



of elections or their designees may serve as precinct election officers for in-person early voting. In their absence, the county clerk or deputy county clerk shall supervise. Challengers may be appointed to observe all early voting.

The county board of elections may appoint a central voting ballot counting board made up of three members, no more than two-thirds of the same political party. This board shall retain the keys to all locked early voting equipment until the early voting ballots are counted.

The county clerk shall keep a list for each election of all early voters, and shall send a copy to the State Board of Elections. This list shall not be made public until after the close of business on the election day for which the list applies. The county clerk and Secretary of State shall keep a record of the number of early votes cast as part of the official election returns.

The county clerk shall have voting machines ready to use four days prior to early voting. The county board of elections shall inspect the machines for compliance no later than three days prior to the election. A notice shall be published at least a day before this inspection. If found to be compliant, the county board of elections shall endorse their approval in the book containing the identification number of the machine(s).

No person shall electioneer within the interior or affix any campaign material to the exterior or interior of a building being used for in-person early voting while voting is being conducted.

Any person making a false statement on an application to cast an in-person early voting ballot is guilty of a Class D felony.

Any person who participates in a prohibited activity during absentee voting, early voting, or on election day, shall, for each offense be guilty of a Class A misdemeanor.

The four hours a person is allowed to be absent from any services or employment in order to vote has been extended to include early voting.

The Kentucky County Clerks Association and the Association's Election Committee provided the following views regarding the impact of HB 253. Both expect the impact to be significant.

The Kentucky County Clerks Association has a few 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. 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.

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.

Additionally, the Kentucky County Clerks Association has concerns regarding the 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 253 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 253 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 launched

electronic poll books. Electronic poll books provide precinct rosters electronically and thus eliminate all need for paper rosters.

In response to concerns about the logistics and cost related to multiple voting locations, HB 253 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.

HB 253 provides for no-excuse absentee voting for the three Saturdays, 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 Secretary of State agrees with the County Clerks Association that an extension of voting hours for in-person early voting will result in additional personnel cost regarding precinct election officers. The Secretary of State supports in-person early voting in clerk's offices on three Saturday preceding a primary, regular election, or special election as well as any weekday that the clerk's offices are open. Early voting during this period eliminates the need for separating in-house absentee voting in clerk's offices from early voting in clerk's offices.

The Secretary of State and the non-partisan Kentucky State Board of Elections (comprised of 3 Democrats and 3 Republicans) endorses HB 253 as a means of expanding voting before Election Day in order to address the Commonwealth's low voter turnout.

In 2015 when all of Kentucky's constitutional officers appeared on the ballot, Kentucky's turnout in the primary election was 12% and the general election was only 30%.

The 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 Kentucky 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.

It is not anticipated that there will be a significant number of convictions under the penalties listed in Section 5 that creates a Class D felony offense for any person who makes a false statement on an application to cast an in-person early voting ballot or that a Class A misdemeanor is added for individuals who during early voting violate prohibited activities during voting.

When a court denies bail to a Class D felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky’s 76 full service jails or four life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. Upon sentencing, a Class D felon is housed in one of Kentucky’s full service jails for the duration of his or her sentence. The Department of Corrections pays a jail \$31.34 per day to house a D felon. Since the per diem pays for the estimated average cost of housing a Class D felon, the per diem may be less than, equal to, or greater than the actual housing cost.

A person convicted of a Class A misdemeanor may be incarcerated for up to twelve months. Misdemeanants are housed in one of Kentucky’s 76 full service jails or four life safety

jails. While the expense of housing inmates varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average of \$31.34 per day.

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

Part II refers to HB 253 as introduced. There are no prior versions of HB 253.

**Data Source(s):** Secretary of State, Kentucky Board of Elections, Kentucky County Clerks Association, LRC Staff; Kentucky Department of Corrections

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