

STATE BOARD OF ELECTIONS
(Amendment)

31 KAR 6:020. Provisional voting.

RELATES TO: KRS 117.015(1)(a), 117.275, 117.305, 52 U.S.C. 21082~~[42 U.S.C. 15482]~~

STATUTORY AUTHORITY: KRS 117.015(1)(a), 52 U.S.C. 21082~~[42 U.S.C. 15482, sec. 302(d)]~~

CERTIFICATION STATEMENT: This is to certify that this administrative regulation complies with the requirements of 2025 RS HB6, Section 8.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the Kentucky State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties in the administration of the election laws. The Help America Vote Act of 2002, 52 U.S.C. 21082~~[42 U.S.C. 15482, Section 302(d)]~~ requires the state to comply with the provisions of that section concerning provisional voting in elections for federal offices. This administrative regulation establishes procedures for provisional voting.

Section 1. Definitions.

- (1) "Provisional ballot" means a ballot cast in an election for federal office by an individual who resides in a voting precinct but whose eligibility to vote is in question or is not determinable on election day.
- (2) "Provisional ballot inner envelope" means the envelope with the words "provisional ballot" printed on the front.
- (3) "Provisional ballot outer envelope" means the envelope with the following printed on the front:
 - (a) Precinct election officer checklist of circumstances for issuing a provisional ballot;
 - (b) Provisional ballot affirmation; and
 - (c) The county board of elections checklist for indicating whether the ballot was counted and if not counted the reason why.

Section 2. Applicability. This administrative regulation shall be applicable to special, primary, and general elections for the federal elective offices of President/Vice President, United States Senator, and United States House of Representatives.

Section 3. Precinct Election Officer Notice.

- (1) A precinct election officer who cannot confirm a potential voter's eligibility to vote on election day shall notify the individual of the option of appearing before the county board of elections to dispute eligibility or voting a provisional ballot in that precinct if the individual resides at a residence within the geographical boundaries of the precinct.
- (2) If the individual chooses to cast a provisional ballot, then the individual shall not be eligible to vote in any other manner.

Section 4. Procedures and Circumstances for Casting a Provisional Ballot.

- (1) The individual shall sign a provisional ballot precinct signature roster, SBE 35, which contains the individual's name, address, signature, date of birth, political party affiliation, identification type, and precinct officer initials.
- (2) The precinct election officer shall check the appropriate box next to the circumstance for issuing the provisional ballot.
- (3) The circumstances for issuing the provisional ballot:
 - (a) Voter whose name does not appear on the precinct roster and whose registration status cannot be determined by the precinct officer;
 - (b) Voter whose name does not appear on the precinct roster and who has been verified as ineligible to vote;

- (c) Voter who does not have identification;
 - (d) Voter who is voting as a result of a federal or state court order or any order under state law in effect ten (10) days prior to election day which extends polling hours; or
 - (e) Voter has been challenged by all four (4) precinct election officers.
- (4) The precinct election officer shall give the individual the provisional ballot, a provisional ballot inner envelope, SBE 39, and the provisional ballot outer envelope, SBE 38.
- (5) To cast a provisional ballot, an individual shall execute the written affirmation on the provisional ballot outer envelope before a precinct officer at the voting place declaring the individual is a registered voter in the county and resides within the geographical boundaries of the precinct. The written affirmation executed by the individual shall state:
- (a) The individual's name;
 - (b) Current residential address;
 - (c) Political party affiliation;
 - (d) That the individual is a registered voter in the county and resides in the precinct;
 - (e) That the individual knows of no legal reason to prevent his or her vote from being cast and counted;
 - (f) That the individual has not voted and shall not vote in another precinct or by absentee ballot in this state during this election;
 - (g) That the individual understands that any person who falsely signs and verifies any form requiring verification shall be guilty of perjury and subject to penalties therefore; and
 - (h) That the individual further understands that if he or she executes the affirmation and is not a registered voter at the current address stated, the individual has committed a criminal act.
- (6) The precinct election officer shall direct the individual to a private voting area in which the individual shall cast his or her provisional ballot.
- (7)
- (a) An individual may spoil up to two (2) provisional ballots and shall not be issued more than a total of three (3) provisional ballots.
 - (b) Spoiled ballots shall be placed in the provisional ballot inner envelope, sealed by the individual, and returned to a precinct election officer who shall mark on the provisional ballot stub of the issued ballot and on the front of the envelope "spoiled ballot".
- (8) The individual shall place the voted provisional ballot in the provisional ballot inner envelope and seal. The individual shall place the sealed provisional ballot inner envelope in the provisional ballot outer envelope and seal.
- (9) The individual shall return the sealed provisional ballot outer envelope to the precinct election officer.
- (10) The precinct election officer, upon receiving the sealed provisional ballot outer envelope from the individual, shall give the individual the provisional ballot information sheet, SBE 36, which explains the individual's right to contact their local county clerk to learn if the provisional ballot was counted, and if not counted, the reason why.
- (11) A precinct election officer shall place sealed provisional ballot outer envelopes and sealed spoiled provisional ballot inner envelopes in a container and transmit to the county board of elections.
- (12) The county board of elections shall determine the eligibility to vote of each individual casting a provisional ballot, in accordance with KRS Chapters 116 to 118 and 31 KAR Chapters 2 to 6.
- (13) If the county board of elections determines the individual is eligible to vote in the precinct in the election, the vote shall be counted and the county board shall so indicate on the provisional ballot outer envelope.

(14) If the county board of elections determines the individual is ineligible to vote in the precinct in the election, the vote shall not be counted and the county board shall so indicate on the provisional ballot outer envelope.

Section 5. Provisional Ballot During Extension of Time to Close Polls.

(1) An individual who votes in an election for federal office as a result of a federal or state court order or any other order extending the time established for closing the polls by a state law in effect ten (10) days before the date of that election may only vote in that election by casting a provisional ballot.

(2) A provisional ballot cast during an extension of the time for closing the polls required by orders described in this section shall be separated and held apart from other provisional ballots cast by those not affected by the order.

Section 6. Responsibilities.

(1) The county board of elections shall count all eligible provisional ballots.

(2) The county board of elections shall begin counting provisional ballots no later than 9 a.m. prevailing time on the day following the election.

(3) The provisional ballot count shall be certified by the county board of elections on the Certification Official Count and Record of Election Totals prescribed by the State Board of Elections in 31 KAR 4:031~~[0]~~, which contains the office name, name of candidate, machine vote totals, absentee machine vote totals, paper absentee ballot vote totals, provisional ballot vote totals, and total votes. This form shall be certified to the Secretary of State's Office not later than 12 p.m., prevailing time, on the Friday following the election. For special elections this form shall be certified to the Secretary of State's Office not later than 12 p.m., prevailing time, on the day following the election.

(4) Upon completion of a recanvass of vote totals, the county board of elections shall report recanvassed vote totals on the Recanvass of Official Count and Record of Election Totals form, prescribed by the State Board of Election in 31 KAR 4:071~~[31 KAR 4:070]~~, which contains the office name, name of candidate, machine vote totals, absentee machine vote totals, paper absentee ballot vote totals, provisional ballot vote totals, and total votes. The recanvassed vote totals shall be certified and immediately reported to the Secretary of State's Office.

(5) County clerks shall cause provisional ballots to be printed. The provisional ballots shall be printed with a ballot stub that will be consecutively numbered with a place for voter name, precinct election officer initials, and marked by precinct officers if it was a spoiled ballot.

(6) County clerks shall post instructions in each precinct on how to cast a provisional ballot, in accordance with Section 4 of this administrative regulation.

(7)

(a) For general and special elections, a minimum of twenty (20) provisional ballots and other applicable forms shall be sent to each precinct.

(b) For primary elections, a minimum of twenty (20) provisional ballots and other applicable forms shall be sent for each party to each precinct.

(8) After the county board of elections has completed its investigation of each provisional ballot and marked the face of the provisional ballot outer envelope appropriate to its findings, the county clerk shall photocopy the face of each outer envelope for future access to convey to the individual whether or not the ballot was counted, and if not counted, the reason why, and shall immediately enter the information in the Statewide Voter Registration Database.

(9) Provisional ballots and all envelopes from a general election shall be locked for thirty (30) days and retained for twenty-two (22) months. Provisional ballot and all envelopes from a primary or special election shall be locked for ten (10) days and retained for twenty-two (22) months.

(10) A provisional ballot accountability statement for provisional ballots, SBE 37, shall be sent to each precinct and returned to the county board of elections, which contains the county name, precinct name, number of ballots issued, ballot stub numbers, number of provisional ballots used, number of provisional ballots unused, number of provisional ballots spoiled and place for the signature of all four (4) precinct election officers.

(11) The chairman of the county board of elections shall file a completed "County Board of Elections Provisional Ballots Issued to Voters and Counted" form, SBE 54C, with the State Board of Elections within ten (10) days after any special, primary, or general election for the federal elective offices of President/Vice President, United States Senator, and United States House of Representatives.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Provisional Ballot Precinct Signature Roster - SBE 35", 10/2025~~{(6/17)}~~;
- (b) "Provisional Ballot Informational Sheet - SBE 36", 10/2025~~{(9/04)}~~;
- (c) "Provisional Ballot Accountability Sheet - SBE 37", 10/2025~~{(12/05)}~~;
- (d) "Provisional Ballot Outer Envelope - SBE 38", (6/17);
- (e) "Provisional Ballot Inner Envelope - SBE 39", (11/03); and
- (f) "County Board of Elections Provisional Ballots Issued to Voters and Counted - SBE 54C" 10/2025~~{(2/04)}~~.

(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: October 13, 2025

FILED WITH LRC: October 14, 2025 AT 11:55 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2025, at 11:00 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 December 31, 2025. 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

Subject Headings:Elections and Voting; County Clerks; Local Governments

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes procedures for provisional voting.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to maintain the maximum degree of correctness, impartiality, and efficiency in the procedures of voting.

(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 assists in maintaining the maximum degree of correctness, impartiality, and efficiency in the procedures of voting.

(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:

This amendment updates incorrect statutory citations and Form SBE 35, Form SBE 36, Form SBE 37, and Form SBE 54C.

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

This amendment updates Form SBE 35, Form SBE 36, Form SBE 37, and Form SBE 54C for the first time since 2017 (SBE 35), 2004 (SBE36), 2005 (SBE 37), and 2004 (SBE 54C).

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

This amendment will assist in maintaining the maximum degree of correctness, impartiality, and efficiency in the procedures of voting.

(3) Does this administrative regulation or amendment implement legislation from the previous five years?This amendment does not implement legislation from the previous five years.

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

This administrative regulation will affect voters of the Commonwealth, county boards of election, and the State Board of Elections.

(5) Provide an analysis of how the entities identified in question (4) 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 (4) will have to take to comply with this administrative regulation or amendment:

. To comply with this amendment, county boards of election will need to ensure that the new forms are used for provisional voters.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (4):

The State Board of Elections estimates that the implementation of this administrative regulation will have minimal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (4):

Compliance with this new administrative regulation will benefit all by assisting in maintaining the maximum degree of correctness, impartiality, and efficiency in the procedures of voting.

(6) 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.

(b) On a continuing basis:

The continuing costs of this administrative regulation for the State Board of Elections will be minimal.

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

Funds from the State Board of Elections' administrative budget will be used in the implementation and enforcement of this administrative regulation.

(8) 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.

(9) 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.

(10) TIERING: Is tiering applied?

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 IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation:

. KRS 117.015(1)(a) and 52 U.S.C. 21082 require and authorize the actions taken by this administrative regulation.

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act:

This administrative regulation is expressly authorized by the creation of KRS 117.015(a), 2005 Ky. Acts ch. 91, sec. 2.

(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions:

This administrative regulation will affect the promulgating agency, the State Board of Elections.

(b) Estimate the following for each affected state unit, part, or division identified in (3)(a):

1. Expenditures:

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.

For subsequent years:The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

2. Revenues:

For the first year:It is not expected or intended that this administrative regulation will generate any revenue.

For subsequent years:It is not expected or intended that this administrative regulation will generate any revenue.

3. Cost Savings:

For the first year:The State Board of Elections expects that this administrative regulation will not generate any specific cost savings.

For subsequent years:The State Board of Elections expects that this administrative regulation will not generate any specific cost savings.

(4)(a) Identify affected local entities (for example: cities, counties, fire departments, school districts):

This administrative regulation will affect county boards of election. (b) Estimate the following for the first year:

(b) Estimate the following for each affected local entity identified in (4)(a):

1. Expenditures:

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.

For subsequent years:The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

2. Revenues:

For the first year:It is not expected or intended that this administrative regulation will generate any revenue.

For subsequent years:It is not expected or intended that this administrative regulation will generate any revenue.

3. Cost Savings:

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.

For subsequent years:The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a):

This administrative regulation will affect voters of the Commonwealth.

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:

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.

For subsequent years:The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

2. Revenues:

For the first year:It is not expected or intended that this administrative regulation will generate any revenue.

For subsequent years:It is not expected or intended that this administrative regulation will generate any revenue.

3. Cost Savings:

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.

For subsequent years:The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a)

(a) Fiscal impact of this administrative regulation:

The State Board of Elections expects that this administrative regulation will have little to no fiscal impact on the regulated entities, outside those expenditures already undertaken.

(b) Methodology and resources used to reach this conclusion:

This determination of this administrative regulation's fiscal impact is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a "major economic impact", as defined by KRS 13A.010(14):

The State Board of Elections does not expect that this administrative regulation will result in a "major economic impact" as the combined implementation and compliance costs of an administrative regulation are not expected to rise to at least five hundred thousand dollars (\$500,000) over any two (2) year period.

(b) The methodology and resources used to reach this conclusion:

This conclusion is made by the listed contact person and other agency staff based on their collective experience with the subject matter.