



appointed to observe all in-person absentee voting. The county clerk or deputy county clerks shall supervise the in-person absentee voting if precinct officers are not appointed.

HB 474 removes the situational requirements necessary for in-person absentee voting. **Any qualified voter who chooses to vote in-person absentee may do so at the time and location detailed in the bill.**

HB 474 provides that all mail-in absentee ballots meet the same requirements as currently provided in statute regarding voting by mail with the following additions:

- HB 474 expands the qualifying requirements for a mail-in absentee ballot to include an expanded statement of the reason the person cannot vote in person on Election Day to include why the person cannot vote in person during the dates and times provided for in-person absentee voting.
- HB 474 expands the time provisions regarding cancelling a mail-in absentee ballot from seven days before the date of the election to include the time frame during which in-person absentee voting is being conducted. Once the ballot is returned to the clerk, the person may then vote on Election Day or during the in-person absentee voting period.

HB 474 changes the deadline from fifteen days to forty-five days before any special election that the county clerk shall have ballot labels printed and ready for use for each candidate.

HB 474 requires the county clerk to equip the in-person absentee voting machine with the necessary supplies which includes attaching a pencil or pen to the machine for the purpose of write-in votes, at least five days prior to the in-person absentee voting period.

**The Kentucky County Clerks Association and the Association's Election Committee provided the following views regarding the impact of HB 474. Both expect the impact to be significant.**

**The Kentucky County Clerks Association** has two main concerns. First, the cost involved in regards to purchasing additional machines, hiring additional precinct workers, hiring additional administrative staff, and costs associated with reimbursing alternate voting locations and securely storing voting machines.

The Clerks Association believes that additional machines will need to be purchased in order to segregate early voting machines from those machines used on Election Day in order to preserve the history of early voting in case of recounts or investigations.

Each early voting locations will need to have duplicate rosters and voter rolls, to allow each location to mark voters as having voted during the early voting period and to ensure each precinct can verify this has occurred in order to safeguard against individuals voting again come Election Day.

Some counties would need to hire at least two precinct workers. Precinct workers historically have been paid the statutory minimum of \$60 to as much as \$200 per day plus a training day for which the precinct workers are paid a statutory minimum of \$10 or more. If the purchase of one or more machines are necessary, the cost per machine is \$3,500 to \$4,500 per machine. Obviously, if the county has a single early voting location within the actual clerk's office, then cost would be minimized. Overall cost would be dependent on the size of the clerk's office, size of the voting population, ability of the office to pay precinct workers, and the need of additional locations besides the clerk's office.

There is also concern among the clerk offices regarding the use of temporary labor for early voting. Concerns range from the trustworthiness of temporaries to whether or not temporaries possess the necessary knowledge. Whereas, early voting machines might be located at various locations, a clerk in-lieu-of hiring temporary employees would have to send staff to the location for hands-on control and security, thus removing staff from their regular office responsibilities. If clerks opt for outside labor to man the locations, then this would be a labor cost above and beyond what they have today. As for the temporary hires, the Kentucky County Clerks Association believes this would entail a commitment of 20 days around each election. At a minimum, early voting would require 4 election officers per location, the same as Election Day. However, you might have to staff for "crowd control" if fewer locations are used due to the higher volume of people. (PREPARER'S NOTE: HB 474 does not reference 20 days, we assume this is possibly in reference to any preparation time required.)

Of further concern to the Kentucky County Clerks Association is the logistics of setting up and managing early voting. The early voting machines must be delivered to the locations and picked back up and stored. The locations must be reimbursed for what amounts to "rent" for the early voting period. The machines themselves must be secured every day during early voting. This will no doubt add expense. It should be noted that some early voting advocates also favor having many locations during the voting period, which exacerbates the cost substantially.

The second concern that the Kentucky County Clerks Association has is its interpretation of Section 147 of the Kentucky Constitution which states "... any person absent from the county of his legal residence, or from the state, may be permitted to vote in a manner provided by law." The association has concerns that HB 474 conflicts with the Constitution by allowing people to vote absentee by choice instead of out of necessity resulting from being out of county or state on Election Day.

**The Office of the Secretary of State and the Kentucky State Board of Elections provided the following views and expects the impact of HB 474 on local governments to be minimal.**

In response to the concern regarding duplicate rosters, the Secretary of State provided that duplicate rosters are provided by the Kentucky State Board of Elections, at no cost to the county clerks. Most importantly, in 2018 the Kentucky State Board of Elections will

be launching electronic poll books. Electronic poll books provide precinct rosters *electronically* and thus *eliminates all need for paper rosters*.

In response to concerns about the logistics and cost related to multiple voting locations. HB 474 does not mandate a county clerk to establish multiple voting locations. A county may choose to do so, but otherwise, voting will occur in the county clerks' offices. This also remedies cost concerns regarding hiring people to staff the out of office locations since office personnel can staff these machines.

In response to concerns regarding in-person absentee voting expanding to 20 days. To clarify, HB 474 provides for no-excuse absentee voting for at least 12 working days, including 2 Saturdays, before the Sunday prior to Election Day. KRS 117.085 already requires county clerks to offer in-person absentee voting (with an excuse) a minimum of 12 days before an election. The Secretary of State and the Kentucky State Board of Elections report a majority of counties go above and beyond this requirement and include additional days, including Saturdays. Furthermore, to the knowledge of the Secretary of State's office and the Kentucky State Board of Elections, none of the counties that currently open for the 12 or more days for in-person absentee voting utilize temporary labor.

**The Office of the Secretary of State and the non-partisan State Board of Elections** (comprised of 3 Democrats and 3 Republicans) endorses HB 474 as a means of expanding voting before Election Day in order to address the Commonwealth's low voter turnout. In the last few critical election cycles for Kentucky elections turnout was:

- 1) 2016 Primary Election: 20%
- 2) 2015 General Election: 30%
- 3) 2015 Primary Election: 12%

Even in 2015 when all of Kentucky's constitutional officers (i.e. the Governor, Attorney General, Treasurer, etc.), appeared on the ballot, Kentucky's turnout in the general election was only 30%.

The Office of Secretary of State and the Kentucky State Board of Elections also offered the following:

- Early voting or no-excuse in-person voting is currently permitted in 37 states and the District of Columbia, including the neighboring states of Tennessee, Illinois, Ohio, and West Virginia. Many of these states have found their costs have not increased because their work loads are spread out over the additional time and there is time for early identification and correction of any registration/voting systems issues.
- The National Council of State Legislatures has found that pre-Election Day voting won't increase, and may decrease, the cost of election.
- The bipartisan Presidential Commission on Election Administration, on which former-Secretary of State Trey Grayson served, endorsed the concept in 2014.

In response to the second concern posed by the Kentucky County Clerks Association, §147 of the Kentucky Constitution provides that voting shall be “by secret ballot furnished by public authority to the voters at the polls and marked by each voter in private at the polls, and then and there deposited, or any person absent from the county of his legal residence, or from the state, may be permitted to vote in any manner provided by law.” Indeed, in-person absentee voting without an excuse includes providing a secret ballot to the voter at the polls.

Moreover, in 2007, the Attorney General opined that early voting “would not require an amendment to the Kentucky Constitution.” (OAG 07-005).

Finally, federal courts, and indeed the Sixth Circuit Court of Appeals, have considered early voting statutes and their interaction with federal law. The Court in *Millsaps v. Thompson*, 259 F.3d 535 (2001), considered whether Tennessee’s early voting statute violated federal law, specifically, whether Tennessee’s law violated the United States Constitution Elections Clause, Article I, Section 4, clause 1. Much like Kentucky, before Tennessee enacted early voting the state had a law allowing voters who are absent on Election Day to vote absentee. The Court in *Millsaps*, relying on *Foster v. Love*, 522 U.S. 67 (1997), upheld Tennessee’s early voting initiative because of a broad interpretation of the term “election.” Specifically, the Court, following *Foster*, considered an election as “the entire process by which both voters and officials make a final selection on an officeholder and encompasses more than merely casting ballots.” *Id.* Meaning, since votes are not actually tabulated and the election is not “consummated” until Election Day, early voting did not violate the Elections Clause. *Id.* In summary, in light of this case law, any argument that early voting in Kentucky would violate Section 148 of Kentucky’s Constitution or the Elections Clause of the U.S. Constitution is unfounded.

### **Part III: Differences to Local Government Mandate Statement from Prior Versions**

Part II pertains to the bill as introduced. No prior versions of the bill have been introduced necessitating Part III to be completed at this time.

**Data Source(s):** LRC Staff, Kentucky County Clerks Association, Fayette County Clerk's Office, Leslie County Clerk's Office, Secretary of State, State Board of Elections

**Preparer:** Wendell F. Butler      **Reviewer:** KHC      **Date:** 3/14/18