

HOUSE BILL No. 2158

By Representative Miller

1-25

1 AN ACT concerning elections; dealing with advance voting procedures;
2 amending K.S.A. 25-1132, 25-1133, 25-1134 and 25-1136 and K.S.A.
3 2016 Supp. 25-3107 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 25-1132 is hereby amended to read as follows: 25-
7 1132. (a) All advance voting ballots which are received in the office of the
8 county election officer **{or the polling place}** not later than the hour for
9 closing of the polls on the date of any election specified in ~~subsection (b)~~
10 ~~of~~ K.S.A. 25-1122(f), and amendments thereto, shall be delivered by the
11 county election officer to the appropriate special election board provided
12 for in K.S.A. 25-1133, and amendments thereto.

13 (b) *Subject to the deadline for receipt by the office of the county*
14 *election officer as set forth in this subsection, all advance voting ballots*
15 *received by mail by the office of the county election officer after the*
16 *closing of the polls on the date of any election specified in K.S.A. 25-*
17 *1122(f), and amendments thereto, and which are postmarked **or are***
18 **otherwise indicated by the United States postal service to have been**
19 **mailed on or before the date of the election, shall be delivered by the**
20 *county election officer to a special election board or the county board of*
21 *canvassers, as determined by the secretary of state, for canvassing in a*
22 *manner consistent, as nearly as may be, with other advance voting ballots.*
23 *The deadline for the receipt by mail of the advance voting ballots by the*
24 *office of the county election officer shall be the last delivery of mail by the*
25 *United States postal service on the ~~fourth~~ **third** day following the date of*
26 *the election, unless additional time is permitted by the secretary. The*
27 *secretary of state shall adopt rules and regulations to implement this*
28 *subsection.*

29 Sec. 2. K.S.A. 25-1133 is hereby amended to read as follows: 25-
30 1133. (a) The county election officer of every county, which does not use
31 voting machines, optical scanning systems or electronic or
32 electromechanical voting systems, shall establish a special election board.
33 ~~Such~~ The special election board shall consist of the election board
34 members in the precinct in which is located the office of the county

1 election officer or the members of such additional election boards of the
2 county as the county election officer may designate. ~~Such~~ The special
3 election board shall meet at the voting place in the precinct in which is
4 located the office of the county election officer on election day, *or as*
5 *provided by rules and regulations adopted by the secretary of state as*
6 *authorized by K.S.A. 25-1132(b), and amendments thereto.*

7 (b) In counties where voting machines, optical scanning systems or
8 electronic or electromechanical voting systems are used, the county
9 election officer shall appoint a special election board consisting of at least
10 three members. Such members shall be registered voters of ~~such~~ the
11 county. ~~Such~~ The special election board shall meet in the office of the
12 county election officer on election day or at such time before election day
13 as the county election officer deems necessary, *or as provided by rules and*
14 *regulations adopted by the secretary of state as authorized by K.S.A. 25-*
15 *1132(b), and amendments thereto.*

16 Sec. 3. K.S.A. 25-1134 is hereby amended to read as follows: 25-
17 1134. (a) The county election officer in counties which have a special
18 election board established under K.S.A. 25-1133, and amendments thereto,
19 shall deliver all advance voting ballots to the special election board when
20 ~~such~~ the special election board convenes, and thereafter as advance voting
21 ballots are received during election day, until the time for closing of the
22 polls, *or as provided by rules and regulations adopted by the secretary of*
23 *state as authorized by K.S.A. 25-1132(b), and amendments thereto.*

24 (b) The special election board may conduct the original canvass of
25 advance voting ballots when the board convenes, but shall not complete
26 final tabulation prior to election day.

27 Sec. 4. K.S.A. 25-1136 is hereby amended to read as follows: 25-
28 1136. (a) The vote of any advance voting voter may be challenged in the
29 same manner as other votes are challenged, as nearly as may be, and the
30 judges of the special election board shall determine the validity of each
31 advance voting ballot. Whenever the judges determine that the form
32 accompanying an advance voting ballot is insufficient, or that the voter is
33 not a registered voter, or the challenge is otherwise sustained, the advance
34 voting ballot envelope shall not be opened. In all such cases, the judges
35 shall endorse on the back of the envelope the word "provisional" and state
36 the reason for sustaining the challenge.

37 (b) Any advance voting ballot envelope which has not been signed
38 shall not be opened, and no vote on the ballot therein shall be counted.
39 ~~Such~~ The envelope or ballot shall be challenged in the same manner in
40 which other votes are challenged.

41 (c) Whenever it shall be made to appear to the judges of a special
42 election board by sufficient proof that an advance voting voter has died,
43 the envelope containing the advance voting ballot of ~~such~~ the deceased

1 voter shall not be opened. In all such cases, the judges shall endorse on the
2 back of the envelope the word "provisional" and the reason for sustaining
3 the challenge.

4 (d) If objection is made to an advance voting ballot because of form,
5 condition, or marking thereof, the ballot shall be marked "void" if the
6 judges uphold the objection to the entire ballot, and otherwise shall be
7 marked on the back thereof, "objected to" with a statement of the
8 substance of the objection.

9 (e) Void, provisional and objected to advance voting ballots shall be
10 transmitted to the county election officer in the same manner as personally
11 cast provisional ballots are transmitted but shall be placed in separate
12 envelopes or sacks, appropriately labeled and sealed. Votes contained in
13 void and provisional advance voting ballots shall not be included in the
14 total of votes certified by the special election board. Void, provisional and
15 objected to advance voting ballots shall be reviewed by the board of
16 county canvassers, and ~~such~~ *the* board shall finally determine the
17 acceptance or rejection of each void, provisional or objected to ballot.

18 (f) *Procedures for canvassing and challenging advance voting ballots*
19 *received by mail after the closing of the polls pursuant to K.S.A. 25-*
20 *1132(b), and amendments thereto, shall be as set forth in rules and*
21 *regulations adopted by the secretary of state as authorized by K.S.A. 25-*
22 *1132(b), and amendments thereto.*

23 Sec. 5. K.S.A. 2016 Supp. 25-3107 is hereby amended to read as
24 follows: 25-3107. (a) At the time of commencement of any canvass by the
25 county board of canvassers the county election officer shall present to the
26 county board of canvassers the preliminary abstracts of election returns,
27 together with the ballots and records returned by the election boards *and,*
28 *as provided by rules and regulations adopted by the secretary of state as*
29 *authorized by K.S.A. 25-1132(b), and amendments thereto, advance voting*
30 *ballots received after the closing of the polls pursuant to K.S.A. 25-*
31 *1132(b), and amendments thereto.* The county board of canvassers shall
32 inspect and check the records presented by the county election officer and
33 shall hear any questions which the county election officer believes
34 appropriate for determination of the board. The county board of canvassers
35 shall do what is necessary to obtain an accurate and just canvass of the
36 election and shall finalize the preliminary abstract of election returns by
37 making any needed changes, and certifying its authenticity and accuracy.
38 The certification of the county board of canvassers shall be attested by the
39 county election officer. Neither the county board of canvassers nor the
40 county election officer shall open or unseal sacks or envelopes of ballots,
41 except as is required by K.S.A. 25-409, 25-1136 and 25-1337, and
42 amendments thereto, or other specific provision of law or as is authorized
43 to carry out a recount under subsection (b), *or as authorized under*

1 *subsection (e).*

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

43 (c) (1) The provisions of this subsection shall apply to candidates at

1 any election for:

- 2 (A) Any state or national office elected on a statewide basis;
3 (B) the office of president or vice president of the United States;
4 (C) the office of members of United States house of representatives;
5 (D) office of members of state senate or house of representative
6 whose district is located in two or more counties; and
7 (E) office of members of state board of education.

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

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

1 officer in each county immediately shall certify the results of the recount
2 to the secretary of state.

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

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

10 (2) Whenever the election returns reflect that a candidate for office
11 was defeated by $\frac{1}{2}$ of 1% or less of the total number of votes cast and if
12 ~~such~~ the candidate requests a recount in one or more counties of the
13 ballots, the state shall bear the cost of any recount performed using the
14 method by which ~~such~~ the ballots were counted originally.

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

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

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

34 Sec. 6. K.S.A. 25-1132, 25-1133, 25-1134 and 25-1136 and K.S.A.
35 2016 Supp. 25-3107 are hereby repealed.

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