SENATE BILL No. 259

By Committee on Federal and State Affairs

2-16

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

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

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

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

(c) The secretary of state shall adopt rules and regulations to
implement this subsection section.

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

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

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

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

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

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

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

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

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

(c) (1) All available election records shall be made available for public inspection at least 72 hours prior to the certification of any election, including any audit or recount records, and subsequent to an
(2) For purposes of paragraph (1), "election records" includes, but is not limited to, chain-of-custody documents, polling books, drop-box surveillance videos, paper ballots or electronic or paper copies of ballots, advance voting records or election audit or recount records. "Election records" does not include any record that, after redaction, may enable, by itself or in combination with another election record or any public record, the identification of the voter of a particular ballot.

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

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

(f) On or before January 1, 2023, the secretary of state shall adopt rules and regulations to implement the provisions of this section. Rules and regulations adopted pursuant to this section after July 1, 2024, shall be subject to the approval of the legislature.
Sec. 3. K.S.A. 2022 Supp. 25-3009 is hereby amended to read as follows: 25-3009.(a) After an election and prior to the meeting of the county board of canvassers to certify the official election results for any election in which the canvassers certify the results, the county election officer shall conduct a manual audit or tally of each vote cast, regardless of the method of voting, in 1% of all precincts, with a minimum of one precinct located within the county. The precinct or precincts shall be randomly selected and the selection shall take place after the election.

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

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

(A) In presidential election years:

(i) One federal race;

(ii) one state legislative race; and

(iii) one county race.

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

(i) One federal race;

(ii) one statewide race;

(iii) one state legislative race; and

(iv) one county race.

(C) In even-numbered election years, any federal, statewide or state legislative race that is within 4% 2.5% of the total number of votes cast tallied on election night, as determined by the secretary of state and approved by the legislature as provided by K.S.A. 2022 Supp. 25-2912, and amendments thereto, shall be audited. The county election officer shall conduct the audit in the manner set forth in subsection (a) in 10% 25% of all county precincts in the specified race, with a minimum of one precinct in the county. The precincts audited pursuant to this subsection shall be in addition to the precincts audited under subsections (2)(A) and (B).

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

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

(d) The results of the audit shall be compared to the unofficial election night returns and a report shall be submitted to the county election
office and to the secretary of state's office prior to the meeting of the county board of canvassers. If a discrepancy is reported between the audit and the unofficial returns and cannot be resolved, the county election officer or the secretary of state may require audits of all precincts. Once the audit has been completed, the results of the audit shall be used by the county board of canvassers when certifying the official election results.

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

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

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

(b) If a majority of the members any member of the county board of canvassers shall determine that there are manifest errors appearing on the
face of the poll books of any election board, which might make a
difference in the result of any election, or if any candidate shall request the
recount of the ballots cast in all or in only specified voting areas for the
office for which the person is a candidate, or if any registered elector who
cast a ballot in a question submitted an election requests a recount in all or
only specified voting areas to determine the result of the election, the
county board of canvassers shall cause a special election board appointed
by the county election officer to meet under the supervision of the county
election officer and recount the ballots with respect to any office or
question submitted specified by the county board of canvassers or
requested by the candidate or elector. If a recount is required in a county
that uses optical scanning systems as defined in K.S.A. 25-4601 et seq.,
and amendments thereto, or electronic or electromechanical voting
systems, as defined in K.S.A. 25-4401, and amendments thereto, the
method of conducting the recount shall be at the discretion of the person
requesting the recount by hand count. The county election officer shall not
be a member of the special election board. Before the special election
board meets to recount the ballots upon a properly filed request, the party
who makes the request shall file with the county election officer a bond,
with security to be approved by the county or district attorney, conditioned
to pay all costs incurred by the county in making the recount. In the event
that the candidate requesting the recount is declared the winner of the
election as a result of the recount, or if as a result of the recount a question
submitted is overturned, no action shall be taken on the person's bond and
the county shall bear the costs incurred for the recount. Any recount must
be requested in writing and filed with the county election officer not later
than 5 p.m. on the day following the meeting of the county board of
canvassers. The request shall specify which voting areas are to be
recounted. The county election officer shall immediately notify any
candidate involved in the election for which the recount is requested; or
shall notify the county chairperson of each candidate's party. Any— the
recount shall be initiated not later than the following day and shall be
completed not later than 5 p.m. on the fifth day following the filing of the
request for a recount, including Saturdays, Sundays and holidays. Upon
completion of any recount under this subsection, the election board shall
package and reseal the ballots as provided by law and the county board of
canvassers shall complete its canvass. The members of the special election
board shall be paid as prescribed in K.S.A. 25-2811, and amendments thereto,
for time actually spent making the recount.
(c) (1) The provisions of this subsection shall apply to candidates at
any election for:
(A) Any state or national office elected on a statewide basis;
(B) the office of president or vice president of the United States;
(C) the office of members of the United States House of Representatives;

(D) the office of members of the state Senate or House of Representatives whose district is located in two or more counties; and

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

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

(3) The secretary of state immediately shall notify each county election officer affected by the recount and any candidate involved in the election for which the recount is requested. If the candidate cannot be reached, then the secretary of state shall notify the state chairperson of such candidate's party. Any such recount shall be conducted under the supervision of the county election officers at the direction of the secretary of state, and shall be initiated not later than the following day and shall be completed not later than 5 p.m. on the fifth day following the filing of the request for a recount, including Saturdays, Sundays and holidays. Each county election officer involved in the recount shall appoint a special election board to recount the ballots. The members of the special election board shall be paid as prescribed in K.S.A. 25-2811, and amendments thereto, for time actually spent making the recount. Upon completion of any recount under this subsection, the special election board in each county shall package and reseal the ballots as provided by law and the county board of canvassers shall complete its canvass. The county election officer in each county immediately shall certify the results of the recount to the secretary of state.
(d) (1) The provisions of this subsection shall apply to candidates at general elections for:

(A) Any state or national office elected on a statewide basis;
(B) the office of president or vice president of the United States;
(C) the office of members of the United States house of representatives;
(D) the office of members of the state senate or house of representatives; and
(E) the office of members of the state board of education.

(2) Whenever the election returns reflect that a candidate for office was defeated by \( \frac{1}{2} \) of 1% or less of the total number of votes cast and if the candidate requests a recount in one or more counties of the ballots, the state shall bear the cost of any recount performed using the method by which the ballots were counted originally. Any recount shall be performed by hand counting of the original voter-verifiable paper ballot.

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

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

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

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

(g) The amount of any bond required under this section shall be determined based on a calculation of the cost per ballot multiplied by the number of ballots to be recounted. Costs shall not include salaries or wages paid to county election officers or staff for time spent making the recount or costs for the use of available resources of the county. The cost...
for volunteers for hand counting or other necessary resources required to
be procured by the county to accomplish the recount shall be included.
The amount of the bond shall be subject to the approval of the legislature
as provided by K.S.A. 2022 Supp. 25-2912, and amendments thereto.

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

25-2912 and 25-3009 are hereby repealed.

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