



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 not permit any mail-in ballot requests more than 45 days prior to an election and 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, either visually or using assistive voting technology, 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, special district, 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 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.

Section 79 would prohibit local, special district, state, and federal tax dollars from being used to advocate for or against a public question relating to school tax levies appearing on a ballot.

Section 80 would require an automatic recount in any regular election or special election for any member of the General Assembly, Congress, or constitutional officer, if the margin of defeat is 0.5% or less. For the Governor and Lieutenant Governor, the recount must be held no later than the Tuesday following the election and be completed within fourteen days, Sundays excluded. For the remaining constitutional offices, the recount must be held no later than the second Tuesday following the election and be completed within fourteen days, Sundays excluded. The State Board of Election would determine if a recount is required. The voting equipment, ballots, boxes, and all papers relating to the election would be maintained by the county board of elections. Machines and boxes must remain locked, with the keys in the county board of elections until the recount.

The county board of elections must conduct the recount, which would be paid by the Commonwealth of Kentucky. Each political party represented on the county board of elections would be permitted to appoint a representative to be present, and each candidate or the candidate's representative may be present, along with board-authorized news media representatives. The recount must occur after the integrity of the ballots have been confirmed; after votes are counted, the recount must be certified to the Secretary of State by 4 p.m. on the day following the completion of the recount (Sunday excluded).

The addition of the automatic recounts does not change the significant components of the existing laws relating to candidate or party initiated recounts or the appeals process available to the candidate, but the bill adds certain criteria regarding candidate or party-initiated recounts:

- The contestee must file any recount request within 5 days of the contested election.
- A candidate receiving a certificate of election from the county board of elections must file any recount request within 10 days after the election, and the county board of elections must be named a party defendant in the petition.
- A candidate receiving a certificate of election from the State Board of Elections must file any petition requesting a recount no later than the second Tuesday following the election, and the State Board of Elections must be named a defendant in the petition.
- The bond to cover the cost of the recount may be filed by the state political party, political organization, or political group, if any, to which the candidate is affiliated.
- All election-related materials and equipment must be maintained by the county board of elections. The machines and boxes must remain locked and the keys remain with the county board of elections until the recount.
- Each political party represented on the county board of elections may appoint a representative to be present, and each candidate or the candidate's representative may be present along with board-authorized news media representatives.
- After completion of the recount, the county board of elections must forward the result to the Circuit Court at which time the Court will enter a judgement reflecting the recount results and directing the State Board of Elections or the county board of elections to issue a certificate of election.

- Any party may appeal the judgement to the Court of Appeals. (Section 69)

Also in Section 69, any slate of candidates for Governor and Lieutenant Governor, or any candidate for Congress, who does not qualify for an automatic recount, may petition Franklin Circuit Court for a recount. For Governor and Lieutenant Governor Candidates, the petition must be filed by the Tuesday following the election and the State Board of Elections must be named a party defendant in the petition. For Congressional candidates, the petition must be filed by the second Tuesday following the election. Likewise, the State Board of Elections must be named a party defendant in the petition. The findings of the court may not be appealed. However, a petition of contest may be filed to the General Assembly who may accept, modify, or disregard the findings of the court in its sole and absolute discretion. Any candidate for Congress aggrieved by the findings or action of the court must proceed under the rules established by the United States Congress or federal law.

Any candidate for the General Assembly may request a recount of the ballots by filing a petition in the Circuit Court of the county where the requesting candidate resides and no later than the second Tuesday following the election and the State Board of Elections must be named a party defendant in the petition. The findings of the court may not be appealed. However, a petition for contest may be filed to the General Assembly who may accept, modify, or disregard the findings of the court in its sole and absolute discretion.

Section 82 would allow any slate of candidates for Governor and Lieutenant Governor to contest a regular or special election by filing a signed written application and notice of contest with the clerk of the Senate and the clerk of the House. If contesting a regular election, the application must be filed no later the thirty days after the final action of the State Board of Elections or following entry of the findings of the Franklin Circuit Court. In the case of a special election, the notice must be filed no later than 7 days after the final action of the State Board of Elections or following entry of the findings of the Franklin Circuit Court.

Any candidate for the General Assembly may contest any regular or special election by filing a signed written application and notice of contest with the clerk of the house to which the candidate seeks election. If contesting a regular election, the application and notice of contest must be filed no later than 15 days after the final action of the State Board of elections or following entry of the findings of the Circuit Court. If contesting a special election, the application and notice of contest must be filed no later than 3 days following the final action of the State Board of Elections. In both instances, the application and notice must state the grounds of the contest, and no grounds other than those stated in the application and notice must be heard. In the case of a special election contest, the candidates may include a request for a recount. No election contest can be heard unless the contestee has been serviced with a copy of the application and notice of contest. The contestee may make defense without giving counter notice.

The cost of depositions to be used before the board or house of the General Assembly must be paid to the prevailing parties within 30 days of adjudication. If the costs are not timely paid, the prevailing party may seek judgement in a Circuit Court of competent jurisdiction.

In Section 83, when the election of a Governor and Lieutenant Governor is contested, then a board made up of 11 members of and selected by the General Assembly will be responsible for trying the contest, with 7 members constituting a quorum. The board may use the services of any law enforcement agency to transport all records and equipment relating to the contest. All machines and materials must be sealed and transmitted in a tamper-resistant manner with a written chain of custody on a form promulgated by the State Board of Elections. The clerk of the House of Representatives will be custodian of the records.

If a new election is required, the Speaker of the House must issue a writ of election which must designate the day of the elections and be directed to the proper sheriff(s) of the county or counties in which an election is to be held.

Under Section 84, when the election of a member of the General Assembly is contested, the presiding officer of the house to which the member belongs will determine the number of board members, but not more than 9, nor less than 5, and a majority will constitute a quorum. The board members must be sworn prior to trying the contested election and must give true judgement unless the board is dissolved prior to rendering judgement. The board must meet within 24 hours of its selection and appoint its chair, and assign a day for hearing the contest. If a member willfully fails to attend its sessions, the house to which the member belongs must at its discretion punish that member by fine or imprisonment, or both. The board may send for all related materials and equipment, may issue subpoenas, and may use the services of law enforcement to transport all records relating to the contest. The clerk of the contesting member's house will be custodian for the records. The board may order, without approval of the contesting member's house, another recount. This recount must be conducted by the county clerk if no recount has been conducted. If a recount has been conducted, the State Board of Elections must determine the number of persons required for the recount, each being a county clerk except the clerk in which the recount is held; and by random draw, select those that will serve.

If the candidates have received an equal number of votes, the outcome must be determined by lot. If the winning candidate is not legally qualified to take office, then a vacancy will exist, and a new election must be ordered. The person with the highest number of legal votes must be adjudged the person elected and entitled to the office. If the board is unable to decide the person entitled to the office, a new election must be ordered by proclamation to take place between 30 days and 6 weeks following the proclamation. If a new election is ordered, or the incumbent is adjudged not to be entitled to the office, the office must be deemed vacant. Board decisions must be made by a majority of the members and that decision must be reported to the house by which it was appointed, for further action.

In the case of administrative and clerical error regarding all primaries, regular elections, or special elections, the court may determine if an automatic recount will suffice. (Section 66)

In all the scenarios above, no certificate of election can be issued while any recount is pending, and any certificate issued before final judgement is null and void. (Sections 69 and 82)

**The immediate fiscal impact of HB SCS 1 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 SCS 1 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.

#### *Automatic Recount*

HB 574 SCS 1 may not have a fiscal impact on county clerks because the costs of an automatic recount are to be paid by the Commonwealth. (This assumes there is available funding in the General Fund Surplus Account under KRS 48.700 or the Budget Reserve Trust Fund under KRS 48.795.) Assuming that all true costs are reimbursed, there would be no cost to counties for the automatic recount. Costs of the non-automatic recounts authorized in the bill would be paid by the unsuccessful party.



The County Clerks' Association has indicated that current voting machines are accurate and that an automatic recount is not necessary due to the machines' technology. Also, the bill is unclear about who determines the cost of an automatic recount and the disbursement of those funds (county clerk or the county board of election members). The Minnesota Secretary of State established a cost-reimbursement formula of \$.03 per ballot counted; this rate covered less than one-fifth of the total costs. In Washington state, the Secretary of State surveyed counties for actual costs and requested funds from the state legislature, which funded about 50% of the requested amount.

It is difficult to determine fiscal impact because some recounts would be determined by the Circuit Court. Also, cost is dependent on the size of the area (one precinct vs. entire county) that would be recounted.

The recount of a 2018 state House race in Daviess County cost approximately \$10,000.

#### *Prohibition Against Use of Tax Dollars to Advocate for/against Tax Ballot Questions*

The direct result of prohibiting the use of tax dollars for any purpose is a savings to the local government of the amount that would be used. The indirect result of prohibiting the use of tax dollars to advocate for or against a ballot question that challenges a tax increase is a loss of potential revenue. Both amounts are indeterminable

#### *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 misdemeanant 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 SCS 1, which makes the following changes to HB 574 GA:

- Precludes the mail-in absentee ballot portal from being used more than more than 45 days prior to an election;
- Provides for new recount procedures, including an automatic recount; and
- Prohibits local, special district, state, and federal tax dollars from being used to advocate for or against a public question relating to school tax levies that appear on a ballot.

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

HB 574 GA made the following substantive change to HB 574 HCS 1:

- Adopted HFA 2, which allowed 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 was 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; Department of Corrections; WLEX; Kentucky County Clerks' Association; Daviess County Clerk; The Pew Center on the States, "The Cost of Statewide Recounts: A Case Study of Minnesota and Washington," November 2010

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