

UPDATED
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SUPPLEMENTAL NOTE ON SENATE BILL NO. 351

As Amended by Senate Committee of the Whole

Brief*

SB 351, as amended, would require the Secretary of State (Secretary) to develop an affidavit system to be used for persons transferring ballots; provide for the use of electronic poll books in elections; authorize the Secretary to review, approve, and adopt rules and regulations regarding the use of such electronic poll books; prohibit voting systems from having the capability of connecting to the internet or other network; create the crime of electronic poll book fraud; and amend requirements related to the testing of election equipment.

Affidavit System

The bill would require the Secretary, in consultation with county election officers, to develop an affidavit system to be utilized for the transfer of ballots. The bill would require each person who handles ballots to sign an affidavit listing, if applicable, the:

- Number of blank ballots;
- Number of spoiled ballots;
- Number of provisional ballots;
- Number of counted ballots;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Number of advanced ballots in envelopes;
- Name of the person to whom such ballots were delivered; and
- Location of where the ballots were delivered.

The affidavit system developed by the bill would apply to all ballots received, handled, and collected by county election offices prior to, on, and after the date of an election. The affidavit system would operate in conjunction with statutory provisions regarding transporting preserving, and destroying ballots and election records.

Violations of the bill would include altering any information provided in an affidavit or providing false information in an affidavit with the intent to hinder, prevent, or defeat a fair election. Such violations would constitute a severity level 9, nonperson felony. [Note: The provisions of the bill related to affidavits are substantially similar to those of SB 390, as amended by the Senate Committee on Federal and State Affairs.]

Electronic Poll Books

Definition

The bill would define “electronic poll book” as a list of registered voters for a particular precinct or polling location that may be transported to a polling location and on which each voter may sign their signature. The bill would clarify “electronic poll book” would not include automatic tabulating equipment or data processing equipment, including a direct recording electronic system, that are components of an electronic or electromechanical voting system.

Secretary of State Responsibilities

The bill would require the Secretary to examine and approve the kinds or makes of electronic poll books; no kind or make of electronic poll book would be permitted to be used at any election until it receives certification by the Secretary.

Board of County Commissioners and County Election Officer Provisions

The bill would permit a board of county commissioners (board) and county election officer (officer) to provide electronic poll books to be used at voting places, or for advance voting, at national, state, county, township, city, and school primary and general elections and in question submitted elections. Such board and officer would be permitted to issue bonds to finance and pay for the purchase, lease, or rental of such electronic poll books. Such board and officer would be permitted to adopt, experiment, or abandon any electronic poll book authorized for use in the state. If the Secretary rescinds approval of any electronic poll book, the board and officer would be required to abandon such electronic poll book until changes required by the Secretary are made; if such changes cannot be made, the abandonment would be permanent.

Prohibitions

The bill would prohibit, beginning July 1, 2022, the board and officer from purchasing, leasing, or renting any electronic poll book, unless such poll book has been certified by the Secretary. The bill would also prohibit the operation of any electronic poll book with network connectivity that does not meet security standards established by the Secretary.

Sale of Electronic Poll Books

The bill would permit any person, firm, or corporation that desires to sell electronic poll books to political subdivisions in the state to request in writing for the Secretary to examine such poll books. The bill would require any such written request to include a certified check for \$250 to defray costs for the Secretary to provide the examination. [Note: Such examination would follow the guidelines for examination of electronic or electromechanical voting systems currently in KSA 25-4405.]

Electronic or Electromechanical Voting Systems

The bill would require that any electronic or electromagnetic voting system approved by the Secretary shall not have the capability, or any component thereof shall not have the capability of, connecting to the internet or any other communications or computer network. The bill would specify such networks include, but are not limited to, a local area network, wireless network, cellular network or satellite network, or the use of bluetooth or any other wireless communications technology.

Use of Electronic Poll Books and Electronic or Electromechanical Voting Systems

The bill would require the board and officer to provide the number of units of electronic or electromechanical voting systems or electronic poll books as necessary to equip voting places, if such board and officer have determined a kind or make of such voting systems or poll books shall be used in the county.

If the Secretary has rescinded the approval of any electronic poll book, the bill would prohibit any tax from being levied, or any moneys being paid from any fund, for the purchase, lease, or rent of such poll book. [Note: This

prohibition exists in KSA 25-4407 for electronic or electromechanical voting systems.]

The bill would require the board to provide for the storage of such electronic poll books, and would require the officer to be in complete charge of the safekeeping, repair, and delivery of such poll books. The bill would require the officer to see that such poll books are returned to their storage after any election. [Note: These requirements currently exist in KSA 25-4408 for electronic or electromechanical voting systems.]

The bill would require election judges before, during, and after the operation of the polling place, to make all electronic or electromechanical voting systems and vote tabulating equipment available to any candidate or any authorized poll agent for review to ensure there is no connectivity to the internet or to any other communications or computer network.

Electronic Poll Book Fraud

The bill would expand the current crime of electronic or electromechanical voting system fraud to include electronic poll book fraud, which would constitute:

- Being in unlawful or unauthorized possession of electronic poll books; or
- Intentionally tampering with, altering, disarranging, defacing, impairing, or destroying any electronic poll book, or component thereof.

Electronic poll book fraud would be a severity level 9, nonperson felony.

Testing of Election Equipment

Current law requires officers to have testing conducted of automatic tabulating equipment and optical scanning equipment within five days prior to the date of an election. The bill would require public notice of such test to be published on the county website, if the county has a website.

The bill would amend current law requiring such testing to be repeated after the completion of the canvass to require such repeat testing to be conducted within five business days after the completion of the canvass.

Optical Scanning Equipment

The bill would prohibit any optical scanning equipment and systems using optical scanning equipment approved by the Secretary from having the capability of, or any component having the capability of, being connected to the internet or any other communications or computer network, including a local area network, wireless network, cellular network, satellite network, or use bluetooth or any other wireless communications technology.

Background

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Bowers.

Senate Committee on Federal and State Affairs

In the Senate Committee hearing, a representative of the Office of the Secretary of State provided **proponent** testimony, generally stating the need for the Secretary to regulate and certify electronic poll books. Three private citizens provided written-only proponent testimony.

A representative of the Kansas County Clerks and Election Officials Association who is also the Harvey County Clerk provided neutral testimony.

Written-only **opponent** testimony was provided by a private citizen.

The Senate Committee amended the bill to:

- Remove a requirement for election judges to ensure that no component of an electronic or electromechanical voting system is connected to the internet or other communications or computer network; and
- Require election judges make all electronic or electromechanical voting systems and vote tabulating equipment available to any candidate or any authorized poll agent for review.

Senate Committee of the Whole

The Senate Committee of the Whole amended the bill to insert provisions requiring the Secretary to develop an affidavit system for persons transferring ballots. [*Note: These provisions were passed by the Senate in SB 390. Further information on this bill appears below.*]

SB 390 (Affidavit System)

The bill was introduced by Senator Hilderbrand.

Senate Committee on Federal and State Affairs

In the Senate Committee hearing, Senator Hilderbrand provided **proponent** testimony, stating the bill was a result of his experience as a county commissioner, and that the bill would address concerns about ballot chain of custody.

Written-only proponent testimony was provided by three private citizens.

A representative of the Office of the Secretary of State provided neutral testimony, stating the bill would give the agency the ability to harmonize chain of custody policies, and indicating concern with having the system in place by the effective date.

Written-only **opponent** testimony was provided by a private citizen.

The Senate Committee amended the bill to:

- Replace references to “local election officers” with “county election officers”;
- Specify that each person who handles ballots for a county election office would be required to sign the affidavit;
- Add the number of counted ballots to the list of items required on the affidavit;
- Specify the affidavit system would apply to all ballots received, handled, and collected by county election offices prior to, on, and after the date of an election;
- Provide the affidavit system would operate in conjunction with statutory provisions regarding transporting, preserving, and destroying ballots and election records;
- Define violations of the bill and penalty for violation; and
- Make technical changes.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on SB 351 as introduced, the Office of the Secretary of State estimates any fiscal effect on expenditures from the enactment of the bill would be negligible and could be absorbed within existing resources. The Office estimates the bill could increase its annual revenues by approximately \$2,000 from the requirement to certify electronic poll books.

The Office indicates enactment of the bill would require local law enforcement and county prosecutors to investigate and prosecute electronic poll book fraud, and it is unclear if there would be any fiscal effect for those entities. The Kansas Association of Counties indicates a county's cost to purchase equipment required by the bill could be significant, but would depend on the population of the county and how much equipment is needed.

According to the fiscal note prepared by the Division of the Budget on SB 390 as introduced, the Kansas Association of Counties (KAC) states enactment of the bill could slightly increase costs necessary for administering the affidavit signature requirements. The exact costs would vary depending on how many personnel are necessary to oversee the election process appropriate for each county's population size. The KAC cannot estimate the fiscal effect.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2023 Governor's Budget Report*.

Elections; affidavits; electronic poll books; voting systems; Secretary of State; ballot transfer