

Approved: March 4, 2009

Date

MINUTES OF THE SENATE ETHICS AND ELECTIONS COMMITTEE

The meeting was called to order by Chairman Vicki Schmidt at 9:30 a.m. on February 18, 2009, in Room 446-N of the Capitol.

All members were present except:

Senator Susan Wagle- excused

Committee staff present:

Mike Heim, Office of the Revisor of Statutes

Ken Wilke, Office of the Revisor of Statutes

Martha Dorsey, Kansas Legislative Research Department

Reed Holwegner, Kansas Legislative Research Department

Carolyn Long, Committee Assistant

Conferees appearing before the committee:

Brad Bryant, Deputy Assistant Secretary of State for Elections and Legislative Matters

David Haley, Kansas Senator

Michael Byington, Kansas Association for the Blind and Visually Impaired

Brian Newby, Johnson County Clerk

Others attending:

See attached list.

It was moved by Senator Reitz, approved by Senator Apple that the minutes for February 4, 2009, February 5, 2009, February 11, 2009 and February 13, 2009 be approved. Motion passed.

The Chair opened the hearing on **SB 190 - Elections; include electronic and direct read electronic voting machines in voting machine fraud statute** and **SB 191-- Elections; paper verification for electronic voting machines**. Explanation by staff stated that **SB 190** deals with voting machine fraud and election tampering by inserting in Section "b" wording that would include voting machines and **SB 191** with requiring a verifiable paper trail on direct recording electronic voting machines.

The Chair welcomed Senator David Haley, sponsor of **SB 190**, who referenced his written statement (Attachment 1). Senator Haley feels his bill defines "voting machine" and codifies voting machine fraud.

Brad Bryant, Deputy Assistant Secretary of State for Elections and Legislative Matters, presented written testimony (Attachment 2) stating that the Secretary of State's office is neutral regarding its passage.

The hearing on **SB 190** was closed and the hearing on **SB 191** was opened with the sponsor, Senator David Haley presenting written testimony (Attachment 3).

Senator Faust-Goudeau, co-sponsor of the bill, concurred with Senator Haley's comments. As clarification, the screen would indicate voter choices and after affirmation by voter there would be tangible means of how the vote was cast.

Senator Reitz liked the concept of the bill but felt the cost was prohibitive.

The Chair thanked Senator Haley for his presentation to the committee.

Brad Bryant appeared as an opponent to the bill. He provided written testimony (Attachment 4) supporting the Secretary of State's argument against passage of legislation requiring VVPATs on electronic voting machines.

The Chair acknowledged Michael Byington, Kansas Association for the Blind and Visually Impaired, who presented written testimony in opposition to **SB 191**, (Attachment 5). Mr. Byington told the committee that for the first time ever a visually impaired person has the opportunity to vote with complete privacy and independently, without having to share that information with another. If the paper ballot is what the final vote is dependant upon, the ballot would then need to proceed to an optical character scanning process in order to

CONTINUATION SHEET

Minutes of the Senate Ethics And Elections Committee at 9:30 a.m. on February 18, 2009, in Room 446-N of the Capitol.

be accessible to the visually impaired and therefore he opposed this legislation.

Senator Faust-Goudeau asked that she and the rest of the committee be provided with collaborating information that Mr. Byington referred to in his testimony alleging machine dysfunction.

Brian D. Newby, Election Commissioner for Johnson County, provided written testimony (Attachment 6) in opposition to this legislation. Modification to machines would be approximately \$500/machine. He can see the level of confidence that voters may place in this type of procedure but in his opinion, since this bill includes the phrase "can be used for a recount" it would leave the process up to political opponents, parties or courts to determine.

Written testimony in opposition of **SB 191** was submitted by:

Bruce L. Newby, Election Commissioner, Wyandotte County Election Office (Attachment 7).

Due to time restraints, **SB 267** will be rescheduled at a later date.

The meeting was adjourned at 10:32 a.m. The next meeting is scheduled for February 25, 2009.

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SENATE CHAMBER

DAVID B. HALEY
SENATOR
DISTRICT 4
WYANDOTTE COUNTY

SENATE BILL 190

2/18/2009

ELECTION CRIMES: DEFINING "VOTING MACHINE FRAUD"

To: Madam Chair Schmidt, Mr. Vice-Chair Apple & Members of the
KANSAS SENATE ETHICS AND ELECTIONS COMMITTEE

Madam Chairman and members of the Committee, thank you for hearing testimony on SB 190, a
bill concerning voting machine fraud.

Current law does not define what is considered a "voting machine". SB 190 amends KSA
25-2425 to include definitions of voting technology used by the state of Kansas.

Since the 2000 presidential election, voters' confidence in our election system has been
violently shaken. To restore confidence in Kansas' ability to protect the rights of voters, SB 190
further codifies what voting machine fraud is and expands the amends current law to make sure
Kansans' right to vote is not tampered with by criminals.

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Senate Ethics and Elections Cmte
Date 2-18-2009
Attachment 1

In 2004, a Johns Hopkins University study documented numerous techniques that could be used to change votes. An employee of a voting machine manufacturer, an employee of the board of elections, a computer hacker, or any person who could get their hands on a voting machine for one minute could tamper with the software in a voting machine and invalidate the tally. In 2006, the Brennan Center for Justice released a report which showed that there are over 100 ways to tamper with current voting machine technology such as DRE and optical scanner systems.

Kansas need to take proactive steps to ensure that election fraud is dealt with in a meaningful manner so as to dissuade would-be criminals from taking part in fraud. By explicitly defining what “voting machine fraud” entails, Kansans can put more trust in their election system.

Thank you again, Madam Chairman; Members.

At the appropriate time, I would stand for questions.

RON THORNBURGH
Secretary of State



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STATE OF KANSAS

Senate Committee on Ethics and Elections

Testimony on Senate Bill 190

Brad Bryant, Deputy Assistant Secretary of State
Elections and Legislative Matters

February 18, 2009

Madam Chair and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 190. This is an election crime bill that amends the language of K.S.A. 25-2425, dealing with voting machine fraud. We are uncertain of the intent or the potential effect of the bill, so we are neutral with regard to its passage. We do wish to offer several comments.

Under current law, it is illegal for a person to be in unauthorized possession of voting equipment or ballots. Also, it is illegal to tamper with, impair or destroy a voting machine or ballot. Senate Bill 190 would amend language from two voting equipment statutes into the election crimes.

We ask the committee to consider the following points:

1. The provisions of Senate Bill 190 appear to be covered in existing statutes governing optical scan voting equipment (K.S.A. 25-4612) and direct recording electronic voting equipment (K.S.A. 25-4414). If so, Senate Bill 190 might not be necessary. We have attached copies of those statutes.
2. The penalties for violations in K.S.A. 25-4612 and K.S.A. 25-4414 are level 9 nonperson felonies. The penalty in Senate Bill 190 is a level 10 nonperson felony. If the committee considers passing Senate Bill 190, we recommend amending it to a level 9 nonperson felony to be consistent with similar legislation passed in recent years.
3. The reference to "counting location" in lines 28-30 on Page 1 does not appear to be relevant to the rest of the provisions of Senate Bill 190. We recommend removal of these lines.
4. The language in lines 14-18 on Page 1 is similar to the provisions of K.S.A. 25-4612 and K.S.A. 25-4414 but it is less up to date because the statutes in Article 46 and Article 44 were amended in 2007 as part of a general updating of the language governing voting equipment as required by the Help America Vote Act of 2002. If the committee considers passing Senate Bill 190, we recommend updating lines 14-18 on Page 1 to reflect the newer language in the

Senate Ethics and Elections Cmte

Date 2-18-2009

Attachment 2

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corresponding statutes in Article 46 and Article 44.

As stated before, we are neutral regarding passage of Senate Bill 190, but if the committee decides to recommend it favorably for passage, we recommend amendments to address the questions we have raised. We are willing to provide assistance as needed.

Thank you for your consideration.

25-4414

Chapter 25.--ELECTIONS

Article 44.--ELECTRONIC AND ELECTROMECHANICAL VOTING SYSTEMS

25-4414. Electronic or electromechanical voting system fraud; penalty. Electronic or electromechanical voting system fraud is: (a) Being in unlawful or unauthorized possession of voting equipment, computer programs, operating systems, firmware, software or ballots; or

(b) intentionally tampering with, altering, disarranging, defacing, impairing or destroying any electronic or electromechanical system or component part thereof, or any ballot used by such systems.

Electronic or electromechanical voting system fraud is a severity level 9, nonperson felony.

History: L. 1977, ch. 129, § 14; L. 1993, ch. 291, § 215; L. 2007, ch. 125, § 21; July 1.

25-4612

Chapter 25.--ELECTIONS

Article 46.--OPTICAL SCANNING SYSTEMS TO COUNT VOTES

25-4612. Optical scanning equipment fraud; penalty. Optical scanning equipment fraud is:

(a) Being in unlawful or unauthorized possession of ballots, optical scanning equipment, computer programs, operating systems, firmware or software; or

(b) intentionally tampering with, altering, disarranging, defacing, impairing or destroying any optical scanning equipment or component part thereof, or any ballot, operating system, firmware or software used by a system.

Optical scanning equipment fraud is a severity level 9, nonperson felony.

History: L. 1982, ch. 158, § 12; L. 1993, ch. 291, § 216; L. 2007, ch. 125, § 32; July 1.

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SENATE CHAMBER

DAVID B. HALEY

SENATOR
DISTRICT 4
WYANDOTTE COUNTY

SENATE BILL 191

2/18/2009

REQUIRING A VERIFIABLE PAPER TRAIL FOR VOTING MACHINES

To: Madam Chair Schmidt, Mr. Vice-Chair Apple & Members of the
KANSAS SENATE ETHICS AND ELECTIONS COMMITTEE

Madam Chairman and members of the Committee, thank you for hearing testimony on SB 191, a bill concerning electronic voting machines; requiring a verifiable paper trail .

Citizens' confidence in electronic voting machines has been badly shaken. Voter distrust in our election system has not gone away since the passage of the Help America Vote Act (HAVA) of 2002. Therefore, we must put into place a means by which voters and election officials can make sure votes have not been mistallied by the voting machine or tampered with. That means using a voter-verified paper trail.

Unfortunately, many modern voting systems remain vulnerable to error. A 2006 Brennan Center for Justice report confirmed that "votes have been miscounted or lost as a result of defective firmware (coded instructions in a computer system's hardware), faulty machine software, defective tally server software, election programming errors, machine breakdowns, malfunctioning input devices, and pollworker error."

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Senate Ethics and Elections Cmte
Date 2-18-2009
Attachment 3

In November 2004, the Associated Press reported that the California Secretary of State banned one model of Diebold machines after finding that the machine disenfranchised voters during the 2004 presidential primary. Diebold machines were recertified in California only after the firm paid a fine of \$2.6 million. The AP reported in October 2006 that Diebold Election Systems discovered a screen-freeze problem in several Maryland voting machines, yet the company did not fully inform the state and took three years to replace the flawed machines. A local Sarasota County, Florida, paper reported in November 2006 that iVotronic touchscreen machines used in that county registered 18,000 ballots cast without a vote for Congress in a hotly contested race. Sarasota's undervote was far higher than in neighboring counties – raising the likelihood that an error caused the results.

The Association for Computing Machinery survey conducted in September 2004 found that 95% expressed concern about the security of electronic voting systems and endorsed the use of voter-verified paper records. Kansas is one of twelve states in the nation which does not require voter-verified paper records. We need to update our law to ensure that we do not disenfranchise any eligible voter as a result of faulty voting machine software.

Thank you again, Madam Chairman; Members.

At the appropriate time, I would stand for questions.

RON THORNBURGH
Secretary of State



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STATE OF KANSAS

Senate Committee on Ethics and Elections

Testimony on Senate Bill 191

Brad Bryant, Deputy Assistant Secretary of State
Elections and Legislative Matters

February 18, 2009

Madam Chair and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 191 on behalf of the Secretary of State. This bill would require voter verifiable paper audit trails (VVPATs) on direct recording electronic (DRE) voting machines. We oppose passage of Senate Bill 191 as an unnecessary and extremely expensive requirement for electronic voting equipment.

This bill contains the following provisions:

- It would require all electronic voting equipment to be equipped with VVPATs by January 1, 2010.
- It would allow VVPATs to be the official records for recounts.
- It would prohibit the Secretary of State from certifying any DRE voting equipment that does not include VVPATs.
- It would prohibit the Secretary of State from spending any money from any source on electronic voting machines, or any equipment related thereto, unless they have VVPATs.

Many election administrators and others experienced with electronic voting equipment do not support VVPATs and oppose efforts to require them. We oppose them because they are unnecessary, expensive, unreliable, optional mechanical devices that do not enhance the voting system's security. Voting system security is an end-to-end process with security measures at all points. VVPATs are involved at only one point and do not enhance the overall security of the process.

A voter using a DRE is required to review his/her ballot onscreen before casting it, and reviewing it again on a paper receipt is unnecessary. Further, each machine has an audit trail that can be printed on paper, thus providing a paper audit trail. Requiring the voter to review a *voter verifiable* paper audit trail before casting the ballot is, again, unnecessary.

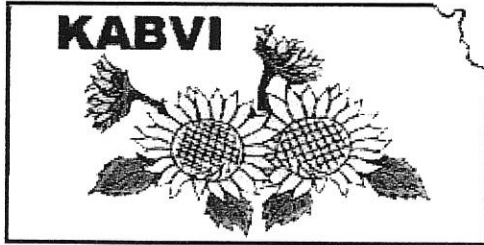
If Senate Bill 191 passes, several thousand new electronic voting devices owned by county governments in Kansas would have to be retrofitted by January 1, 2010, at a cost of approximately \$700 per unit. The total cost to counties would be an estimated \$2,399,600.

For these reasons and others listed on the attached page, we urge the committee not to pass Senate Bill 191. Thank you for your consideration.

Voter Verifiable Paper Audit Trails on Electronic Voting Machines-- Points to Consider

We offer the following points to support our argument against passage of legislation requiring VVPATs on electronic voting machines:

- Electronic voting devices have been used successfully for 25 years, including more than 20 years in Kansas. There are no documented cases of lost votes caused by the machines.
- A voting system is a *system*, with security at all points in the electoral process. VVPATs are involved at only one point and do not enhance the overall security of the process.
- The Help America Vote Act of 2002 (HAVA) requires at least one fully accessible, ADA-compliant voting device in each polling place to allow voters with disabilities, including the visually impaired, to vote a secret, independent ballot without assistance. Requiring a paper receipt on these devices negates this requirement in HAVA because voters with visual impairments cannot read the paper receipt.
- Our estimate of the fiscal impact of this legislation is that it will cost approximately \$2,399,600 in calendar year 2009.
- A voter could disrupt the process by fraudulently claiming the receipt was incorrect, thereby casting doubt on all votes cast on that machine.
- The existing federal Voluntary Voting Systems Guidelines require audit trails, which all electronic voting machines used in Kansas have, but the standards do not require *voter verifiable* paper audit trails.
- Congress is considering federal legislation that would require VVPATs. If a federal bill would pass, it would probably include funding to save the state and/or Kansas counties the cost of adding VVPATs to existing machines. Also, we should wait to see what standards and requirements for VVPATs are written into the federal legislation rather than writing state requirements now that may conflict with federal requirements.



Kansas Association for the Blind And Visually Impaired

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February 16, 2009

TO: Senate Ethics and Elections

FROM: Michael Byington, C.E.O.

SUBJECT: Senate Bill 191 – Opposition

I find it difficult to have to oppose this bill because Senators Haley and Faust-Goudeau have been extremely careful to write a bill that features all appropriate references to access for people who have disabilities to be able to vote privately, independently, and verifiably. While our Organization certainly wishes to commend their efforts and intent, we must explain why we nonetheless oppose voter verified paper audit trails (VVPATs), and thus must oppose this Legislation.

Kansas has done an excellent job thus far in its implementation of the federal Help America Vote Act (HAVA). Overall, problems have been few, and have been resolvable when they have occurred.

Senate Ethics and Elections Cmte
Date 2-18-2009
Attachment 5

My wife, who is the President of our Organization, is totally blind, and has been from birth. A significant portion of the members of our Organization are also totally blind. In her late 50s, a couple of years ago, was the first time in my wife's life that she has ever had the opportunity to vote without having to tell some other human being how she wanted to vote, and then have them mark her ballot on her behalf. She pronounced the process of voting completely independently, and being able to verify that she had voted for whom she wanted, to be a high point in her adult life thus far. Many of our members feel this way.

We have other members who are visually impaired. They have some vision, but much less than most people have. I fit in that category. For me, and many of my fears as well, we used to try to vote privately using the paper ballots or non-talking voting machines of the past, but we were never fully sure that we had seen all of the ballot properly and truly voted as we had intended. With the machines in use currently, we can be sure we are voting as we intend, and the process indeed still remains quite private.

Senate Bill 191 would in theory retain the right and opportunity for people who can not read the ballot due to visual or other impairments to vote privately, independently and verifyably. In fact, however, it would make the process much more difficult and cumbersome.

The idea behind this bill is that, if an election is extremely close, or there are allegations of fraud, machine malfunction, etc. it would be possible to fall back on the paper ballots to determine who actually won the election. The problem is, once we return to the paper ballot being the final determining factor as to how votes are counted, then the paper ballot itself is what the disabled voter, who can not read the ballot due to vision loss or other disabilities, will have to have private, independent access to in order to have the same level of private, voting access which is currently available.

There are some machines out there that have been designed to provide such continuing access to VVPATs, but their track records are not nearly as dependable as the current range of machines being used in Kansas to accommodate disabled voters and others who choose to vote using an electronic machine.

If the paper ballot is what the final determiner of the vote depends on, then, once the ballot is completed and printed out by whatever voting machine is being used, that paper ballot has to go to an optical character scanning process in order to be accessible to blind, visually impaired, or otherwise disabled voters for verification. This requires the design of a machine that has three times the functions, and usually more than three times the moving parts, of the current accessible voting machines being used in Kansas. This not only creates more opportunities for machine malfunction, but also more complex training for poll workers.

The Kansas Secretary of State, and local election officials have overall done a good job with training poll workers to use the new equipment now found in our polling places. In Kansas, however, we often, quite appropriately, hires citizen poll workers who are often not professional people, and who are not skilled in complex electronic machine troubleshooting.

We believe that the issues of less dependable machines, coupled with more complex machines for poll workers to operate, make VVPATs a bad idea. The intent of Senate Bill 191 is to create a more accurate and verifyable election process. The result, however, we fear might be just the opposite.

Also, there is a lack of proof that killing trees to create VVPATS truly creates more accurate elections. Paper can burn, disappear, or turn to mush when wet, just as computer assisted voting machines can fail, or tabulation machines can fail. The first non-paper voting machines were the old Edison type voting machines used in some of the larger counties in Kansas. Those machines were cumbersome, heavy, and about the size of a mid

60s Buick, but they were used in Kansas for many years, even though the average failure rate with those machines was around seven percent. I am old enough to remember voting on those monsters. We are certainly doing a lot better than that with the non-VVPAT machines of today.

We have an election system that is working pretty well in Kansas. Voting at the polls is accessible to all. We do not need to take a step backwards and re-invent this system. Instead, the Secretary of State is now attempting to move further forward. I serve on a task force he has created to look at improvements that can be made in such systems as vote-by-mail, away voting, etc. Part of the work of this task force will be to insure that these remote voting systems are accessible as well.

I want to close with a true story about a voting experience one of our members had. I will change her name because she does not like to have attention called to herself, and would thus want me to do so. Sandy is a 39 year old mother of three. She has children in the home who are eleven, nine, and seven. She lost absolutely all of her vision a few years ago due to a tumor. Her Husband is a minister and Christian educator, and the family lives in a small Kansas town. Sandy has learned the skills of blindness necessary to skillfully care for her three children, and to ably discharge the usual duties of a minister's wife. When she first lost her vision, she thought that the citizen participation process of voting was over for her. She then learned that she still had the legal right to vote, but that she had to suffer the indignities of taking her husband, another friend, or poll workers into the voting booth with her to read and mark her ballot. As a minister's wife, and a rather private person, none of these options were acceptable to her. She was thus delighted when it was announced that all polling places in the State would have accessible voting machines that she could use privately, independently, and verifiably. It was thus with great optimism that she took her three children to the polling place with her when she went to vote in this last election. She said she wanted her children to see that the citizen participation process of

elections is open to everyone, whether disabled or not. She wanted them to see that their totally blind mother could vote just as independently as anyone else. "We don't think that new accessible voting machine is working right, and we are not sure how to work it anyway," one of the poll workers told her when she got there. She had to vote the old fashioned way by telling poll workers, who were possibly members of her church, how she wanted to vote. With the machines we have now, these stories are unusual. I have asked her to inform the Elections Office of the Secretary of State about the problem so that special attention can be paid to resolve it for future elections, and I hope this young wife and mother takes time out of her busy schedule to provide this information, but if we transition to the VVPAT machines, this rather rare incident will become all the more common.

Oh, and when many, many of those new fangled accessible VVPAT machines fail to work, who do voters blame? Usually they do not blame the Kansas Legislature, The Secretary of State, local election officials, or the federal Congress. They blame the patriotic, disabled citizens who only asked to be able to vote privately, independently, and verifiably just as all other citizens are afforded the right to do. Our members and associates do not want the blame for bad decisions made by others.

Thank you for taking the time to consider my comments. Please contact me if I may provide additional information.

Johnson County Election Office



Brian D. Newby
Election Commissioner

TESTIMONY BEFORE THE SENATE COMMITTEE ON ETHICS AND ELECTIONS

Wednesday, February 18, 2009

Thank you for allowing me to briefly address the committee regarding Senate Bill 191.

I have addressed members of previous House and Senate committees on this issue since 2005. Much has changed since then. One thing that hasn't changed, however, is the financial impact upon Johnson County to retrofit our machines. The full impact in Johnson County includes the purchase of more machines and will cost nearly \$2 million.

Retrofitting our existing fleet of 2,000 machines alone will cost in excess of \$1 million and, because the paper trail apparatus slows down the voting process, we would need at least another 200 machines to match the voting experience we had in 2008. The cost of those machines would be approximately \$600,000.

Since 2005, there has been much activity regarding Voter Verifiable Paper Audit Trails (VVPATs) in various states and at the federal level. While federal paper trail legislation was introduced and strongly pushed in 2007, it did not move out of committee because there wasn't financial commitment behind funding the bill. A replacement bill is being introduced this year by the same U.S. Representative. This bill would require paper ballots and not allow voting machines even if they have Voter Verifiable Paper Audit Trails as mentioned in Senate Bill 191.

If the committee moves ahead with legislation this year, I respectfully ask that the committee be very specific regarding the use of the paper receipts as the official ballot of records for recounts. For instance, the bill includes the phrase "can be used for a recount." Please do not leave it up to political opponents, parties, or courts to determine when the receipts can be used for recounts, when they can't, and what occurs when paper jams result in receipts not being created for all ballots cast on machines.

This will be an issue. Since becoming Johnson County Election Commissioner in 2005, we have had two Kansas House races separated by fewer than five votes. Given the reliability of the printing of the paper receipts, I can envision a hypothetical scenario under this bill where just three receipts jam and are not printed, and a recount of the paper receipts changing the outcome of an election simply because of printer failure. I don't believe that is the intent of this bill, but please be very specific in addressing use of the receipt. The best option, from my perspective, is to not make it the official ballot for recounts.

I stress from an elections integrity standpoint that Johnson County's touch-screen machines have performed well, and we have used touch-screen machines for seven years. Our machines were invented, or even a concept, leading to the cost issue before us.

Senate Ethics and Elections Cmte
Date 2-18-2009
Attachment 6

From an accuracy standpoint, I do not believe the VVPATs are necessary. If it is believed that voter confidence in the overall system may improve with VVPATs, our primary request is that the requirement for VVPATs be matched with proper funding.

As I mentioned, Johnson County has used touch-screen voting machines since 2002. In fact, Johnson County has used voting machines as the primary method of voting for more than 40 years. So, if you are under 65, it is very unlikely that you have ever voted at a polling place in Johnson County, as they do in Kansas City, Missouri, for instance, on a paper ballot and then fed that paper ballot into a scanner, where the results would be tabulated on a data card that is returned to the election office at the end of the night.

I tell you this because of the possibility of the latest federal legislation I mentioned being passed. If the state were to pass this bill without funding, and the possibility of federal legislation requiring paper continues to loom, Johnson County would need to evaluate the merits of upgrading its fleet of machines with VVPATs for \$2 million, only to have those machines be ruled unlawful federally.

Moving to paper-only balloting would then have to become a serious consideration for Johnson County. Paper-voting brings many issues, including higher on-going costs, dependency on natural resources including fuel, and the potential for Minnesota-like operational issues. In Minnesota, three months have passed since the election without a U.S. Senator being named the winner because of disputes over paper ballots.

Also, for Johnson County, an investment in scanners at the polls is estimated at approximately \$4 million, but that's the likely expense Johnson County would face if this legislation passed without funding. It would be too risky, in my opinion, to invest \$2 million in a solution that has the potential to quickly be eliminated by federal legislation.

Thank you for allowing me to speak and I respectfully stand for questions.



Wyandotte County Election Office

Bruce L. Newby, Election Commissioner
Frances D. Sheppard, Assistant Election Commissioner

TESTIMONY BEFORE SENATE COMMITTEE ON ETHICS AND ELECTIONS

Wednesday, February 18, 2009

Thank you for the opportunity to provide written comments concerning Senate Bill No. 191.

Senate Bill No. 191 would require that every direct-recording-electronic (DRE) voting machine in use in Kansas to either be modified to incorporate or include from the manufacturer the capability for producing a voter-verifiable paper audit trail (VVPAT) of every ballot cast. This requirement affects every touch-screen voting machine currently in use.

In Wyandotte County, the primary method for voting is a paper ballot. In 2006, we acquired 100 DRE touch screen voting machines. The DRE does not replace the paper ballot. The DRE provides those voters who desire to do so the option of using the DRE touch screen to vote. Using the touch screen is optional for any voter. Most voters continue to choose the paper ballot. Younger voters and many disabled voters seem to prefer the DRE.

The acquisition of DREs was done to bring voting capabilities in line with the requirements of the Help America Vote Act (HAVA). The DRE provides the disabled voter a physically more convenient method to cast a ballot and, for the blind voter, gives them the opportunity to vote a secret, unassisted ballot by use of an audio ballot and a numbered keypad.

At the time of acquisition, the VVPAT was not required or recommended. If DRE voting machines with VVPAT had been purchased, the difference in cost would have been entirely at county expense. Budgetary considerations prevented spending for a DRE feature that was not required. Further, the DRE was never considered in this county to be anything but a secondary option for voting.

The manufacturer's cost estimate to retrofit our 100 DRE touch screen voting machines is \$71,000.00, which is equivalent to \$710 per unit. To trade in the existing DRE for DRE with VVPAT would cost \$149,090.50. While all of our existing equipment can be retrofitted, there may be other counties which would have to pay a much greater cost to trade up that could be equal to or much greater than \$149,090.50 per 100.

If this bill is passed, it would cost Wyandotte County at least \$71,000.00 to be in compliance by January 1, 2010. With every government budget in great distress from the current economic conditions, this is not a cost Wyandotte County can afford. Even if the economy is much improved, this is not a fiscally prudent expense.

Despite the rhetoric that claims these machines can be compromised, there is no record of any instance in any election in Wyandotte County where anyone has been successful in compromising an election. What we have is a record that supports the accuracy and integrity of voting on the DRE that shows they have never been compromised. Every DRE is thoroughly tested before every election to ensure it produces an exact record of votes cast. Every DRE is tested after every election to ensure it produces an exact record of votes cast.

The DRE, along with all other election equipment, is carefully secured, there is a transfer of custody by signature to the precinct Supervising Judge, the machine is carefully supervised while present in the polling place, and the machine is returned to the Election Office on Election Night by the precinct Supervising Judge with custody being transferred back by signature. The door for the machine memory card is secured by key and this key is never out of the direct control of designated election officials. Security measures are designed to prevent anyone from tampering with or attempting to compromise any voting machine.

Spending \$70,000.00 to assuage the concerns of some that these machines could somehow be compromised is a peculiar choice of how best to spend precious taxpayer dollars. Absent any evidence of an actual compromise that has affected any DRE machine in the actual working environment of an election, this expense would seem to be unwise. Even if there was some evidence of compromise, the best remedy may be much less expensive than that which is being proposed by this bill.

Bruce L. Newby
Election Commissioner
Wyandotte County