

1 EDUCATION AND WORKFORCE DEVELOPMENT CABINET

2 Kentucky Board of Education

3 Department of Education

4 (New Administrative Regulation)

5 702 KAR 3:340. Approval of school district lease agreements.

6 RELATES TO: Section 177 of the Kentucky Constitution, KRS 45.570, 65.944, 65.946,
7 156.070, 160.160, 424.260, KRS Chapter 45A, 702 KAR 3:135

8 STATUTORY AUTHORITY: KRS 65.944(1)(b), 156.070, 156.160

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 and 156.070 require the
10 Kentucky Board of Education to promulgate administrative regulations concerning the
11 management of the school districts. KRS 65.944(1)(b) requires the Kentucky Board of Education
12 to promulgate administrative regulations to implement requirements for lease approval by the
13 Commissioner of Education. This administrative regulation establishes requirements for approval
14 of school district lease agreements.

15 Section 1. Administrative Guidelines. (1) To request approval of a lease agreement in excess of
16 \$100,000 from the Commissioner of Education pursuant to KRS 65.944(1)(b), the district shall
17 submit a copy of the proposed lease and a completed Local Board Attorney Certification form to
18 the Department of Education prior to finalization of the lease agreement.

19 (2) The school district shall submit the proposed lease to the Department of Education who shall
20 approve or disapprove the lease within thirty (30) business days.

21 (3) During the evaluation process, the Department of Education may request additional
22 documentation to properly evaluate the proposed lease agreement.

23 Section 2. Final Approval and Reconsideration. (1) Final approval of a proposed school district

1 lease agreement in excess of \$100,000 shall be granted by the Commissioner of Education before
2 the agreement takes effect.

3 (2) Upon receiving written approval from the Commissioner of Education, a school district may
4 enter into the lease.

5 (3)(a) The Commissioner of Education shall send written notification to the school district if the
6 agreement is not approved.

7 (b) The notice shall contain the reasons the agreement was not approved.

8 (c) A school district may request reconsideration by the Commissioner of Education if alterations
9 are made to the proposed lease which alleviate the concerns expressed by the Commissioner of
10 Education.

11 Section 3. Incorporation by Reference. (1) The following material is incorporated by
12 reference:

13 (a) "Local Board Attorney Certification", August 2023, is incorporated by reference.

14 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
15 law, at the Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Monday through
16 Friday, 8:00 a.m. through 4:30 p.m. This material may be viewed at:
17 <https://education.ky.gov/districts/legal/Pages/Kentucky-Revised-Statutes.aspx>.

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)

Jason E. Glass, Ed.D.
Commissioner of Education

(Date)

Lu S. Young, Ed.D.
Chairperson Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on XXXX at 10:00 am, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 XXX. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, KY 40601, phone 502-564-4474, fax 502-564-9321, email: regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

702 KAR 3:340

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:

The proposed administrative regulation creates an approval process for school district leases in excess of one hundred thousand dollars (\$100,000) as required pursuant to KRS 65.944(1)(b).

(b) The necessity of this administrative regulation:

KRS 65.944(1)(b) requires the Kentucky Board of Education to promulgate an administrative regulation establishing an approval process by the Commissioner of Education for school districts leases that exceed one hundred thousand dollars (\$100,000).

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

The proposed administrative regulation is required pursuant to KRS 65.944(1)(b).

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

The proposed regulation creates an approval process for local school district leases that exceed one hundred thousand dollars (\$100,000).

(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:

N/A.

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

N/A.

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

N/A.

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

N/A.

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

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:

School districts will have their legal counsel complete the incorporated "Local Board Attorney Certification" form certifying that the lease complies with applicable laws and submit the form and lease to the Commissioner of Education for approval. The Commissioner will approve or deny the lease. If the lease is denied, then the Commissioner must provide the reasons and the district may correct any defects in the lease and/or request reconsideration.

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

The proposed lease approval process should have minimal cost to the school district as the district

should already have legal counsel involved in the review of leases in excess of one hundred thousand dollars (\$100,000). Completion of the “Local Board Attorney Certification” form will help the district save money by ensuring that the lease contains all the legally required terms.

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

The proposed regulation will ensure that districts have legal counsel review and certify that the agreement meets legal requirements for leases that exceed one hundred thousand dollars (\$100,000). This should ensure that district leases are compliant with applicable law.

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

(a) Initially:

It is believed that there will be minimal costs to school districts to implement.

(b) On a continuing basis:

District costs for legal review and certification of a lease will depend on the number of districts leases in excess of one hundred thousand dollars (\$100,000).

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

School district 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:

No additional fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

The proposed regulation does not establish any fees.

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

Tiering was not applied. The proposed regulation is uniformly applicable to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

702 KAR 3:340

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.

The proposed regulation is required by KRS 65.944(1)(b) and authorized by KRS 156.070 and 156.160

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?
The proposed administrative regulation establishes a school district lease approval process. It will not generate revenue.

(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?
The proposed administrative regulation establishes a school district lease approval process. It will not generate revenue.

(c) How much will it cost to administer this program for the first year?
It is expected that districts will incur some unknown additional costs. The proposed regulation requires district legal counsel to certify leases exceeding one hundred thousand dollars comply with legal requirements. Many districts already involve legal counsel in the preparation and review of leases. For such districts, the proposed administrative regulation should only minimally impact costs.

(d) How much will it cost to administer this program for subsequent years?
Unknown. Districts will incur some cost related to legal review of leases exceeding one hundred thousand dollars (\$100,000). Costs will depend on the number of leases and legal counsel costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. *"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]*

The proposed regulation is not expected to have a major economic impact on the department or local school districts.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

1) List a summary of each item included in the material incorporated by reference [KRS 13A.224-13A.2267]

2) Continue listing items until summary is complete.

3) Include total number of pages incorporated.

“Local Board Attorney Certification” is a on page form required to be completed by a school districts legal counsel wherein the counsel certifies that a lease exceeding one hundred thousand dollars (\$100,000) complies with applicable legal requirements.