

Secretary of State
Notice of Hearing on Proposed Administrative Regulations

A public hearing will be conducted at 1:00 p.m., Monday, March 27, 2023, in the second-floor auditorium at Memorial Hall, 120 SW 10th Ave., Topeka, KS, regarding the adoption of three new election regulations: Kansas Administrative Regulations 7-21-5, 7-29-3, and 7-45-2.

K.A.R. 7-21-5, Electronic poll book signatures, is authorized by and implements K.S.A. 2022 Supp. 25-2912 which requires a handwritten signature on an electronic poll book. This regulation defines what denotes an acceptable signature, the acceptable methods to comply with the new law, and the requirements for disabled access.

K.A.R. 7-29-3, Ballot secrecy, is authorized by and implements K.S.A. 2022 Supp. 25-2912 which requires ensuring that it is not possible to “associate a voter with the record of the voter's vote,” i.e. preserving ballot secrecy. The proposed regulation clarifies what records cannot be released to the public because the record can be used to determine how a particular voter voted.

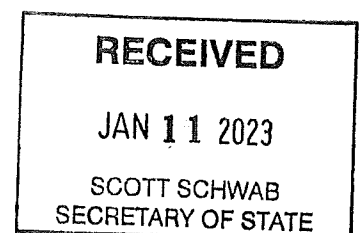
K.A.R. 7-45-2, Oversight of authorized poll agents, is authorized by and implements K.S.A. 25-3005, and merely clarifies what is already the practice at polling places, that authorized poll agents are not to speak with voters in the polling place, except in limited circumstances. A poll agent's role is to observe.

Adopting these regulations imposes no economic burdens on county election staff and imposes no environmental impact.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed regulations. Comments may be submitted prior to the hearing to Clay Barker, General Counsel, Office of the Secretary of State, Memorial Hall, 120 SW 10th Ave., Topeka, KS 66612-1594, or to clay.barker2@ks.gov. All interested parties will be given a reasonable opportunity at the hearing to present their views. Additionally, interested parties wanting to participate remotely may contact Clay Barker at clay.barker2@ks.gov to obtain remote access information. It may be necessary to request each participant to limit any oral presentation to five minutes.

Any individual with a disability may request accommodation to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation should be made at least five days in advance of the hearing by contacting Clay Barker at 785-296-3483 or the Kansas Relay Center at 1-800-766-3777.

Copies of the full text of the regulations and economic impact statements may be obtained at the address above for the Office of the Secretary of State, or by contacting Lara Murphy, Director of Administrative Regulations and Publications, at 785-296-0082 or lara.murphy@ks.gov. The proposed regulations are also available on the Secretary of State's website at www.sos.ks.gov.



Proposed

Scott Schwab
Secretary of State

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7-21-5. Electronic poll book signatures. A hand-written signature on an electronic poll book means any mark made by a person indicating that the person is the listed registered voter residing at the address recorded on the electronic poll book. The person may make their mark on the electronic poll book screen by employing a stylus, a finger, or by an amanuensis.

(Authorized by and implementing K.S.A. 2022 Supp. 25-2912; effective P-_____.)

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NOV 15 2022

DEPT. OF ADMINISTRATION

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7-29-3. Ballot secrecy. To ensure that a ballot that has been cast cannot be associated with the voter who cast the ballot, the following records shall not be made available to the public:

(a) Ballot images, except when used for post-election audits conducted pursuant to K.S.A. 25-3009, and amendments thereto, or recounts conducted pursuant to K.S.A. 25-3107, and amendments thereto; and

(b) any aggregation of individual ballot data with a single entry for each ballot that was tabulated, showing the manner the voting system interpreted and tabulated the voter's markings on the ballot. (Authorized by and implementing K.S.A. 2022 Supp. 25-2912 ; effective

P-_____.)

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NOV 21 2022

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7-45-2. Oversight of authorized poll agents. (a) The supervising judge shall instruct each authorized poll agent appointed to the polling place of all requirements pertaining to authorized poll agents that are issued by the county election officer or given in Kansas law.

(b) If a poll agent does not comply with the requirements, any election board worker may ask the poll agent to correct or cease the improper or illegal activity or to leave the polling place. This activity shall be reported to the county election officer.

(c) The election board workers shall ensure that the poll agents do not engage in any activities that would constitute election crimes, including the following:

- (1) Electioneering, as defined in K.S.A. 25-2430 and amendments thereto;
- (2) voter intimidation, as defined in K.S.A. 25-2415 and amendments thereto;
- (3) disorderly election conduct, as defined in K.S.A. 25-2413 and amendments thereto;
- (4) unauthorized voting disclosure, as defined in K.S.A. 25-2422 and amendments

thereto; and

- (5) voting machine fraud, as defined in K.S.A. 25-2425 and amendments thereto.

(d) The election board workers shall prevent the poll agents from performing the following:

- (1) Touching or handling any voter's ballot during the voting process;
- (2) distributing ballots or counting ballots;
- (3) hindering or obstructing any voter from voting or from entering and leaving the

polling place; and

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(4) hindering or obstructing any election board worker from performing election duties;

and

(5) speaking to any voter in the polling place other than a greeting. (Authorized by and

implementing K.S.A. 25-3005; effective July 7, 2008; amended P-_____.)

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Kansas Administrative Regulations Economic Impact Statement (EIS)

Secretary of State
Agency

Clay Barker
Agency Contact

785-296-3483
Contact Phone Number

7-21-5
K.A.R. Number(s)

☒ Permanent ☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.
- ☒ No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?
- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.
- ☒ No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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Section I

Brief description of the proposed rule(s) and regulation(s).

A new statute, KSA 25-2912, requires a handwritten signature on an electronic poll book. This regulation defines what denotes an acceptable signature, the acceptable methods to comply with the new law, and the requirements for disabled access.

Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

The proposed regulation complies with the voter access requirements of the Americans with Disabilities Act and the Help America Vote Act of 2002. There is no applicable federal approach, and the proposed approach is similar to that used by most states.

Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The proposed regulation will have no effect on business activities or growth.

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

There are no compliance costs. A county must use a poll book at voting locations, which may be paper or electronic. This regulation merely describes what denotes an acceptable signature on an electronic pollbook.

- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

None

- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

There are no costs. There are no specific benefits other than specifying what denotes an acceptable signature.

- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

None needed.

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- F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.
Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses – \$0

Costs to Local Governmental Units – \$0

Costs to Members of the Public – \$0

Total Annual Costs – \$0

(sum of above amounts)

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

This regulation is a definition, there is no cost associated with its implementation.

- ☐ Yes If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- ☐ No
- ☒ Not Applicable

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

None

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

None

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

Not applicable.

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- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

We solicited input from election official as to what should be an acceptable signature on an electronic poll book.

Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

☐ Yes If yes, complete the remainder of Section IV.

☒ No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

Click here to enter agency response.

- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

Click here to enter agency response.

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

Click here to enter agency response.

- D. Provide a detailed statement of the data and methodology used in estimating the costs used.

Click here to enter agency response.

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**SCOTT SCHWAB
SECRETARY OF STATE**

Kansas Administrative Regulations Economic Impact Statement (EIS)

Secretary of State
Agency

Clay Barker
Agency Contact

785-296-3483
Contact Phone Number

7-29-3
K.A.R. Number(s)

☒ Permanent ☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.
- ☒ No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?
- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.
- ☒ No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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Section I

Brief description of the proposed rule(s) and regulation(s).

A new statute KSA 25-2912, required ensuring that it was not possible to “associate a voter with the record of the voter's vote,” i.e. preserving ballot secrecy. The proposed regulation clarifies what records cannot be released to the public because it can be used to determine how a particular voter voted.

Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

There is no applicable federal approach, and the proposed approach is similar to that used by many states that have adopted a policy on these records.

Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;
None
- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;
None
- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);
None
- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;
There are no costs associated with the proposed regulation
- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;
Not applicable

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- F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.

Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses – \$0

Costs to Local Governmental Units – \$0

Costs to Members of the Public – \$0

Total Annual Costs – \$0

(sum of above amounts)

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

No costs are involved

- ☐ Yes If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- ☐ No
- ☒ Not Applicable

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

None

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

None

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

None

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- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

We consulted with election experts on ways to determine how a person could discover how a voter voted and reviewed open record requests to county election officers.

Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

- ☐ Yes If yes, complete the remainder of Section IV.
☒ No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

Click here to enter agency response.

- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

Click here to enter agency response.

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

Click here to enter agency response.

- D. Provide a detailed statement of the data and methodology used in estimating the costs used.

Click here to enter agency response.

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Kansas Administrative Regulations Economic Impact Statement (EIS)

Secretary of State
Agency

Clay Barker
Agency Contact

785-296-3483
Contact Phone Number

7-45-2
K.A.R. Number(s)

☒ Permanent ☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.
- ☒ No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?
- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.
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Section I

Brief description of the proposed rule(s) and regulation(s).

The proposed regulation merely states clearly what is already the practice at polling places. After reviewing nationwide polling place operations and other state practices, the Secretary of State determined it was necessary to clarify that authorized poll agents were not to speak with voters in the polling place, except in limited circumstances. A poll agent's role is only to observe.

Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

There is no applicable federal approach, and the proposed approach is similar to that used by most states.

Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The proposed regulation would not affect business activities or growth

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

None

- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

None

- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

There are no costs. The amendment to the regulation merely clarifies what is already the practice in polling places.

- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

Not applicable

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- F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.

Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses – \$0

Costs to Local Governmental Units – \$0

Costs to Members of the Public – \$0

Total Annual Costs – \$0

(sum of above amounts)

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

Click here to enter agency response.

- ☐ Yes If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- ☐ No
- ☒ Not Applicable

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

None

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

None

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

None

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- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

We reviewed polling place practices in other states and consulted with county election officers

Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

- ☐ Yes If yes, complete the remainder of Section IV.
☒ No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

Click here to enter agency response.

- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

Click here to enter agency response.

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

Click here to enter agency response.

- D. Provide a detailed statement of the data and methodology used in estimating the costs used.

Click here to enter agency response.

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