

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2618**

As Agreed to April 4, 2024

Brief*

HB 2618 would amend provisions of election law regarding the Transparency in Revenues Underwriting Elections Act and the crime of false representation of an election official.

The bill would be in effect upon publication in the *Kansas Register*.

Transparency in Revenues Underwriting Elections Act

The bill would amend the Transparency in Revenues Underwriting Elections Act regarding the acceptance and use of certain election-related funds.

Definitions

The bill would define the following terms:

- “Governmental agency” would mean the state, or any agency, political subdivision, or instrumentality thereof; and
- “Federal government” would mean any branch, agency, department, office, bureau, or instrumentality of the government of the United States.

Expending of Funds

Current law provides that no election official can knowingly accept or expend any moneys, directly or indirectly, from any person, except as provided in any acts of appropriation or as otherwise provided by law, for any expenditures related to conducting, funding, or otherwise facilitating the administration of a lawful election.

The bill would add that no governmental agency, including, but not limited to, any election official, could knowingly accept or expend any moneys, directly or indirectly, from the federal government, except as provided in acts of appropriation or as otherwise provided by state law,

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and that those moneys could not be used for any election-related activities, including, but not limited to, voter registration and voter assistance, as well as not for any expenditures related to conducting, funding, or otherwise facilitating the administration of a lawful election.

The bill would also provide that, if these expenditures were authorized by acts of appropriation or state law, any moneys received from the federal government would only be expendable for purposes authorized by the act of Congress appropriating the funds.

False Representation of an Election Official

The bill would remove “engaging in conduct that gives the appearance of being an election official” from the list of conduct that constitutes false representation of an election official. The bill would also clarify that false representation of an election official would require the intent to cause another person to believe they are engaging with an election official.

[*Note:* Continuing law provides the crime of false representation of an election official is a severity level 7 nonperson felony.]

Conference Committee Action

The second Conference Committee agreed to retain the provisions of HB 2618, as amended by the Senate Committee on Federal and State Affairs; add the provisions of SB 367, as amended by the Senate Committee of the Whole, regarding the Transparency in Revenues Underwriting Elections Act; and change the effective date for the provisions of SB 367 to be effective upon publication in the *Kansas Register*.

Background

The second Conference Committee added the provisions of SB 367, as amended by the Senate Committee of the Whole, to HB 2618, as amended by the Senate Committee on Federal and State Affairs, and changed the effective date of SB 367 to be effective upon publication in the *Kansas Register*.

SB 367 (Transparency in Revenues Underwriting Elections Act)

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

Senate Committee on Federal and State Affairs

In the Senate Committee hearing, **proponent** testimony was provided by a representative of Opportunity Solutions Project, who discussed presidential Executive Order 14019, issued in March 2021, which directs federal agencies to assist in voter registration efforts. The representative stated the bill would address concerns that taxpayer funds are being used to influence elections through targeted voter registration.

Written-only proponent testimony was provided by three private citizens.

Neutral testimony was provided by a representative of the Office of the Secretary of State, who expressed uncertainty about what funding the bill is addressing and what it means to “indirectly” accept or expend federal funds. The representative stated the bill would have no effect on the current expenditures of federal funds for state elections, which are approved by Congress through the Help America Vote Act (HAVA), because these funds already go through the regular state legislative budgeting process. The representative also noted HAVA funds are distributed solely to state election officials and are not provided to any other federal or state agency for the purposes of funding election-related activity.

Opponent testimony was provided by a representative of Loud Light Civic Action, who stated that the state government generally does not fund elections in Kansas or provide aid to county clerks. The representative noted that, because Kansas election offices are already prohibited from accepting non-government aid to assist with the administration of elections (2021 Senate Sub. for HB 2183), the organization is concerned that the bill would further limit other potential funding avenues.

Written-only opponent testimony was provided by a representative of the League of Women Voters Kansas.

The Senate Committee amended the bill to:

- State that no agency would be designated as a voter registration agency except as provided by state law;
- Nullify any designation of a federal agency as a voter registration agency that was made prior to July 1, 2024;
- Specify that “federal agency” would mean any branch, department, bureau, office, or instrumentality of the federal government; and
- Provide that moneys received from the federal government could be expended only for the purposes authorized by the appropriation made by Congress.

[*Note:* The Conference Committee did not retain the above-described Senate Committee amendments, except for the amendment providing that moneys received from the federal government could be expended only for the purposes authorized by the appropriation made by Congress.]

Senate Committee of the Whole

The Senate Committee of the Whole amended the bill to:

- Remove provisions concerning the designation of voter registration agencies [*Note:* The Conference Committee retained the amendment.];
- Remove the definition of the term “federal agency” [*Note:* The Conference Committee retained the amendment.];

- Add a definition of the term “governmental agency” [*Note: The Conference Committee retained the amendment.*]; and
- Add that no governmental agency, including, but not limited to, any election official, would be permitted to knowingly accept or expend any moneys, directly or indirectly, from the federal government for elections, unless provided in any acts of appropriation or by state law [*Note: The Conference Committee retained the amendment.*].

House Committee on Elections

The House Committee had an informational briefing on the topic of SB 367 (prohibiting the use of funds provided by the U.S. government for the conduct of elections and election-related activities unless approved by the Legislature) on March 12, 2024.

HB 2618 (False Representation of an Election Official)

The bill was introduced by the House Committee on Elections at the request of a representative of the Office of the Attorney General.

House Committee on Elections

In the House Committee hearing, a representative of the Office of the Secretary of State testified as a **proponent** of the bill. The representative discussed two scams involving impersonating an election official and stated the bill would close the loophole these scams exploit.

Written-only proponent testimony was submitted by a representative of the Office of the Attorney General and three private citizens.

Neutral testimony was provided by a representative of Loud Light Civic Action and the League of Women Voters. The neutral conferees generally stated the intent of the bill is good; however, they cautioned the language of the bill is still too broad and would continue to chill Kansans’ speech.

Written-only neutral testimony was submitted by a representative of Kansas Appleseed.

No other testimony was provided.

Senate Committee on Federal and State Affairs

In the Senate Committee hearing, **proponent** testimony was provided by representatives of the Office of the Attorney General and the Office of the Secretary of State, who generally stated the bill should help address judicial concerns raised with the current statutory language.

Neutral testimony was provided by a representative of Loud Light Civic Action, who stated the bill does not clarify what specific conduct would be covered by the bill, and the proposed language could still present some confusion in its interpretation.

Written-only neutral testimony was provided by representatives of Kansas Appleseed and the League of Women Voters.

No other testimony was provided.

The Senate Committee amended the bill to change the effective date to upon publication in the *Kansas Register*. [Note: The Conference Committee retained the amendment.]

Fiscal Information

SB 367 (Transparency in Revenues Underwriting Elections Act)

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Secretary of State noted federal law requires each state to have a statewide voter registration database. The federal government provides funding for this purpose under HAVA. If the agency is prohibited from using federal funds for security and administration of the statewide voter registration system, under the bill, funding for the database would need to come from another source, likely the State General Fund (SGF). The agency's budget contains \$1.4 million from HAVA funds for maintenance of the database in FY 2025. Maintenance would continue in FY 2026. The agency estimates future procurement costs for a new database would be \$10.0 million beginning in FY 2026 from the SGF. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

HB 2618 (False Representation of an Election Official)

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of the Secretary of State states enactment of the bill would not have a fiscal effect. The Kansas Sentencing Commission estimates enactment of the bill could impact prison beds and admissions, but any impact would be very small. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

The Kansas Association of Counties states enactment of the bill would have a negligible fiscal effect on counties.

Elections; election crimes; false representation of an election official; Transparency in Revenues Underwriting Elections Act

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