

SESSION OF 2016

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE
BILL NO. 2543**

As Amended by House Committee on Elections

Brief*

Sub. for HB 2543 would require a manual post-election audit of vote tallies in randomly selected precincts in each county beginning in 2017. The bill also would change the deadline for the county board of canvassers to certify each election, and it would modify requirements for voting equipment purchased in the future. Details of the bill follow.

***Audit Requirements Applicable to Elections Occurring
after July 1, 2017***

The bill would require:

- Each county election officer conduct a manual audit or tally of each vote cast, without regard to the voting method, in one percent of all county precincts, or one precinct, whichever number is larger;
- The audit be conducted after the election and before the county board of canvassers meets to certify election results;
- The precinct(s) selected be chosen randomly, after the election has taken place;

*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>

- The audit be performed manually and consist of a review of all paper ballots cast in the precinct(s) selected;
- The audit be performed by a sworn, bipartisan election board, the members of which must be trained. The bill would require the county election officer to determine the election board members;
- The audit be conducted publicly. At least five days prior to the audit, the bill would require notice of time and location be provided on the official county website. Any candidate or entity authorized to appoint a poll agent could appoint the same for the audit;
- The audit results be compared to the unofficial election night returns, and a result of the comparison be submitted to the county election office and to the Secretary of State's Office prior to the meeting of the county board of canvassers. If a discrepancy is reported which cannot be resolved, the bill would allow the county election officer or the Secretary of State to expand the audit to additional precincts;
- Once the audit is completed, the county board of canvassers must use the audit results when certifying election results; and
- The Secretary of State adopt rules and regulations governing the conduct and procedure of the audit, including the random selection of precincts.

Delay of Canvass for All Elections

Effective July 1, 2016, the bill would change the canvass date to a business day not later than 13 days following any election, except the county election officer would be permitted to move the canvass up to four business days later. The bill would require notice of the time and place of any canvass be published in a newspaper of general circulation in the county prior to the canvass. (Current law requires the canvass to take place between 8:00 a.m. and 10:00 a.m. on the Monday following a Tuesday election, with the exception provided that a county election officer may move the canvass to the second Thursday following the election if prior notice is published in a newspaper of general circulation in the county. For elections not held on a Tuesday, the canvass must be held not later than the fifth day following the election day, at the time designated by the county board of canvassers.)

Future Election Equipment Requirements

Effective July 1, 2016, every board of county commissioners would be prohibited from purchasing, leasing, or renting either of the following types of voting system equipment:

- Any direct recording electronic (DRE) equipment system, defined in KSA 2015 Supp. 25-4401(d) as “a system that records votes by means of a ballot display provided with mechanical or electro-optical components that can be activated by the voter, that processes data by means of a computer program, that records voting data and ballot images in memory components, that produces a tabulation of the voting data stored in a removable memory component and as printed copy, and that may also provide a means for transmitting individual ballots or vote totals to a central location for consolidating and reporting results from precincts at the central location”; or

- Any electronic or electromechanical equipment system unless the system:
 - Provides a paper record of each vote cast which is produced at the time the vote is cast; and
 - Has the ability to be tested both before an election and prior to the date of canvass, which test must include the ability to match the paper record of the machine to the vote total contained in the machine.

The bill also would modify law regarding criteria for certain equipment approval by the Secretary of State (KSA 2015 Supp. 25-4406), to conform with the above caveats on purchasing any electronic or electromechanical equipment.

Background

The bill's introduction was requested by the Secretary of State. Proponents at the hearing before the House Committee on Elections were Secretary of State Kobach, the Chairman of the Sedgwick County Board of County Commissioners, and the election commissioners of Sedgwick, Shawnee, and Wyandotte counties. Representative Ousley and a private citizen testified in favor of post-election audits while suggesting changes to the original bill.

The Secretary of State noted Kansas is in the minority of states that do not require a post-election audit of election results. He stated the bill, as introduced, would constitute one of the stronger post-election audit requirements among states. The Secretary also testified in favor of the bill's July 1, 2017, effective date.

All conferees testified in favor of implementing a manual audit of election results on a randomly selected sample of

precincts, to ensure all votes are being tabulated accurately. Concerns were mentioned by some regarding who should conduct the audit, details regarding the conduct of the audit, the type(s) and sources of equipment needed in order to conduct an effective audit, and when the bill should be made effective.

Upon first assignment, the House Committee on Elections amended the original bill to do the following and inserted the amended contents into a substitute bill:

- Clarify the intent of the bill that the audit occurs after an election and that the precinct(s) selected for the audit must be selected randomly;
- Require the random selection of precinct(s) be made after the election;
- Allow Sedgwick County to conduct the post-election audit for elections occurring in 2016, and clarify that all counties would be required to conduct the audits beginning in 2017;
- Require all equipment acquired in the future be equipped with a paper trail in order to conduct the audit;
- Delay the canvass of all elections by the county board of canvassers; and
- Make additional technical and clarifying changes.

Upon reassignment of the bill to the Committee, the House Committee on Elections removed the option for Sedgwick County to conduct the audit for elections taking place after July 1, 2016.

According to the fiscal note prepared by the Division of the Budget, the Secretary of State indicated enactment of the original bill would have no fiscal effect on the state budget, and the Kansas Association of Counties indicated enactment would increase expenditures for personnel needed to conduct the audits, but an estimate of that increase was not provided.