

confirmed and after votes are counted, the recount shall be certified to the Secretary of State by 4 p.m. on the day following the completion of the recount (Sunday excluded).

The addition of Commonwealth-initiated recounts as detailed above to the KRS shall not change the significant components of the existing laws pertaining to candidate or party initiated recounts or the appeals process available to the candidate, but adds the following criteria regarding candidate or party-initiated recounts:

- The contestee must file a request for a recount within 5 days of the contested election.
- Any candidate receiving a certificate of election from the **county board of elections** shall file his or her request for a recount within 10 days after the election and the county board of elections shall be named a party defendant in the petition. Any candidate receiving a certificate of election from the **State Board of Elections** shall file his or her petitions requesting a recount no later than the second Tuesday following the election and the State Board of Elections shall be named a defendant in the petition.
- The bond to cover the cost of the recount may be filed by the state political party, political organization, or political group, if any, to which the candidate is affiliated. The county board of elections will conduct the recount which shall be paid by the requesting candidate.
- All election-related materials and equipment shall be maintained by the county board of elections. The machines and boxes shall remain locked and the keys remain with the county board of elections until the recount.
- Each political party represented on the county board of elections may appoint a representative to be present, and each candidate or the candidate's representative may be present for observation as well as board-authorized news media representatives.
- Only after the completion of the recount, the county board of elections shall forward the result to the Circuit Court at which time the Court will enter a judgement reflecting the recount results and directing the State Board of Elections or the county board of elections to issue a certificate of election.
- Any party may appeal the judgement to the Court of Appeals.

Any slate of candidates for Governor and Lieutenant Governor, or any candidate for Congress, may petition Franklin Circuit Court for a recount. The petition shall be filed by the second Tuesday following the election and the State Board of elections shall be named a party defendant in the petition. The findings of the court may not be appealed. However, a petition of contest may be filed to the General Assembly who may accept, modify, or disregard the findings of the court in its sole and absolute discretion.

Any candidate for the General Assembly may request a recount of the ballots by filing a petition in the Circuit Court of the county where the requesting candidate resides and no later than the second Tuesday following the election and the State Board of Elections shall be named a party defendant in the petition. The findings of the court may not be appealed. However, a petition for contest may be filed to the General Assembly who may accept, modify, or disregard the findings of the court in its sole and absolute discretion.

Any slate of candidates for Governor and Lieutenant Governor may contest a regular or special elections by filing a signed written application and notice of contest with the clerk of the Senate and the clerk of the House. If contesting a regular election, the application must be filed no later the thirty days after the final action of the State Board of Elections or following entry of the findings of the Franklin Circuit Court. In the case of a special election, the notice shall be filed no later than 7 days after the final action of the State Board of Elections or following entry of the findings of the Franklin Circuit Court.

Any candidate for the General Assembly may contest any regular or special election by filing a signed written application and notice of contest with the clerk of the house to which the candidate seeks election. If contesting a regular election, the application and notice of contest shall be filed no later than 15 days after the final action of the State Board of elections or following entry of the findings of the Circuit Court. If contesting a special election, the application and notice of contest shall be filed no later than 3 days following the final action of the State Board of Elections. In both instances, the application and notice shall state the grounds of the contest, and no grounds other than those stated in the application and notice shall be heard. In the case of a special election contest, the candidates may include a request for a recount. No election contest shall be heard unless the contestee has been serviced with a copy of the application and notice of contest. The contestee may make defense without giving counternotice.

The cost of depositions to be used before the board or house of the General Assembly shall be paid to the prevailing parties within 30 days of adjudication. If the cost are not timely paid, the prevailing party may seek judgement in a Circuit Court of competent jurisdiction.

When the election of a Governor and Lieutenant Governor is contested, then a board made up of 11 members of and selected by the General Assembly will be responsible for trying the contest, with 7 members constituting a quorum. The board may use the services of any law enforcement agency to transport all records and equipment relating to the contest. All machines and materials shall be sealed and transmitted in a tamper-resistant manner with a written chain of custody on a form promulgated by the State Board of Elections. The clerk of the house before which the contest will proceed shall be custodian of the records.

If a new election is required, the Speaker of the House shall issue a writ of election which shall designate the day of the elections and be directed to the proper sheriff(s) of the county or counties in which an election is to be held.

When the election of a member of the General Assembly is contested, the presiding officer of the house to which the member belongs will determine the number of board members, but not more than 9, nor less than 5, and a majority shall constitute a quorum. The board members shall be sworn prior to trying the contested election and shall give true judgement unless the board is dissolved prior to rendering judgement.

The board shall meet within 24 hours of tis selection and appoint its chair, and assign a day for hearing the contest. If a member willfully fails to attend its sessions, the house to which

the member belongs shall at its discretion punish that member by fine or imprisonment, or both. The board may send for all related materials and equipment, may issue subpoenas, and may use the services of law enforcement to transport all records relating to the contest. The clerk of the contesting member's house shall be custodian for the records. The board may order, without approval of the contesting member's house, another recount. The recount shall be conducted by the county clerk if no recount has been conducted. If a recount has been conducted, the State Board of Elections shall determine the number of persons required for the recount, each being a county clerk except the clerk in which the recount is held; and by random draw, select those that will serve.

If the candidates have received an equal number of votes, the outcome shall be determined by lot. If the winning candidate is not legally qualified to take office, then a vacancy shall exist, and a new election shall be ordered. The person with the highest number of legal votes shall be adjudged the person elected and entitled to the office. If the board is unable to decide the person entitled to the office, a new election shall be ordered by proclamation to take place between 30 days and 6 weeks following the proclamation. If a new election is ordered, or the incumbent is adjudged not to be entitled to the office, the office shall be deemed vacant. Board decisions must be made by a majority of the members and that decision shall be reported to the house by which it was appointed, for further action.

In the case of administrative and clerical error regarding all primaries, regular elections, or special elections, the court may determine if an automatic recount will suffice.

In all the scenarios above, no certificate of election shall be issued while any recount is pending, and any certificate issued before final judgement shall be null and void.

The fiscal impact of HB 522 HCS 1 on local governments is indeterminable. An automatic recount triggered by a vote margin of not more than half of one percent would be conducted by the County Board of Elections, not the Circuit Court. The Kentucky Association of County Clerks are in favor of the recount being done by the Circuit Clerk since that is a remedy for the candidate if they feel that the County Board of Elections didn't do a good job.

The Kentucky County Clerk's Association doesn't like the automatic recount provisions, stating they aren't necessary with the current voting machines. Having a minimum or maximum percentage of votes may hinder a candidate's ability to request a recount, so the limitation seems rather restrictive. The Association suggests that the legislators could restrict it to specific races to keep frivolous recounts from occurring, but there would need to be more specific language.

The Kentucky County Clerk's Association is concerned that the bill is unclear on who determines the cost of an automatic recount and doesn't say who would be paid for this recount. This would mean use of county clerk staff and/or county board of election members, so all costs would be based on wage and hour issues but mainly a loss of productive hours of the election staff.

The Kentucky County Clerk's Association also states that it is hard to determine fiscal impact since some recounts would be set by the Circuit Court and also depend on the size of the area that would be recounted (i.e. one precinct vs the whole county).

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II refers to HB 522 HCS 1. HB 522 HCS 1 keeps most of the provisions of HB 522 as introduced, and makes the following changes:

- deletes references to the State Constitution regarding new members of the General Assembly and the process by which they become a member;
- provides a mandatory recount for Congressional candidates if the margin of defeat is less than .5%;
- deletes language allowing the defeated candidate to waive a recount;
- removes the .5% to 2% criteria for candidate or party-initiated recounts;
- removes the appeals process regarding findings of the Franklin Circuit Court and gives the General Assembly the ability to receive petitions of protest regarding findings of the court. The General Assembly may accept, modify, or disregard the findings of the court in its sole and absolute discretion;
- provides guidelines regarding the transfer of election materials and machines to the State Board of Elections, including the chain of custody;
- provides that if the General Assembly determines a new election is required, the Speaker of the House shall issue a writ of election which shall be directed to the proper sheriff(s); and
- provides guidelines regarding recounts and the participation of the county clerks in the recounts as determined by the State Board of Elections.

Data Source(s): LRC Staff; Kentucky County Clerk's Association

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