

The background of the slide is a composite image. The top left shows a line of yellow school buses with "SCHOOL BUS" written on the front. The bottom left shows a classroom with blue walls, desks, chairs, and educational materials. A white diagonal line separates the two images.

# Kentucky Board of Education (KBE) Facilities Update

**December 2022**

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Kentucky Department of  
**E D U C A T I O N**

# KDE Facilities Review

- June 2021, KDE began a review of the facilities process, including applicable regulations and statutes with a work group of superintendents, facility directors, district and educational cooperative staff.
- HB 678 was signed into law on April 8, 2022.
- HB 678 immediately and dramatically changed the facility process.
- KDE has continued its review and is implementing the requirements of HB 678.
- HB 678 is scheduled to lapse on June 30, 2024.
- It is unknown whether the General Assembly will make permanent, limit or expand the provisions of HB 678.
- HB 678 has increased efficiencies in processing of facility actions.

# HB 678 (2022 Regular Session) (1)

- Until June 30, 2024, boards may elect to operate under HB 678 provisions which eliminates certain KDE prior approvals.
- 150 districts currently have adopted HB 678.
- Districts must still follow all applicable statutes and regulations.
- Districts may commence funding, financing, design, construction, renovation or modification of district facility projects without prior approval from KDE.
- Districts may use architect or engineer to estimate the cost of the project in advance of financing.

# HB 678 (2)

- KDE has 30 business days to approve:
  - Completed District Facility Plans (DFP), requests for acquisition of property and requests for disposal of property
  - Since April 10, 2022, 11 completed DFPs and 26 requests for acquisition or disposal of property.
  - On average, 13.9 days for approval of DFPs and 9.1 days for property acquisition or disposal.
- KDE to provide requested technical assistance and guidance to local boards.
- BG-1 Project Applications are filed with KDE for record keeping and data collection.
- Since April 10, 2022, HB 678 districts have filed 437 initial and revised BG1s.

# HB 678 (3)

- Act is retroactive and applicable to outstanding submissions and requests made prior to the effective date.
- Districts may include extracurricular facilities in any priority on a district DFP (allows restricted funds to be utilized for extracurricular facilities)
- KDE prior approval still required for federal funds

# HB 678 Scope of Review

- By June 30, 2023, KDE shall conduct a review of administrative regulations, incorporated materials, design manuals and district guidance materials relating to the construction, renovation and modification of school facilities to identify inefficiencies in the review and approval process.
- District Facility Planning
  - 702 KAR 4:180
  - Planning Manual
    - Model Program of Spaces

# HB 678 Scope of Review (cont.)

- Capital Construction Process
  - 702 KAR 4:160
  - KDE Documents
  - AIA Documents
- 702 KAR 4:050 Building sites
- 702 KAR 4:090 Property Disposal
  - Updated May 2021
- Possible new regulations
  - Districts as Lessee, Professional Development

# HB 678 - Provisions to Retain

- Local boards may continue to operate under provisions of HB 678 which allow them to approve their own funding, financing, design, construction, renovation or modifications of the district's facilities without KDE prior approval
- Approval of a complete district facility plan, a request for acquisition of property, or a request for disposal of surplus property within 30 business days by KDE
- Capital funds usage being approved by local boards of education in compliance with KRS 157.420
- Continued use of restricted funds on extracurricular facilities
- Local board approval of agreements previously approved by KDE



# HB 678 Required Reporting (1)

- KDE shall identify updates needed to the administrative regulations and materials due to the changing needs in facilities design, construction industry and the economy.
  - Model Program of Spaces (more flexibility, increased locally identified program space allowance, inclusion or additional space for SRO, nurses, mental health, and FRYSC)
  - OCTE spaces are in addition to Model Program of Spaces and reviewed by OCTE
  - Provisions for cooperative purchasing
  - Guaranteed Energy Savings Contracts
  - Updates to all AIA forms (in process)
  - Construction Manager as a Constructor a/k/a Construction Manager at Risk (new)
  - Incorporation of FACPAC and KFICS in regulatory language

# HB 678 Required Reporting (2)

- Including most commonly granted waivers from administrative regulations and changes needed to reduce or eliminate the need for such waivers
  - KBE Waiver requests – February 2018-October 2022
  - 10 Site Acquisition and preparation exceed 10% of total project costs
  - 7 Project exceeds 120% of the total gross area of model program of spaces
  - 6 Access restricted funds for extracurricular activities
  - 5 Other
- KDE recommends consideration and approval of waivers by the commissioner or his delegee, with appeals to the KBE.
- KDE LPC Non-resident waivers to be approved by local board of education

# HB 678 Required Reporting (3)

- KDE is required to review its procedures for conducting reviews and approvals for building plans and specifications, Capital Outlay Funds and financing arrangements under KRS 160.160(3) and (4) in order to reduce delays and increase efficiency.
- Building Plans and Specifications:
  - KDE supports the continuation of districts electing to manage review and approvals for building plans and specification per HB 678, with a recommendation that district facility staff participate in required professional development training.
  - Allow districts to pay for required facilities training and salaries of facilities director and/or district employed licensed design professionals with capital funds.

# HB 678 Required Reporting (4)

- Professional development

Hours may be delivered by KDE or a third party approved by KDE (similar to finance officers)

- Capital Outlay

KDE supports the provisions of HB 678 which allow districts to access Capital Outlay Funds without prior KDE approval

- Financing

KDE has not completed work on recommendations for financing arrangements under KRS 160.160(3) and (4)

# HB 678 Required Reporting (5)

- KDE is to discuss with the Department of Housing, Buildings and Construction (HBC) which elements of KBE administrative regulations are appropriate to incorporate into HBC regulations for enforcement
  - KDE staff met with the Department of Housing, Buildings and Construction and reviewed existing regulations. There does not appear to be a duplication of missions or services.

# HB 678 Required Reporting (6)

- By Sept. 1, 2023, KDE shall report the results of the aforementioned reviews to the Interim Joint Committee (IJC) on Appropriations and Revenue (A&R) and the IJC on Education.
- KDE is on track to timely report the results of the review to the IJC on A&R and the IJC on Education.

# Next Steps

- Jan. 31, 2023 completion of internal KDE review and recommendations
- February 2023 – distribution of recommended regulatory revisions to Facilities work group and others for input and feedback
- April 2023 – presentation to LSAC for input and feedback
- June 2023 – presentation to LSAC and KBE
- June 30, 2023 - completion of review by KDE per HB 678
- Sept. 1, 2023 - report submitted to LRC per HB 678

# Questions

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