

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(Amended at ARRS Committee)

105 KAR 1:445. Trustee elections.

RELATES TO: KRS 11A.020, 11A.040, 61.080, 61.505, 61.645, 78.782

STATUTORY AUTHORITY: KRS 61.505(1)(g), 61.645(4)(j), 78.782(4)(j)

CERTIFICATION STATEMENT: This is to certify that this administrative regulation complies with the requirements of KRS 13A.105(2) because it does not have a major economic impact.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852. KRS 61.645(4)(j) and 78.782(4)(j) authorize the systems to promulgate an administrative regulation to implement the use of electronic and telephonic ballots in the trustee election process and requires paper ballots to be mailed upon request of any eligible voter. This administrative regulation establishes the procedures and requirements for preparing and casting electronic, telephonic, and paper ballots, and the tabulation of the ballots for trustee elections.

Section 1. Definitions.

(1) "Ballot" means an electronic or paper document that ~~meets~~~~[includes]~~ the requirements of provisions required by KRS 61.645(4)(c) and 78.782(4)(c), and for each candidate includes~~[the candidate's]~~:

- (a) A recent ~~[Recent]~~ photograph;
- (b) City and county of residence;
- (c) Employer and position title, or the employer from which the candidate last worked or retired, and the position title of the last position held;
- (d) Education, including schools and universities attended and degrees earned;
- (e) Any professional licenses or certifications~~[held by the candidate]~~;
- (f) Any organization of which the candidate is a member that is listed on the candidate's application; and
- (g) The website~~[Web site]~~ address where each candidate's materials are~~[filed Application for Trustee and resume is]~~ available for viewing.

(2) "Board" means the Board of Trustees of the Kentucky Retirement Systems or the Board of Trustees of the County Employees Retirement System.

(3) "Candidate" means a participant of the system for which the election is being held who is nominated by:

- (a) The ~~[Is nominated by the]~~ relevant board; or
- (b) Petition ~~[Is nominated by petition]~~ of the members of the relevant system.

(4) "Election year" means the year of the:

- ~~(a)~~ Expiration of a trustee's term of office; and~~[the year of the]~~
- ~~(b)~~ Trustee election.

(5) "Eligible voter" means any person who:

- (a) Is a participant of the system for which the vote is being taken on or before December 31 of the year preceding the election year; and
- (b) Has on file:
 - 1. A valid email address; or
 - 2. If a paper ballot is requested pursuant to KRS 61.645(4)(j), a valid physical mailing address.

- (6) "Plurality of votes" means a majority of valid votes cast in an election.
- (7) "Resume" means a document that at a minimum includes the participant's:
- (a) First and last name;
 - (b) Address;
 - (c) Phone number;
 - (d) E-mail address;
 - (e) Educational background; and
 - (f) Professional employment history that includes dates of employment, job title, employer name and address, and type of business.
- (8) "Term of Office" means the period of membership on the relevant Board, which begins on April 1 of the year elected or appointed and ends on March 31 four (4) years thereafter.
- (9) "Valid email address" means an email address the agency has on file for a participant that is operational and able to receive messages, or has not otherwise been deemed an invalid email address by the agency.
- (10) "Valid physical mailing address" means the mailing address on file at which~~for~~ a participant~~where he or she~~ is able to receive U.S. mail, including a:
- (a) Current ~~A current~~ street address;
 - (b) ~~A~~ Post Office box registered with the United States Postal Service; or
 - (c) Private ~~A private~~ mailbox registered with a commercial mail receiving agency established pursuant to the United States Postal Service regulation.
- (11) "Valid vote" means a timely cast vote by an eligible voter that clearly designates~~has clearly designated~~ the voter's choice of an eligible candidate or candidates.
- (12) "Write-in" means casting a valid vote for an eligible candidate~~a person~~ not listed on the ballot as a candidate by:
- (a) Inserting his or her~~their~~~~his or her~~ name in the designated place when casting the vote by mail or electronically; or
 - (b) Providing his or her~~their~~~~his or her~~ name when casting the vote by telephone.
- (13) "Write-in candidate" means a person who is not listed on the ballot as a candidate and has been inserted or provided as a write-in.

Section 2. Use of Third-party Vendors. Subject to KRS 61.505(3)(d), the agency may contract with third-party vendors to provide services for the trustee election process as provided by KRS 61.645(4) and 78.782(4).

Section 3. Election and ballot requirements.

- (1) At the expiration of an elected trustee's term of office, an election shall occur for the:
 - (a) ~~The~~ Kentucky Retirement Systems Board of Trustees pursuant to KRS 61.645; and
 - (b) ~~The~~ County Employees Retirement System Board of Trustees pursuant to KRS 78.782.
- (2) Ballots shall include:
 - (a) Candidates nominated by the Board in accordance with Section 4 of this administrative regulation;
 - (b) Candidates nominated by Petition in accordance with Section 5 of this administrative regulation; or
 - (c) A write-in option.
- (3)
 - (a) On or before June 30~~May 31~~ of the year immediately preceding an election year, the agency shall provide notice to current participants detailing the steps he or she~~they~~~~he or she~~ shall take to become a potential candidate.
 - (b) A participant shall only be a potential candidate if he or she~~they~~~~he or she~~:

1. ~~Is /Are /~~ [Is] a member or retired member of the system in which he or she is/they are/~~[he or she is]~~ seeking placement on the ballot; ~~/ /~~, or is a retired member with the majority of his or her service in that system;

2. ~~Is /Are /~~ a member or a retired member of County Employees Retirement System if he or she is /they are/ seeking placement on the ballot for the County Employees Retirement System, and the agency verifies the majority of his or her /their/ ~~[his or her]~~ service was earned in that system in a:

a. Nonhazardous position if he or she is /they are/ seeking placement on the ballot for a trustee position under KRS 78.782(1)(a)(1); or

b. Hazardous position if he or she is /they are/ seeking placement on the ballot for a trustee position under KRS 78.782(1)(a)(2);

3. ~~[2.] Is /Are /~~ [Is] not statutorily prohibited by virtue of term limits as established in KRS 61.645(3) and 78.782(3);

4. ~~[3.] Completes /Complete /~~ [Completes] the requirements of paragraph (c) of this subsection;

5. ~~[4.] Passes /Pass /~~ [Passes] the background check in accordance with subsection (4)(b) of this section;

6. ~~[5.] Is /Are /~~ [Is] determined constitutionally compatible in accordance with subsection (4)(c) of this section;

7. ~~[6.] Is /Are /~~ [Is] not a current or former employee of the agency, Kentucky Retirement Systems, or County Employees Retirement System, or is/are/ not otherwise prohibited from being placed~~[or the Board in which he or she is seeking placement]~~ on the ballot, ~~/ /~~ pursuant to KRS 61.545(6)(c) or 78.782(6)(c); and

8. ~~[7.] Is /Are /~~ [Is] not in violation of any provision of KRS 11A.020 or 11A.040 by a court of competent jurisdiction or any other statute.

(c) Each participant seeking to be a potential candidate shall file in accordance with ~~the notice indicated in]~~ paragraph (a) of this subsection:

1. A valid Application for Trustee;
2. A resume with cover letter;
3. A recent color photograph; and
4. An authorization for the agency to complete a background check.

(4)

(a) The agency shall review the filed documentation to ensure a potential candidate meets the requirements established in subsection (3)(b) of this section, and completed the requirements established in subsection (3)(c) of this section and KRS 61.645 and 78.782.

(b) A background check shall be completed for each potential candidate.

(c) If currently employed, the Kentucky Attorney General's Office shall review the potential candidate's employment to determine if it is constitutionally compatible with the trustee position in accordance with KRS 61.080, 61.645, 78.782, and the Kentucky Constitution Section 165. If the Kentucky Attorney General's Office indicates that the potential candidate's employment is not constitutionally compatible with the trustee position, the potential candidate shall be:

1. Excluded ~~[Be excluded]~~ from placement on the ballot; or
2. Included ~~[Be included]~~ for possible placement on the ballot if he or she provides/they provide/ a written statement confirming his or her/their/ agreement~~[he or she agrees]~~ to resign from his or her/their/~~[his or her]~~ current position if elected~~[, and provides a written statement as such]~~.

Section 4. Nomination by the Board.

(1) The agency shall provide the respective Board of each system~~[system's Board]~~ with a list of potential candidates who meet the requirements of Section 3(3) and (4) of this

administrative regulation, and each of ~~his or her~~*their* completed corresponding Applications for Trustee.

(2) The name of each candidate nominated by the respective Board within six (6) months prior to the end of a term of office shall be placed on the ballot.

Section 5. Petitions.

(1) To be included on the ballot by petition, the potential candidate shall file a valid petition no later than October 31 of the year preceding the election year~~four (4) months from the end of the term of office set to expire~~.

(2) A valid petition is a petition that meets the requirements of:

(a) ~~Meets the requirements of~~ Section 3(3) and (4) of this administrative regulation; and

(b) KRS 61.645(4)(b) or 78.782(4)(b).

(3) Each petition shall be reviewed by the agency to verify that each signature belongs to a participant of the respective system.

(4) The name of each candidate who meets the requirements of this section shall be placed on the ballot.

Section 6. Default to electronic ballots.

(1) The agency shall notify each eligible voter that an electronic ballot shall be provided unless he or she requests~~they request~~~~he or she requests~~ a modification to the ballot type received in accordance with subsection (2) of this section.

(2)

(a) A request to modify the ballot type shall be received on or before November 30 of the year preceding the election year in order to be effective for the upcoming election.

Modifications of the ballot type include changing from:

1. An ~~From an~~ electronic ballot to a paper ballot; and

2. A ~~From a~~ paper ballot to an electronic ballot.

(b) An eligible voter shall request a change in~~change in~~ the type of ballot:

1. Through the Self-Service Web site;

2. Via phone by calling the agency and providing ~~his or her~~*their* ~~agency-issued~~~~his or her agency issued~~ personal identification number (PIN); or

3. By filing a signed written request.

(3) Once an eligible voter modifies the ballot type he or she receives~~they receive~~~~he or she receives~~, the eligible voter shall receive the specified ballot type until he or she requests~~they request~~~~he or she requests~~ a change in the ballot type in accordance with subsection (2) of this section.

Section 7. Ballot Preparation and Delivery.

(1) The agency or its third-party vendor shall prepare the official ballot within four (4) months of the nominations of the respective Board~~no later than three (3) months prior to the expiration of the term of office~~. The ballot shall:

(a) Provide a unique voter identification number;

(b) Provide details on how to vote~~by telephone~~;

(c) Contain instructions defining what constitutes a valid vote; and

(d) Indicate that any invalid vote shall not be counted.

(2) Ballots shall be provided to eligible voters~~the eligible voter~~ on or before January 28~~20~~ of the election year.

(a) The agency or its third-party vendor shall email electronic ballots to ~~For an electronic ballot,~~ the email address on file unless the eligible voter:

1. Has requested a paper ballot, which shall be sent to his or her ~~their~~ last valid physical mailing address on file; or

~~2. Only has a valid physical mailing address on file to which a paper ballot shall be sent. [on or before December 31 of the year preceding the election year shall be used. If the eligible voter does not have a valid email address on file, the electronic ballot shall not be sent. If the agency discovered the invalid email address on or before one (1) week prior to the deadline to cast a valid vote, a paper ballot shall be mailed in accordance with paragraph (b) of this subsection.]~~

~~[(b)] [For a paper ballot, the valid physical mailing address on file on or before December 31 of the year preceding the election year shall be used. If a returned paper ballot is received:]~~

~~[1.] [With notification of a new mailing address from the United States Postal Service, the ballot will be mailed to the new address if the notification is received on or before one (1) week prior to the date the vote shall be cast; or]~~

~~[2.] [With no notification of a new mailing address from the United States Postal Service on or before one (1) week prior to deadline to cast a valid vote, if the participant has a valid email address on file, an electronic ballot shall be sent in accordance with paragraph (a) of this subsection.]~~

~~(b) [(c)]~~ The ballot shall not be provided if there is no valid physical mailing address and no valid email address on file.

(3) The agency and its third-party vendor shall be held harmless for any incorrect email address or mailing address submitted by the participant or inadvertently entered by the agency or its third-party vendor.

Section 8. Casting of Votes.

(1) In order to be accepted and counted as a valid vote pursuant to KRS 61.645:

(a) Electronic votes and votes by telephone shall be cast on or before March 1 of the election year; and ~~[For an electronic vote or vote by telephone to be accepted and counted as a valid vote, it shall be cast on or before the end of day on March 1 of the election year, except as provided in paragraph (b) of this subsection.]~~

(b) Paper votes ~~[For paper voting, the vote]~~ shall be on a ballot postmarked to the required address by ~~[the end of day on]~~ March 1 of the election year.

(2)

(a) For an electronic or paper ballot, the eligible voter shall:

1. Indicate the candidate or candidates of his or her~~their~~~~[his or her]~~ choice pursuant to KRS 61.645(4)(f) and 78.782(4)(f); or

2. Indicate a write-in option and add the name of an eligible participant as specified by the Board for which the vote is being cast.

(b) To cast a vote by electronic ballot, the eligible voter shall electronically sign the completed ballot on the Web site provided~~[to him or her]~~ and follow any other prompts.

(c) To cast a vote by paper ballot, the eligible voter shall sign the completed ballot and mail it to the address indicated on the paper ballot.

(3) To cast a vote by telephone, the eligible voter shall:

(a) Call the number provided on the paper or electronic ballot;

(b) Provide his or her~~their~~~~[his or her]~~ unique voter identification number;

(c) Indicate the candidate or write-in candidate of his or her~~their~~~~[his or her]~~ choice verbally; and

(d) Follow any other prompts.

(4) Each eligible voter shall cast only one (1) vote per open position in each applicable system and any subsequent vote received or submitted shall be invalid and not accepted.

Section 9. Review of Cast Votes.

(1) The third-party vendor shall review each cast vote to determine~~[ascertain]~~ whether it is a valid vote.

(2)

(a) Invalid votes shall include ballots:

1. Returned to the agency or third-party vendor for faulty or invalid physical mailing addresses or email addresses;
2. Incorrectly returned or mailed to the street address of the agency or third-party vendor; or
3. That do not comply with Section 8 of this administrative regulation.

(b) Invalid votes shall not be considered or counted. Once the final results are announced, the ballots from these invalid votes shall be shredded or otherwise electronically destroyed by the third-party vendor and a certificate shall be provided to the agency confirming the shredding or destruction of these ballots.

Section 10. Tabulation of Votes.

(1) After totaling the valid votes, the third-party vendor shall certify the results of the election in writing to the Chair of the respective Board in care of the Chief Executive Officer. The certified results shall be provided to the agency on or before March 15 of the election year.

(2) Once all valid votes have been counted and the results are final, the third-party vendor shall destroy all ballots, including ballots or data generated and stored from electronic or telephone votes, and provide a certificate confirming the destruction of the ballots or data to the agency.

(3) The candidate or write-in candidate with the plurality of votes is~~[votes is]~~ elected to the vacant trustee position and shall begin his or her~~[their]~~~~[his or her]~~ term of office on April 1 of the election year.

(4) The agency shall notify each balloted candidate~~[and write-in candidate]~~ of the outcome of the election.

Section 11. Board Vacancies.

(1) The agency shall notify participants of the vacancy of an elected trustee during an unexpired term within thirty (30) days of the vacancy occurring. The notice shall detail the steps members or retired members shall take to become a potential candidate.

(2) In order to be an eligible candidate for the trustee vacancy, a participant shall:

(a) Meet the requirements established in Section 3(3)(b) of this administrative regulation; and

(b) File the materials established in Section 3(3)(c) of this administrative regulation with the agency no later than sixty (60) days after the vacancy occurs.

(3) The agency shall provide a list of eligible candidates to the applicable board for consideration and appointment by majority vote of the remaining elected trustees pursuant to KRS 61.645(5) or 78.782(5)(a).

Section 12. Incorporation by reference.

(1) "Application for Trustee", March 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the agency's ~~website~~~~[Web site]~~ at <https://kyret.ky.gov>.

FILED WITH LRC: February 9, 2026

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