

STATE BOARD OF ELECTIONS
(Amendment)

31 KAR 4:170. Exceptions to prohibition on electioneering.

RELATES TO: KRS 117.015, 117.235

STATUTORY AUTHORITY: KRS 117.015(1)(a), ~~117.235(3)(d)~~~~[117.235(3)(e)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.235(3)(c) authorizes the board to establish exceptions to the prohibition on electioneering through administrative regulations. This administrative regulation establishes these exceptions.

Section 1. Definitions.

- (1) "Bumper sticker" means a sticker that measures within fourteen (14) inches by five (5) inches for display on a vehicle bearing a printed message soliciting votes for or against any bona fide candidate or ballot question in a manner which expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question.
- (2) "Electioneering" is defined by KRS 117.235(3).
- (3) "Polling place" means a voting place established in accordance with the provisions of KRS 117.065.
- (4) "Voting room" means a room in which votes are polled as established in accordance with the provisions of KRS 117.235(1).

Section 2. Exceptions to Electioneering. Electioneering shall not include:

- (1) A bumper sticker affixed to a person's vehicle while parked within or passing through a distance of ~~100~~~~[300]~~ feet of any polling place on the day of any election for a reasonable amount of time in which to vote; or
- (2) A voter's use of a personal telecommunications device, computer, or other information technology system, in the voting room to record or transmit electronically an image of his or her own personal likeness and ballot, if the voter does not use the picture:
 - (a) To solicit signatures to a petition or solicit votes for or against any bona fide candidate or ballot question in a manner that expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question; and
 - (b) Within a distance of 100 feet of any entrance to a building in which a voting machine is located if that entrance is:
 1. Unlocked; and
 2. Used by voters on election day.

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes exceptions to the prohibition on electioneering.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary given that: KRS 117.015(1) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties and KRS 117.235(3)(c) authorizes the board to establish exceptions to the prohibition on electioneering through administrative regulations.

(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. KRS 117.235(3)(c) authorizes the board to establish exceptions to the prohibition on electioneering through administrative regulations.

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

This administrative regulation assists in the implementation of KRS 117.235.

(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 300 foot buffer is amended to 100 feet.

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

This amendment follows judicial and legislative action regarding the distance of the buffer.

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

KRS 117.235(3)(c) authorizes the board to establish exceptions to the prohibition on electioneering through administrative regulations.

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

It allows Kentucky administrative regulations to square with judicial precedent and current statutory language.

(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 appearing and working at voting locations.

(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:

No action is required to comply with this amendment.

(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 no 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 establishes any fees or directly or indirectly increases any fees:

No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied?

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

(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 clerks and 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 117.015(1) and KRS 117.235(3)(c) 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 amendment 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 amendment 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.