

1 AN ACT relating to elections and making an appropriation therefor.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔Section 1. KRS 120.185 is amended to read as follows:

- 4 (1) *(a) In any regular election or special election for any member of the General*
5 *Assembly, Governor and Lieutenant Governor, Treasurer, Auditor of Public*
6 *Accounts, Commissioner of Agriculture, Labor and Statistics, Secretary of*
7 *State, and Attorney General, a recount of the vote shall be required when a*
8 *candidate is defeated by a margin of not more than one half of one percent*
9 *(.5%) of the votes cast for the office;*
- 10 *(b) Any recount held under paragraph (a) of this subsection shall be*
11 *commenced not later than the second Tuesday following the election. The*
12 *State Board of Elections shall determine whether a recount is required*
13 *under this section based upon the total number of votes certified to the*
14 *Secretary of State;*
- 15 *(c) The custody of the machines, the ballots, boxes, and all papers pertaining to*
16 *the election shall be maintained by the county board of elections. The voting*
17 *machines shall remain continuously locked and the ballot boxes containing*
18 *all paper ballots shall remain continuously locked as required by Section 2*
19 *of this Act until the time set for the recount. The keys shall remain in the*
20 *possession of the county board of elections until the time set for the*
21 *recount;*
- 22 *(d) The recount shall be conducted by the county board of elections of each*
23 *county in which votes for the office that is the subject of the recount were*
24 *cast;*
- 25 *(e) At the recount, each political party represented on the county board of*
26 *elections may appoint a representative to be present, and each candidate*
27 *subject to the recount may be present, either in person or by a representative*

1 or both. The county board of elections shall authorize representatives of the
2 news media to observe the recount. All observers permitted by this
3 paragraph shall observe only and shall not speak or otherwise participate in
4 the recount;

5 (f) On the day fixed for the recount, the county board of elections shall meet
6 and, after confirming the integrity of the ballots, shall proceed to recount
7 the ballots;

8 (g) The county board of elections shall complete the recount as soon as
9 practicable. Upon completion of the recount, the county board of elections
10 shall file and enter of record the results of the recount, and shall certify the
11 results of the recount of the total number of votes to the Secretary of State
12 not later than 4 p.m., prevailing time, on the day following the completion
13 of the recount, Sunday excluded. No certificate of election shall be issued by
14 the State Board of Elections while the recount is pending;

15 (h) The costs of any recount held pursuant to this subsection shall be paid by
16 the Commonwealth of Kentucky. The costs shall be deemed a necessary
17 government expense and shall be paid from the general fund surplus
18 account under KRS 48.700 or the budget reserve trust fund under KRS
19 48.705;

20 (i) An unsuccessful candidate or slate of candidates may submit a written
21 waiver for the recount to the Secretary of State within twenty-four (24)
22 hours of the certification of the total number of votes as provided in KRS
23 118.425(4). Upon receipt of the waiver, the State Board of Elections shall
24 immediately order the recount to be cancelled; and

25 (j) If a recount is conducted under paragraph (a) of this subsection, the time
26 for filing a contest petition shall be suspended until the vote is certified as
27 provided in paragraph (g) of this subsection.

- 1 (2) (a) Any candidate who was voted for at a regular election for any of the offices to
2 which KRS 120.155 applies **but who does not qualify for an automatic**
3 **recount under paragraph (a) of subsection (1) of this section** may request a
4 recount of the ballots by:
- 5 1. Filing a petition~~[-so requesting,]~~ with the same court **where**~~[that]~~
6 petitions of contest are required to be filed~~[-with,]~~ within ten (10) days
7 after the day of the election;~~[-]~~ or~~[-]~~
- 8 2. If the candidate is qualified to institute a contest proceeding under KRS
9 120.155, by including a request for a recount in his **or her** petition
10 instituting the contest proceedings~~[-, but in the latter case the petition~~
11 ~~shall be]~~ filed within ten (10) days after the day of the election;~~[-]~~
- 12 (b) Any candidate who is a contestee in a contest proceeding under KRS 120.155
13 may request a recount in his answer filed in the contest proceeding, but only if
14 the answer is filed within ten (10) days after the day of election;~~[-]~~
- 15 (c) If a request for a recount is made, the State Board of Elections or the county
16 board of elections, whichever would issue the certificate of election shall be
17 made a party defendant;~~[-]~~
- 18 (d) The party requesting the recount shall execute bond with approved surety for
19 the costs of the recount, in an amount to be fixed by the Circuit Judge;~~[-]~~
- 20 (e) Upon the bond being filed, the clerk shall immediately notify the Circuit
21 Judge of the request and the filing of the bond, and the judge shall at once
22 enter an order directing **custody of** the voting machines, ballots, boxes, and all
23 papers pertaining to the election to be transferred to the Circuit Court, and fix
24 a day for the recount proceedings to begin. A copy of the order shall be served
25 upon the parties or their counsel in the same manner as notices are required to
26 be served, which shall be deemed sufficient notice of the proceeding;~~[-]~~
- 27 (f) On the day fixed, the court shall proceed to recount the ballots if their integrity

1 is satisfactorily shown and shall complete the recount as soon as
2 practicable; ~~;~~ and

3 **(g) Upon completion of the requested recount under this subsection the court**
4 **shall** file and enter of record the results **of the recount** ~~[thereof]~~, and direct the
5 **State Board of Elections** ~~[state board]~~ or county board **of elections**, whichever
6 would issue the certificate of election, to issue the **certificate** ~~[same]~~ to the
7 party entitled thereto as shown by the recount.

8 **(3)** ~~[(2)]~~ Any party may appeal from the judgment **issued under subsection (2) of this**
9 **section** to the Court of Appeals, in the same manner as provided in KRS 120.075,
10 **and** all of the provisions of **that** ~~[which]~~ statute shall **apply** ~~[be applicable]~~.

11 **(4)** ~~[(3)]~~ If a proceeding for recount is **requested** ~~[asked]~~ and prosecuted in a contest
12 proceeding, **the recount** ~~[it]~~ shall not await the preparation or trial of the contest in
13 the Circuit Court or in the Court of Appeals. The action of the courts shall be final,
14 ~~excluding the parties]~~ as to the question of a recount of the ballots, and certificates
15 shall then be issued to the parties entitled thereto.

16 ➔Section 2. KRS 117.295 is amended to read as follows:

17 (1) For a period of ten (10) days following any primary ~~[election]~~, and for a period of
18 thirty (30) days following any **regular** ~~[general]~~ or special election, the voting
19 machine shall remain locked against voting and the ballot boxes containing all
20 paper ballots shall remain locked, except that the voting machines and the ballot
21 boxes may be opened and all the data and figures therein examined; ~~;~~

22 **(a)** Upon the order of any court of competent jurisdiction, or judge thereof; ~~;~~ ~~or]~~

23 **(b)** By direction of any legislative committee authorized and empowered to
24 investigate and report upon contested elections; **and** ~~;~~

25 **(c) As required to conduct a recount under Section 1 of this Act.** ~~[and]~~

26 All the data and figures shall be examined by the court, judge, **county board of**
27 **elections, State Board of Elections,** or committee in the presence of the officer

1 having the custody of the machine and ballot boxes. In the event of a contest of
2 election, the court in which the contest is pending or the committee before which
3 the contest is being heard may, upon motion of any party to the contest, issue an
4 order requiring that the voting machines and ballot boxes shall remain continuously
5 locked for further time as may be reasonable or necessary, with due regard for the
6 preparation of the machines for a succeeding primary, regular *election*, or special
7 election, but in no event shall the order compel that the machines remain locked to a
8 time within thirty (30) days next preceding any approaching primary, regular
9 *election*, or special election.

10 (2) During the period when the machine and the ballot boxes are required to be kept
11 locked, the keys thereto shall remain in the possession of the county board of
12 elections. After that period, it shall be the duty of the county board of elections to
13 return the keys to the custody of the county clerk.

14 ➔Section 3. KRS 120.017 is amended to read as follows:

15 (1) It shall be the duty of precinct election officers at all primary, regular, or special
16 elections to immediately report to the county clerk any administrative or clerical
17 error discovered in the process of conducting the polling or tabulation of votes at
18 any such election.

19 (2) Upon receipt by the county clerk of notice of error in conducting the polling or
20 tabulation of votes pursuant to subsection (1) of this section, the county clerk shall
21 file an action in the Circuit Court, within fifteen (15) days of the election,
22 requesting a recount of ballots for the precinct reporting the administrative or
23 clerical error. Simultaneously with the filing of such action, the county clerk shall
24 make written notice by regular mail to all candidates appearing on the ballot of the
25 precinct at issue that such action is being filed. In the case of an election for
26 candidates for offices for the state at large or an election on a statewide public
27 question, the action shall be filed in the Franklin Circuit Court; in the case of other

1 elections, the action shall be filed in the Circuit Court of the county in which the
2 precinct reporting the error is located.

3 (3) An action filed in the Circuit Court of proper jurisdiction pursuant to this section
4 shall be heard summarily and without delay. Upon filing of the action, the circuit
5 clerk shall immediately notify the Circuit Judge, and the judge shall at once enter an
6 order directing custody of the voting machine, the ballots, boxes and all papers
7 pertaining to the election from that precinct claiming error, to be transferred to the
8 Circuit Court, and fix a day for the recount proceeding to begin.

9 (4) Candidates notified pursuant to subsection (3) of this section shall, upon proper
10 motion, be made parties to the action.

11 (5) On the day fixed for the recount, the court shall proceed to recount the ballots if
12 their integrity is satisfactorily shown and shall complete the recount as soon as
13 practicable, and shall file and enter of record the results thereof.

14 (6) Any person made party to the action pursuant to subsection (4) of this section may
15 appeal from the judgment to the Court of Appeals, in the same manner as provided
16 in KRS 120.075.

17 (7) The county clerk shall certify the final recount results entered of record in any
18 action filed pursuant to this section to the county board of elections and to the local
19 governing body of each of two (2) dominant political parties. Final certification of
20 election results shall then proceed according to KRS Chapters 117, 118, and 118A.

21 **(8) The court may determine if an automatic recount conducted under Section 1 of**
22 **this Act satisfies the recount required under this section.**

23 ➔Section 4. KRS 120.155 is amended to read as follows:

24 Any candidate for election to any state, county, district or city office (except the office of
25 Governor, Lieutenant Governor, member of the General Assembly, and those city offices
26 as to which there are other provisions made by law for determining contest elections), for
27 whom a number of votes was cast equal to not less than twenty-five percent (25%) of the

1 number of votes cast for the successful candidate for the office, may contest the election
2 of the successful candidate, by filing a petition in the Circuit Court of the county where
3 the contestee resides, unless the officer is one (1) elected by the voters of the whole state,
4 in which case the petition shall be filed in the Franklin Circuit Court. The petition shall be
5 filed and process issued within thirty (30) days after the day of election; it shall state the
6 grounds of the contest relied on, and no other grounds shall afterwards be relied upon.
7 The contestee shall file an answer within twenty (20) days after the service of summons
8 upon him. The answer may consist of a denial of the averments of the petition and may
9 also set up grounds of contest against the contestant; if grounds are so set up they shall be
10 specifically pointed out and none other shall thereafter be relied upon by the party. Any
11 candidate who would have been qualified to bring a contest action under this section, who
12 is a party to a *requested* recount proceeding under *subsection (2) of Section 1 of this*
13 *Act*~~[KRS 120.185]~~, may, by filing answer in the recount proceeding within the time
14 allowed by this section for filing grounds of contest, set forth grounds of contest against
15 the petitioner in the recount proceeding. A reply may be filed within ten (10) days after
16 the answer is filed; its affirmative allegations shall be treated as controverted, and no
17 subsequent pleading shall be allowed.