

1 EDUCATION AND WORKFORCE DEVELOPMENT CABINET

2 Kentucky Board of Education

3 Department of Education

4 (Amendment)

5 702 KAR 4:090. Property disposal.

6 RELATES TO: KRS [~~156.031,~~] 156.160

7 STATUTORY AUTHORITY: KRS 156.160, 156.070

8 NECESSITY, FUNCTION, AND CONFORMITY: [~~KRS 156.031 requires that administrative~~
9 ~~regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed,~~
10 ~~amended if necessary and resubmitted to the Legislative Research Commission prior to December~~
11 ~~30, 1990; and]~~ KRS 156.160 requires the State Board for Elementary and Secondary Education to
12 promulgate administrative regulations dealing with the disposal of real and personal property
13 owned by local boards of education. This administrative regulation is necessary to provide for real
14 property disposal, leases, and easements in accordance with an approved educational program.
15 KRS 156.070 provides that the Kentucky Board of Education shall have the management and
16 control of the common schools.

17 Section 1. Disposition of Real Property. (1) School property proposed for disposal shall be surplus
18 to the [~~need for the~~] educational program need of the district as determined by the effective district
19 facility plan. Surplus property includes real property designated as a “Transitional Center” or not
20 listed on the effective district facility plan. Request for approval to dispose of real property shall be
21 submitted in writing to the Kentucky Department of Education [~~chief state school officer~~]. The

1 request shall identify the property by its address and last reported name and include a plan for
2 resolving mortgage liens or other encumbrances. Upon receipt of written contingent approval from
3 the department, the district may start the disposal process using one of the following methods that
4 secures the fair market value for the property and ensures that the district retains no residual
5 interest as owner or lender:

6 (a) By public auction;

7 (b) By accepting sealed bids; or

8 (c) By setting a minimum acceptable price, which is at least the fair market value of the property.

9 (2) For property disposal by public auction or sealed bids, the proposed sale shall be advertised in
10 accordance with KRS 424.130(1)(b), and the legal notice shall include the following statement:

11 “The board of education reserves the right to reject any and all bids and final approval by the
12 Kentucky Department of Education is required.” Following the conclusion of the auction or receipt
13 of bids, the local board of education shall submit the following to the department for review and
14 final approval:

15 (a) The appraisal;

16 (b) An affidavit attesting to the publication of legal notice;

17 (c) Results of the public auction or sealed bids;

18 (d) The proposed sale agreement reviewed and approved by the board’s attorney; and

19 (e) The local board order approving the sale contingent on approval by the department.

20 (3) For property disposal by setting a minimum acceptable price, the minimum acceptable price
21 shall be the fair market value, which shall be determined by an appraisal from a certified general
22 real property appraiser commissioned by the school district and obtained in connection with the
23 disposal of the property. Following receipt of an acceptable offer to purchase, the local board of

1 education shall submit the following documentation to the department for review and final
2 approval:

3 (a) The appraisal;

4 (b) The proposed sale agreement reviewed and approved by the board's attorney; and

5 (c) The local board order approving the sale contingent on approval by the department.

6 (4) Upon receipt of written final approval from the department, the local school district may
7 execute the sale agreement. The district shall provide the department with a copy of the executed
8 agreement within thirty (30) days from the date of execution.

9 ~~[Disposal may be implemented upon approval.]~~

10 Section 2. Disposition by Easement. (1) Prior to the execution of a proposed easement upon school
11 property, the agreement shall be reviewed by the local district's board attorney. The reviewed
12 agreement and an appraisal from a certified general real property appraiser commissioned by the
13 school district and obtained in connection with the easement~~[the proposed lease agreement for, or~~
14 ~~easement upon, public school property]~~ shall be submitted to the local board of education for its
15 consideration. Upon approval, the local school district's ~~[and]~~ written board
16 order~~[recommendation]~~ shall be forwarded to the department~~[chief state school officer]~~ for review
17 and approval.~~[his review, approval and]~~ The local board of education shall include assurance that
18 disposal will not affect the integrity or usefulness of property crucial to the educational needs of
19 the district.

20 (2) Proposed easement agreements, including but not limited to utility and access easement
21 agreements shall include:

22 (a) The parties to the agreement;

23 (b) A legal description of the easement;

1 (c) Documentation regarding receipt of fair market value as determined by an appraisal from a
2 certified general real property appraiser commissioned by the school district and obtained in
3 connection with the disposal of the property or equivalent valuable consideration;

4 (d) A reversionary clause that reverts the property back to the exclusive unrestricted control of the
5 local board of education when the need for the easement no longer exists; and

6 (e) A plat by a licensed surveyor indicating the easement boundaries, acreage and its relationship to
7 the larger property.

8 (3) Upon receipt of written final approval from the department, the local school district may
9 execute the agreement. The district shall provide the department with a copy of the executed
10 agreement within thirty (30) days from the date of execution.

11 (4) Temporary and construction easements do not require department approval but shall include
12 provisions related to the amount of time in effect, and a requirement that any disturbed areas shall
13 be returned to original condition.

14 Section 3. Disposition by Lease (District as Lessor/Landlord). (1) Prior to the execution of a
15 proposed lease agreement for school property, the proposed lease agreement shall be reviewed by
16 the local district's board attorney and the board's insurance carrier. The proposed lease agreement
17 shall be submitted to the local board of education for its consideration and a written board order
18 forwarded to the department for review and approval. The local board of education shall provide
19 assurance that the disposal will not affect the integrity or the usefulness of the property subject to
20 the educational need of the district.

21 (2) The proposed lease agreement shall include, but is not limited to the following provisions:

22 (a) The parties to the agreement;

23 (b) The proposed use and occupation;

1 (c) A description of the leased space including square footage and description of common areas if
2 applicable;

3 (d) Use of site and parking;

4 (e) Term of lease including beginning and ending dates. The term shall include an annual
5 renewal/cancellation provisions;

6 (f) Determination of fair market value and how payments are to be made;

7 (g) Insurance requirements of the parties;

8 (h) Identification of the parties' responsibilities for payment of utilities, performance of
9 maintenance and related supplies;

10 (i) Notice provisions;

11 (j) Provisions for security;

12 (k) Requirements for compliance with established board policies if tenants will be in contact with
13 students; and

14 (l) Any other applicable terms or conditions.

15 (3) Upon receipt of written final approval from the department, the local school district may
16 execute the lease agreement. The district shall provide the department with a copy of the executed
17 agreement within thirty (30) days from the date of execution.

18 Section 4. Conflict of Interest. (1) ~~Members of the local school board requesting department~~
19 ~~approval to lease or dispose of surplus property shall submit a certification that the members~~
20 ~~of the local school board have no conflict of interest with regard to the transaction and that~~
21 ~~neither board members, nor member of their family, have any financial interest in the~~
22 ~~transaction. In the event of any conflict of interest in the transaction, a conflicted local school~~
23 ~~board member shall publicly disclose the conflict of interest to the school board and recuse~~

1 ~~himself/herself from voting on the matter. The local school board shall provide minutes of~~
2 ~~any such meeting to the department when requesting approval under any section of this~~
3 ~~administrative regulation.]~~
4 (2) If a local school board uses a third party to dispose of or lease property, the third party shall not
5 have any financial interest in the transaction or adjacent property beyond a standard commission
6 approved by the school board. In the event the third party has any financial interest in the
7 transaction or adjacent property beyond a standard commission, the third party must publicly
8 disclose his/her conflict of interest to the local school board and said conflict shall be spread on the
9 local school board's meeting minutes. The local school board shall provide minutes of any such
10 meeting to the department when requesting approval under any section of this administrative
11 regulation.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

(Date)

Kevin C. Brown
Interim Commissioner of Education

(Date)

Lu Young, Chair
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 22, 2020 at 10am in the State Board Room, 5th Floor, 300 Sower Blvd., Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (5) working days prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2020.

CONTACT PERSON: Todd G. Allen, Interim General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky, 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 702 KAR 4:090

Contact Person: Todd G. Allen, Todd.allen@education.ky.gov

Phone Number: 502-564-4474

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation sets forth the procedures for the disposition of surplus real property by a local board of education.

(b) The necessity of this administrative regulation:

The regulation is necessary to clarify the process by which local boards of education dispose of surplus real property to explicitly include the constitutionally required steps for a district to obtain fair market value for the property.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations dealing with the disposal of real and personal property owned by local boards of education. This administrative regulation is necessary to provide for real property disposal, leases, and easements in accordance with an approved educational program. KRS 156.070 provides that the Kentucky Board of Education shall have the management and control of the common schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation establishes the processes by which local boards of education may dispose of surplus real property. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations dealing with the disposal of real and personal property owned by local boards of education.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The regulation sets out the steps a local board of education must undertake when disposing of surplus real property. Prior to the amendment the requirements for disposal were informed by court cases and Attorney General Opinions. This regulation clarifies the process to explicitly include the required steps for a district to obtain fair market value for the property in one location.

(b) The necessity of the amendment to this administrative regulation:

The regulation is necessary to clarify the process by which local boards of education dispose of surplus real property to explicitly include the constitutionally required steps for a district to obtain fair market value for the property.

(c) How the amendment conforms to the content of the authorizing statutes:

KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations dealing with the disposal of real and personal property owned by local boards of education. This administrative regulation is necessary to provide for real property disposal, leases, and easements

in accordance with an approved educational program. KRS 156.070 provides that the Kentucky Board of Education shall have the management and control of the common schools.

(d) How the amendment will assist in the effective administration of the statutes:

This regulation establishes the processes by which local boards of education may dispose of surplus real property. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations dealing with the disposal of real and personal property owned by local boards of education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local school districts.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

The regulation sets out the steps a local board of education must undertake when disposing of surplus real property. Prior to the amendment the requirements for disposal were informed by court cases and Attorney General Opinions. This regulation does not change the process but rather puts the required steps for a district to obtain fair market value for the property in one location.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There are no new costs associated with the amendment. The regulation codifies existing requirements for the disposal of surplus property.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The regulation provides clarification to local boards of education when disposing of surplus property. The regulation sets out the steps a local board of education must undertake when disposing of surplus real property. Prior to the amendment the requirements for disposal were informed by court cases and Attorney General Opinions. This regulation does not change the process but rather puts the required steps for a district to obtain fair market value for the property in one location.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially:

Since the proposed amendment merely codifies the existing requirements for the disposal of surplus property, there will be no new cost to implement the regulation.

(b) On a continuing basis:

No new costs are expected related to the regulation amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this

administrative regulation: Kentucky Department of Education General Funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment:

There are no fees associated with this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees associated with this regulation.

(9) TIERING: Is tiering applied? Explain why tiering was or was not used.

Tiering was not applied. The regulation applies equally to all Kentucky school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 702 KAR 4:090.

Contact Person: Todd G. Allen, Todd.allen@education.ky.gov

Phone Number: 502-564-4474

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

School districts

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

This regulation establishes the processes by which local boards of education may dispose of surplus real property. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations dealing with the disposal of real and personal property owned by local boards of education.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This regulation should have no impact on revenue, beyond the proceeds generated from the sale of any surplus property. The amendment clarifies the process for the disposal of local board of education surplus property.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This regulation should have no impact on revenue, beyond the proceeds generated from the sale of any surplus property. The amendment clarifies the process for the disposal of local board of education surplus property.

(c) How much will it cost to administer this program for the first year?

This regulation is not expected create any new costs. It merely reduces existing requirements to inside of the regulation. The costs associated with the administration of this regulation is mainly staff time.

(d) How much will it cost to administer this program for subsequent years?

This regulation is not expected create any new costs. It merely reduces existing requirements to inside of the regulation. The costs associated with the administration of this regulation is mainly staff time.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A.

Expenditures (+/-): N/A.

Other Explanation: