KENTUCKY DEPARTMENT OF EDUCATION (KDE) STAFF NOTE

Topic: Waiver Request 2026-WV-082, Burgin Independent Schools.
Date: October 2026
Action Requested: ☐Review ☐Action/Consent ☒Action/Discussion
Held In: ☒Full Board **Committee:** ☐ School Improvement ☐ Waiver & Innovation ☐ Awards

SYNOPSIS OF WHAT YOU WILL BE SHARING:

The Kentucky Board of Education (KBE) must consider whether it will approve or deny the waiver requested pursuant to KRS 156.161 and 701 KAR 5:170.

COMMISSIONER'S RECOMMENDATION:

KRS 156.161 provides: "The department and the commissioner shall not recommend approval or denial to the state board, but may provide the benefits and disadvantages of approving the waiver request."

Following review and evaluation of the request, the Commissioner notes the following benefits and disadvantages of approving the request:

Benefits of Approval: If the KBE approves the district's waiver request, the local board of education will be considered to have satisfied the requirements in KRS 160.470 for levying a recallable tax rate of 76.8. The KBE will consider separately from this waiver request at a future KBE meeting date after the recall period ends whether to approve the district's 2026-2027 tax rates.

Disadvantages of Approval: The newspaper advertisement requirement in KRS 160.470(8)(b) provides the public with notice that the local board of education has adopted a recallable tax rate so that taxpayers can file the petition required to initiate recall of the tax rate if they choose to do so. Therefore, by not publishing this information in the newspaper, some individuals may not have received notification that the local board of education adopted a recallable rate. The district notes in its waiver request, however, that the district "requested an additional publication to the local paper that will be printed and available to the public September 10, 2026" and that the district did comply with the requirement in KRS 160.470(8)(b) regarding publishing the information on its website.

APPLICABLE STATUTE OR REGULATION:

KRS 156.161 and 701 KAR 5:170
Seven day publication timeline set forth in KRS 160.470(8)(b).

BACKGROUND

Existing Policy:
KRS 156.161 authorizes the Kentucky Board of Education to promulgate administrative regulations establishing procedures for processing requests to waive statutes or administrative regulations. Pursuant to this authority, the KBE promulgated 701 KAR 5:170 setting forth the procedures and forms a school district may utilize to request waivers from the KBE. Pursuant to KRS 156.161, the KBE may not waive any statute or administrative regulation:

(a) Relating to health and safety, including required criminal background checks for staff and volunteers specified in KRS 160.380 and 161.148;
(b) Relating to civil rights;
(c) Required by federal law;
(d) Relating to compulsory attendance requirements under KRS 158.030 and 158.100, or the recording of data necessary for participation in the fund to support education excellence in Kentucky;
(e) Establishing certification requirements for teachers, except a waiver may authorize up to twenty-five percent (25%) of the teaching staff of a school may be employed without teacher certification if the individual possesses a: (1) Baccalaureate or graduate degree in the subject the individual is hired to teach; or (2) Recognized industry credential in the technical education area the individual is hired to teach;
(f) Requiring students' participation in state assessment of student performance as required under KRS 158.6453;
(g) Financial audits, audit procedures, and audit requirements under KRS 156.265;
(h) Open records and open meeting requirements under KRS Chapter 61;
(i) Purchasing requirements and limitations under KRS Chapter 45A and KRS 156.074 and 156.480; or
(j) Requiring instructional time that is at least equivalent to the student instructional year specified in KRS 158.070.

Pursuant to 701 KAR 5:170, when KDE receives a waiver request from a school district, it must first perform a technical review to determine whether the waiver meets minimum technical requirements to advance to substantive review.

Those portions of the waiver request that advance to substantive review, if any, are reviewed and evaluated considering the following factors:
(a) The entirety of the waiver request;
(b) Student academic achievement for the past three full school years for which data is available in the schools and programs identified in the waiver request;
(c) Whether and to what extent the waiver request describes processes the requesting party will utilize to measure success as a result of the waiver, if granted, using data and accountability;
(d) The likelihood of the schools and programs identified in the waiver request realizing meaningful operational efficiency improvements if the waiver is granted;
(e) The likelihood of the students enrolled in the schools and programs identified in the waiver request realizing improved academic achievement if the waiver is granted;
(f) Whether and to what extent the waiver request reasonably anticipates potential adverse impacts on student academic achievement and addresses such potential adverse impacts;
(g) Whether and to what extent the waiver request demonstrates the establishment of high expectations for student learning and evidence based best practices for learning in the schools and programs identified in the request; and
(h) For requests seeking identification as a School of Innovation, the likelihood of improving student outcomes in a manner that would be difficult or impossible without a waiver.

Following review and evaluation, the Commissioner shall provide an analysis to the Kentucky Board of Education, including the benefits and disadvantages of approving the request, along with the Commissioner's determination whether he finds the requested waiver is more likely than not: (a) To improve school or program operations without hindering student academic achievement; or (b) To improve student academic achievement at the school or program.

If a waiver is granted, it shall expire on June 30 of the third full school year after the request was first approved, except for facility waivers which "shall not expire unless the state board specifically provides for expiration when granting the waiver." KRS 156.161.

Summary of Issue:
Following receipt of the waiver request, KDE performed a technical review pursuant to 701 KAR 5:170, Section 3. As a result of its technical review, KDE determined requests to waive the

following statutes and administrative regulations should undergo substantive review: The seven day publication timeline set forth in KRS 160.470(8)(b).

KDE's District Funding and Reporting Branch (DFRB) performed a substantive review of the waiver request. The waiver request was reviewed in its entirety and DFRB has been in conversation with the district. KRS 160.470(8)(b) requires a local board of education to publish on the home page of its website and in the newspaper of largest circulation in the county an advertisement within seven days following the local board of education's adoption of a recallable tax rate. Burgin Independent notes in its waiver request that the required advertisement was submitted to the newspaper of largest circulation in the county and that the district posted the required notice on its website. However, the seven day publication period expired without the newspaper publishing the submitted advertisement. Burgin Independent provided the following information in its waiver request regarding the impact of not being able to adopt the recallable tax rate:

> FY 2025-2026 Assessment base $385,792,153; Seek Funding $1,797,232
> FY 2026-2027 Assessment based $451,238,543; Seek Funding $1,495,660
> SEEK reduction ($301,572)
>
> Compensating rate 69.6 cents
> 4% rate 72.3 cents
> Board-adopted rate 76.8 cents
> Projected local revenue at 76.8 cents: $3,348,827.93
> Projected local revenue at 69.6 cents: $2,852,031.01
> Difference: $496,796.92

The district further stated in its waiver request the following: "If the district cannot maintain the adopted rate and instead must use the 69.6-cent compensating rate, the difference in projected local tax revenue is $496,796.92. Taken together, the SEEK reduction and the local-revenue difference represent a combined funding impact of $798,368.92."

DFRB identified errors in the above figures which were acknowledged by the district. The updated information is as follows:

> FY 2025-2026 Assessment base $385,792,153; Seek Funding $1,797,232
> FY 2026-2027 Assessment based $451,238,543; Seek Funding **$1,640,097**
> SEEK reduction (**$157,135**)
>
> Compensating rate 69.6 cents
> 4% rate 72.3 cents
> Board-adopted rate 76.8 cents
> Projected local revenue at 76.8 cents: **$3,147,068.70**
> Projected local revenue at 69.6 cents: $2,852,031.01
> Difference: **$295,037.69**
>
> The amount identified for the combined SEEK reduction and local-revenue difference is **$452,172.69**.

The following factors listed in 701 KAR 5:170 Section 4(2) were determined to not be applicable: (b) Student academic achievement for the past three (3) full school years for which data is available in the schools and programs identified in the waiver request;

(c) Whether and to what extent the waiver request describes processes the requesting party will utilize to measure success as a result of the waiver, if granted, using data and accountability; […]
(e) The likelihood of the students enrolled in the schools and programs identified in the waiver request realizing improved academic achievement if the waiver is granted; […]
(g) Whether and to what extent the waiver request demonstrates the establishment of high expectations for student learning and evidence based best practices for learning in the schools and programs identified in the request; and
(h) For waiver requests seeking identification as a school of innovation, the likelihood of improving student outcomes in a manner that would be difficult or impossible without a waiver.

DFRB reviewed the following additional factors listed in 701 KAR 5:170 Section 4(2):

(d) The likelihood of the schools and programs identified in the waiver request realizing meaningful operational efficiency improvements if the waiver is granted; […]
(f) Whether and to what extent the waiver request reasonably anticipates potential adverse impacts on student academic achievement and addresses such potential adverse impacts[.]

Regarding 701 KAR 5:170 Section 4(2)(d), if the waiver is granted, the local board of education will have satisfied the requirements in KRS 160.470 for levying a recallable tax rate. The KBE will separately consider from this waiver request at a future KBE meeting date after the recall period ends whether to approve or disapprove the tax rates levied by the local board of education. Therefore, if the KBE approves this waiver request, and subsequently approves the district's tax rates, it is likely that the district will realize meaningful operational efficiency because the district will be able to obtain more revenue than if the waiver request is denied.

Regarding 701 KAR 5:170 Section 4(2)(f), the district notes in its waiver request that "[t]he requested waiver is financial and procedural; it does not reduce academic standards, instructional requirements, or accountability."

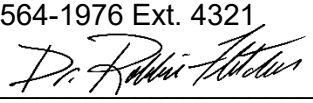
Pursuant to 701 KAR 5:170 Section 4(3), the Commissioner finds that the requested waiver is more likely than not to improve school operations without hindering student academic achievement.

Budget Impact:
Other than staff time reviewing and processing this waiver request, there is no additional budget impact to KDE regardless of whether the waiver is granted or denied by the KBE.

Groups Consulted and a Brief Summary of Responses:
As this is a waiver request for an individual public school district, no additional groups were consulted. KDE followed the KBE regulation 701 KAR 5:170 to process and review the waiver request.

CONTACT PERSON(S):

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Commissioner of Education

GOALS/PRIORITIES: Indicate all applicable options.

☐ Foster Educational Innovation Through Vibrant Learning Experiences
☐ Advance Educational Excellence Through Continuous Professional Improvement
☐ Cultivate Collaborative Partnerships
☐ Legislation
☒ Commissioner's Management