

As Amended by Senate Committee

Session of 2022

SENATE BILL No. 438

By Committee on Judiciary

2-4

1 AN ACT concerning elections; relating to election audits; concerning
2 election procedures; amending K.S.A. 25-3009 and repealing the
3 existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. (a) In the calendar year following the general
7 election of an even-numbered year, the secretary of state shall conduct in
8 four counties an audit of the procedures used for election administration
9 and election records for the elections held during the previous two
10 calendar years.

11 (b) The secretary of state shall select the counties to be audited at
12 random, except that:

13 (1) One of the counties selected shall have a voting age population of
14 more than 90,000;

15 (2) one of the counties selected shall have a voting age population of
16 more than 20,000 but less than 90,000;

17 (3) two of the counties selected shall have a voting age population of
18 less than 20,000;

19 (4) a county selected in the three most recent audit cycles shall not be
20 selected in the current audit cycle; and

21 (5) voting age population shall be set by the most recent federal
22 decennial census.

23 (c) The secretary of state shall adopt rules and regulations necessary
24 to implement this section including enumerating the specific records and
25 procedures to be examined.

26 Sec. 2. K.S.A. 25-3009 is hereby amended to read as follows: 25-
27 3009. (a) After an election and prior to the meeting of the county board of
28 canvassers to certify the official election results for any election in which
29 the canvassers certify the results, the county election officer shall conduct
30 a manual audit or tally of each vote cast, regardless of the method of
31 voting, in 1% of all precincts, with a minimum of one precinct located
32 within the county. The precinct or precincts shall be randomly selected and
33 the selection shall take place after the election.

34 (b) (1) The audit shall be performed manually and shall review all
35 paper ballots selected pursuant to subsection (a). The audit shall be
36 performed by a sworn election board consisting of bipartisan trained board

1 members. The county election officer ~~will~~ shall determine the members of
2 the sworn election board who will conduct the audit.

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

4 (A) In presidential election years:

- 5 (i) One federal race;
- 6 (ii) one state legislative race; and
- 7 (iii) one county race.

8 (B) In ~~even-numbered~~ *even-numbered*, non-presidential election
9 years:

- 10 (i) One federal race;
- 11 (ii) one statewide race;
- 12 (iii) one state legislative race; and
- 13 (iv) one county race.

14 (C) *In even-numbered election years, any federal, statewide or state*
15 *legislative race that is within 1% of the total number of votes cast tallied*
16 *on election night, as determined by the secretary of state, shall be audited.*
17 *The county election officer shall conduct the audit in the manner set forth*
18 *in subsection (a) in 10% of all county precincts in the specified race, with*
19 *a minimum of one precinct in the county. The precincts audited pursuant*
20 *to this subsection shall be in addition to the precincts audited under*
21 *subsections (2)(A) and (B).*

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

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

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

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

1 (f) The secretary of state shall adopt rules and regulations governing
2 the conduct and procedure of the audit, including the random selection of
3 the precincts and offices involved in the audit.

4 ~~(f) The provisions of this section shall apply to all counties for~~
5 ~~elections that take place after January 1, 2019.~~

6 Sec. 3. K.S.A. 25-3009 is hereby repealed.

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