

Proposed



SCOTT SCHWAB
Secretary of State

Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594
(785) 296-4564

STATE OF KANSAS

Secretary of State Notice of Hearing on Proposed Administrative Regulation

A public hearing will be conducted at 1:00 p.m. Tuesday, February 16, 2021 in the second-floor auditorium at Memorial Hall, 120 SW 10th Ave., Topeka, Kansas, to provide for the adoption of Kansas Administrative Regulation 7-48-1. This regulation pertains to vote centers.

This 60-day notice of public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed regulation. Comments may be submitted prior to the hearing to Garrett Roe, General Counsel, Office of the Secretary of State, Memorial Hall, First Floor, 120 SW 10th Ave., Topeka, KS 66612-1594, or to garrett.roe@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 Garrett Roe at garrett.roe@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 in order to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Requests for accommodation should be made at least five days in advance of the hearing by contacting Garrett Roe at 785-296-4564 or the Kansas Relay Center at 1-800-766-3777.

K.A.R. 7-48-1 details the process for county election officials to conduct elections using vote centers as outlined in K.S.A. 25-2701.

The regulation sets the legal framework for counties that choose to utilize voting centers in elections. The regulation itself imposes no anticipated economic impact. Any economic impact would be the result of a county election official choosing to utilize voting centers.

Copies of the full text of the regulation and economic impact statement 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 regulation is also available on the Secretary of State's website at <https://www.sos.ks.gov>.

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Article 48. Vote Centers

K.A.R. 7-48-1. Vote centers; plans; report. (a) For purposes of this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) "Election day" means the day for casting ballots for any national, state, county, township, city, and school primary and general election, question-submitted election, or other election authorized by law and conducted by the county election officer.

(2) "Electronic poll book" means the electronic version of the poll book, as described in K.S.A. 25-2507 and amendments thereto, used at a vote center or voting place.

(3) "Vote center" means a voting place where any registered voter in a county with a vote center plan implemented may cast a ballot on election day.

(4) "Voting place" has the meaning specified in K.S.A. 25-2506, and amendments thereto.

(b) Pursuant to K.S.A. 25-2701 and amendments thereto, any county election officer may authorize the use of vote centers allowing all voters within the county to vote at any polling location on election day following submittal of a plan and receipt of approval by the Kansas secretary of state. Once a vote center plan is in effect, each polling location under the jurisdiction of the county election officer shall be a vote center.

(c) The plan specified in subsection (b), which shall be signed by the chairman of the county commission and the county election officer and received by the Kansas secretary of state at least six months before implementation, shall provide the following:

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(1) The implementation date of the first election in which vote centers are to be used.

A county election official shall not utilize vote centers for the first time in a general or primary election in an even-numbered year;

(2) the number of vote centers that will be established and the number of polling places that will be reduced;

(3) the location of each vote center. For each location identified, the plan shall provide the following:

(A) Certification that each location complies with the Americans with disabilities act (ADA) accessibility requirements;

(B) a description of each vote center. The description of each vote center shall include at least the number of voting machines, tables, chairs, and board workers for that vote center location and the number of parking spaces and designated handicap parking spaces available for that vote center location;

(C) a detailed description of all hardware, firmware, and software for all voting equipment and electronic poll books that will be used in the vote center;

(D) a statement that each piece of voting equipment has been certified by the United States election assistance commission and the Kansas secretary of state's office;

(E) a statement acknowledging that each electronic poll book to be used has been successfully used in at least one jurisdiction in the United States before using the poll book at a vote center location;

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(F) a detailed testing plan that provides an estimate of the highest volume of voters at each vote center and certifies that testing has been done to ensure that the vote center can accommodate at least that volume; and

(G) a contingency plan designed to both prevent a disruption of the vote center process and ensure that the election is properly conducted if a disruption occurs. At a minimum, the contingency plan shall address likely impediments that could cause issues at vote centers, including the following:

(i) Inclement weather;

(ii) complete loss of connectivity for any length of time to electronic poll books or voting machines that includes a plan of preventing voters from voting at multiple locations;

(iii) higher than anticipated volumes of voters; and

(iv) unavailability of a vote center;

(4) a description of the methods and standards that the county election official will use to ensure the security of voting conducted at vote centers. As part of these security methods, an electronic poll book shall not be connected in any way to a voting system. The county election official shall also certify that each vote center will have a secure connection that has real-time access to an electronic poll book and prevents any voter from voting more than once at that vote center or at any other vote center during the same election; and

(5) a public outreach plan that involves a local working group designed to inform county citizens of the change to vote centers. This public outreach plan shall include the names of local officials, county residents, and any other individuals that are part of the local working

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group developing and implementing the plan. The public outreach plan shall also describe the activities that the local working group will utilize to educate the public on vote centers.

(d)(1) If a county election officer intends to implement a change to the vote center plan involving the requirements in paragraph (c)(3)(C), the county election officer shall notify the secretary of state no later than 90 days before implementing the change. The notice shall be accompanied by the statements required by paragraphs (c)(3)(D) and (E) and the testing plan and the contingency plan required by paragraphs (c)(3)(F) and (G).

(2) If a county election officer intends to change or close a vote center location, the county election officer shall notify the secretary of state upon the determination being made and any new vote center location being selected. This notice shall be submitted no later than 90 days before the first election in which the vote center location closing or change is to occur. If the 90-day advance notice is impracticable, the county election officer may seek approval from the secretary of state to waive the 90-day requirement, but notice shall still be provided before implementing the changes identified in this paragraph.

(3) If a county election officer intends to change the vote center plan involving the security methods and standards required in paragraph (c)(4), the county election officer shall notify the secretary of state no later than 90 days before implementation of the change. If the 90-day advance notice is impracticable, the county election officer may seek approval from the secretary of state to waive the 90-day requirement.

(e) Following the first year that a vote center plan is implemented, the county election officer shall submit the county's vote center plan, which shall include any updates or changes since last submission to the secretary of state, six months before the next August primary

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election occurring in the year identified in K.S.A. 25-101(a)(1), and amendments thereto. The county election officer shall then resubmit the plan at the same time every four years.

(f) The process for casting a ballot at each vote center shall comply with all statutory requirements in Kansas, including the provisions in K.S.A. 25-2901 et seq., and amendments thereto.

(g) Following the first election in which a county utilizes vote centers, the county election officer shall submit to the secretary of state a report that includes the following:

- (1) The number of voters and provisional voters who utilized each vote center;
- (2) the estimated time that a voter waited during peak voting hours at each vote center; and
- (3) any logistical, voting machine, or network problems encountered at any vote center.

(h) If a county election officer in consultation with the county commissioners wants to return to a precinct model of voting rather than the vote center model, the county election officer and the county commissioners shall submit a plan to the Kansas secretary of state. The plan, which shall be signed by the chairman of the county commission and the county election officer and received by the Kansas secretary of state at least six months before implementation, shall provide the following:

- (1) The implementation date of the first election in which precinct model voting will be used;
- (2) the number of polling places that will be used;

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(3) the location of each polling place. For each location identified, the plan shall be accompanied by the following:

(A) Statement of compliance with ADA accessibility requirements;

(B) a description of each polling place. The description of each polling place shall include at least the number of voting machines, tables, chairs, and board workers expected to be used at that polling place and the number of parking spaces and designated handicap parking spaces available for that polling place;

(C) a detailed description of all hardware, firmware, and software for all voting equipment and electronic poll books that will be used in the polling places;

(D) a statement that each piece of voting equipment has been certified by the United States election assistance commission and the Kansas secretary of state's office; and

(E) a statement acknowledging that each electronic poll book to be used has been successfully used in at least one jurisdiction in the United States before being used in a polling place; and

(4) a public outreach plan that involves a local working group designed to inform county citizens of the change back to precinct voting. This public outreach plan shall include the names of local officials, county residents, and any other individuals that are part of the local working group developing and implementing the plan. The public outreach plan shall also describe the activities that the local working group will utilize to educate the public on the change back to precinct voting. (Authorized by and implementing K.S.A. 2020 Supp. 25-2701; effective P-_____.)

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**Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget**

Kansas Secretary of State

Agency

Garrett Roe

Agency Contact

785-296-8473

Contact Phone Number

7-48-1

K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to:

Division of the Budget
900 SW Jackson, Room 504-N
Topeka, KS 66612

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

The proposed rule and regulation will provide guidance on how county election officials can implement vote centers for Kansas elections. A vote center is a polling location at which any registered voter in a county may vote, regardless of the voter's assigned polling place.

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

N/A

III. Agency analysis specifically addressing following:

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

This rule and 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 and regulation and on the state economy as a whole;

The rule and regulation only governs how a county can implement vote centers. No county is required to operate vote centers under Kansas law. The only costs that would occur for a county would be costs associated with election administration if a county opted to operate vote centers.

C. Businesses that would be directly affected by the proposed rule and regulation;

N/A

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

The benefit to this rule and regulation is that it sets a framework for election security and other election related issues with which

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counties must comply prior to implementing vote centers. Counties will only incur costs if they opt to utilize vote centers.

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;

The Kansas Secretary of State ("KSOS") formed a working group that consisted of numerous county election officials and other election experts to obtain input on what they believed should be required for counties to operate vote centers. After drafting the regulations, KSOS provided the same elections officials an opportunity to provide input or raise concerns about the proposed regulations. Two key components that KSOS included in the regulation involve counties must meet to implement vote centers as a way to protect voters. The regulation provides that vote centers may only be implemented for the first time in odd years; this requirement lessens any impact a new system of voting would have on voters by requiring vote centers to be implemented initially during municipal elections. The regulation also requires sufficient notice to voters to inform them of the vote center changes.

F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

This is impossible to quantify. Any costs that may occur will be different for each county and will only be incurred if counties choose utilize vote centers. If a county does not implement vote centers, this regulation has no effect on that county.

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES NO

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

N/A

Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period 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.

YES NO

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

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League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

Any expenditures for a county is dependent upon a county opting to change its voting procedures to implement vote centers. The regulation, by itself, does not require any expenditures by counties.

- 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).**

See answer to paragraph E.

- I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).**

N/A

