

MEMORANDUM

To: Superintendent Garrison
From: Mary Ann Stewart
Date: April 18, 2022
RE: HB 678

Recently KSBA sent to all School Districts a sample Resolution which would permit the School District to opt into HB 678. I am providing you with my analysis of what the legislation accomplishes and what the expectations are for those Districts which choose to go this route.

I. ANALYSIS

1. Purpose of HB 678

The purpose of the legislation is to streamline the approval process at KDE for improvements of school facilities. There is currently a large backlog of facility plans and requests for approval at the State level. This has in turn caused local School Districts to experience financial losses from inability to secure favorable financing or construction costs because of the delay in approval at the State level. There is also an ancillary purpose in the legislation to provide a window of time – through June 30, 2023, for KDE to review and improve its own administrative regulations and practices to make this approval process more efficient. Part of that review process will include analysis of current construction processes and standards, and utilization of most commonly granted waivers. This review may also result in changes to the statutes governing school construction for the General Assembly to consider during the 2024 Regular Session.



2. HB 678: Overview

In a nutshell, HB 678 permits School Districts to by-pass the KDE approval process for new construction projects up through June 30, 2024. Absent this legislation all School Districts have to get approval of KDE of any new construction under KRS 162.060 and for financing of such projects under KRS 160.160.

KRS 160.062 tasks KDE through the Commissioner of Education with ensuring that all plan reviews for any new school construction or renovation meets the requirements of the Uniform State Building Code as adopted by the Kentucky Department of Housing, Buildings, and Construction. No School Board can approve a contract until that approval is obtained from KDE. Furthermore, under KRS 160.160(3) and (4), no School District can enter into or make a mortgage, lease, finance, or create any other encumbrance upon school property without securing specific approval of the Department of Education.

HB 678 is a declaration of emergency by the General Assembly, and provides that a local Board of Education may provide for and commence funding, financing, design construction, renovation or modification of district-owned facilities without first securing approval by the Kentucky Department of Education. This legislation by-passes the State approval process described above. It also provides that “notwithstanding the provisions of KRS 160.160(2), a local Board of Education may use the estimates of architects or engineers who prepared the plans or specifications for the project as an alternative to the receipt of advertised, public and competitive bids for the project to estimate the cost of the project in advance of financing. So, essentially any District that opts into HB 678 may obtain financing by using these estimates of

the architect or engineers alone. If the District commences the project upon obtaining the financing, it will still have to competitively bid the project for the actual work.

A District which opts into HB 678 must still ensure that the plans meet or exceed the requirements of the Uniform State Building Code. Thus, instead of waiting on this review by KDE, a District which opts into HB 678 shall through its own architect or engineers, document and ensure this compliance. Additionally, the District must also still submit the BG-1 Project Application forms as appropriate to KDE for recordkeeping purposes.

There are some other provisions of HB 683 which are intended to streamline the process for approval of new construction projects and renovations and approvals of facilities plans. For example under Section 2 until June 30, 2024, if a local Board of Education submits a request for approval of a complete district facility plan, a request to acquire property, or request to surplus property, to KDE then KDE must approve or disapprove the request within 30 days and report that to the Kentucky Board of Education. A denied request may be appealed to the Kentucky Board of Education.

Section 3 provides that KDE shall provide assistance and guidance to local Boards of Education upon request, regarding facilities funding, financing, design, construction, renovation, modification; of district facilities plans; and the acquisition or disposal of property. So, even if a School District opts into HB 678 and by-passes the KDE approval process, per Section 3, the District will still have the benefit of KDE assistance and guidance.

Section 4 provides that if there are outstanding requests and submissions made by a District that have not yet been acted upon by KDE, then the School District may apply HB 678, and by-pass the KDE approval process for those requests and submissions. I would recommend

that if the District does opt into HB 678, and wants to apply it to submissions that are already pending at KDE that the District send some notification through e-mail or letter advising of its decision to apply the exception to those pending matters.

Prior requirements of Federal ESSER fund monies still remain in effect. So, this legislation would not impact the requirements for prior State approval for expenditure of those funds.

II. CONCLUSION

Generally, I recommend that any School District which has pending construction or renovation projects, or anticipates having such up through June 30, 2024, adopt the Resolution to Opt into HB 678 as prepared by KSBA. However, you should go into this process with your eyes open and realize that this does not in any way minimize or reduce existing requirements under State and Federal Building Codes for such projects. It just means that the School District will have to rely more heavily upon its architect or project engineer to ensure that these requirements are met. So, a Local School District may incur more architectural costs on the front end of projects as the work normally reserved for KDE will be shifted now to the Local Board of Education. On the other hand, that additional cost may be offset by the savings which the District realizes through the elimination of bureaucratic delays.

Also, as I pointed out earlier in this memorandum, a School District which adopts the Resolution and opts into HB 678, may rely upon architect's estimates to secure financing; but that does not eliminate the District's need to follow its own procurement policies for the actual work.