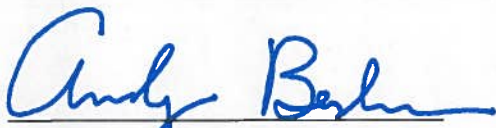



STATEMENT OF EMERGENCY

31 KAR 4:201E

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 4:201E. Chain of Custody for Records During an Election Contest

4 RELATES TO: KRS 120.205, 120.215

5 STATUTORY AUTHORITY: KRS 117.015(1)(a)

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 120.205 and KRS 120.215 require the State Board of Elections to  
9 promulgate administrative regulations to provide for a form on which documents any  
10 individuals transporting all voting equipment, ballots, boxes, precinct rosters, and other  
11 voting records related to an election contest involving an election of a Governor and  
12 Lieutenant Governor or a member of the General Assembly. This administrative regulation  
13 establishes that form.

14 Section 1. In the event that a board is established under KRS 120.205 or KRS  
15 120.215 to try a contested election of a Governor and Lieutenant Governor or a member  
16 of the General Assembly, the possession of all components of a voting system, ballots,  
17 ballot boxes, precinct rosters, and any other voting records sent for by the board shall not

1 transfer unless documented in writing on Form SBE 75, "Election Contest Chain-of-  
2 Custody."

3 Section 2. Incorporated by Reference. (1) Election Contest Chain-of-Custody, Form  
4 SBE 75, 04/2022, is incorporated by reference.

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



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Karen Sellers  
Executive Director, State Board of Elections

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this new 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 4:201E 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 form which documents any individuals transporting all voting equipment, ballots, boxes, precinct rosters, and other voting records related to an election contest involving an election of a Governor and Lieutenant Governor or a member of the General Assembly, as required by KRS 120.205 and KRS 120.215.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that Kentucky Acts Chapter 197 requires the State Board to promulgate new administrative regulations under KRS 120.205 and KRS 120.215.

(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 120.205 and KRS 120.215, as amended by Kentucky Acts Chapter 197.

(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 those involved in the administration of an election contest involving an election of a Governor and Lieutenant Governor or a member of the General Assembly

- (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. To comply with this administrative regulation, those transporting election materials will need to document themselves on a standardized form anytime the materials are transferred.

- (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 cost only the amount necessary to print a standardized form through conventional means.

(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 those involved in administering an election contest by providing the complete history of the movement of any related election materials.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Form SBE 75.

(b) On a continuing basis: The only continuing cost will be the price associated with printing any copies of the Form SBE 75 that are necessary.

(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:



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 uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

## FISCAL NOTE

31 KAR 4:201E

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?

The State Board of Elections and the General Assembly will be impacted by this administrative regulation, as well as any law enforcement agency requested to transport the election materials required for the contest.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 120.205 and KRS 120.215, as amended by Kentucky Acts Chapter 197, 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

"Election Contest Chain-of-Custody," Form SBE 75, 04/2022, is the 1-page form that documents any individuals transporting all voting equipment, ballots, boxes, precinct rosters, and other voting records related to an election contest involving an election of a Governor and Lieutenant Governor or a member of the General Assembly.



# KENTUCKY STATE BOARD OF ELECTIONS

## Election Contest Chain-of-Custody

Voting Site Location: \_\_\_\_\_

- A separate form must be completed for each transfer of records between a person(s) transferring and a person(s) receiving.

### To Be Completed by Person(s) Transferring Election Materials:

Transferred By: \_\_\_\_\_

Site of Transfer: \_\_\_\_\_

Date/Time of Transfer: \_\_\_\_\_

Upon initial inspection, do any materials show any signs of tampering or vandalism?    Y    N

Were all locking mechanisms locked at time of arrival?    Y    N

Do any locking mechanisms appear to be tampered with?    Y    N

Name of anyone with access to materials after materials were transferred by the above-listed:

\_\_\_\_\_  
\_\_\_\_\_

Date/Time of Departure: \_\_\_\_\_

Signature(s): \_\_\_\_\_

### To Be Completed by Person(s) Receiving Delivery of Election Materials:

Received By: \_\_\_\_\_

Site of Delivery: \_\_\_\_\_

Date/Time of Delivery: \_\_\_\_\_

Upon initial inspection, do any materials show any signs of tampering or vandalism?    Y    N

Were all locking mechanisms locked at time of arrival?    Y    N

Do any locking mechanisms appear to be tampered with?    Y    N

Name of anyone with access to materials after materials were received by the above-listed:

\_\_\_\_\_  
\_\_\_\_\_

Signature(s): \_\_\_\_\_

- Deliver all completed Chain-of-Custody Forms to the County Clerk in the jurisdiction of the voting site location.

**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.