

**Local Government Mandate Statement
Kentucky Legislative Research Commission
2021 Regular Session**

Part I: Measure Information

Bill Request #: 1258

Bill #: HB 574 GA

Document ID #: 5975

Bill Subject/Title: AN ACT relating to elections.

Sponsor: Representative Jennifer Decker

Unit of Government: City County Urban-County
Unified Local
 Charter County Consolidated Local Government

Office(s) Impacted: County clerk offices; county board of elections; jails

Requirement: Mandatory Optional

Effect on

Powers & Duties: Modifies Existing Adds New Eliminates Existing

**Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local
Government**

HB 574 GA is a comprehensive elections bill that would amend statutory provisions relating to paper ballots, voting equipment and systems, election education, voter registration, voting procedures, county board of election appointments, consolidated precincts, mail-in absentee ballots, voter assistance, drop-boxes and receptacles for mail-in absentee ballots, recanvass thresholds, and certain penalties. Some of the more notable provisions and changes to existing law relating to local governments are set forth below.

Section 3 requires county clerks to give voter registration forms each year to every high school principal or assistant principal of each high school, technology center, and private school. Requires State Board of Education to institute annual public education programs about elections, voting, and election fraud.

Section 5 requires the State Board of Elections to, within 5 days of notification from a local or state government that a voter has registered to vote in a different jurisdiction, remove

the name of the person from the voter registration records. No voter's name can be removed during the time the registration books are closed for a primary, regular, or special election.

Section 6 would prohibit a person from knowingly collecting, gaining possession of, delivering, or exercising control over a mail-in absentee ballot unless the person had a legal reason—specified in the section—for doing so. Section 46 would make this a Class D felony.

Section 7 would, among other things, require the county board of elections to meet and stay in session on election days to rule on questions regarding the curing of signatures relating to mail-in absentee ballots.

Section 8 would increase the county clerk's role in selecting precinct election officers and judges at voting places.

Section 10 would permit the county board of elections to designate (rather than petition the state board of elections for permission) a single voting location for more than one precinct if the voting location is equipped with voting equipment capable of providing or accepting separate ballots without endangering ballot integrity or election law. If this happens, one voting equipment may be used for more than one precinct if ballots are counted for each separate precinct. The county board of elections may petition the state board of elections for permission to allow consolidation of precinct election officers at a voting location that combines more than one precinct.

Section 11 would require mail-in absentee ballot requests to be requested on a secure online portal established by the State Board of Elections, except that certain specified workers would also have the option of requesting the ballot through the county clerk. Voters with no access to the online portal may request a mail-in absentee ballot over the telephone or in person. The county clerk must then input the information into the portal. If the voter qualifies for the ballot, the portal must transmit the request to the appropriate county clerk. The portal would close at 11:59 p.m., 14 days prior to the primary or election. Currently, applications must be received 7 days prior to the election.

The bill somewhat limits the reasons for requesting a mail-in absentee ballot by prohibiting a person from so voting unless the person is unable "to appear at the polls on election day or the days in-person absentee voting is conducted on account of age, disability, or illness." In other words, it is not sufficient if the person is unable to appear at the polls on election day; the person must also be unable to vote on the days prior to the election in which in-person voting is taking place. The bill limits in-person absentee voting to the Thursday, Friday, and Saturday prior to the primary or election; this reduces the time from 12 working days before the election to three. The bill also establishes certain requirements related to mailing of the ballot and for the outer envelope of the mail-in absentee ballot. The county clerk must keep a record of the mail-in absentee ballots issued and returned by mail, hand-delivered, or placed in a secure drop-box or receptacle, and for in-person absentee voting and federal in-person provisional absentee voting.

Section 12 would require the county clerk to have at least one secure ballot drop-box for voted mail-in absentee ballots for each election. Notice of the drop-box locations must be provided. The bill would require the drop-box outside the county clerk's office to be in a well-lit and easily accessible location, secured to ensure immobility while in use, under video surveillance, tamper resistant, and conspicuously notes as a mail-in absentee ballot drop-off location. A box in the county clerk's office must be under direct supervision of staff and easily accessible to the public. It must be emptied by the county clerk and at least one member of the county board of elections who is not of the same political party affiliation as the county clerk at least once each business day or more frequently as needed. The ballots must be removed with a record of the date and time they were removed, and the names of the persons removing them. If the box is not in the county clerk's office, the ballots must be returned to the county clerk in locked transport containers. The county clerk and at least one members of the county board of elections who is not of the same political affiliation as the county clerk must keep keys to all secure ballot drop-boxes and transport containers in the county.

Upon receipt of a mail-in ballot, the county clerk must scan the barcode or label that is unique to the individual voter to note the receipt of the mail-in absentee ballot, and then deposit the ballots in a locked ballot box.

Section 14 establishes certain criteria for accepting or rejecting mail-in absentee ballots. Those with signatures that do not match the voter's signature on the voter's identify document may be cured by the voter upon being notified. Section 14 also sets forth the requirements for counting mail-in absentee ballots by the county board of elections in a meeting in the county clerk's office.

Section 18 requires a voting system approved after the Act's effective date to be constructed so that it, among other things:

- Ensures voter secrecy;
- Provides for a nonpartisan ballot;
- Provides the voter with an opportunity to verify votes recorded on the permanent paper ballot by using a voter-verified paper audit trail, allows the voter to change votes or correct errors, and gives a voter who spoils a ballot another ballot;
- Uses a paper ballot cast by the voter for tabulating purposes;
- Preserves the paper ballot;
- Has a public counter with a register that is visible from the outside of the counter; and
- Produces a real-time audit log record.

Section 18 would also allow *existing* voting equipment that has been certified and been in use prior to the Act's effective date to continue to be used until such time as it is replaced.

Section 20 requires the county clerk to have printed sufficient paper ballots to be used for voting for any primary or election. Additionally, the county clerk shall have printed sufficient paper ballots ready at least 45 days, instead of 15 days, prior to a special election.

Section 38 would deem a candidate's request for a recanvass to be insufficient unless the difference between the candidate's votes is less than one percent of the total votes cast.

Section 44 would require the State Board of Elections to promulgate administrative regulations relating to, among other things, audits of voting systems and voting equipment, and reviews of any audit log, and conducting a review and audit of an election audit, including a risk-limiting audit.

Section 64 expands the Class A misdemeanor and Class D felony charges to include voting equipment and voting system.

- Class A misdemeanor for an unauthorized person to have a key to a voting machine, voting equipment, or voting system.
- Class D felony for a person who willfully tampers with a voting machine, voting equipment, or voting system, and
- Class D felony for an election official or other person entrusted with custody or control of a voting machine, voting equipment, or voting system to tamper with, unlawfully open, or prevent correction operation of a voting machine, voting equipment, or voting system, or cause a voting machine, voting equipment, or voting system to be used with knowledge that it is not in proper working order.

Sections 73 and 74 would prohibit local, state, and federal tax dollars from being used to advocate for or against a public question appearing on a ballot.

Section 75 would remove, during the emergency, the Governor's ability to order a different manner for holding elections.

Section 76 would allow the bona fides of a candidate seeking nomination as the nominee of a political party or nonpartisan or judicial nominee in a primary or election to an office as a member of a political organization, political group, or as an independent in a special or regular election to be questioned by a qualified voter or by an opposing candidate by filing a motion in Circuit Court. The bona fides of a nominee of a political party or nonpartisan or judicial nominee may be brought before the primary. An action regarding the bona fides for election to office as a member of a political organization, political group, or as an independent may be brought prior to a special or regulation election.

Section 77 would to provide more detail for actions regarding bona fides of any candidate.

Section 78 would allow a homeless person with no fixed nighttime residence to elect a location with a fixed habitation address to be considered a residence. The address may include a supervised shelter or other public or private place not ordinarily used for regular sleeping accommodations.

The immediate fiscal impact of HB GA on counties is minimal, assuming existing equipment is operational and functioning properly. Without additional state or federal funding, the future fiscal impact of HB 574 GA on those counties that must upgrade or purchase new voting systems could be significant. The fact that the bill

would allow *existing* voting equipment that is operational and functioning properly to continue to be used until such time as it is replaced could significantly minimize the initial fiscal impact on county governments. Some of the costs could be offset by the bill's provisions that allow combining of precincts and segregation of precinct votes on the voting equipment.

Replacing Existing Malfunctioning Equipment

Generally speaking, voting machines cannot be replaced with a *different type* of machine and still be part of the same, existing, unified system. If one machine malfunctions, *all* machines would need to be updated to the new paper-based system.

Paper Ballot Voting Machine

As voting systems are replaced, the fiscal impact could be significant. The requirement for paper ballots and for a paper trail could be a significant cost for counties that must upgrade existing equipment or purchase new equipment. It has been estimated that the fiscal impact to the affected counties would be approximately \$20 million to \$25 million.

WLEX-18 News has reported that the Fayette County Clerk purchased 175 paper ballot machines at a cost of \$5,000 per machine.

Funding from the Help America Vote Act (HAVA) may not be sufficient to purchase new machines.

There would be ongoing costs for the printing of paper ballots. It has been estimated that each page to be printed costs approximately 25 cents.

These costs aside, it is also true that counties will expect to replace voting equipment over time and must budget to do so. Provided the current equipment remains operational and functions properly, replacing equipment may not be an unexpected expense.

Training of Staff

There would be an initial cost to county clerk offices to learn new voting procedures and train their staff. As related to election-related crimes, there would be some additional training for law enforcement, and there could be increased demands on workload for law enforcement, jails, and county attorneys associated with any increase in the number of arrests, prosecutions, and incarcerations. These costs are expected to be minimal.

Jails

The crimes established in Section 6, 46, and Section 64 relate to Class A misdemeanors and Class D felonies. The number of people prosecuted with crimes under these sections would likely be few.

A person convicted of a Class A misdemeanor may be incarcerated from 90 days to 12 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 an average cost to incarcerate of \$37.35 per day. The majority of misdemeanor

defendants are granted bail, but those who do not will also cost local jails an average of \$37.35 per day. The average cost to incarcerate a single Class A misdemeanor serving the complete sentence after conviction would range from \$3,361.50 (90 days x 37.35) to \$13,632.75 (365 days x \$37.35).

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 average cost to incarcerate of \$37.35, which includes the \$31.34 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 Class D felon. The per diem may be less than, equal to, or greater than the actual housing cost.

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

Part II, above, relates to HB 574 GA, which makes the following substantive change to HB 574 HCS 1:

- Adopted HFA 2, which allows a homeless person with no fixed nighttime residence to elect a location with a fixed habitation address to be considered a residence.

The fiscal impact of HB 574 GA is the same as the fiscal impact of HB 574 HCS 1.

HB 574 HCS 1 made the following significant changes to HB 574 (as introduced):

- Shortened the number of days for in-person absentee voting prior to a primary or election to three days instead of four days (Thursday, Friday, and Saturday instead of Wednesday, Thursday, Friday, and Saturday);
- Removed the Governor's powers to order a different manner for holding elections during a declared emergency;
- Provided more detail for actions regarding bona fides of any candidate; and
- Permitted filing of an independent's, or political organization's, or political group candidate's statement-of-candidacy form by April 1 preceding a regular election, rather than the last Tuesday in January before a regular election.

Data Source(s): LRC staff; Fayette County Clerk; State Board of Elections; WLEX; Kentucky County Clerks' Association

Preparer: Robert Jenkins **Reviewer:** KHC **Date:** 3/1/21