Memorandum

To: LSA

From: Eric Gookin, Chief Operating Officer, Office of the Secretary of State

Date: November 27, 2023

Re: Election Recounts pre-filed SOS department bill.

The bill changes the composition of recount boards based on the population of the county. For a county of fewer than 15,000, the board shall consist of a designee of the candidate requesting the recount, a designee of the apparent winning candidate, and a person who is a precinct election official selected by the chief judge of the judicial district in which the canvass occurs. For a county with a population between 15,000 and 49,999, the board shall consist of a designee of the candidate requesting the recount, a designee of the apparent winning candidate, and three persons who are precinct election officials selected by the chief judge of the judicial district in which the canvass occurs. For a county with a population of 50,000 or greater, the board shall consist of two designees of the candidate requesting the recount, two designees of the apparent winning candidate, and three persons who are precinct election officials selected by the chief judge of the judicial district in which the canvass occurs. Members appointed by the chief judge for the recount of a partisan election shall not be comprised of more than one-third of persons who are not members of either of the two political parties whose candidates for president received the most or next-most votes at the last general election for a partisan election and not more than a simple majority of members appointed by a chief judge shall be from the same political party or organization.

The bill removes the first and second Monday after an election as a possible date for canvassing an election.

The bill requires a county board of canvassers to order a recount in all election districts in a county for a particular office or nomination if a request for a recount is filed with the commissioner of that county not later than 5:00 p.m. on the second day following the board’s canvass of the election. The bill requires the state commissioner of elections to order a recount of the votes cast for a statewide office, a seat in the United States Congress, or electors for president or vice president, or nominations for such offices, in each county specified in a written request if the request is filed with the state commissioner not later than 5:00 p.m. on the second day following the county canvass of the election in question. A request for a recount shall indicate whether the recount shall be conducted using only automated tabulating equipment or by hand following the use of such equipment. If a candidate requests a hand recount in one county, the bill requires the candidate to request a hand recount in all counties in which the candidate requests a recount. The state commissioner of elections shall assess a civil penalty of $100 against a candidate for each county in which the candidate was required to request a hand recount but did not. The bill requires the penalty to first be deducted from the recount bond paid by the candidate and to be deposited in the general fund of the state.

The bill requires a recount board to be convened no later than 9:00 a.m. on the sixth day following the canvass of the election. The commissioner shall then inform the board whether the candidate requested a hand recount. The board shall direct the commissioner to retabulate the ballots using the automatic tabulating equipment using the same program as was used to tabulate the votes on election day unless the program is believed or known to be flawed. The board shall recount only the ballots which were voted and counted for the office in question, including disputed ballots. After retabulating, the board shall compare the results to the abstract prepared pursuant to the county board’s canvass and note any discrepancies. If the candidate requested a hand recount, the bill requires the ballots to be separated into categories and tabulated. The board shall then compare the results of the tabulation to the results of the canvass and the automatic recount. If there are discrepancies, the results of the hand recount shall control. The bill then requires the board to reseal and preserve the ballots.

At the conclusion of the recount, the bill requires the board to make and file with the county commissioner of elections a report of its findings, signed by a majority of the board. The bill requires a recount board to include in its written report following the conclusion of a recount a full tally and accounting of ballots reviewed by the board. The report must allow the county commissioner of elections to correct the canvass of votes in the manner required by law, if applicable. The board shall file its report by 17 days after the canvass of an election for the offices of president and vice president, by 21 days after the canvass of an election for a state office or a seat in the United States Congress, and by 13 days after the canvass of any other election. The bill also requires the county board of elections to reconvene no later than 27 days following a presidential election to correct any errors identified by the recount board.

The bill requires a petition for a recount of an election for a public measure to be submitted not later than two days following the canvass of the votes for the measure rather than three days. The bill changes the makeup of the recount board for a public measure by removing a designee named by the commissioner and a person jointly selected by that person and a designee named in the petition requesting the recount and replacing them with two election officials selected by the chief judge of the judicial district where the canvass occurs. The commissioner shall convene the recount board not later than 9:00 a.m. on the sixth day following the county board’s canvass of the election in question.

Under current law, a county commissioner of elections may conduct an administrative recount if the commissioner suspects that voting equipment used in the election malfunctioned or that programming errors may have affected the outcome of the election, or if the precinct election officials report counting errors to the commissioner. The bill instead allows the county commissioner of elections to conduct an administrative audit if such circumstances exist. The bill allows political parties, as defined in Code, to appoint observers to witness the audit.

The bill changes the clerk of a court of contest for presidential electors and congresspersons from the secretary of state to the clerk of the supreme court. If the clerk of the supreme court is absent or unable to act, the secretary of state shall be the clerk of the court. For elections for state officers, the bill changes the clerk of a contest court to the clerk of the supreme court. If the clerk of the supreme court is absent or unable to act, the secretary of state shall be the clerk of the court. However, if the secretary of state is a party to the contest, the auditor of state shall be the clerk of the court.

The bill takes effect upon enactment.