

SECRETARY OF STATE
(Amendment)

30 KAR 2:010. Certification of vacancy in nominations

RELATES TO: KRS 118.105

STATUTORY AUTHORITY: KRS 118.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.025(2) requires the Department of State to be responsible for elections. KRS 118.105 authorizes the Secretary of State to certify that a vacancy exists in a nomination because of death, withdrawal, disqualification to hold the office sought, or severe disabling condition which arose after the nomination.

Section 1. Notification of Vacancy.

(1) The Secretary of State shall be notified of the vacancy in a nomination governed by KRS 118.105.

(2) The notification shall:

- (a) Be written;
- (b) Be dated;
- (c) State the reason for the vacancy;
- (d) Contain documentation to substantiate the reason for the vacancy;
- (e) Be signed by the person making the notification; and
- (f) Be notarized.

(3) The notification may be made by:

- (a) The candidate;
- (b) The governing authority of a party;
- (c) A registered voter; or
- (d) An opposing candidate.

(4) The notification shall be delivered to the Secretary of State by:

- (a) Certified mail;
- (b) Fax;
- (c) Email; or
- (d) Any person authorized by the person making the notification.

Section 2. Documentation to Substantiate Reason for Vacancy.

(1) Documentation to substantiate the reason for a vacancy shall be filed with the notification by the candidate or governing authority of the party as provided by this section. For:

(a) Death of a candidate: a certificate of death or other evidence satisfactory to the Secretary of State, such as a:

- 1. Certification or written statement from the coroner; or
- 2. Certification from a funeral director;

(b) Withdrawal of a candidate: the Notice of Candidate Withdrawal form, SBE/SOS/05 (4/21);

(c) Disqualification to hold the office sought: evidence of legal disqualification; and

(d) ~~(e)~~ Severe disabling condition: medical evidence of the condition.

(2) Medical evidence of a severe disabling condition shall consist of medical evidence provided by:

- (a) A licensed and practicing:
 - 1. Physician;
 - 2. Osteopath;
 - 3. Psychologist;
 - 4. Psychiatrist; or

- (b) Other medical professional qualified to make a determination that the candidate is suffering from a severe disabling condition.
- (3) The documentation filed to substantiate the reason for vacancy may be challenged, in writing, by:
 - (a) The governing authority of an opposing party;
 - (b) An opposing candidate; or
 - (c) A registered voter.
- (4)
 - (a) The Secretary of State shall review all documentation relating to the reason for a vacancy.
 - (b) If the Secretary of State determines that additional documentation is required, he or she shall request a review:
 - 1. Of the medical evidence of a severe disabling condition filed with the notification; or
 - 2. By a medical professional specified in subsection (2) of this section.

Section 3. In accordance with KRS 118.105, the Secretary of State shall not certify that a vacancy exists if he or she determines that the documentation filed to substantiate the reason for the vacancy does not establish that a vacancy exists because of:

- (1) Death;
- (2) Withdrawal;
- (3) Disqualification to hold the office sought; or
- (4) ~~(3)~~ A severe disabling condition which arose after the nomination.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: December 1, 2021

FILED WITH LRC: December 2, 2021 at 12:58 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 25, 2022, at 10:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five 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 February 28, 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: Jennifer Scutchfield, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the procedures to certify vacancy in nominations.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish the procedures to certify vacancy in nominations.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

In order for the Secretary of State to fulfill its duties under KRS 118.105, this administrative regulation is necessary to establish the procedures to certify vacancy in nominations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation is necessary to establish the procedures to certify vacancy in nominations.

(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:

The legislature added a vacancy can occur because of withdrawal of a candidate. This supports the current version of KRS 118.105.

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

The legislature added a vacancy can occur because of withdrawal of a candidate. This supports the current version of KRS 118.105.

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

The legislature added a vacancy can occur because of withdrawal of a candidate. This supports the current version of KRS 118.105.

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

The legislature added a vacancy can occur because of withdrawal of a candidate. This supports the current version of KRS 118.105.

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

This regulation affects citizens of the Commonwealth that are filing for public office and voting for a candidate.

(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:

Individuals identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

The Secretary of State will not incur costs with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The regulation will reflect current law. (5) Provide an estimate of how much it will cost to implement this administrative regulation:

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

(a) Initially:

None.

(b) On a continuing basis:

None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

N/A

(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:

An increase in fees or funding will not be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied?

Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(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?

This regulation will impact the Office of the Secretary of State.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

This administrative regulation is authorized by KRS 118.105.

(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?

This administrative regulation will not generate any additional revenue for state or local governments during the first year.

(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?

This administrative regulation will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year?

The administration cost is minimal.

(d) How much will it cost to administer this program for subsequent years?

The administration cost will be minimal.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: