

SESSION OF 2022

SUPPLEMENTAL NOTE ON SENATE BILL NO. 389

As Amended by Senate Committee on Federal
and State Affairs

Brief*

SB 389, as amended, would require all voting systems in Kansas to use a paper ballot with a distinctive watermark as established by the Secretary of State (Secretary), for elections on and after January 1, 2024.

The bill would require the ballot to be:

- Marked by the voter, or person assisting the voter as permitted by law, by hand or by use of a voting machine that is a non-tabulating paper ballot marking or printing device;
- Subject to inspection and verification by the voter after marking and before the vote is cast and counted; and
- Canvassed by hand or by vote-tabulating equipment.

The bill would require a sample hand-counted audit of the paper ballots conducted for each precinct if the paper ballots are read by vote-tabulating equipment.

The bill would require the voting system to provide the voter an opportunity to correct any error on the paper ballot before it is secured and preserved.

*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>

The bill would prohibit a voting system from preserving paper ballots in a manner that would associate a voter with the record of their vote without the voter's consent.

The bill would require the paper ballot to be preserved and constitute the official ballot for audit and recount purposes. The bill would require each paper ballot be counted by hand in a recount unless the recount requestor elects not to have the ballots counted by hand. In the event of any inconsistencies in vote tallies, the vote tallies of the paper ballots counted by hand would be the true and correct record of votes cast.

The bill would require a sample hand-counted audit of paper ballots to be conducted by the election board if paper ballots are read and tabulated by vote-tabulating equipment. The audit would consist of an examination of voter markings on randomly selected paper ballots in comparison to the results of the voting system's tabulation. The bill would require the audit to conform to rules and regulations to be adopted by the Secretary, and the audit results would be reported to the county election officer, the canvassing board, and the Secretary.

The bill would prohibit the use of poll books not requiring a hand-written signature.

The bill would require the Secretary to adopt rules and regulations to implement the bill by January 1, 2023.

Background

The bill was introduced by Senator Hilderbrand.

Senate Committee on Federal and State Affairs

In the Senate Committee hearing, Senator Hilderbrand and a private citizen provided **proponent** testimony, stating

that the bill would increase public trust in the validity of elections. Written-only proponent testimony was provided by a representative of Opportunity Solutions Project and four private citizens.

Representatives of the Secretary and the Kansas Association of Counties provided neutral testimony, indicating technical concerns with the bill. Written-only neutral testimony was provided by a private citizen.

Opponent testimony on the bill was provided by representatives of the Disability Rights Center of Kansas and Loud Light Civic Action, indicating concerns for individuals with disabilities and the cost to county election offices. Written-only opponent testimony was provided by Senator Sykes, representatives of the Kansas County Clerks and Election Officials Association and Wichita NAACP, and a private citizen.

The Senate Committee amended the bill to require the Secretary to adopt rules and regulations by January 1, 2023, and to delay implementation of the watermark requirement until January 1, 2024.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Office of the Secretary of State indicates it would incur costs for staff time, but these costs could be absorbed within existing resources.

Both the Office of the Secretary of State and the Kansas Association of Counties indicate enactment of the bill would significantly increase expenditures for counties and local county election offices related to:

- Equipment upgrades for voting machine vendors and ballot printing vendors to have the capability to produce watermarked ballots;

- Hand recounts; and
- Additional wages paid to election board workers who would be required to conduct sample random audits.

The exact impact for each county would depend on the county's population and equipment replacement needs. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2023 Governor's Budget Report*.

Elections; voting systems; watermark; election audits