sections 3, 4, 5, 6, and 7)**

The bill would:

- Require each person voting by advance ballot to be transmitted in person to provide, for every election, the same form of ID as is required of those voting at the polls on election day (see above).
- Require each person voting by advance ballot to be transmitted by mail to provide, for every election, one of the following:
 - The voter's current and valid Kansas driver's license or nondriver's ID card *number*;
 - A *copy* of any one of the same ID forms as required of those voting at the polls on election day.
- Prohibit the county election officer from providing an advance ballot to a person (when the ballot is to be returned by mail) unless the county election official verifies that the person's signature (contained in the ID form the person provides) matches the one on file in the county voter registration records.
 - The signature verification could be done by electronic device or by human inspection.
 - If the signatures do not match, the county election officer must attempt to contact the person and offer another opportunity to provide a signature for purposes of verifying identity. If unable to reach the person, the county election officer is authorized to transmit a provisional ballot which may be counted only if the signature included with the ballot can be verified.
- Prohibit the county election officer from providing an advance ballot to a person (when the ballot is to be returned by mail) unless the person provides the required ID, but the county election officer would be

required to provide information to the person regarding the voter's right to vote a provisional ballot. The county election officer also would be required to provide the person an opportunity to provide the ID required.

- In conjunction with this requirement, the bill would require all Kansas state offices and any offices of any subdivision of the state to allow any person seeking to vote by advance ballot to use a photocopying device to make one photocopy of an ID document at no cost.
- Require a voter whose ballot is returned to the county election officer by someone else to designate in writing the person authorized to return the ballot. The person so designated by the voter would be required to sign a statement that the designee has not exercised undue influence on the voting decisions of the voter and agrees to deliver the ballot as directed by the voter.
- Authorize the Secretary of State to adopt rules and regulations regarding identification for advance voting.

***Increasing Penalties for and Prosecuting Election Crimes
(Sections 7, 11, 12, 13, 14, 15, 19, and 20)***

The bill would:

- Revise the statute on advance voting crimes by amending the existing crimes and adding a new one. (KSA 25-1128)
 - The following would be amended:
 - Marking or transmitting more than one advance voting ballot is changed to “knowingly” marking or transmitting more than one advance voting ballot.
 - Interfering with or delaying the transmission of any advance voting ballot application from a voter to the county election officer is changed to

- “knowingly” interfering with or delaying the transmission.
 - Marking, signing or transmitting the advance voting ballot or envelope by a person other than the voter is changed to “knowingly” marking, signing or transmitting the ballot or envelope.
 - “Willfully” and falsely affirming, declaring or subscribing to any material fact in an affirmation form for an advance voting ballot is changed to “knowingly” and falsely affirming, declaring or subscribing to any material fact in an affirmation form.
 - The crime of knowingly signing an application for advance voting ballot for another person would be added. An exception would be made for a voter with a disability that prevents the voter from signing the application or if an immediate family member signs an application on behalf of another immediate family member with proper authorization.
 - The penalty for any violation of any offenses contained in this statute would be increased from a class C misdemeanor to a severity level 9, nonperson felony.
- Revise the statute on election perjury to do the following (KSA 25-2411):
 - Include statements contained in declarations (in addition to affidavit statements), to which intentionally and knowingly falsely swearing or affirming is considered election perjury; and
 - Change the penalty from a severity level 9 to a severity level 8, nonperson felony.
- Revise the statute on voting without being qualified to do the following (KSA 25-2416):

- Eliminate the word “willfully” so that the crime relates only to “knowingly” committing acts which constitute the crime;
 - Adding the action of voting or attempting to vote at any election by a non-U.S. citizen or a person otherwise not qualified to vote;
 - Eliminating the following two actions from the crime’s definition:
 - Voting or offering to vote more than once at the same election; and
 - Inducing or aiding a person to vote more than once.

(Note: These items would be placed into a new statute created to address the crime of voting more than once. See below for description.)
 - Increasing the penalty from a class A misdemeanor to a severity level 8, nonperson felony.
- Revise the statute on *election tampering* by increasing the penalty from a severity level 8 to a severity level 7, nonperson felony. (KSA 25-2423)
 - Revise the statute on *false impersonation of a voter* as follows (KSA 25-2431):
 - Indicating that representing oneself as another person can be in relation to either a real or fictitious person; and
 - Increasing the penalty from a severity level 9 to a severity level 8, nonperson felony.
 - Move the crimes related to *voting more than once* into a separate statute. (New Section 20) The language eliminated from the statute on voting without being qualified would be added to this new statute, *i.e.*:
 - Voting or offering to vote more than once at the same election; and
 - Inducing or aiding a person to vote more than once.

- Violation would be a severity level 8, nonperson felony.
- Authorize the Secretary of State, along with the Attorney General and district and county attorneys, to prosecute election crimes. (New Section 19)

Proof of Citizenship for Voter Registration (Sections 8, 9, 10, and 18)

The bill would:

- Require every person to provide evidence of U.S. citizenship when he/she registers to vote. The county election officer or Secretary of State's Office would be required to accept any registration application that is not accompanied by such evidence in person at the time of filing the application; however, the person would not be registered until this evidence is provided. Once satisfactory evidence is provided, the county election officer must indicate so in the person's permanent voter file. Documents satisfying this citizenship evidence requirement would be confidential until July 1, 2016, and would include any one the following:
 - Driver's license or nondriver's ID card issued by the appropriate agency in any state in the United States, if the agency indicates on the license or nondriver's ID card that the person has provided satisfactory proof of U.S. citizenship.
 - Birth certificate that verifies U.S. citizenship to the satisfaction of the county election officer or Secretary of State.
 - Pertinent pages of a U.S. valid or expired passport.
 - Naturalization documents or the number of the naturalization certificate, with further instructions if only the number is provided.
 - Other documents or methods of proof of U.S. citizenship issued by the federal government

- pursuant to the Immigration and Nationality Act of 1952 (including its amendments).
- Bureau of Indian Affairs card number, tribal treaty card number or tribal enrollment number.
 - Consular Report of Birth Abroad of a Citizen of the United States of America;
 - Certificate of Citizenship issued by the U.S. Citizenship and Immigration Services;
 - Certification of report of Birth issued by the U.S. Department of State;
 - American Indian Card issued by the U.S. Department of Homeland Security with the classification “KIC”;
 - Final adoption decree showing the applicant’s name and U.S. birthplace;
 - Official U.S. military record of service showing the applicant’s birthplace in the U.S.; or
 - An extract from a U.S. hospital birth record created at the time of a U.S. born applicant's birth.
- Permit an applicant who is a U.S. citizen but does not have any of the acceptable proof-of-citizenship documents to submit any evidence that the applicant believes demonstrates he/she is a U.S. citizen. The applicant must contact the Secretary of State Elections Division directly by submitting a form, at which time the Secretary of State must notify the State Election Board. The State Election Board (comprised, in current law, of the Lieutenant Governor, the Secretary of State and the Attorney General) must meet on the call of the Secretary of State as needed to assess an individual's information provided as evidence of citizenship. The process which must be followed – including an opportunity for the applicant to request a hearing, and what happens if the State Election Board finds the applicant's evidence insufficient to establish citizenship – is specified in the bill. The Secretary of State would be required to make additional rules as necessary to implement the requirement that the State Election Board meet on this matter.

- Deem any person registered to vote in Kansas on the effective date of this act to have provided satisfactory citizenship evidence already. A voter who moves within the state or modifies his/her registration records for any other reason would not be required to submit evidence of citizenship.
- State that proof of voter registration from another state is not satisfactory evidence of U.S. citizenship.
- Require all evidence-of-citizenship documents submitted be kept confidential by the county election officer or the Secretary of State and maintained as provided by Kansas record retention laws. This requirement would expire on July 1, 2016, unless the Legislature reenacts it as part of the review of exceptions required pursuant to the Kansas Open Records Act.
- Permit the Secretary of State to adopt rules and regulations in order to implement these requirements.

Free Birth Certificate Copy

The bill would prohibit the Secretary of Health and Environment from charging or accepting any fee for a certified copy of a birth certificate if the birth certificate is requested by a person 18 or older for the purposes of meeting the citizenship requirement for voter registration. A person requesting a copy of his/her birth certificate for this purpose would be required to swear under oath on an affidavit that the voter plans to register to vote in Kansas and has none of the documents allowed as evidence of citizenship. Any person signing such an affidavit knowing the information is false would be deemed guilty of a Class C misdemeanor. The Secretary would be required to adopt rules to implement these new provisions. (KSA 65-2418)

Severability (Section 21)

The bill would require any provision of this act to be severed from the rest of the act, if it is held to be unconstitutional under either the U.S. or Kansas constitution. The remainder of the act would remain valid and in effect.

Background

As it left the Senate, SB 129 dealt only with filling a vacant Senate Office. The House Committee on Elections added the contents of HB 2067, as amended by House Committee of the Whole, and further amended those contents.

Background for SB 129

The Deputy Secretary of State for Elections and Legislative Matters testified in support of SB 129. He stated the date change would allow for a candidate filing period and a primary election. There was no other testimony.

Background for HB 2067

National Voter ID Requirements

The federal Help America Vote Act (HAVA) requires all states obtain identification from first-time voters who registered to vote by mail and did not provide identification with their mail-in voter registration. Public Law 107-252, Section 303 further specifies how a voter may meet these requirements:

(a) For those voting in person, presenting to the appropriate official a current and valid photo ID, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the voter's name and address.

(b) For those voting by mail, submitting with the ballot a copy of a current and valid photo ID, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the voter's name and address.

Current Kansas Law on Voter ID

Current law requires persons voting for the first time in the county to provide identification unless they have done so when they registered. Acceptable identification forms include a current, valid Kansas driver's license, a nondriver's ID card, a utility bill, bank statement, paycheck, government check or other government document containing the voter's current name and address as indicated on the registration book. A voter's driver's license copy or number, nondriver's ID card copy or number, or the last four digits of the voter's Social Security number may be provided when applying for an advance ballot to be transmitted by mail.

Other State Voter ID Laws

According to research conducted by the National Conference of State Legislatures (NCSL), 27 states have enacted broader voter ID requirements than those required by HAVA. In these states, all voters are asked to show ID prior to voting. Nine states request or require a photo ID, and the other eighteen states accept additional forms of ID that do not necessarily include a photo. All 27 states have some recourse for voters without ID to cast a vote.

Table 1, developed by NCSL, briefly summarizes the NCSL summary of the 27 states' ID requirements.

Table 1: State Requirements for Voter Identification		
States that Request or Require <i>Photo ID</i>	States that Require ID (Photo not Required)	
Florida	Alabama	North Dakota
Georgia	Alaska	Ohio
Hawaii	Arizona	Oklahoma*
Idaho	Arkansas	South Carolina
Indiana	Colorado	Tennessee
Louisiana	Connecticut	Texas
Michigan	Delaware	Utah
South Dakota	Kentucky	Virginia
	Missouri	Washington
	Montana	

*The law for one of the newly added states, Oklahoma, will take effect July 1, 2011.

The number of states with broader-than-HAVA voter ID requirements has grown over the past several years. In January 2007 the NCSL reported 24 such states. At that time, seven were listed as either requesting or requiring photo ID. In the November 2010 NCSL report that number had grown to nine.

Recent Kansas Voter ID Legislation

A number of bills requiring Kansas voters to show a photo ID at the polls have been proposed in the past several years. Of those, four have been worked significantly by the Legislature; of the four, one (2008 HB 2019) passed both legislative chambers and was vetoed by the Governor.

National and State Voter Registration Requirements

The U.S. Voting Rights Act of 1965 allows all U.S. citizens to vote at any election in any state. No specific requirement exists at the federal level regarding proof of citizenship when registering to vote. Kansas' law requires individuals applying to register to sign an affidavit swearing they are U.S. Citizens.

Action on the Bill

The House Committee on Elections amended the bill as follows:

Voter ID-Related Changes

- Revised the source of the photo ID related to postsecondary education institutions, from a public institution to an accredited one.
- Clarified that a voter who does not provide the appropriate ID may vote a provisional ballot.
- Deleted the requirement that each person voting at the polls on election day provide one of the following additional documents to establish the person's current address, if the address on the submitted form of photo ID is not current: Utility bill, bank statement, paycheck, government check or other government document. The document must contain the voter's current name and address as indicated on the registration book or poll book.
- Made technical changes.

Voter Registration-Related Changes

- Added a number of documents to the list of acceptable proof-of-citizenship documents.

- Added language that requires any completed application for registration be accepted, but that an applicant is not registered until satisfactory citizenship evidence has been provided.
- Added the requirements relating to the State Election Board's review of citizenship evidence in the case of those who do not provide any of the required documents.
- Added a provision exempting Kansas Department of Revenue employees from liability when they transfer information to the Secretary of State that is required or permitted by law.

The House Committee of the Whole made a technical change regarding which information must be redacted from voter registration records when these records are made available to the public.

Fiscal Note

According to the fiscal note on *the original SB 129*, the Secretary of State indicates passage of this bill would have no fiscal effect on state revenues or expenditures. Any effect on county election offices would be negligible.

The fiscal note on *HB 2067* indicates the bill would result in minimal state and county costs that currently are estimable and additional county costs. Following is the fiscal note's detail:

The Secretary of State estimates HB 2067 would increase its expenditures by \$12,500 in FY 2011 and \$1,000 in FY 2012. The estimate for FY 2011 includes \$10,000 to program the statewide voter registration database; \$1,000 to redesign and print new voter registration application forms; \$1,000 to develop a training

program for county election officers and poll workers; and \$500 to conduct a training program for state voter registration agencies. The estimate for FY 2012 includes costs for additional training.

The Secretary of State indicates that HB 2067 may increase expenditures for counties by \$51,000 in FY 2011. Approximately 20 counties would incur the cost to purchase document scanning equipment to use in conjunction with the statewide voter registration database which would total \$20,000 (20 counties X \$1,000 per scanner). County election offices could incur increase training costs for poll workers totaling \$31,000.

In addition, the Secretary of State indicates that counties may incur costs to employ additional temporary workers during election seasons, but these costs cannot be estimated. The Secretary of State also assumes costs to provide free copies of documents to individuals who cannot afford to pay for them. The Secretary of State notes that these costs would be negligible and could be absorbed within existing resources, but the costs born to counties cannot be estimated.

The Department of Revenue indicates that the costs associated with examiner training, cash register reprogramming, and affidavit scanning and retention could be absorbed within existing resources. In addition, the Department notes that it will be required to compensate its digitized driver's license vendor out of its Photo Fee Fund, for all free identification cards issued for voting purposes. The Department indicates that the costs associated with the issuance of free identification cards could initially be absorbed within existing resources

because most people who would desire photo identification already possess either a driver's license or nondriver identification card. The Department of Health and Environment estimates that HB 2067 would increase its expenditures by \$5,000 in FY 2011 to program the Vital Statistics System.

Any fiscal effect associated with HB 2067 is not reflected in *The FY 2012 Governor's Budget Report*.