

**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 not later than the hour for closing of the polls on  
9 the date of any election specified in ~~subsection (b)~~ of K.S.A. 25-1122(f),  
10 and amendments thereto, shall be delivered by the county election officer  
11 to the appropriate special election board provided for in K.S.A. 25-1133,  
12 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 on or before*  
18 *the date of the election, shall be delivered by the county election officer to*  
19 *a special election board or the county board of canvassers, as determined*  
20 *by the secretary of state, for canvassing in a manner consistent, as nearly*  
21 *as may be, with other advance voting ballots. The deadline for the receipt*  
22 *by mail of the advance voting ballots by the office of the county election*  
23 *officer shall be the last delivery of mail by the United States postal service*  
24 *on the fourth day following the date of the election, unless additional time*  
25 *is permitted by the secretary. The secretary of state shall adopt rules and*  
26 *regulations to implement this subsection.*

27 Sec. 2. K.S.A. 25-1133 is hereby amended to read as follows: 25-  
28 1133. (a) The county election officer of every county, which does not use  
29 voting machines, optical scanning systems or electronic or  
30 electromechanical voting systems, shall establish a special election board.  
31 ~~Such~~ The special election board shall consist of the election board  
32 members in the precinct in which is located the office of the county  
33 election officer or the members of such additional election boards of the  
34 county as the county election officer may designate. ~~Such~~ The special  
35 election board shall meet at the voting place in the precinct in which is  
36 located the office of the county election officer on election day, or as

1 *provided by rules and regulations adopted by the secretary of state as*  
2 *authorized by K.S.A. 25-1132(b), and amendments thereto.*

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

12 Sec. 3. K.S.A. 25-1134 is hereby amended to read as follows: 25-  
13 1134. (a) The county election officer in counties which have a special  
14 election board established under K.S.A. 25-1133, and amendments thereto,  
15 shall deliver all advance voting ballots to the special election board when  
16 ~~such the~~ special election board convenes, and thereafter as advance voting  
17 ballots are received during election day, until the time for closing of the  
18 polls, *or as provided by rules and regulations adopted by the secretary of*  
19 *state as authorized by K.S.A. 25-1132(b), and amendments thereto.*

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

23 Sec. 4. K.S.A. 25-1136 is hereby amended to read as follows: 25-  
24 1136. (a) The vote of any advance voting voter may be challenged in the  
25 same manner as other votes are challenged, as nearly as may be, and the  
26 judges of the special election board shall determine the validity of each  
27 advance voting ballot. Whenever the judges determine that the form  
28 accompanying an advance voting ballot is insufficient, or that the voter is  
29 not a registered voter, or the challenge is otherwise sustained, the advance  
30 voting ballot envelope shall not be opened. In all such cases, the judges  
31 shall endorse on the back of the envelope the word "provisional" and state  
32 the reason for sustaining the challenge.

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

37 (c) Whenever it shall be made to appear to the judges of a special  
38 election board by sufficient proof that an advance voting voter has died,  
39 the envelope containing the advance voting ballot of ~~such the~~ deceased  
40 voter shall not be opened. In all such cases, the judges shall endorse on the  
41 back of the envelope the word "provisional" and the reason for sustaining  
42 the challenge.

43 (d) If objection is made to an advance voting ballot because of form,

1 condition, or marking thereof, the ballot shall be marked "void" if the  
2 judges uphold the objection to the entire ballot, and otherwise shall be  
3 marked on the back thereof, "objected to" with a statement of the  
4 substance of the objection.

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

14 (f) *Procedures for canvassing and challenging advance voting ballots*  
15 *received by mail after the closing of the polls pursuant to K.S.A. 25-*  
16 *1132(b), and amendments thereto, shall be as set forth in rules and*  
17 *regulations adopted by the secretary of state as authorized by K.S.A. 25-*  
18 *1132(b), and amendments thereto.*

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

41 (b) If a majority of the members of the county board of canvassers  
42 shall determine that there are manifest errors appearing on the face of the  
43 poll books of any election board, which might make a difference in the

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

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

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

1 (D) office of members of state senate or house of representative  
 2 whose district is located in two or more counties; and

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

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

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

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

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

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

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

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

25 *(e) Procedures for canvassing and challenging advance voting*  
26 *ballots received by mail after the closing of the polls pursuant to K.S.A.*  
27 *25-1132(b), and amendments thereto, shall be as set forth in rules and*  
28 *regulations adopted by the secretary of state as authorized by K.S.A. 25-*  
29 *1132(b), and amendments thereto.*

30 Sec. 6. K.S.A. 25-1132, 25-1133, 25-1134 and 25-1136 and K.S.A.  
31 2016 Supp. 25-3107 are hereby repealed.

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