

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 early 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 expect the impact of HB 78 on local governments to be significant. The Secretary of State opposes this bill as it places an unfunded mandate on our county officials.

The Kentucky County Clerks Association has 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 location 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 78 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.

In response to concerns about the logistics and cost related to multiple voting locations, HB 78 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 78 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.

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 77 full service jails or three 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 77 full service jails or three 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 78 as introduced.

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

Preparer: Wendell F. Butler **Reviewer:** KHC **Date:** 2/5/20