

As Amended by House Committee

As Amended by Senate Committee

Session of 2005

SENATE BILL No. 132

By Committee on Elections and Local Government

1-28

12 AN ACT concerning elections; relating to the use of optical scanning
13 systems to count votes; amending K.S.A. 25-4601, 25-4602, 25-4603,
14 25-4604, ~~25-4605~~, 25-4607, 25-4609, 25-4610, 25-4611, 25-4612 and
15 25-4613 and repealing the existing sections.

16

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

18 Section 1. K.S.A. 25-4601 is hereby amended to read as follows: 25-
19 4601. As used in this act unless the context otherwise requires:

20 (a) "Ballot" means a paper ballot ~~of at least three inches in width and~~
21 ~~seven inches in depth~~ on which candidates' names or questions are
22 printed and ~~are~~ *which is* designed to receive opaque marks which can be
23 detected by optical scanning equipment and which ~~are~~ *is* capable of being
24 counted manually.

25 (b) ~~"Counting location" means the location or locations in the county~~
26 ~~selected by the county election officer for the automatic processing or~~
27 ~~counting, or both, of ballots.~~

28 ~~(c)~~ "Optical scanning equipment" means apparatus designed to ex-
29 amine and detect opaque marks on ballots which represent votes and
30 count and tabulate those votes by electronic methods.

31 ~~(d)~~ (c) "System" means an optical scanning system of automatically
32 counting and tabulating ballots with optical scanning equipment.

33 (d) "Precinct count voting system" means an optical scanning voting
34 system that tabulates ballots at the polling place.

35 (e) "Central count voting system" means an optical scanning voting
36 system that tabulates ballots from multiple precincts at a central location.
37 Voted ballots are placed into secure storage at the polling place and trans-
38 ported to a central counting location.

39 Sec. 2. K.S.A. 25-4602 is hereby amended to read as follows: 25-
40 4602. (a) The board of county commissioners and the county election
41 officer of any county may provide for use of a system using optical scan-
42 ning equipment to be used in the county at national, state, county, town-
43 ship, city and school primary and general elections and in question sub-

1 mitted elections.

2 ~~(b) When the board of county commissioners of any county is pre-~~
3 ~~sented with a petition requesting a vote on the proposition of using a~~
4 ~~system using optical scanning equipment in such county, signed by elec-~~
5 ~~tors equal in number to not less than 10% of the votes cast for secretary~~
6 ~~of state in the county at the last preceding general election at which the~~
7 ~~secretary of state was elected, such board of county commissioners shall~~
8 ~~submit the proposition to the voters of such county at the next succeeding~~
9 ~~state primary or general election. If a majority of the votes cast on the~~
10 ~~proposition are in favor of the proposition, the board of county commis-~~
11 ~~sioners and the county election officer shall provide such a system to be~~
12 ~~used at national, state, county, township, city and school primary and~~
13 ~~general elections and in question submitted elections.~~

14 ~~—(c) The board of county commissioners of any county in which the~~
15 ~~board and county election officer have determined that a system using~~
16 ~~optical scanning equipment shall be used or in which a proposition to use~~
17 ~~a system that uses optical scanning equipment has been adopted may~~
18 ~~issue bonds, without an election, to finance and pay for purchase, lease~~
19 ~~or rental of such a system and optical scanning equipment.~~

20 ~~(c)~~ (c) The board of county commissioners and the county election
21 officer of any county may adopt, experiment with or abandon any system
22 using optical scanning equipment authorized under this act and approved
23 by the secretary of state for use in the state and may use such a system
24 in all or any part of the voting areas within the county or in combination
25 with *an electronic or electromechanical voting system or with* regular
26 paper ballots. Whenever the secretary of state rescinds approval of any
27 such system or optical scanning equipment, the board of county com-
28 missioners and the county election officer shall abandon such system until
29 changes therein required by the secretary of state have been made, or if
30 the secretary of state advises that acceptable changes cannot be made
31 therein, such abandonment shall be permanent.

32 Sec. 3. K.S.A. 25-4603 is hereby amended to read as follows: 25-
33 4603. The secretary of state shall examine and approve the kinds or makes
34 of systems using optical scanning equipment, *including operating systems,*
35 *firmware and software,* and no kind or make of such system shall be used
36 at any election unless and until it receives ~~approval~~ *certification* by the
37 secretary of state and a statement thereof is filed in the office of the
38 secretary of state.

39 Sec. 4. K.S.A. 25-4604 is hereby amended to read as follows: 25-
40 4604. (a) Any person, firm or corporation desiring to sell any kind or make
41 of system using optical scanning equipment to counties in this state may
42 make a request in writing of the secretary of state to examine the kind or
43 make of the system using optical scanning equipment which it desires to

1 sell and shall accompany the request with a certified check in the amount
2 of \$250 payable to the secretary of state, and shall furnish at its own
3 expense such optical scanning equipment and other items necessary for
4 operation of such system to the secretary of state ~~at the capitol in the city~~
5 ~~of Topeka, Kansas,~~ for use ~~by the secretary~~ in examining such equipment
6 and system. The secretary of state may require such person, firm or cor-
7 poration to furnish a competent person to explain the system and dem-
8 onstrate by the operation of such system that ~~it will do all the things~~
9 ~~required by this act and applicable Kansas Statutes Annotated, and~~
10 ~~amendments thereto, and can be safely used~~ *such system complies with*
11 *state and federal laws.* The secretary of state may employ a competent
12 person or persons to assist in the examination and to advise the secretary
13 as to the sufficiency of such system and equipment and to pay such per-
14 sons reasonable compensation therefor. The costs of employment and
15 other costs associated with the approval of such system shall be paid ~~in~~
16 ~~advance~~ by the applicant.

17 (b) The secretary of state may require a review of any theretofore
18 approved system using optical scanning equipment and the operation
19 thereof. Such review shall be commenced by the secretary of state giving
20 written notice to the person, firm or corporation which sought approval
21 of the system and to each county election officer and county commis-
22 sioner of counties known to have purchased, leased or rented any such
23 system or equipment. Such notice shall fix a time and place of hearing at
24 which those persons wishing to be heard may appear and give oral or
25 written testimony and explanation of the system, its optical scanning
26 equipment and operation and experience had therewith. After such hear-
27 ing date and after such review as the secretary of state deems appropriate,
28 the secretary of state may renew approval of the system and such equip-
29 ment, require changes therein for continued approval thereof or rescind
30 approval previously given on either a conditioned or permanent basis.

31 (c) The secretary of state may appoint persons to assist county elec-
32 tion officers or county commissioners in the testing of any system using
33 optical scanning equipment and the programs of the system.

34 ~~Sec. 5. K.S.A. 25-4605 is hereby amended to read as follows: 25-~~
35 ~~4605. (a) The board of county commissioners and the county election~~
36 ~~officer may purchase a system with payment by installments, may rent or~~
37 ~~lease a system or may lease optical scanning equipment with option to~~
38 ~~purchase with lease payments to be applied on the purchase price. Con-~~
39 ~~tracts for payment by installments, leases, rental agreements and leases~~
40 ~~with option to purchase may be for terms not exceeding 10 years, and~~
41 ~~The provisions of article 11 of chapter 10 of the Kansas Statutes Anno-~~
42 ~~tated and K.S.A. 79-2925 to 79-2940, inclusive, and amendments thereto,~~
43 ~~shall have no application to such contracts of purchase and lease or rental~~

1 agreements, except that where payment is to be made from the general
2 fund the budget shall provide for the raising of the necessary yearly
3 amount to make installment or rental payments. Where the authorized
4 maximum levy for the general fund is insufficient for all other yearly
5 expenses chargeable against such fund and to pay installments or rentals
6 on the system or optical scanning equipment, or where the aggregate
7 limit for taxes is such that a sufficient tax for the general fund cannot be
8 levied to pay all other yearly expenses chargeable against such fund and
9 to pay installments or rentals on the systems, the board of county com-
10 missioners may levy a tax of sufficient millage to provide revenue to pay
11 such installments or rentals and to pay a portion of the principal and
12 interest on bonds issued under the authority of K.S.A. 12-1774, and
13 amendments thereto, by cities located in the county and such levy shall
14 not be within or limited by any aggregate limit of tax for such county.

15 —(b)— For the use of optical scanning equipment or a system, the board
16 of county commissioners may pay the same out of the general fund of
17 such county, or issue time warrants bearing not to exceed 5% interest
18 and payable by not more than three annual tax levies of not to exceed
19 two mills which shall not be within or limited by any aggregate tax levy
20 applying to such county or issue general obligation bonds of such county,
21 such bonds not to be limited by any bonded debt limit and such bonds
22 shall not be considered in determining the bonded debt of the county for
23 the purpose of issuing bonds for other purposes.

24 —(c)— No tax shall be levied under this section, nor shall any moneys be
25 paid from any fund under authority of this section for any contract to
26 purchase, lease or rent any optical scanning equipment or system, if ap-
27 proval of such system or equipment has been rescinded by the secretary
28 of state.

29 Sec. ~~6~~ **5**. K.S.A. 25-4607 is hereby amended to read as follows: 25-
30 4607. The ballot information shall be in the order of arrangement pro-
31 vided for in article 6, chapter 25 of Kansas Statutes Annotated for official
32 ballots. Such information may be printed on both sides of one ballot or
33 on more than one ballot. Nothing in this act shall be construed as pro-
34 hibiting the use of multiple ballots when the information for any election
35 exceeds the capacity of a single ballot. Voting squares *or ovals* may be
36 placed before or after the names of candidates and statements of ques-
37 tions or on a separate paper corresponding to the ballot upon which the
38 names of candidates and statements of questions appear. Voting squares
39 *or ovals* shall be of such size as is compatible with the system used. Ballots
40 shall be printed on paper and with ink compatible with the system used
41 and the information printed in as plain clear type and size as the ballot
42 spaces permit. ~~At the bottom of~~ **On** each ballot shall be printed a box,
43 which shall be placed on the ballot in such a manner so as not to interfere

1 with the scanning of the ballot.

2 Sec. ~~7~~ **6**. K.S.A. 25-4609 is hereby amended to read as follows: 25-
3 4609. (a) ~~When a voter is handed a ballot, such~~ *Each* voter shall be in-
4 structed *how* to mark the ballot as directed, and to not mark the ballot
5 ~~in any other way before such voter enters the voting booth~~. The voter shall
6 also be instructed to place such person's ballot or ballots in a ballot sleeve
7 or other container after voting, in order that no ballot upon which a choice
8 ~~is indicated is~~ *votes are* exposed.

9 (b) In case any elector after entering the voting booth asks for further
10 instruction concerning the manner of voting, two ~~judges~~ *election board*
11 *members* of opposite political parties shall give such instruction to such
12 elector, but no ~~judge~~ *election board member* or other election officer or
13 person assisting an elector shall in any manner request, suggest or seek
14 to persuade or induce any elector to vote for or against any candidate,
15 question or ticket. ~~After receiving such instruction, such elector shall vote~~
16 ~~as in the case of an unassisted voter~~.

17 (c) After the voter has marked the ballot or ballots, the voter shall
18 place it or them in the ballot sleeve provided for this purpose and return
19 it to the judge. The judge shall verify the unique mark on the ballot and
20 deposit the ballot in the ballot box.

21 Sec. ~~8~~ **7**. K.S.A. 25-4610 is hereby amended to read as follows: 25-
22 4610. (a) The optical scanning equipment may be located at any place
23 within the county approved by the county election officer.

24 (b) Within five days prior to the date of the election, the county elec-
25 tion officer shall have the optical scanning equipment tested to ascertain
26 that the equipment will correctly count the votes cast for all offices and
27 on all questions submitted. Public notice of the time and place of the test
28 shall be given at least 48 hours prior thereto by publication once in a
29 newspaper of general circulation in the county where such equipment is
30 to be used. The test shall be ~~observed by at least two election inspectors,~~
31 ~~who shall not be of the same political party, and shall be open to repre-~~
32 ~~sentatives of the political parties, candidates, the press and the public.~~
33 The test shall be conducted by processing a preaudited group of ballots
34 marked as to record a predetermined number of valid votes for each
35 candidate and on each question submitted, and shall include for each
36 office one or more ballots which have votes in excess of the number
37 allowed by law in order to test the ability of the optical scanning equip-
38 ment to reject such votes. If any error is detected, the cause therefor shall
39 be ascertained and corrected and an errorless count shall be made before
40 the optical scanning equipment is approved. ~~The test shall be repeated~~
41 ~~immediately before the start of the official count of the ballots, and at the~~
42 ~~conclusion of the official count in the same manner as set forth above.~~
43 ~~After~~ *The test shall be repeated after* the completion of the count, ~~the~~.

1 ~~The programs used and ballots and ballot stubs~~ **and ballots** shall be
2 sealed, retained and disposed of in the same manner as paper ballots.

3 Sec. ~~9 8~~. K.S.A. 25-4611 is hereby amended to read as follows: 25-
4 4611. (a) As soon as the polls are closed, ~~an election~~ *the supervising judge*
5 shall open the ballot box and count the number of ballots or envelopes
6 containing ballots that have been cast to determine that the number of
7 ballots ~~does not exceed~~ *equals* the number of voters shown on the poll
8 book. If there is ~~an excess~~ *a discrepancy*, this fact shall be reported in
9 writing to the county election officer with the reasons therefor if known.
10 ~~The total number of voters shall be entered on the tally sheets.~~

11 (b) The election judge shall place all ballots that have been cast in
12 the container provided for the purpose, which shall be sealed and deliver-
13 ed by two election ~~judges~~ *board members* who shall not be of the same
14 political party, to the counting location together with the *provisional*,
15 unused, void and defective ballots and returns.

16 (c) All proceedings at the counting location shall be under the direc-
17 tion of the county election officer and under the observation of two elec-
18 tion ~~judges~~ *board workers* who shall not be of the same political party
19 and shall be open to the public, but no persons except those employed
20 and authorized for the purpose shall touch any ballot, ballot container or
21 return. If any ballot is damaged or defective so that it cannot properly be
22 counted by the optical scanning equipment, it shall be counted manually.

23 (d) Advance voting ballots may be counted by the optical scanning
24 equipment if they have been marked in a manner which will enable them
25 to be properly counted by such equipment.

26 (e) The return printed by the optical scanning equipment, to which
27 has been added the return of write-in and advance voting votes and man-
28 ually counted votes, shall constitute the official return of each precinct or
29 voting area. Upon completion of the count the returns shall be open to
30 the public. A copy of the returns shall be posted at the office of the county
31 election officer.

32 (f) If for any reason it becomes impracticable to count all or a part
33 of the ballots with optical scanning equipment, the county election officer
34 may direct that they be counted manually, following as far as practicable
35 the provisions governing the counting of paper ballots.

36 Sec. ~~10 9~~. K.S.A. 25-4612 is hereby amended to read as follows: 25-
37 4612. Optical scanning equipment fraud is:

38 (a) Being in unlawful or unauthorized possession of ballots ~~or programs~~,
39 *optical scanning equipment, computer programs, operating systems, firm-*
40 *ware or software*; or

41 (b) intentionally tampering with, altering, disarranging, defacing, im-
42 pairing or destroying any optical scanning equipment or component part
43 thereof, or any ballot, *operating system, firmware or software* used by a

1 system.

2 Optical scanning equipment fraud is a severity level 10, nonperson
3 felony.

4 Sec. ~~10~~ **10**. K.S.A. 25-4613 is hereby amended to read as follows: 25-
5 4613. Optical scanning equipment and systems using optical scanning
6 equipment approved by the secretary of state:

7 (a) Shall be capable of being tested to ascertain that the equipment
8 will correctly count votes cast for all offices and on all questions submit-
9 ted; and

10 (b) shall be capable of printing in legible form, reports and summaries
11 of the election results as required by articles 30 and 31 of chapter 25 of
12 Kansas Statutes Annotated; and

13 (c) shall be capable of tabulating votes for candidates for nomination
14 or election of ~~at least seven different~~ *all* political parties *officially recog-*
15 *nized pursuant to K.S.A. 25-302a, and amendments thereto*; and

16 (d) shall be capable of tabulating votes for any independent candidate
17 of any office; and

18 (e) shall be capable of tabulating votes for constitutional amendments
19 or other questions submitted; and

20 (f) shall be capable of tabulating the number of “write-in” votes cast
21 for any office; ~~and~~

22 (g) ~~shall not count any votes for an office or upon a question sub-~~
23 ~~mitted provide notification when the voter has cast more or fewer votes~~
24 ~~for such office or upon such question than the voter is entitled to cast;~~
25 ~~and~~

26 ~~—(h) shall meet the requirements of applicable federal laws.~~

27 ***shall not count any votes for an office or upon a question submitted***
28 ***when the voter has cast more votes for such office or upon such***
29 ***question than the voter is entitled to cast;***

30 (h) ***shall provide notification when the voter has cast more or***
31 ***fewer votes for such office or upon such question than the voter is***
32 ***entitled to cast; and***

33 (i) ***shall meet the requirements of the help America vote act of***
34 ***2002 and other federal statutes and regulations governing voting***
35 ***equipment.***

36 New Sec. ~~12~~ **11**. The secretary of state may adopt rules and
37 regulations:

38 (a) For the use of optical scanning systems to count votes under the
39 election laws of this state; and

40 (b) necessary for the administration of this act.

41 New Sec. ~~13~~ **12**. K.S.A. 25-4601 through 25-4613, inclusive, and
42 amendments thereto, and sections ~~12 and 13~~ **11 and 12**, and amend-
43 ments thereto, shall be known and may be cited as the optical scanning

1 voting systems act.

2 Sec. ~~14~~ **13**. K.S.A. 25-4601, 25-4602, 25-4603, 25-4604, ~~25-4605~~, 25-
3 4607, 25-4609, 25-4610, 25-4611, 25-4612 and 25-4613 are hereby
4 repealed.

5 Sec. ~~15~~ **14**. This act shall take effect and be in force from and after
6 its publication in the statute book.