


STATEMENT OF EMERGENCY

31 KAR 4:071E

This emergency regulation is being promulgated pursuant to both KRS 13A.190(1)(a)(1), to meet an imminent threat to public welfare, as well as, KRS 13A.190(1)(a)(3), to meet an imminent deadline for the promulgation of an administrative regulation established by state statute. Section 150 of the Constitution of Kentucky requires free and fair elections in the Commonwealth; KRS 118.025(3) sets May 17, 2022 as the statutory date for the primary nomination of candidates, while KRS 118.025(4) sets November 8, 2022 as the date for the regular election. This is being filed as an emergency administrative regulation to ensure the administrative regulations and procedures required by state statute to promote free and fair elections are in effect during the upcoming primary and regular election. This emergency administrative regulation is temporary in nature will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.


ANDY BESHEAR
Governor


KAREN SELLERS
Director, State Board of Elections

1 STATE BOARD OF ELECTIONS

2 (New Emergency Administrative Regulation)

3 31 KAR 4:071E. Recanvass procedures.

4 RELATES TO: KRS 117.305, 118.425, 242.120

5 STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.305(5), (6), (7); 242.120(3), (4), (5)

6 NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State
7 Board of Elections to promulgate administrative regulations necessary to properly carry
8 out its duties. KRS 117.305(5) and KRS 242.120(3) require the State Board of Elections to
9 prescribe forms to be used by county boards of elections to report all recanvassed votes,
10 KRS 117.305(6) and KRS 242.120(4) require that the board promulgate administrative
11 regulations to set reporting standards for recanvass reports, and KRS 117.305(7) and KRS
12 242.120(5) require that the board promulgate administrative regulations to establish the
13 proper procedures for conducting a recanvass for each type of voting system approved
14 by the board and in use in Kentucky. This administrative regulation establishes the
15 reporting forms to be used in the event of a recanvass, reporting standards for an election
16 if a recanvass is requested and received in a timely manner, and establishes the proper
17 procedures for conducting a recanvass on the approved voting systems in use in
18 Kentucky.

1 Section 1. (1) The Recanvass of Official Count and Record of Election Totals form,
2 SBE 49A, shall be used by the county board of elections to report all recanvassed votes,
3 except for local option elections.

4 (2) The Recanvass of Official Count and Record of Election Totals for Local Option
5 Election form, SBE 49B, shall be used by the county board of elections to report
6 recanvassed votes for local option elections.

7 (3) The county board of elections shall state the name of the county in which the
8 recanvass is being conducted, the date of the report, the date of the election, the office
9 for which the recanvass is being made, the name of each candidate for the office being
10 recanvassed, and the machine votes, absentee votes, provisional votes and total votes for
11 each candidate. The report shall be signed by each member of the county board of
12 elections.

13 (4) For a recanvass of a local option election, the county board of elections shall
14 state the name of the county in which the recanvass is being conducted, the date of the
15 report, the date of the local option election, the proposition for which the recanvass is
16 being made, the names of the leaders of the committees favoring or opposing the
17 proposition being recanvassed, and the machine votes, absentee votes, and vote totals
18 for "yes" or "no" votes. The report shall be signed by each member of the county board
19 of elections.

1 Section 2. (1) The county board of elections shall file its recanvass report, SBE 49A,
2 immediately upon completion of the recanvass for those vote totals reported to the
3 Secretary of State, pursuant to KRS 118.425(3).

4 (2) The county board of elections shall file its recanvass report, SBE 49A,
5 immediately upon completion of the recanvass for the vote totals reported to the county
6 clerk, pursuant to 118.425(2).

7 (3) The county board of elections shall file its recanvass report for a local option
8 election, SBE 49B, immediately upon completion of the recanvass for the vote totals
9 reported to the county clerk, pursuant to KRS 242.110.

10 Section 3. If KRS 117.305(1) or KRS 242.120(2)(a) requires a recanvass, the
11 provisions established in this section shall apply.

12 (1) In a general election, the county board of elections shall only check and tabulate
13 the votes of the candidate requesting a recanvass and each opposing candidate seeking
14 the same office.

15 (2) In a partisan primary, the county board of elections shall only check and tabulate
16 the votes of the candidate requesting a recanvass and each opposing candidate of the
17 same political party seeking the same office.

18 (3) In a nonpartisan election, the county board of elections shall only check and
19 tabulate the votes of the candidate requesting a recanvass and each opposing candidate
20 seeking the same office.

1 (4) In a local option election, the county board of elections shall check and tabulate
2 the "yes" and "no" votes.

3 Section 4. A county board of elections shall recanvass the votes recorded
4 depending on the machine and voting method utilized, as follows:

5 (1) If an electronic voting system with a central tabulation system is used, the
6 recanvass shall be taken:

7 (a) By clearing the system, such as by setting the tabulation system to zero and
8 retabulating the votes recorded on the memory cartridges on election day by using the
9 central tabulation system; or

10 (b) By comparing the results printout printed from each voting machine on election
11 day with the county-wide recapitulation sheet.

12 (2) If an electronic voting system without a central tabulation system is used, the
13 recanvass shall be taken by comparing the results printout printed from each voting
14 machine on election day with the county-wide recapitulation sheet.

15 (3) Paper ballots, which were judged to be valid by the county board of elections
16 on election day and which were not counted using a central tabulation system but were
17 hand-counted on election day, shall be recanvassed by utilizing the same procedure
18 actually used to count those paper ballots on election day following the procedures for
19 the uniform definition of a vote established by 31 KAR 6:030.

1 Section 5. Incorporation by Reference. (1) The following material is incorporated
2 by reference:

3 (a) "Recanvass of Official Count and Record of Elections Totals", SBE 49A, 04/22;

4 and

5 (b) "Recanvass of Official Count and Record of Elections Totals for Local Option
6 Election", SBE 49B, 04/22.

7 (2) This material may be inspected, copied, or obtained, subject to applicable
8 copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky
9 40601, Monday through Friday, 8 a.m. to 4:30 p.m.



Karen Sellers
Executive Director, State Board of Elections

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this temporary emergency administrative regulation shall be held on June 28, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, Phone: (502) 782-9499, Email: TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

31 KAR 4:071E Contact Person: Taylor Brown, phone: 502-782-9499, email: TaylorA.Brown@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reporting forms to be used in the event of a recanvass, reporting standards for an election if a recanvass is requested and received in a timely manner, and establishes the proper procedures for conducting a recanvass on the approved voting systems in use in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given KRS 117.305(5) and KRS 242.120(3) require the State Board of Elections to prescribe forms to be used by county boards of elections to report all recanvassed votes, KRS 117.305(6) and KRS 242.120(4) require that the board promulgate administrative regulations to set reporting standards for recanvass reports, and KRS 117.305(7) and KRS 242.120(5) require that the board promulgate administrative regulations to establish the proper procedures for conducting a recanvass for each type of voting system approved by the board and in use in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117.305(5), KRS 242.120(3), KRS 117.305(6), KRS 242.120(4), KRS 117.305(7), and KRS 242.120(5).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This administrative regulation will affect all the State Board of Elections and county boards of election.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The State Board of

Elections will need to make available the required forms; county boards of election will need to complete and submit them.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will result in the entities involved incurring only nominal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit the entities involved in that they will be able to further guarantee free and fair elections in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The expected cost of the implementation of this administrative regulation for the State Board of Elections will be nominal.

(b) On a continuing basis: The expected continuing cost of this administrative regulation for the State Board of Elections will be nominal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

It is expected that implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is recommendations for uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE

31 KAR 4:071E

Contact Person: Taylor Brown, phone: 502-782-9499, email: TaylorA.Brown@ky.gov

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

At the state level, the State Board of Elections will be impacted by this administrative regulation. At the local level, county boards of election will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.305(5), KRS 242.120(3), KRS 117.305(6), KRS 242.120(4), KRS 117.305(7), and KRS 242.120(5) require and authorize the actions taken by this administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings(+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. *"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)].* The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

"Recanvass of Official Count and Record of Elections Totals", Form SBE 49A, 04/22, is the 1-page form that county board of elections file as a record reporting their recanvass vote totals to the county clerk.

"Recanvass of Official Count and Record of Elections Totals for Local Option Election", Form SBE 49B, 04/22, is the 1-page form that county board of elections file as a record reporting their recanvass vote totals to the county clerk for a local option election.

**RECANVASS
OF OFFICIAL COUNT AND RECORD
OF ELECTION TOTALS**

STATE OF KENTUCKY

County of _____

We, the County Board of Elections, duly authorized to recanvass the returns of the County of _____, do certify that in an election held in said county, on the _____ day of _____, 20____ a recanvass was conducted in said county on the _____ day of _____, 20____ and the following votes were cast for the Office or on the Question indicated:

Office	Name	Mail-in Absentee Vote	In-Person Absentee Votes (Thurs., Fri., & Sat.)	Election Day Votes	Provisional Ballot Votes	Total Votes

County Board of Elections (Democrat) _____
 County Board of Elections (Republican) _____
 County Board of Elections (Sheriff) _____
 County Board of Elections (County Clerk) _____

**RECANVASS
OF OFFICIAL COUNT AND RECORD OF ELECTION TOTALS
FOR LOCAL OPTION ELECTION**

STATE OF KENTUCKY

COUNTY OF _____

Having received a request for recanvass of election totals of the local option election held on the _____ day of _____, 20_____, and such request being received in a timely manner as provided by Kentucky Revised Statutes, we, the County Board of Elections, duly authorized to recanvass the returns of the County of _____, do certify that a recanvass was conducted in said County on the _____ day of _____, 20_____, on the following question:

VOTES	Machine	Machine Absentee	Paper Absentee	TOTAL
Yes				
No				

NAMES OF LEADERS OF COMMITTEES FAVORING OR OPPOSING THE PROPOSITION:

COUNTY BOARD OF ELECTIONS:

_____ Member

_____ Member

_____ Sheriff

_____ County Clerk, Chairman

118.025 Voting to be by secret paper ballot -- General laws applicable -- Time for holding elections.

- (1) Except as otherwise provided by law, voting in all primaries and elections shall be by secret paper ballot.
- (2) The general laws applying to primaries, regular elections, and special elections shall apply to primaries, regular elections, and special elections conducted with the use of voting equipment, and all provisions of the general laws applying to the custody of ballot boxes shall apply, as far as applicable, to the custody of the voting system or voting equipment.
- (3) A primary for the nomination of candidates to be voted for at the next regular election shall be held on the first Tuesday after the third Monday in May of each year.
- (4) The election of all officers of all governmental units shall be held on the first Tuesday after the first Monday in November.
- (5) If the law authorizes the calling of a special election on a day other than the day of the regular election in November, the election shall be held on a Tuesday.
- (6) If the law requires that a special election be held within a period of time during which the voting equipment must be locked as required by KRS 117.295, the special election shall be held on the fourth Tuesday following the expiration of the period during which the voting equipment is locked.

Effective: June 29, 2021

History: Amended 2021 Ky. Acts ch. 197, sec. 48, effective June 29, 2021. -- Amended 2020 Ky. Acts ch. 88, sec. 5, effective July 15, 2020. -- Amended 2008 Ky. Acts ch. 129, sec. 6, effective July 15, 2008. -- Amended 2002 Ky. Acts ch. 262, sec. 1, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 261, sec. 2, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 195, sec. 13, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 394, sec. 20, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 288, sec. 38, effective July 14, 1992; and ch. 296, sec. 7, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 431, sec. 1, effective July 13, 1990. -- Amended 1986 Ky. Acts ch. 29, sec. 12, effective July 15, 1986. -- Amended 1984 Ky. Acts ch. 44, sec. 6, effective March 2, 1984. -- Amended 1982 Ky. Acts ch. 402, sec. 3, effective January 1, 1984. -- Created 1974 Ky. Acts ch. 130, sec. 98, effective June 21, 1974.

Section 150 Disqualification from office for using money or property to secure or influence election -- Corporation not to use money or other thing of value to influence election -- Exclusion from office for conviction of felony or high misdemeanor -- Laws to regulate elections.

Every person shall be disqualified from holding any office of trust or profit for the term for which he shall have been elected who shall be convicted of having given, or consented to the giving, offer or promise of any money or other thing of value, to procure his election, or to influence the vote of any voter at such election; and if any corporation shall, directly or indirectly, offer, promise or give, or shall authorize, directly or indirectly, any person to offer, promise or give any money or any thing of value to influence the result of any election in this State, or the vote of any voter authorized to vote therein, or who shall afterward reimburse or compensate, in any manner whatever, any person who shall have offered, promised or given any money or other thing of value to influence the result of any election or the vote of any such voter, such corporation, if organized under the laws of this Commonwealth, shall, on conviction thereof, forfeit its charter and all rights, privileges and immunities thereunder; and if chartered by another State and doing business in this State, whether by license, or upon mere sufferance, such corporation, upon conviction of either of the offenses aforesaid, shall forfeit all right to carry on any business in this State; and it shall be the duty of the General Assembly to provide for the enforcement of the provisions of this section. All persons shall be excluded from office who have been, or shall hereafter be, convicted of a felony, or of such high misdemeanor as may be prescribed by law, but such disability may be removed by pardon of the Governor. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon, from power, bribery, tumult or other improper practices.

Text as Ratified on: August 3, 1891, and revised September 28, 1891.

History: Not yet amended.