

120.215 Board to determine contest of election of member of General Assembly.

- (1) When the election of a member of the General Assembly is contested, the house to which he or she belongs or seeks to be a member shall, within three (3) days after its organization, and in the manner provided in KRS 120.205, select a board of not more than nine (9) nor less than five (5) of its members to determine the contest.
- (2) The number of members required for the board shall be determined by the presiding officer of the house to which the person filing the contest belongs or seeks to be a member, and announced to the house prior to the selection of any member of the board, a majority of whom shall constitute a quorum.
- (3) The members selected to serve on the board as provided in this section shall be sworn by the presiding officer to try the contested election, and shall give true judgment according to the evidence, unless dissolved before rendering judgment.
- (4) The board shall be governed by the same rules, have the same power, and be subject to the same penalties as a board to determine the contested election of Governor and Lieutenant Governor under KRS 120.195 and as provided in this section. It shall report its decision to the house of the General Assembly by which it was appointed, for its further action.
- (5) The board shall, within twenty-four (24) hours of its selection, meet, appoint its chair, and assign a day for hearing the contest, and may adjourn from day to day as its business requires. If any member of the board willfully fails to attend its sessions, that member shall be reported to the house to which he or she belongs, and that house shall then, in its discretion, punish that member by fine or imprisonment, or both.
- (6) The board may, upon a majority vote, send for persons, papers, and records, including all voting equipment, ballots, boxes, and precinct rosters, and may issue subpoenas signed by its chair or the presiding officer of the house before which the contest is proceeding. The board or the presiding officer may also issue subpoenas for taking proof.
- (7) The board may use the services of any law enforcement agency to transport all records relating to the election contest, including voting equipment, ballots, boxes, and precinct rosters. All voting equipment, ballots, boxes, precinct rosters, and other voting records sent for by the board shall be sealed, to the extent possible, and transmitted in a tamper-resistant manner. The chain of custody for the records shall be recorded, in writing, on a form prescribed by the State Board of Elections in administrative regulations promulgated under KRS Chapter 13A to include the identity of the person or persons transferring and receiving the records, and the date, time, and location of the transfer. The clerk of the house before which the contest is proceeding shall be designated by the board as the custodian of the records while the records are in the possession of the board.
- (8) The board may order a recount of the election even if a recount has been conducted under KRS 120.157 or 120.185. A recount ordered by the board may be conducted without prior approval of the house before which the contest is proceeding. The recount shall be conducted by:

- (a) The county clerk of the county or counties in which the precincts subject to the recount are located, if no recount of the election has been conducted; or
 - (b) The State Board of Elections, if a recount has been conducted under KRS 120.157 or 120.185, which shall:
 - 1. Determine the number of persons required to conduct the recount, each of whom shall be a county clerk;
 - 2. Select that number of clerks by placing the name of each county clerk in a box or similar receptacle, and after it has been well-shaken and well-intermixed, the chair of the State Board of Elections shall draw out one (1) name at a time, which shall be announced aloud. This process shall continue until the required number is obtained; and
 - 3. Once completed, provide the results of the recount to the contest board.
- The county clerk of any county containing precincts subject to the recount shall not be eligible to conduct the recount.
- (9) If it appears the candidates have received an equal number of legal votes cast, the right to the office shall be determined by lot, in the manner prescribed by the board, and under the direction of the board.
 - (10) If the board finds the person returned is not legally qualified to receive the office at the time of his or her election, and if the house in which the contest is pending concurs under subsection (14) of this section, a vacancy shall exist, and a new election shall be ordered to fill the vacancy. If a new election is required, it shall be immediately ordered by proclamation of the presiding officer of the house before which the contest is proceeding who shall issue a writ of election. The writ shall be signed by the officer issuing it, shall designate the day for holding the election, and shall be directed to the proper sheriff or sheriffs as provided in KRS 118.740.
 - (11) If the board finds a person other than the one returned received the highest number of legal votes cast, and if the house in which the contest is pending concurs under subsection (14) of this section, he or she shall be adjudged the person elected and entitled to the office.
 - (12) If the board is unable to decide the person entitled to the office, and if the house in which the contest is pending concurs under subsection (14) of this section, a vacancy shall exist, and a new election shall be ordered by that house of the General Assembly to fill the vacancy. If a new election is required, it shall be immediately ordered by proclamation of the presiding officer of the house before which the contest is proceeding who shall issue a writ of election. The writ shall be signed by the officer issuing it, shall designate the day for holding the election, and shall be directed to the proper sheriff or sheriffs as provided in KRS 118.740.
 - (13) When a new election is ordered, or the incumbent is adjudged not to be entitled to the office, his or her power shall immediately cease, and if the office is not adjudged to another, it shall be deemed vacant.
 - (14) No decision shall be made but by the vote of a majority of the members of the board. The decision of the board shall not be final or conclusive, except as provided in subsection (8) of this section, but shall be reported to the house of the General

Assembly by which it was appointed, for its further action.

Effective: June 29, 2021

History: Amended 2021 Ky. Acts ch. 197, sec. 84, effective June 29, 2021. -- Created 1974 Ky. Acts ch. 130, sec. 169.