

STATE BOARD OF ELECTIONS
(New Administrative Regulation)

31 KAR 4:071. Recanvass procedures.

RELATES TO: KRS 117.305, 118.425, 242.120

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. 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. 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.

Section 1.

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

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

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

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

Section 2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

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

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

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

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: April 28, 2022 at 9:58 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 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 July 31, 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.