

SENATE BILL No. 259

By Committee on Federal and State Affairs

2-16

1 AN ACT concerning elections; prohibiting the use of ballot copies or
2 images in election audits and recounts; setting a deadline of 7:00 p.m.
3 on the day of the election for the receipt of all advance ballots by the
4 office of the county election officer; requiring the use of paper ballots
5 and hand counting of ballots for all elections; providing for legislative
6 oversight of elections with respect to certain matters; mandating that
7 election records be publicly available and the creation of certain
8 additional election records pertaining to ballots by the county election
9 officer; establishing use of a uniform paper for the printing of ballots
10 for all elections; amending K.S.A. 25-1132, 25-3107 and 25-4413 and
11 K.S.A. 2022 Supp. 25-2912 and 25-3009 and repealing the existing
12 sections.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 25-1132 is hereby amended to read as follows: 25-
16 1132. (a) All advance voting ballots that are received in the office of the
17 county election officer or any polling place within the county not later than
18 ~~the hour for closing of the polls 7:00 p.m.~~ on the date of any election
19 specified in K.S.A. 25-1122(f), and amendments thereto, shall be delivered
20 by the county election officer to the appropriate special election board
21 provided for in K.S.A. 25-1133, and amendments thereto.

22 ~~(b) Subject to the deadline for receipt by the office of the county~~
23 ~~election officer as set forth in this subsection, all advance voting ballots~~
24 ~~received by mail by the office of the county election officer after the~~
25 ~~closing of the polls on the date of any election specified in K.S.A. 25-~~
26 ~~1122(f), and amendments thereto, and which are postmarked or are~~
27 ~~otherwise indicated by the United States postal service to have been~~
28 ~~mailed on or before the close of the polls on the date of the election, shall~~
29 ~~be delivered by the county election officer to a special election board or~~
30 ~~the county board of canvassers, as determined by the secretary of state, for~~
31 ~~canvassing in a manner consistent, as nearly as may be, with other advance~~
32 ~~voting ballots. The deadline for the receipt by mail of the advance voting~~
33 ~~ballots by the office of the county election officer shall be the last delivery~~
34 ~~of mail by the United States postal service 7:00 p.m. on the third day~~
35 ~~following the date of the election.~~

36 (c) The secretary of state shall adopt rules and regulations to

1 implement this ~~subsection~~ *section*.

2 Sec. 2. K.S.A. 2022 Supp. 25-2912 is hereby amended to read as
3 follows: 25-2912. (a) (1) (A) ~~All voting systems used for~~ elections in this
4 state held on or after January 1, 2024, shall require the use of an
5 individual, durable, voter-verified paper ballot with a distinctive
6 watermark *and serial number* established by the secretary of state. *The*
7 *watermark and serial numbering system shall be approved by the*
8 *legislature*. The voter's ballot shall be:

9 (i) *Marked by hand* by the voter, or by a person assisting the voter as
10 otherwise permitted by law, ~~either by hand or by use of a voting machine~~
11 ~~that is a non-tabulating paper ballot marking or printing device or system~~
12 ~~that may be electromechanical or electronic;~~

13 (ii) made available to the voter for inspection and verification by the
14 voter after the voter has marked the ballot but before the voter's vote is
15 cast and counted, that may be spoiled by the voter if it fails to reflect the
16 voter's choices and that permits the voter to cast a new paper ballot; and

17 (iii) ~~canvassed by hand or read and tabulated by vote tabulating~~
18 ~~equipment consisting of optical scanning equipment or other counting~~
19 ~~equipment that counts and tabulates paper ballots.~~

20 (B) ~~The voting system shall provide the voter~~ *shall be provided* with
21 an opportunity to correct any error on the paper ballot before the paper
22 ballot is secured and preserved.

23 (2) ~~The voting system shall not preserve the paper ballots~~ *shall not be*
24 *preserved* in any manner that makes it possible, at any time after the ballot
25 has been cast, to associate a voter with the record of the voter's vote
26 without the voter's consent.

27 (3) The paper ballot shall constitute the official ballot and shall be
28 preserved and used as the official ballot suitable for purposes of any audit
29 or recount conducted with respect to any election ~~in which the voting~~
30 ~~system is used~~. Each paper ballot shall be counted by hand in any recount
31 conducted with respect to any election, ~~unless the requestor of a recount~~
32 ~~pursuant to K.S.A. 25-3107, and amendments thereto, elects not to have~~
33 ~~the ballots counted by hand~~. *Copies or images of cast paper ballots shall*
34 *not be used for purposes of any audit or recount*.

35 (4) ~~In the event of any inconsistencies or irregularities between any~~
36 ~~electronic vote tallies and the vote tallies determined by counting by hand~~
37 ~~the paper ballots cast~~. The paper ballots as counted by hand shall be the
38 true and correct record of the votes cast.

39 (b) The use of poll books not requiring a hand-written signature shall
40 be prohibited.

41 (c) (1) *All available election records shall be made available for*
42 *public inspection at least 72 hours prior to the certification of any*
43 *election, including any audit or recount records, and subsequent to an*

1 election.

2 (2) For purposes of paragraph (1), "election records" includes, but is
3 not limited to, chain-of-custody documents, polling books, drop-box
4 surveillance videos, paper ballots or electronic or paper copies of ballots,
5 advance voting records or election audit or recount records. "Election
6 records" does not include any record that, after redaction, may enable, by
7 itself or in combination with another election record or any public record,
8 the identification of the voter of a particular ballot.

9 (d) For purposes of this section and legislative oversight of state and
10 local elections, "approval by the legislature" means that the secretary of
11 state shall give notice to advise the chairperson of the legislative
12 coordinating council of a decision of the secretary requiring legislative
13 approval pursuant to state law within one business day after the day the
14 decision is made. The chairperson of the legislative coordinating council
15 shall call a meeting of the council for purposes of reviewing the decision
16 of the secretary of state. The secretary of state's decision may be approved
17 or revoked at any time by concurrent resolution of the legislature or, when
18 the legislature is not in session or is adjourned during session for three or
19 more calendar days, the secretary of state's decision may be approved or
20 revoked by the legislative coordinating council with the affirmative vote of
21 the members thereof. The secretary of state's decision shall be deemed to
22 have been approved unless and until the legislature or legislative
23 coordinating council revokes the decision. For a period of 30 calendar
24 days before any election, such revocation shall occur not later than three
25 calendar days after the day that the secretary of state gives notice of the
26 secretary's decision to the chairperson of the legislative coordinating
27 council, otherwise the decision shall be deemed approved for such
28 election.

29 (e) The paper used for ballots shall be uniform for all elections in
30 this state and approved by the legislature. The county election officer shall
31 cause a record to be made of all ballots printed, issued, voted, lost or
32 destroyed to enable a full accounting and reconciliation of all ballots
33 before and after an election is made. Before and after the election, the
34 paper used for ballots, the actual printed ballots and such records of the
35 county election officer shall be subject to inspection by the public and
36 audit, inspection and approval by the legislature. No record shall be made
37 that may enable the identification of the voter of a particular ballot either
38 by itself or in combination with another election record or any public
39 record.

40 (f) On or before January 1, 2023, the secretary of state shall adopt
41 rules and regulations to implement the provisions of this section. Rules
42 and regulations adopted pursuant to this section after July 1, 2024, shall
43 be subject to the approval of the legislature.

1 Sec. 3. K.S.A. 2022 Supp. 25-3009 is hereby amended to read as
2 follows: 25-3009.(a) After an election and prior to the meeting of the
3 county board of canvassers to certify the official election results for any
4 election in which the canvassers certify the results, the county election
5 officer shall conduct a manual audit or tally of each vote cast, regardless of
6 the method of voting, in 1% of all precincts, with a minimum of one
7 precinct located within the county. The precinct or precincts shall be
8 randomly selected and the selection shall take place after the election.

9 (b) (1) The audit shall be performed manually and shall review all
10 paper ballots selected pursuant to subsection (a). *Copies or images of cast*
11 *paper ballots shall not be used for tabulation of votes or for purposes of*
12 *the audit.* The audit shall be *live streamed, recorded and* performed by a
13 sworn election board consisting of bipartisan trained board members. The
14 county election officer shall determine the members of the sworn election
15 board who will conduct the audit.

16 (2) The audit shall review contested races as follows:

17 (A) In presidential election years:

- 18 (i) One federal race;
- 19 (ii) one state legislative race; and
- 20 (iii) one county race.

21 (B) In even-numbered, non-presidential election years:

- 22 (i) One federal race;
- 23 (ii) one statewide race;
- 24 (iii) one state legislative race; and
- 25 (iv) one county race.

26 (C) In even-numbered election years, any federal, statewide or state
27 legislative race that is within ~~1%~~ 2.5% of the total number of votes cast
28 tallied on election night, as determined by the secretary of state *and*
29 *approved by the legislature as provided by K.S.A. 2022 Supp. 25-2912,*
30 *and amendments thereto,* shall be audited. The county election officer shall
31 conduct the audit in the manner set forth in subsection (a) in ~~10%~~ 25% of
32 all county precincts in the specified race, with a minimum of one precinct
33 in the county. The precincts audited pursuant to this subsection shall be in
34 addition to the precincts audited under subsections (2)(A) and (B).

35 (D) In odd-numbered election years, two local races will be randomly
36 selected, and the selection shall take place after the election.

37 (c) At least five days prior to the audit, notice of the time and location
38 of the audit shall be provided to the public on the official county website.
39 The audit shall be conducted in a public setting. Any candidate or entity
40 who is authorized to appoint a poll agent may appoint a poll agent for the
41 audit.

42 (d) The results of the audit shall be compared to the unofficial
43 election night returns and a report shall be submitted to the county election

1 office and to the secretary of state's office prior to the meeting of the
2 county board of canvassers. If a discrepancy is reported between the audit
3 and the unofficial returns and cannot be resolved, the county election
4 officer or the secretary of state ~~may~~ shall require audits of ~~additional~~ all
5 precincts. Once the audit has been completed, the results of the audit shall
6 be used by the county board of canvassers when certifying the official
7 election results.

8 (e) Upon publication of the notice of the audit pursuant to subsection
9 (c), the signed and certified official abstracts required by K.S.A. 25-3006,
10 and amendments thereto, shall be made available by the county election
11 office for review by any authorized poll agent. Such abstracts shall be
12 from all precincts and shall not be limited to those precincts that are
13 subject to the audit. The abstracts shall be available for review until
14 commencement of the original canvass.

15 (f) The secretary of state, *with the approval of the legislature as*
16 *provided by K.S.A. 2022 Supp. 25-2912, and amendments thereto*, shall
17 adopt rules and regulations governing the conduct and procedure of the
18 audit, including the random selection of the precincts and offices involved
19 in the audit.

20 Sec. 4. K.S.A. 25-3107 is hereby amended to read as follows: 25-
21 3107. (a) At the time of commencement of any canvass by the county
22 board of canvassers the county election officer shall present to the county
23 board of canvassers the preliminary abstracts of election returns, together
24 with the ballots and records returned by the election boards and, as
25 provided by rules and regulations adopted by the secretary of state as
26 authorized by K.S.A. 25-1132(b), and amendments thereto, advance voting
27 ballots received after the closing of the polls pursuant to K.S.A. 25-
28 1132(b), and amendments thereto. The county board of canvassers shall
29 inspect and check the records presented by the county election officer and
30 shall hear any questions which the county election officer believes
31 appropriate for determination of the board. The county board of canvassers
32 shall do what is necessary to obtain an accurate and just canvass of the
33 election and shall finalize the preliminary abstract of election returns by
34 making any needed changes, and certifying its authenticity and accuracy.
35 The certification of the county board of canvassers shall be attested by the
36 county election officer. Neither the county board of canvassers nor the
37 county election officer shall open or unseal sacks or envelopes of ballots,
38 except as is required by K.S.A. 25-409, 25-1136 and 25-1337, and
39 amendments thereto, or other specific provision of law or as is authorized
40 to carry out a recount under subsection (b), or as authorized under
41 subsection (e).

42 (b) ~~If a majority of the members~~ *any member* of the county board of
43 canvassers shall determine that there are manifest errors appearing on the

1 face of the poll books of any election board, which might make a
2 difference in the result of any election, or if any candidate shall request the
3 recount of the ballots cast in all or in only specified voting areas for the
4 office for which the person is a candidate, or if any registered elector who
5 cast a ballot in a question submitted an election requests a recount in all or
6 only specified voting areas to determine the result of the election, the
7 county board of canvassers shall cause a special election board appointed
8 by the county election officer to meet under the supervision of the county
9 election officer and recount the ballots with respect to any office or
10 question submitted specified by the county board of canvassers or
11 requested by the candidate or elector. ~~If a recount is required in a county~~
12 ~~that uses optical scanning systems as defined in K.S.A. 25-4601 et seq.,~~
13 ~~and amendments thereto, or electronic or electromechanical voting~~
14 ~~systems, as defined in K.S.A. 25-4401, and amendments thereto,~~ The
15 method of conducting the recount shall be at the discretion of the person
16 requesting the recount *by hand count*. The county election officer shall not
17 be a member of the special election board. Before the special election
18 board meets to recount the ballots upon a properly filed request, the party
19 who makes the request shall file with the county election officer a bond,
20 with security to be approved by the county or district attorney, conditioned
21 to pay all costs incurred by the county in making the recount. In the event
22 that the candidate requesting the recount is declared the winner of the
23 election as a result of the recount, or if as a result of the recount a question
24 submitted is overturned, no action shall be taken on the person's bond and
25 the county shall bear the costs incurred for the recount. Any recount must
26 be requested in writing and filed with the county election officer not later
27 than 5 p.m. on the day following the meeting of the county board of
28 canvassers. The request shall specify which voting areas are to be
29 recounted. The county election officer shall immediately notify any
30 candidate involved in the election for which the recount is requested; or
31 shall notify the county chairperson of each candidate's party. ~~Any~~
32 ~~recount shall be initiated not later than the following day and shall be~~
33 ~~completed not later than 5 p.m. on the fifth day following the filing of the~~
34 ~~request for a recount, including Saturdays, Sundays and holidays. Upon~~
35 ~~completion of any recount under this subsection, the election board shall~~
36 ~~package and reseal the ballots as provided by law and the county board of~~
37 ~~canvassers shall complete its canvass. The members of the special election~~
38 ~~board shall be paid as prescribed in K.S.A. 25-2811, and amendments~~
39 ~~thereto, for time actually spent making the recount.~~

40 (c) (1) The provisions of this subsection shall apply to candidates at
41 any election for:

- 42 (A) Any state or national office elected on a statewide basis;
- 43 (B) the office of president or vice president of the United States;

1 (C) the office of members of *the* United States house of
2 representatives;

3 (D) *the* office of members of *the* state senate or house of
4 representatives whose district is located in two or more counties; and

5 (E) *the* office of members of *the* state board of education.

6 (2) Any candidate may request a recount in one or more counties.
7 Any such recount must be requested in writing and filed with the secretary
8 of state not later than 5 p.m. on the second Friday following the election.
9 The request shall specify which counties are to be recounted. ~~If a recount~~
10 ~~is required in a county that uses optical scanning systems as defined in~~
11 ~~K.S.A. 25-4601, and amendments thereto, or electronic or~~
12 ~~electromechanical voting systems, as defined in K.S.A. 25-4401, and~~
13 ~~amendments thereto;~~ The method of conducting the recount shall be ~~at the~~
14 ~~discretion of the person requesting the recount~~ *by hand count*. Except as
15 provided by this subsection and subsection (d), the person requesting the
16 recount shall file with the secretary of state a bond, with security to be
17 approved by the secretary of state, conditioned to pay all costs incurred by
18 the counties and the secretary of state in making the recount. The amount
19 of the bond shall be determined by the secretary of state. A candidate
20 described in subsection (c)(1)(D) and (E) may post a bond as provided by
21 subsection (b) in lieu of the bond required by this subsection. In the event
22 that the candidate requesting the recount is declared the winner of the
23 election as a result of the recount, no action shall be taken on the
24 candidate's bond and the counties shall bear the costs incurred for the
25 recount.

26 (3) The secretary of state immediately shall notify each county
27 election officer affected by the recount and any candidate involved in the
28 election for which the recount is requested. If the candidate cannot be
29 reached, then the secretary of state shall notify the state chairperson of
30 such candidate's party. Any such recount shall be conducted under the
31 supervision of the county election officers at the direction of the secretary
32 of state, and shall be initiated not later than the following day and shall be
33 completed not later than 5 p.m. on the fifth day following the filing of the
34 request for a recount, including Saturdays, Sundays and holidays. Each
35 county election officer involved in the recount shall appoint a special
36 election board to recount the ballots. The members of the special election
37 board shall be paid as prescribed in K.S.A. 25-2811, and amendments
38 thereto, for time actually spent making the recount. Upon completion of
39 any recount under this subsection, the special election board in each
40 county shall package and reseal the ballots as provided by law and the
41 county board of canvassers shall complete its canvass. The county election
42 officer in each county immediately shall certify the results of the recount
43 to the secretary of state.

1 (d) (1) The provisions of this subsection shall apply to candidates at
2 general elections for:

3 (A) Any state or national office elected on a statewide basis;

4 (B) the office of president or vice president of the United States;

5 (C) the office of members of *the* United States house of
6 representatives;

7 (D) *the* office of members of *the* state senate or house of
8 representatives; and

9 (E) *the* office of members of *the* state board of education.

10 (2) Whenever the election returns reflect that a candidate for office
11 was defeated by ~~½~~ 1% or less of the total number of votes cast and if
12 the candidate requests a recount in one or more counties of the ballots, the
13 state shall bear the cost of any recount ~~performed using the method by~~
14 ~~which the ballots were counted originally.~~ *Any recount shall be performed*
15 *by hand counting of the original voter-verified paper ballot.*

16 (3) Not later than 60 days following a recount conducted pursuant to
17 this subsection, the board of county commissioners of each county in
18 which the recount occurred shall certify to the secretary of state the
19 amount of all necessary direct expenses incurred by the county. Payment
20 for such expenses shall be made to the county treasurer of the county upon
21 warrants of the director of accounts and reports pursuant to vouchers
22 approved by the secretary of state. Upon receipt of such payment and
23 reimbursements, the county treasurer shall deposit the entire amount
24 thereof in the county election fund, if there is one and if there is not then
25 the county general fund.

26 (4) The secretary of state, with the advice of the director of accounts
27 and reports, shall determine the correctness of each amount certified under
28 this section and adjust any discrepancies discovered before approving
29 vouchers for payment to any county.

30 (e) Procedures for canvassing and challenging advance voting ballots
31 received by mail after the closing of the polls pursuant to K.S.A. 25-
32 1132(b), and amendments thereto, shall be as set forth in rules and
33 regulations adopted by the secretary of state as authorized by K.S.A. 25-
34 1132(b), and amendments thereto.

35 (f) *Copies or images of cast ballots shall not be used for purposes of*
36 *any recount. Recount election records shall be made available to the*
37 *public as provided by K.S.A. 2022 Supp. 25-2912, and amendments*
38 *thereto.*

39 (g) *The amount of any bond required under this section shall be*
40 *determined based on a calculation of the cost per ballot multiplied by the*
41 *number of ballots to be recounted. Costs shall not include salaries or*
42 *wages paid to county election officers or staff for time spent making the*
43 *recount or costs for the use of available resources of the county. The cost*

1 *for volunteers for hand counting or other necessary resources required to*
2 *be procured by the county to accomplish the recount shall be included.*
3 *The amount of the bond shall be subject to the approval of the legislature*
4 *as provided by K.S.A. 2022 Supp. 25-2912, and amendments thereto.*

5 Sec. 5. K.S.A. 25-4413 is hereby amended to read as follows: 25-
6 4413. In the case of a recount, the ballots shall be recounted in the manner
7 provided by K.S.A. 25-4412, and amendments thereto. *Copies or images*
8 *of cast ballots shall not be used for purposes of a recount.*

9 Sec. 6. K.S.A. 25-1132, 25-3107 and 25-4413 and K.S.A. 2022 Supp.
10 25-2912 and 25-3009 are hereby repealed.

11 Sec. 7. This act shall take effect and be in force from and after its
12 publication in the statute book.