

HOUSE BILL No. 2334

By Representative Toplikar

2-10

1 AN ACT concerning elections; relating to electronic voting machines;
2 prohibiting network connections to such machines; providing for a
3 recount of results generated by such machines; amending K.S.A. 2020
4 Supp. 25-3107 and 25-4406 and repealing the existing sections.

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

7 Section 1. K.S.A. 2020 Supp. 25-3107 is hereby amended to read as
8 follows: 25-3107. (a) At the time of commencement of any canvass by the
9 county board of canvassers the county election officer shall present to the
10 county board of canvassers the preliminary abstracts of election returns,
11 together with the ballots and records returned by the election boards and,
12 as provided by rules and regulations adopted by the secretary of state as
13 authorized by K.S.A. 25-1132(b), and amendments thereto, advance voting
14 ballots received after the closing of the polls pursuant to K.S.A. 25-
15 1132(b), and amendments thereto. The county board of canvassers shall
16 inspect and check the records presented by the county election officer and
17 shall hear any questions which the county election officer believes
18 appropriate for determination of the board. The county board of canvassers
19 shall do what is necessary to obtain an accurate and just canvass of the
20 election and shall finalize the preliminary abstract of election returns by
21 making any needed changes, and certifying its authenticity and accuracy.
22 The certification of the county board of canvassers shall be attested by the
23 county election officer. Neither the county board of canvassers nor the
24 county election officer shall open or unseal sacks or envelopes of ballots,
25 except as is required by K.S.A. 25-409, 25-1136 and 25-1337, and
26 amendments thereto, or other specific provision of law or as is authorized
27 to carry out a recount under subsection (b), or as authorized under
28 subsection (e).

29 (b) If a majority of the members of the county board of canvassers
30 shall determine that there are manifest errors appearing on the face of the
31 poll books of any election board, ~~which~~ *that* might make a difference in
32 the result of any election, or if any candidate shall request the recount of
33 the ballots cast in all or in only specified voting areas for the office for
34 which the person is a candidate, or if any registered elector who cast a
35 ballot in a question submitted election requests a recount in all or only
36 specified voting areas to determine the result of the election, the county

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

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

- 36 (A) Any state or national office elected on a statewide basis;
37 (B) the office of president or vice president of the United States;
38 (C) the office of members of *the* United States house of
39 representatives;
40 (D) *the* office of members of *the* state senate or house of
41 representatives whose district is located in two or more counties; and
42 (E) *the* office of members of *the* state board of education.
43 (2) Any candidate may request a recount in one or more counties.

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

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

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

- 39 (A) Any state or national office elected on a statewide basis;
40 (B) the office of president or vice president of the United States;
41 (C) the office of members of *the* United States house of
42 representatives;
43 (D) *the* office of members of *the* state senate or house of

1 representatives; and

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

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

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

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

22 (e) *If a recount is required in a county that uses optical scanning*
23 *systems, as defined in K.S.A. 25-4601, and amendments thereto, or*
24 *electronic or electromechanical voting systems, as defined in K.S.A. 25-*
25 *4401, and amendments thereto, the method of conducting the recount shall*
26 *be at the discretion of the person requesting the recount. Any person*
27 *requesting a recount pursuant to this section may request a recount of an*
28 *electronic or electromechanical voting system by filing such request in*
29 *writing with the secretary of state not later than 5 p.m. on the second*
30 *Friday following the election. Such request may include that the media*
31 *storage devices and the voting machines, including any tabulating*
32 *machines, used on the day of the election be operated together to generate*
33 *hard copies of the election results tabulated by the electronic or*
34 *electromechanical voting system on the day of the election. The person*
35 *requesting such recount shall be permitted to be present during such*
36 *recount. A copy of the election results generated during such recount shall*
37 *be provided to the person requesting such recount. Any such recount shall*
38 *be conducted under the supervision of the county election officers at the*
39 *direction of the secretary of state, and shall be initiated not later than the*
40 *day following the day such request was filed, including Saturdays,*
41 *Sundays and holidays. During any such recount, the voting machine may*
42 *be unsealed and opened by the county election officers without first*
43 *obtaining a court order for an inspection of such machine. The counties*

1 *shall bear the cost of any recount requested pursuant to this subsection.*

2 (f) Procedures for canvassing and challenging advance voting ballots
3 received by mail after the closing of the polls pursuant to K.S.A. 25-
4 1132(b), and amendments thereto, shall be as set forth in rules and
5 regulations adopted by the secretary of state as authorized by K.S.A. 25-
6 1132(b), and amendments thereto.

7 Sec. 2. K.S.A. 2020 Supp. 25-4406 is hereby amended to read as
8 follows: 25-4406. Electronic or electromechanical voting systems
9 approved by the secretary of state *shall*:

10 (a) ~~shall~~ Provide for voting for the candidates for nomination or
11 election of all political parties officially recognized pursuant to K.S.A. 25-
12 302a, and amendments thereto;

13 (b) ~~shall~~ permit a voter to vote for any independent candidate for any
14 office;

15 (c) ~~shall~~ provide for voting on constitutional amendments or other
16 questions submitted;

17 (d) ~~shall~~ be so constructed that, as to primaries where candidates are
18 nominated by political parties, the voter can vote only for the candidates
19 for whom the voter is qualified to vote according to articles 2 and 33 of
20 chapter 25 of the Kansas Statutes Annotated, and amendments thereto;

21 (e) ~~shall~~ afford the voter an opportunity to vote for any or all
22 candidates for an office for whom the voter is by law entitled to vote and
23 no more, and at the same time shall prevent the voter from voting for the
24 same candidate twice for the same office;

25 (f) ~~shall~~ be so constructed that in presidential elections the
26 presidential electors of any political party may be voted for by one action;

27 (g) ~~shall~~ provide for "write-in" votes;

28 (h) ~~shall~~ provide for voting in absolute secrecy, except as to persons
29 who request assistance due to temporary illness or disability or a lack of
30 proficiency in reading the English language;

31 (i) ~~shall~~ reject all votes for an office or upon a question submitted
32 when the voter has cast more votes for such office or upon such question
33 than the voter is entitled to cast;

34 (j) ~~shall~~ provide for instruction of voters on the operation of voting
35 machines, illustrating the manner of voting by the use of such systems.
36 The instruction may include printed materials or demonstration by election
37 board workers;

38 (k) ~~shall~~ provide a paper record of each vote cast, produced at the
39 time the vote is cast;

40 (l) ~~shall~~ have the ability to be tested both before an election and prior
41 to the date of canvass. The test shall include the ability to match the paper
42 records of such machines to the vote totals contained in the machines; ~~and~~

43 (m) *be certified in writing by the vendor supplying such system that*

1 *such system cannot be connected to the internet or any other computer*
2 *network, including any local area network, or any wireless*
3 *communications network, including any cellular transmission network.*
4 *The secretary of state and the county election officer for the county where*
5 *such system is used shall inspect such system to verify its compliance with*
6 *this subsection and, upon verifying such compliance, shall certify that*
7 *such system is compliant with this subsection and may be used in an*
8 *election under the laws of this state; and*

9 ~~(m)(n)~~ shall meet the requirements of the help America vote act of
10 2002 and other federal statutes and regulations governing voting
11 equipment.

12 Sec. 3. K.S.A. 2020 Supp. 25-3107 and 25-4406 are hereby repealed.

13 Sec. 4. This act shall take effect and be in force from and after its
14 publication in the statute book.