

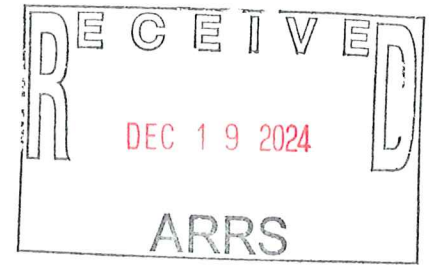


**Kentucky Council on
Postsecondary Education**

Andy Beshear
Governor

100 Airport Road, 2nd Floor
Frankfort, Kentucky 40601
Phone: 502-573-1555
<http://www.cpe.ky.gov>

Aaron Thompson, Ph.D.
President



December 19, 2024

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort KY 40601

Re: **13 KAR 2:120.** Comprehensive funding model for the allocation of state general fund appropriations to public universities.
13 KAR 2:130. Comprehensive funding model for the allocation of state general fund appropriations to Kentucky Community and Technical College institutions.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee **staff of the issues raised by 13 KAR 2:120 and 13 KAR 2:130, the Council on Postsecondary Education proposes the attached amendment to 13 KAR 2:120 and 13 KAR 2:130**

Sincerely,

Travis Powell
Senior Vice President and General Counsel

SUGGESTED SUBSTITUTE – ORDINARY ONLY

Final Version: 11/01/24 at 4:07 p.m.

**GENERAL GOVERNMENT CABINET
Council on Postsecondary Education**

13 KAR 2:120. Comprehensive funding model for the allocation of state general fund appropriations to public universities.

RELATES TO: KRS 48.600, 48.630, 164.001, 164.092

STATUTORY AUTHORITY: KRS 164.092(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.092(12) requires the Council on Postsecondary Education to promulgate an administrative regulation to implement a comprehensive funding model for the public postsecondary education system. This administrative regulation establishes the formula by which general fund appropriations shall be distributed in the public university sector.

Section 1. Definitions.

- (1) "Academic year" means July 1st through June 30th and all terms completed therein.
- (2) "Bachelor's degrees" means the total number of bachelor's degrees awarded during the academic year, including degrees conferred to resident and non-resident students.
- (3) "Comprehensive university" is defined by KRS 164.001(7).
- (4) "Council" is defined by KRS 164.092(1)(c).
- (5) "FAFSA form" means the free application for federal student aid form completed by students to determine eligibility to receive federal student financial aid.
- (6) "First-generation college students" means students who report on the FAFSA form that neither parent has earned a college degree or credential, or one (1) parent if the other parent's education level is unknown.
- (7) "Formula base amount" is defined by KRS 164.092(1)(e) and includes a deduction for mandated programs.
- ~~(8)~~ [(6)] "Hold-harmless provision" is defined by KRS 164.092(1)(f).
- ~~(9)~~ [(7)] "Institution" means a public university.
- ~~(10)~~ [(8)] "Low-income student" means a student who received a Federal Pell Grant after the 2005-2006 academic year for attendance at the institution from which the student received a bachelor's degree.
- ~~(11)~~ [(9)] "Mandated program" means a research or public service activity not integral to the instructional mission of the institution that is:
 - (a) Funded with greater than \$450,000 of state appropriations at research universities and \$200,000 at comprehensive universities; and
 - (b) Directed by statute, resolution, executive branch budget bill, executive order, or other legal mandate.
- (12) "Non-traditional age students" is defined **by/in** KRS 164.092(1)(k).
- ~~(13)~~ [(10)] "Non-resident student" means a student who does not meet the requirements for Kentucky residency for purposes of tuition **established/set forth** in 13 KAR 2:045.
- ~~(14)~~ [(11)] "Research university" is defined by KRS 164.092(1)(m) [(j)].
- ~~(15)~~ [(12)] "Resident student" means a student certified as a Kentucky resident for purposes of tuition pursuant to 13 KAR 2:045 and any non-resident student attending an institution under a state tuition reciprocity agreement entered into by the council.

~~(16)~~~~(13)~~ "Small school adjustment" means a one (1)-time calculation made using the formula base amounts in 2017-2018 and equals:

(a) For a research university, ten (10) percent of the respective formula base amount for each institution;~~and~~

(b) For a comprehensive university, ten (10) percent of the total formula base amount for all comprehensive universities divided by six (6);~~and~~;

(c) For institutions that have a hold-harmless **provision** amount in fiscal year 2023-2024, an additional amount equaling the institution's 2023-2024 hold-harmless **provision** amount.

~~(17)~~~~(14)~~ "STEM+H **bachelor's** degrees" means degrees in the fields of science, technology, engineering, math, and health sciences as determined by the council **based on the U.S. Department of Homeland Security STEM Designated Degree Program List, as well as all programs in CIP 51.**

~~(18)~~~~(15)~~ "Stop-loss provision" is defined by KRS 164.092(1)~~(n)~~~~(k)~~.

~~(19)~~~~(16)~~ "Underrepresented ~~minority~~ students" means first-generation college students~~students who categorize themselves as Hispanic or Latino, American Indian or Alaska Native, Black or African American, Native Hawaiian or Other Pacific Islander, or two (2) or more races~~.

~~(20)~~~~(17)~~ "University allocable resources" is defined by KRS 164.092(1)~~(o)~~~~(h)~~.

Section 2. Allocable Resources. The council shall determine total university allocable resources for any given year by calculating each institution's formula base amount and subtracting the small school adjustment and any amount protected by a hold-harmless provision. These amounts shall then be combined along with any applicable increase or decrease in general fund appropriation.

Section 3. Metric Weighting. For purposes of Sections 5, 6, and 7 of this administrative regulation, bachelor's degrees, student progression, earned credit hours, facilities' square feet, instruction and student services costs, and full-time equivalent student enrollment shall be calculated with differential weights for research and comprehensive universities in accordance with the Public University Funding Model Metric Weighting Chart.

Section 4. Three (3)-year Rolling Average. Each metric shall be calculated by averaging the most recent three (3) years of finalized data.

Section 5. Student Success Outcomes. Forty (40)~~Thirty-five (35)~~ percent of total university allocable resources shall be certified for distribution to each institution based on its share of the total volume of student success outcomes related to bachelor's degree production and student progression as established in KRS 164.092(6)(a)1. through 4.5., and in the following denominations:

(1) Nine (9) percent based on the ~~normalized~~ bachelor's degrees awarded in an academic year as **established**~~described~~ in the Public University Sector Funding Model Formula Chart;

(2) Five (5) percent based on STEM+H bachelor's degrees awarded in an academic year;

~~(3)~~ ~~Three (3) percent based on bachelor's degrees awarded to underrepresented minority students in an academic year;~~

~~(3)~~~~(4)~~ Nine and a half (9.5)~~Three (3)~~ percent based on bachelor's degrees awarded to low-income students in an academic year;

~~(4)~~~~(5)~~ Three (3) percent based on the number of full-time and part-time undergraduate students reaching or surpassing thirty (30) cumulative earned credit hours in any term completed from August 1st to July 31st;

~~(5)~~(6) Five (5) percent based on the number of full-time and part-time undergraduate students reaching or surpassing sixty (60) cumulative earned credit hours in any term completed from August 1st to July 31st; ~~and~~

~~(6)~~(7) Seven (7) percent based on the number of full-time and part-time undergraduate students reaching or surpassing ninety (90) cumulative earned credit hours in any term completed from August 1st to July 31st; ~~and~~;

(7) One and a half (1.5) percent based on the number of bachelor's degrees awarded to first generation students in an academic year.

Section 6. Student Credit Hour Production. ~~Thirty (30)~~~~Thirty-five (35)~~ percent of total university allocable resources shall be certified for distribution to each institution based on its share of total volume of weighted student credit hours earned during an academic year as established in KRS 164.092(6)(b).

(1) Credit hour weighting by course level and discipline shall be in accordance with the Public University Funding Model Earned Credit Hour Production Weighting Index.

(a) Credit hours earned by non-resident students shall be given one-half (0.5) the weight of those earned by resident students in comparable programs of study.

(b) Beginning fiscal year 2024-2025:

1. Credit hours earned by non-resident students shall be given three-quarters (.75) the weight of those earned by resident students in comparable programs of study; and

2. Resident undergraduate non-traditional age students shall be given twice the weight of those earned by traditional age students in comparable programs of study. ~~and~~

(2) The calculation in subsection (1) of this section shall not include credit hours earned by high school students taking courses for college credit.

Section 7. Operational Support. Thirty (30) percent of total university allocable resources shall be certified for distribution to each institution in support of vital campus operations as established in KRS 164.092(6)(c)1. through 3.

(1) Ten (10) percent shall be allocated based on facilities' square feet as reported annually to the council and as established in KRS 164.092(6)(c)1.

(2) Ten (10) percent shall be allocated based on direct instruction and student services costs as reported on each institution's annual audited financial statement and as established in KRS 164.092(6)(c)2.

(3) Ten (10) percent shall be allocated based on total full-time equivalent student enrollment as established in KRS 164.092(6)(c)3 and using the formula established in the Public University Sector Funding Model Formula Chart.

Section 8. Hold-harmless and Stop-loss Provisions.

(1) Any final amounts certified for distribution to any institution shall account for any hold-harmless or stop-loss provisions established in KRS 164.092(9).

(2) The council shall determine hold-harmless amounts for institutions ~~[in fiscal year 2018-2019]~~ through application of the formula established in this administrative regulation.

(a) If the formula total amount generated for an institution is less than its initial allocable resources, the amount of that difference shall be designated as the institution's hold-harmless allocation.

(b) If applied, an institution maintaining a hold-harmless allocation shall not receive additional distributions of funding through the model until the hold-harmless allocation balance is brought to zero through improved institutional performance, additional appropriations, or some combination thereof.

~~[(c)] [The council shall apply these hold-harmless allocations, with any applicable credit adjustments as determined annually by the formula, to all applicable institutions in 2018-2019, 2019-2020, 2020-2021, and in any subsequent years as directed by the General Assembly.]~~

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Public University **Sector** Funding Model Formula Chart," April 2024~~[June 2017]~~;

(b) "Public University Funding Model Metric Weighting Chart," April 2024~~[June 2017]~~; and

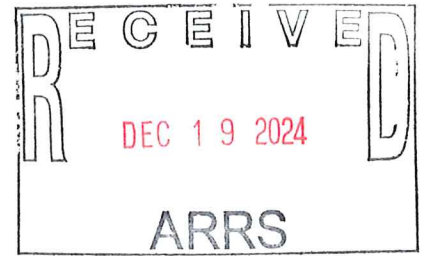
(c) "Public University Funding Model Earned Credit Hour Production Weighting Index," June 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 100 Airport Road, Third Floor~~[1024 Capital Center Drive, Suite 320]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and <https://cpe.ky.gov/>.

***General Reviewer's Note:** File one (1) copy of the Public University Sector Funding Model Formula Chart with the April 2024 edition date. File this copy in conjunction with filing this suggested substitute.



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Postsecondary Education**



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Re: 13 KAR 2:120. Comprehensive funding model for the allocation of state general fund appropriations to public universities.
13 KAR 2:130. Comprehensive funding model for the allocation of state general fund appropriations to Kentucky Community and Technical College institutions.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 13 KAR 2:120 and 13 KAR 2:130, the Council on Postsecondary Education proposes the attached amendment to 13 KAR 2:120 and 13 KAR 2:130

Sincerely,

A handwritten signature in black ink that reads "Travis Powell".

Travis Powell
Senior Vice President and General Counsel

SUGGESTED SUBSTITUTE

Final Version: 11/01/24 at 3:08 p.m.

GENERAL GOVERNMENT CABINET Council on Postsecondary Education

13 KAR 2:130. Comprehensive funding model for the allocation of state general fund appropriations to Kentucky Community and Technical College System institutions.

RELATES TO: KRS 48.600_ - 48.630, 164.001, 164.092

STATUTORY AUTHORITY: KRS 164.092(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.092(12) requires the Council on Postsecondary Education to promulgate an administrative regulation to implement a comprehensive funding model for the public postsecondary education system. This administrative regulation establishes the formula by which general fund appropriations shall be distributed in the Kentucky Community and Technical College System sector.

Section 1. Definitions.

(1) "Academic year" means the Summer, Fall, and Spring terms~~[means July 1 through June 30 and all terms completed therein].~~

(2) **"Council" is defined by KRS 164.092(1)(c).**

~~(3) "Credentials" means the total number of certificates, diplomas, and associate degrees awarded during the academic year["Associate degree" means total number of associate degrees awarded during the academic year, including degrees conferred to resident and non-resident students].~~

[(3) "Council" is defined by KRS 164.092(1)(c).]

(4) "Equity adjustment" means ten (10) percent of total KCTCS institution allocable resources divided by sixteen (16) and allocated to each institution using the Community Needs Index.

(5) "FAFSA form" means the free application for federal student aid form completed by students to determine eligibility for federal student financial aid.

(6) "First-generation college students" means students who report on the FAFSA that neither parent has earned a college degree or credential, or one (1) parent if the other parent's education level is unknown.

~~(7)[(5)] "Formula base amount" is defined by KRS 164.092(1)(e) and includes a deduction for mandated programs.~~

~~(8)[(6)] "Full-[]time equivalent student enrollment" means the total academic year credit hours taken divided by thirty (30)~~[fall semester credit hours earned divided by fifteen (15)].~~~~

~~(7) ["High-wage, high-demand credentials" means credentials tied to occupations identified in the Kentucky Office of Employment and Training's Kentucky Occupational Outlooks and annual Occupational Employment statistics wage data that meet the following criteria:]~~

~~[(a) [Have a median annual wage that is greater than or equal to the wage at the 75th percentile for all occupations in the state of Kentucky;]~~

~~[(b) [Show growth greater than or equal to the projected percent change for all Kentucky occupations; or]~~

~~[(c) [Have 100 or more average annual job openings.]~~

~~(9)[(8)] "Hold-harmless provision" is defined by KRS 164.092(1)(f).~~

~~(10)[(9)] "Institution" means a college in the Kentucky Community and Technical College System.~~

~~(11)[(10)] "KCTCS" is defined by KRS 164.092(1)(h).~~

~~(12)[(11)] "KCTCS institution allocable resources" is defined by KRS 164.092(1)(i).~~

~~(13)~~~~(12)~~ "Low-income student~~[students]~~" means a student who has received a Federal Pell Grant at any time since 2005-2006 at KCTCS~~[the graduating institution]~~.

~~(14)~~~~(13)~~ "Mandated program" means a research or public service activity not integral to the instructional mission of the institution that is:

- (a) Funded with greater than \$200,000 of state appropriations; and
- (b) Directed by statute, resolution, executive branch budget bill, executive order, or other legal mandate.

~~(15)~~ "Non-traditional age~~[college]~~ students" is defined by KRS 164.092(1)(k).

~~(16)~~~~(14)~~ ["Non-resident student" means a student who does not meet the requirements for Kentucky residency for purposes of tuition set forth in 13-KAR 2:045.]

~~(15)~~ ["Resident student" means a student certified as a Kentucky resident for purposes of tuition pursuant to 13-KAR 2:045 and any non-resident student attending an institution under a state tuition reciprocity agreement entered into by the council.]

~~(16)~~ ["STEM+H degrees" mean degrees in the fields of science, technology, engineering, math, and health sciences as identified to annually by KCTCS.]

~~(17)~~ "Stop-loss provision" is defined by KRS 164.092(1)(n)~~(k)~~.

~~(18)~~ ["Targeted industry credentials" means credentials awarded in Classification of Instructional Programs (CIP) codes developed by the U.S. Department of Education's National Center for Education Statistics that crosswalk to occupations with education or training requirements of an associate degree or below in targeted industry sectors as identified in a targeted industry CIPs index provided annually by KCTCS.]

~~(17)~~~~(19)~~ "Underprepared students" means~~[mean]~~ students who tested into developmental English, math, or reading upon entering KCTCS~~[at any period of enrollment]~~ since the 2010-11 academic year.

~~(18)~~~~(20)~~ "Underrepresented [minority] students" means first-generation college students~~[mean students who categorized themselves as Hispanic or Latino, American Indian or Alaska Native, Black or African American, Native Hawaiian or Other Pacific Islander, or two (2) or more races]~~.

Section 2. Allocable Resources. The council shall determine total KCTCS institution allocable resources for any given year by calculating each institution's formula base amount and subtracting the equity adjustment and any amount protected by a hold harmless provision. These amounts shall then be combined along with any applicable increase or decrease in general fund appropriation.

Section 3. Data Sets. Unless indicated otherwise, each metric, except facilities square footage, shall be calculated using a three (3) year rolling average~~[the most recent set of finalized data]~~.

Section 4. Student Success Outcomes. Thirty-five (35) percent of total KCTCS institution allocable resources shall be certified for distribution to each institution based on its share of the total volume of student success outcomes as established in KRS 164.092(8)(a)1. through ~~4.7.~~, and in the following denominations:

- (1) ~~Eight (8)~~~~Ten (10)~~ percent based on the credentials awarded in an academic year weighted to provide a premium for credentials that are aligned with the economic needs of the state **using the Credentials Tied to the Economy**~~[using an average of the most recent three (3) years of finalized data and weighted in the following manner:]~~

(1.0)	[for an undergraduate certificate or diploma which a student can complete in less than one (1) academic year;]
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[2.0]	[for an undergraduate certificate or diploma which a student can complete in at least one (1), but less than two (2) academic years; and]
[4.0]	[for an associate degree.]

- [(2)] [Two (2) percent based on STEM+H credentials awarded in an academic year;]
- (2)[(3)] One (1)[Two (2)] percent based on degrees[credentials] awarded to underrepresented [minority] students in an academic year;
- (3)[(4)] Five (5)[Two (2)] percent based on credentials awarded to low-income students in an academic year;
- (4)[(5)] Four (4)[Two (2)] percent based on credentials awarded to underprepared students in an academic year;
- (5) Six (6) percent based on credentials awarded to non-traditional age[college] students in an academic year;
- (6) Four (4)[Two (2)] percent based on the number of students in the cohort who transferred to a baccalaureate degree granting college or university after the last term a student was enrolled at a KCTCS institution in the academic year;
- [(7)] [Two (2) percent based on targeted industry credentials awarded in an academic year;]
- [(8)] [One (1) percent based on high-wage, high-demand credentials awarded in an academic year;]
- (7)[(9)] One (1)[Two (2)] percent based on the number of full-time and part-time undergraduate students reaching or surpassing fifteen (15) cumulative earned credit hours in an academic year;
- (8)[(10)] Two (2)[Four (4)] percent based on the number of full-time and part-time undergraduate students reaching or surpassing thirty (30) cumulative earned credit hours in an academic year; and
- (9)[(11)] Four (4)[Six (6)] percent based on the number of full-time and part-time undergraduate students reaching or surpassing forty-five (45) cumulative earned credit hours in an academic year.

Section 5. Student Credit Hour Production. Thirty-five (35) percent of total KCTCS allocable resources shall be certified for distribution to each institution based on its share of total volume of weighted student credit hours earned during an academic year as established in KRS 164.092(8)(b). Credit hour weighting by course discipline shall be in accordance with the KCTCS Funding Model Classification of Instructional Program (CIP) Cost Factors Index.

Section 6. Operational Support. Thirty (30) percent of total KCTCS allocable resources shall be certified for distribution to each institution in support of vital campus operations as established in KRS 164.092(8)(c)1. through 3.

- (1) Ten (10) percent shall be allocated based on facilities' square feet as reported annually to the council and as established in KRS 164.092(8)(c)1.
- (2) Ten (10) percent shall be allocated based on direct instruction and student services costs as reported to The Integrated Postsecondary Education Data System (IPEDS) and as established in KRS 164.092(8)(c)2.
- (3) Ten (10) percent shall be allocated based on total full-time equivalent student enrollment as established in KRS 164.092(8)(c)3.

Section 7. Stop-loss and Hold-Harmless Provisions.

- (1) Any final amounts certified for distribution to any institution shall account for any hold-harmless or stop-loss provisions established in KRS 164.092(9).
- (2) The council shall determine hold-harmless provision amounts for institutions [in fiscal year 2018-2019] through application of the formula established in this administrative regulation.

(3) If the formula total amount generated for an institution is less than its initial allocable resources, the amount of that difference shall be certified to KCTCS as that institution's hold-harmless provision allocation.

~~[(4)] [The council shall apply these hold-harmless allocations to all applicable institutions in 2018-2019 and in any subsequent years as directed by the General Assembly.]~~

Section 8. Incorporation by Reference.

(1) The following material is incorporate by reference:

(a) "KCTCS Funding Model Classification of Instructional Program (CIP) Cost Factors Index", June 2017;

(b) "Community Needs Index (CNI)", April 2024; and

(c) "Credentials tied to the Economy", April 2024.~~[is hereby incorporated by reference.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 100 Airport Road, Third Floor~~[1024 Capital Center Drive, Suite 320]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and <https://cpe.ky.gov/>.

***General Reviewer's Note:** File one (1) copy of the Community Needs Index (CNI) AND the Credentials Tied to the Economy, with both having the April 2024 edition date. File these copies in conjunction with filing this suggested substitute.

Council on Postsecondary Education
 Funding Model for the Public
 Universities
 Metric Weighting Chart (April 2024)

Funding Model Metrics	Percent of Formula	Research Universities	Comprehensive Universities
Bachelor's Degrees	9.0%	1.67345	1.00000
STEM+H Bachelor's Degrees	5.0%	1.54105	1.00000
Underrepresented Student Bachelor's Degrees	1.5%	1.00000	1.00000
Low Income Bachelor's Degrees	8.0%	2.35120	1.00000
Low Income Bachelor's Degrees	1.5%	1.00000	1.00000
Student Progression (@ 30 Credit Hours)	3.0%	1.49386	1.00000
Student Progression (@ 60 Credit Hours)	5.0%	1.45320	1.00000
Student Progression (@ 90 Credit Hours)	7.0%	1.56076	1.00000
Student Credit Hours Earned (Weighted)	30.0%	1.14208	1.00000
Facilities Square Feet	10.0%	1.36134	1.00000
Instruction and Student Services Costs	10.0%	0.90251	1.00000
FTE Student Enrollment	10.0%	1.34278	1.00000
	100.0%		

Credentials Tied to the Economy (April 2024)

- **Definition:** The CISA Credentials metric is a credentials-based metric that determines the number of conferred credentials that are aligned to occupations identified as critical to the economic infrastructure of the United States.
- **Purpose:** To determine the number credentials conferred by KCTCS that are aligned with occupations that have been determined by the federal government to be critical to the infrastructure of the United States.
- **Data:**
 - CPE Official (Type 5)
 - Used to determine the number of graduates per academic program.
 - Cybersecurity & Infrastructure Security Agency (CISA) Critical Infrastructure Workers
 - [Many U.S. Workers in Critical Occupations in the Fight Against COVID-19 \(Revised\) – LMI Institute \(lmiontheweb.org\)](#)
 - In an effort to help workforce and labor market information (LMI) professionals, as well as other state, community and economic researchers provide the best possible information to inform policymakers, the [LMI Institute](#) and [C2ER](#) has produced the following list of BLS Standard Occupation Classification (SOC) codes connected to critical infrastructure (e.g., essential) industries. The list is based on the Department of Homeland Security's guidance for identifying the critical infrastructure workforce during COVID-19 response.
 - [Guidance on the Essential Critical Infrastructure Workforce | CISA](#)
 - ***The list identifies workers who conduct a range of operations and services that may be essential to continued critical infrastructure operations, including staffing operations centers, maintaining and repairing critical infrastructure, operating public safety call centers, working construction, and performing operational functions, among others. It includes workers who support crucial supply chains and enable cyber and physical security functions for critical infrastructure. The industries that essential workers support represent, but are not limited to, medical and healthcare, telecommunications, information technology systems, defense, food and agriculture, transportation and logistics, energy, water and wastewater, and law enforcement.***
 - The LMI Institute and C2ER used the DHS memo to identify the [Standard Occupational Classification \(SOC\) definitions](#) connected to medical and healthcare, telecommunications, information technology systems, defense, food and agriculture, transportation and logistics, energy, water and wastewater, law enforcement, and public works industries.
- **Method**
 - Download the data sources listed above.
 - Using the AP to SOC crosswalk, bring in the SOC codes for each KCTCS academic plan listed in the Type 5 file.
 - Use the CISA list of critical infrastructure SOC codes to flag the academic plans (based on the associated SOC code) that are considered critical to the infrastructure of the United States.
 - Pivot by college and year to get the counts of the CISA flagged programs.

Community Needs Index (CNI) – (April 2024)

- **Definition:** The Community Needs Index (CNI) is a normalized measure of community economic disadvantage based on U.S. Census data measuring unemployment, labor force participation, and individual poverty. The metric has a mean of zero and values represent standard deviations above and below the mean.
- **Purpose:** To identify KCTCS college areas that may need additional resources due to regional economic disadvantage.
- **Data:**
 - Based on 5-Year ACS Estimates
 - Collected using "getcensus" function in Stata
 - Collected at the county level
 - The enrollment cluster crosswalk is used to link counties to college areas
 - Main variables: unemployment, labor force participation, poverty
- **Method:**
 - Principal Component Analysis (PCA)
 - Statistical method used to combine variables into composite values that are based on shared variability between the variables.
 - The three measures load onto a single variable that we call the CNI
 - The values for the CNI are z-scores which describes how many standard deviations each college is away from the average CNI value.
 - Negative scores indicate the college has lower than average CNI and positive scores indicate the college has higher than average CNI.
 - The colleges are split into quartiles after being rank ordered based on the CNI.

Community Need Index (CNI)								
2019-20			2020-21			2021-22		
College	CNI	Quartile	College	CNI	Quartile	College	CNI	Quartile
Hazard	3.25	1	Hazard	2.93	1	Southeast	3.08	1
Southeast	2.94	1	Southeast	2.91	1	Hazard	3.00	1
Big Sandy	2.09	1	Big Sandy	1.98	1	Big Sandy	1.87	1
Somerset	0.82	1	Somerset	0.87	1	Somerset	0.79	1
Hopkinsville	0.50	2	Hopkinsville	0.69	2	Ashland	0.66	2
Ashland	0.43	2	Ashland	0.38	2	Hopkinsville	0.34	2
Maysville	-0.32	2	Maysville	-0.22	2	Madisonville	-0.06	2
Henderson	-0.62	2	Madisonville	-0.30	2	Maysville	-0.15	2
Madisonville	-0.64	3	Southcentral	-0.47	3	Southcentral	-0.51	3
Owensboro	-0.74	3	Elizabethtown	-0.83	3	Elizabethtown	-0.70	3
Southcentral	-0.75	3	Bluegrass	-0.94	3	West Kentucky	-0.97	3
Elizabethtown	-0.84	3	Henderson	-1.06	3	Bluegrass	-1.17	3
Bluegrass	-1.08	4	West Kentucky	-1.11	4	Owensboro	-1.28	4
West Kentucky	-1.14	4	Owensboro	-1.13	4	Jefferson	-1.30	4
Jefferson	-1.48	4	Jefferson	-1.32	4	Henderson	-1.37	4
Gateway	-2.43	4	Gateway	-2.37	4	Gateway	-2.23	4

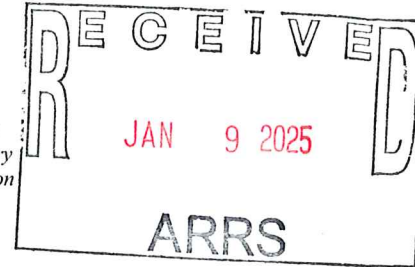


TEACHERS' RETIREMENT SYSTEM
of the State of Kentucky

GARY L. HARBIN, CPA
Executive Secretary

ROBERT B. BARNES, JD
Deputy Executive Secretary
Operations and General Counsel

ERIC WAMPLER, JD
Deputy Executive Secretary
Finance and Administration



January 9, 2025

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
702 Capitol Avenue
Frankfort, Kentucky 40601

Dear Co-Chairs:

After consideration of the issues raised by 102 KAR 1:340, and pursuant to the directives of KRS 13A.320, Teachers' Retirement System of the State of Kentucky (TRS) proposes the attached amendment to this ordinary administrative regulation.

If you have any questions, please advise.

Sincerely,

Robert, B. Barnes
Deputy Executive Secretary of Operations
& General Counsel

SUGGESTED SUBSTITUTE

**FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System**

102 KAR 1:340. Calculation of final average salary.

RELATES TO: KRS 161.220-~~161.716(9)~~

STATUTORY AUTHORITY: KRS 161.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the board of trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.220(9) establishes the definition of "final average salary" including permissible salary increases for annuity calculations~~[for retirement calculation purposes, which limits the amount of increases in salaries that can be included as final average salary if those increases are received for any of the three (3) years of employment immediately prior to retirement, unless the member experiences a corresponding change in position or in length of employment].~~ This administrative regulation establishes the method for calculating final average salary if there is a change in position or in length of employment. This administrative regulation establishes how KRS 161.220(9) is applied.~~[for any of the final three (3) years immediately prior to retirement, and measuring the increase in compensation for those final three (3) years.]~~

Section 1. Definitions.

(1) "Additional duties" means service from a duty or duties outside of the member's primary job duty. This includes compensation paid from a district's supplemental or extra service salary schedule, such as coaching, club sponsoring, and summer school teaching. Additional duties also includes extended school services (ESS). For members employed by employers that are not school districts, additional duties includes assignments, responsibilities, duties, college credit hour classes taught, grant writing, and projects that are outside of, or added to, the member's position.

(2) "Newly Created Position" means a position that did not exist at least a full twelve (12) months prior to the member's assumption of that position.

(3) "Position" means:

(a) The primary job duty performed by a member that, standing alone, earns service credit in TRS, whether that job duty is provided in full-time employment as defined in KRS 161.220(21), part-time employment, or substitute teaching; and

(b) Does not include additional duties as defined ~~by~~**[in]** this administrative regulation.

(4) "Previously existing position" means a position that existed at least a full twelve (12) months prior to the member's assumption of that position.

(5) "Rank and step" means a single, specific cell on the salary schedule where rank serves as one axis of the schedule and step as the other.

(6) "Salary schedule" means only the single certified salary schedule based on rank and step generally applicable districtwide for teachers and excludes other schedules or compensation arrangements.

[(6) "rank and step" means a single, specific cell on the salary schedule where rank serves as one axis of the schedule and step as the other.]

Section 2. A member who receives an increase in salary that exceeds the limits permitted for inclusion as final average salary pursuant to KRS 161.220(9)(b), but experiences a corresponding change in length ~~in~~ employment, shall have his or her final average salary calculated using salaries adjusted in the manner established in this section.

(1) The member shall receive one (1) additional day of salary for retirement calculation purposes at the member's base daily rate of pay for each day added to the member's annual contract in excess of the member's contracted days from the last immediately prior fiscal year.

(2) The base daily rate of pay used as an additional day of salary for retirement calculation purposes shall not include compensation:

(a) For extra duties worked beyond the member's primary job duty for which the member receives most of his or her compensation;

(b) That exceeds the limitations established by KRS 161.220(9)(b);

(c) That is not "annual compensation" as defined by KRS 161.220(10); or

(d) That is otherwise excluded from use in retirement calculations pursuant to the provisions of KRS 161.220 through 161.716.

(3) The additional days shall be worked days in order to have the additional salary included for retirement calculation purposes.

Section 3. The limitation established by KRS 161.220(9)(b) on the amount of salary included in each of the member's three (3) highest salaries shall not apply if the increase in the member's salary is due to a corresponding change in position. A corresponding change in position only occurs if:

(1) The member assumes a newly created position in which all duties are new and different from the previous position the member held;

(2) The member moves from one (1) position to another separate, previously existing position; or

(3) The member assumes a second, previously existing position in its entirety, and now occupies two (2) different positions.

(4) For purposes of paragraphs (b) and (c) of this subsection:

(a) For school district employers, the district salary schedule shall be proof of a previously existing position.

(b) For other employers, proof of a previously existing position includes official employment records, such as those for classified and non-classified positions established under the state merit system.

(c) For all employers, a title change, in and of itself, shall not be proof.

Section 4. The limitation established by KRS 161.220(9)(b) on the amount of salary included in each of the member's three (3) highest salaries shall apply in situations including if:

(1) A member performs additional duties during ~~the~~[a] fiscal year; ~~[or]~~

(2) The employer changes the member's duties or responsibilities to include additional duties or responsibilities within the member's existing position; ~~[or]~~

(3) The member assumes some, but not all, duties of a second position; or

(4) The member assumes a newly created position in which not all duties are new and different.

Section 5.

~~[(1)] [Members who experience a corresponding change in position shall be entitled to receive salary credit:]~~

~~[(a)] [If the employer is a school district, based upon the compensation paid to the new position from the previous year's salary schedule, plus a percentage increase equal to the highest percentage~~

increase received by members on any one (1) rank and step of the salary schedule of the school district;
or]

[(b)] [If the employer is not a school district, the percentage increase received by all other members.]

[(2)] Any contributions paid to TRS on salaries that are disallowed under KRS 161.220(9)(b) shall be refunded to the school district on the member's behalf. [102 KAR 1:340. Calculation of final average salary if there is a corresponding change in position or in length of employment during any of the final three (3) years immediately prior to retirement.]

Section 6. The measurement of the limitation under KRS 161.220(9)(b) shall be applied so that the combined increase in salary for each of the last three (3) full years of salary prior to retirement shall not exceed the total permissible, percentage increase received by other members of the employer for the same three (3) year period. The increases for each of the last three (3) full years of salary shall be measured from, and compared to, the base full fiscal year salary that is immediately prior to the last three (3) full years of salary.

Section 7.

(1) In determining the limitation under KRS 161.220(9)(b), the total permissible percentage increase for a school district **shall be/is** the highest percentage increase for a specific cell of the salary schedule, as defined in Section **1(6), [1(5)]** from one (1) fiscal year to the next and **shall exclude/excludes** any increase from one (1) cell to another cell whether by rank or step.

(2) Individual members may have increases greater than the district's permissible increase **if/when** they advance on the salary schedule as defined in Section **1(6) [1(5)]** in step or rank. Individual members may not have increases greater than the district's permissible increase **if/when** they advance on a pay schedule or compensation agreement other than the salary schedule **[as]** defined in Section **1(6) [1(5)]**.



KENTUCKY PUBLIC PENSIONS AUTHORITY

David L. Eager, Executive Director

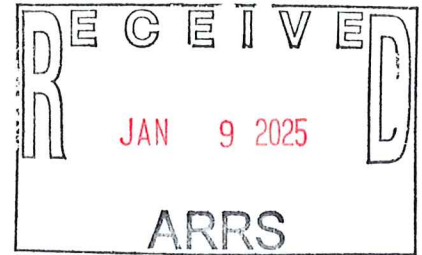
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Kentucky Public
Pensions Authority

January 9, 2025

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort KY 40601



Re: 105 KAR 1:130. Hazardous Position Coverage.

Dear Co-Chairs West and Lewis:

After discussions with the Administrative Regulation Review Subcommittee staff of issues raised by 105 KAR 1:130, the Kentucky Public Pensions Authority accepts the proposed attached staff suggested amendments.

Sincerely,

Jessica Beaubien

Jessica Beaubien, Policy Specialist
Kentucky Public Pensions Authority
1270 Louisville Road
Frankfort, KY 40601

SUGGESTED SUBSTITUTE

**FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority**

105 KAR 1:130. Hazardous ~~position~~[duty] coverage.

RELATES TO: KRS 16.505, 61.552, 61.560, 61.580, 61.592, 78.530, 78.545, 78.5520, 78.615, 78.650~~[78.545(30)]~~

STATUTORY AUTHORITY: KRS ~~61.505~~[61.645(9)(e)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~61.505(1)(g)~~ authorizes the Kentucky Public Pensions Authority~~[61.645(9)(e) requires the Board of Trustees of the Kentucky Retirement Systems]~~ to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with~~[necessary or proper in order to carry out the provisions of]~~ KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852. KRS 61.592 and 78.5520 prescribe~~[KRS 61.592(2) requires the board to promulgate administrative regulations prescribing]~~ the manner in which an employer shall request hazardous position~~[duty]~~ coverage for employees, and the requirements for converting nonhazardous position coverage to hazardous position coverage. This administrative regulation establishes the requirements, procedures, and forms for requesting, or converting to, hazardous position coverage.

Section 1. Definition~~[Definitions]~~. "Systems" means the Kentucky Employees Retirement System or the County Employees Retirement System.

~~[(1)] ["County" is defined by KRS 78.510(3).]~~

~~[(2)] ["Department" is defined by KRS 61.510(3).]~~

Section 2. Hazardous Positions in the County Employees Retirement System.

~~(1) Pursuant to KRS 78.5520(2), County Employees Retirement System (CERS) employers shall classify a position as a hazardous position only when authorized by the CERS Board of Trustees. [If a county eligible to participate in the County Employees Retirement System chooses to provide hazardous duty coverage to all eligible employees, the county shall adopt an appropriate order to pay the required contributions and provide hazardous coverage to all eligible employees. Notwithstanding the three (3) month trial period set out in 105 KAR 1:120, Section 2, the county's request for participation in County Employees Retirement System shall be submitted to the Board of Trustees at the first quarterly meeting which occurs at least one (1) month after the adoption of the appropriate order. The effective date of hazardous position coverage in the order shall be the date of the county's participation in County Employees Retirement System.]~~

~~(2) A CERS employer shall notify the agency of the intent to request authorization of a hazardous position from the CERS Board of Trustees. Once notified, the agency shall provide the employer with a hazardous position packet, including the date the completed packet shall be returned to be presented for authorization to the CERS Board of Trustees. The hazardous position packet stipulates that the employer shall submit:~~

~~(a) A resolution on the employer's letterhead stating the employer's intent to classify an eligible position as a hazardous position, and the desired effective date of the hazardous position classification;~~

(b) A valid Form 7011, HP-1, Hazardous Participation Certification (CERS), to certify that the position identified in paragraph (a) of this subsection meets the definition of a hazardous position and that sufficient funds have been budgeted for the required employer contributions;

(c) A job description for each position identified in this subsection;

(d) A valid Form 7025, Position Questionnaire, for each position identified in this subsection; and

(e) A valid Form 2011, HP-2, Hazardous Position Certification, to certify the effective date each employee began working in the position and the date of each employee's physical examination by a licensed physician.

[Section 3.]

~~[(1)] [A department participating in the Kentucky Employees Retirement System may provide hazardous position coverage upon authorization by the governing authority. The governing authority shall make the request for hazardous position coverage in writing to the Board of Trustees of Kentucky Retirement Systems. If the position is approved, the effective date of hazardous position coverage shall be the first day of any month following the quarterly meeting of the board of trustees which occurs after the date of the request.]~~

~~[(2)] [A county participating in County Employees Retirement System may provide hazardous position coverage upon adoption of a resolution by its governing authority to transfer eligible positions from nonhazardous to hazardous position coverage. The governing authority shall make a written request for hazardous position coverage to the Board of Trustees of Kentucky Retirement Systems. If the position is approved for hazardous coverage, the effective date of hazardous position coverage shall be the first day of any month following the quarterly meeting of the Board of Trustees of Kentucky Retirement Systems in which the hazardous position coverage is approved unless a different date is approved by the Board of Trustees of Kentucky Retirement Systems.]~~

~~(3)~~

~~(a)[(a)]~~

~~[1-] An employee[Employees] who began participating in CERS[County Employees Retirement System] prior to September 1, 2008, and was[were] working in a CERS hazardous position[covered positions in County Employees Retirement System] prior to September 1, 2008, shall continue to participate as a hazardous position employee[covered employees] as long as he or she remains[they remain] in a position that has been approved for hazardous position coverage.~~

~~(b)[2-] An employee[Employees] who began participating in CERS[County Employees Retirement System] prior to September 1, 2008, and is[are] subsequently employed in a hazardous position[covered positions], shall participate as a hazardous position employee[covered employees] as long as he or she remains[they remain] in a position that has been approved for hazardous position coverage.~~

~~(c)[(b)] An employee[Employees] who began[begin] participating in CERS[County Employees Retirement System] on or after September 1, 2008, in a position that was approved as a[for] hazardous position[coverage] prior to September 1, 2008, shall not be reported as a hazardous position employee[covered employees] until the position is approved by the CERS[county requests that the] Board of Trustees[of Kentucky Retirement Systems approve] as a hazardous position in accordance with Section 4(1) of this administrative regulation[coverage for those positions that meet the criteria as set out in KRS 61.592(1)(b), and hazardous coverage is approved by the Board of Trustees of Kentucky Retirement Systems for those positions], even if the position was[has] previously [been] approved as a[for] hazardous position[coverage].~~

Section 3.~~[Section 4.]~~ Hazardous Positions in the Kentucky Employees Retirement System.

(1) Pursuant to KRS 61.592(2), an employer in the Kentucky Employees Retirement System (KERS) shall classify a position as a hazardous position only when authorized by the Kentucky Retirement Systems (KRS) Board of Trustees.

(2) A KERS employer shall notify the agency of the intent to request authorization of a hazardous position from the KRS Board of Trustees. Once notified, the agency shall provide a hazardous position packet, including the date the completed packet shall be returned to be presented for authorization to the KRS Board of Trustees. The hazardous position packet stipulates that the employer shall submit:

(a) A valid ~~[The department shall complete and submit the]~~ Form 7013, HP-1, Hazardous Position ~~[Participation]~~ Certification (KERS), to certify that the position identified in this subsection meets the definition of a hazardous position and ~~[-. The form shall be signed by the head of the department and by an individual who can attest]~~ that sufficient funds have been budgeted for the required employer contributions; ~~[-]~~

(b) A ~~[For departments of the Commonwealth of Kentucky, the department shall also submit a]~~ letter from the Governor's Office ~~for[of]~~ Policy and Management verifying sufficient funds have been allocated for hazardous position contribution rates ~~[budgeted for employer contributions];~~ ~~[-]~~

~~[(2)] [The county shall complete and submit the "Form 7011, HP-1, Hazardous Participation Certification (CERS)". The form shall be signed by the agency head and by an individual who can attest that sufficient funds have been budgeted for the employer contributions.]~~

(c) A list of all positions identified in this subsection, which shall include the name, social security number, and position title of all affected individuals who are currently employed. For KERS employers reported by the Personnel Cabinet, the list of positions shall also include the unique eight-character Job ID used by the Personnel Cabinet, which shall be different than a nonhazardous position Job ID; ~~[-]~~

(d) A job description for each position identified in this subsection; ~~[-]~~

~~[Section 5:] [The county or department shall submit a description of the duties of each position for which hazardous coverage is requested.]~~

~~(e) [(1)] A valid [The agency shall complete Sections 1 and 3 of] Form 7025, Position Questionnaire, for each position identified in this subsection [employees of a department and for employees of a county whose participation date was prior to September 1, 2008]; **and** [-]~~

~~[(2)] [The agency shall complete Sections 2 and 3 of Form 7025, Position Questionnaire, for employees of a county whose participation date was on or after September 1, 2008.]~~

~~[Section 6:]~~

~~(f) A valid [The county or department shall complete and submit a] Form 2011, HP-2, Hazardous Position Certification, to certify the effective date [provided by the retirement system for] each employee began working in the [a] position and the date of each employee's physical examination by a licensed physician [for which the coverage has been requested. If there is any change in the employee's work assignment or classification, the county or department shall submit a new Form 2011, HP-2, Hazardous Position Certification, indicating the change in the position].~~

Section 4. Board of Trustees determination.

(1)

(a) The CERS Board of Trustees shall review all hazardous position classification requests and information provided by the CERS employer **required by** [as indicated in] Section 2 of this administrative regulation to determine if each position meets the requirements to be classified as a hazardous position.

(b) If the CERS hazardous position is authorized by the CERS Board of Trustees, the hazardous position effective date will be the first day of the month following the CERS Board of Trustees meeting at which it was authorized, unless the CERS Board of Trustees specifies a different date.

(2)

(a) The KRS Board of Trustees shall review all hazardous position requests and information provided by the KERS employer ~~required by~~**as indicated in** Section 3 of this administrative regulation to determine if each position meets the requirements to be classified as a hazardous position.

(b) If the KERS hazardous position is authorized by the KRS Board of Trustees, the hazardous position effective date will be the first day of the month following the KRS Board of Trustees meeting at which it was authorized, unless a different date is specified by the Board.

Section 5. Hazardous Service Certification and Revocation.

(1)

(a) CERS and KERS employers shall ~~complete~~**complete** and submit a valid Form 2011, HP-2, Hazardous Position Certification, at initial hire and each time an employee begins a new hazardous duty position or changes his or her hazardous duty position, as required by KRS 61.592(5) and 78.5520(4).

(b) The employer shall retain a copy of the physical examination by a licensed physician and submit a copy to the agency.

(2) The CERS Board of Trustees shall have the authority to revoke a CERS employee's hazardous position classification pursuant to KRS 78.5520(2)(c).

Section 6.~~[Section 7.]~~ Conversion of Position from Nonhazardous to Hazardous.

(1)

~~[(a)]~~ To convert nonhazardous service credit to hazardous service credit:

~~(a)[:]~~ A member shall:

1. Have ~~a~~ membership date prior to January 1, 2014; and
2. Have previously worked in a nonhazardous position that has been converted to a hazardous position;~~[:]~~

(b) The employer for the converted hazardous position shall have participated in the systems prior to the conversion pursuant to KRS 61.592(3)(c) and 78.5520(3)(a); ~~and[:]~~

(c) Payment of the cost of converting shall be paid in accordance with subsection (3) of this section.

(2)

~~[(a)]~~ To request the conversion of nonhazardous service credit to hazardous service credit:

~~(a)[:]~~ The employer shall complete and submit a valid Form 4150, Certification of Employment in a Hazardous Position, to verify employee and employer participation in accordance with subsection (1)(a) and (b); ~~and[:]~~

(b) The agency shall review the Form 4150 and determine if the service credit is eligible for conversion. If eligible, the agency shall provide the member with the cost of converting.

(3)

(a) The cost of converting the nonhazardous service credit to hazardous service credit shall be paid by the member as provided by KRS 61.552(9) ~~or~~**and** 78.545, unless:

1. The employer elects to pay the cost; or
2. ~~The~~**[If the]** county elects to pay the cost, pursuant to KRS 78.530(3)(a), (d), or (f),~~[to pay the cost of providing hazardous coverage for current employees for past service in positions approved for hazardous coverage,]~~ and the county requests~~[shall request]~~ and pays~~[pay]~~ for an actuarial study to determine the cost.

(b) Payments made by the member shall not be picked up by the employer as described in KRS 61.560(4) and 78.615(1).

(c)

1. Payment is due in full thirty (30) days from the date the cost of converting the service credit is provided to the employee, or in accordance with a payment schedule made with the agency.
2. Payments made by an employer shall be deposited to the retirement allowance account of the appropriate retirement system as established in KRS 61.580 and 78.650, and these funds shall not be considered accumulated contributions of the individual employee.
3. Payments made by a member, including interest, shall be deposited into his or her account as established in KRS 61.575 and 78.640 and are included in the member's accumulated contributions.
4. If payment is not made in accordance with this paragraph, the service credit prior to hazardous position classification shall remain nonhazardous service credit.

~~[Section 8.] [Local government employers may be obligated by statutes outside KRS Chapter 61 to certify certain positions as hazardous.]~~

Section 7.~~[Section 9.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Form 2011, HP-2, Hazardous Position Certification," November 2024~~[April 2009]~~;
 - (b) "Form 4150, Certification of Employment in a Hazardous Position", November 2024;
 - (c) "Form 7011, HP-1, Hazardous Participation Certification (CERS)", November 2024~~[April 2009]~~;
 - ~~(d)~~(e) "Form 7013, HP-1, Hazardous Participation Certification (KERS)", November 2024~~[April 2009]~~;
- and
- ~~(e)~~(d) "Form 7025, Position Questionnaire", November 2024~~[April 2009]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority~~[Kentucky Retirement Systems, Perimeter Park West]~~, 1260 Louisville Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. and 4:30 p.m. This material is also available on the Kentucky Public Pensions Authority's Web site at kyret.ky.gov.



KENTUCKY PUBLIC PENSIONS AUTHORITY

David L. Eager, Executive Director

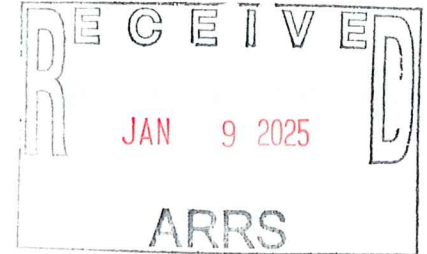
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Kentucky Public
Pensions Authority

January 9, 2025

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort KY 40601



Re: 105 KAR 1:445. Trustee Elections.

Dear Co-Chairs West and Lewis:

After discussions with the Administrative Regulation Review Subcommittee staff of issues raised by 105 KAR 1:445, the Kentucky Public Pensions Authority accepts the proposed attached staff suggested amendments.

Sincerely,

Jessica Beaubien

Jessica Beaubien, Policy Specialist
Kentucky Public Pensions Authority
1270 Louisville Road
Frankfort, KY 40601

SUGGESTED SUBSTITUTE

**FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority**

105 KAR 1:445. Trustee elections.~~[Electronic ballots in Trustee elections.]~~

RELATES TO: KRS 11A.020, 11A.040, 61.080, 61.505, 61.645, 78.782

STATUTORY AUTHORITY: KRS 61.505(1)(g), 61.645(4)(j), ~~(9)(e)~~ 78.782(4)(j)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority~~[61.645(9)(e) requires the Board of Trustees of Kentucky Retirement Systems]~~ to promulgate~~[all]~~ administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with~~[necessary or proper in order to carry out the provisions of]~~ KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852~~[and to conform to federal statutes and regulations]~~. KRS 61.645(4)(j) and 78.782(4)(j) authorize the systems~~[authorizes Kentucky Retirement Systems]~~ to promulgate an administrative regulation to implement the use of electronic and telephonic ballots in the trustee election process and requires paper ballots to be mailed upon request of any eligible voter. This administrative regulation establishes the procedures and requirements for preparing and casting electronic, telephonic, and paper ballots, and the tabulation of the ballots for trustee elections.

Section 1. Definitions.

(1) "Ballot" means an~~[a voting instrument, either]~~ electronic or paper document~~[,]~~ that includes the provisions required by KRS 61.645(4)(c) and 78.782(4)(c), and the candidate's:

(a) ~~[Name;]~~

~~[(b)]~~ Recent photograph;

~~[(b)]~~~~[(e)]~~ City and county of residence;

~~[(c)]~~~~[(d)]~~ Employer~~[Employing agency]~~ and position title, or the employer~~[employing agency]~~ from which the candidate last worked or retired, and the position title of the last position held;

~~[(d)]~~~~[(e)]~~ Education, including schools and universities attended and degrees earned;

~~[(f)]~~ ~~[Whether or not the candidate has been convicted of a felony;]~~

~~[(e)]~~~~[(g)]~~ Any professional licenses or certifications held by the candidate;

~~[(f)]~~~~[(h)]~~ Any organization of which the candidate is a member that is listed on the candidate's application; and

~~[(g)]~~~~[(i)]~~ The Web site address where each candidate's~~[application]~~ filed Application for Trustee~~[by the candidate]~~ and~~[the candidate's]~~ resume is available for viewing.

(2) "Board" means the Board of Trustees of the Kentucky Retirement Systems or the Board of Trustees of the County Employees Retirement System.

(3) "Candidate" means a participant of the system for which the election is being held who:

(a) Is nominated by the relevant board; or

~~[1.]~~ ~~[A participating employee;]~~

~~[2.]~~ ~~[Former employee whose membership has not been terminated under KRS 61.535; or]~~

~~[3.]~~ ~~[A retired member, who meets the requirements of KRS 61.645(6); and]~~

(b) Is nominated~~[Is one (1) of not more than three (3) nominees from the Board of Trustees for each vacant position, nominated]~~ by petition of the members~~[by the membership]~~ of the relevant system~~[for which the vote is being taken, or who is written in on a valid ballot.]~~

(4) "Election year" means the year of the expiration of a trustee's term of office and the year of the trustee election.

(5)~~(3)~~ "Eligible voter" means any person who:

(a) Is a participant~~[was a member or retired member]~~ of the~~[retirement]~~ system for which the vote is being taken on or before December 31 of the year preceding the election year; and

(b) Has on file:

1. A~~[and who has provided Kentucky Retirement Systems ("Systems") with a]~~ valid email address; or
2. If~~[if]~~ a paper ballot is requested pursuant to KRS 61.645(4)(j), a valid physical mailing address.

(6) "Plurality of votes" means a majority of valid votes cast in an election.

(7) "Resume" means a document **that/which** at a minimum includes the participant's:

(a) First and last name;

(b) Address;

(c) Phone number;

(d) E-mail address;

(e) Educational background; and

(f) Professional employment history that includes dates of employment, job title, employer name and address, and type of business.

(8)~~(4)~~ "Term of Office" means the period of membership on the relevant Board~~[of Trustees]~~, which begins on April 1 of the year elected or appointed and ends on March 31 four (4) years thereafter.

(9) "Valid email address" means an email address the agency has on file for a participant that is operational and able to receive messages, or has not otherwise been deemed an invalid email address by the agency.

(10) "Valid physical mailing address" means the mailing address on file for a participant where he or she is able to receive U.S. mail, including:

(a) A current street address;

(b) A Post Office box registered with the United States Postal Service; or

(c) A private mailbox registered with a commercial mail receiving agency established pursuant to the United States Postal Service regulation.

(11)~~(5)~~ "Valid vote~~[Ballot]~~" means a timely cast vote~~[ballot either emailed or mailed]~~ by an eligible voter that has clearly~~[properly]~~ designated the voter's choice of eligible candidate or candidates~~[for the number of vacancies being filled]~~.

(12) "Write-in" means casting a valid vote for a person not listed on the ballot as a candidate by:

(a) Inserting his or her name in the designated place when casting the vote by mail or electronically;
or

(b) Providing his or her name when casting the vote by telephone.

(13) "Write-in candidate" means a person who is not listed on the ballot as a candidate and has been inserted or provided as a write-in.

Section 2. Use of Third-party Vendors. Subject to KRS 61.505(3)(d), the agency may contract with third-party vendors to provide services for the trustee election process as provided by KRS 61.645(4) and 78.782(4).

Section 3. Election and ballot requirements.

(1) At the expiration of an elected trustee's term of office, an election shall occur for:

- (a) The Kentucky Retirement Systems Board of Trustees pursuant to KRS 61.645; and
- (b) The County Employees Retirement System Board of Trustees pursuant to KRS 78.782.

(2) Ballots shall include:

- (a) Candidates nominated by the Board in accordance with Section 4 of this administrative regulation;
- (b) Candidates nominated by Petition in accordance with Section 5 of this administrative regulation;
- or
- (c) A write-in option.

(3)

(a) On or before May 31 of the year immediately preceding an election year, the agency shall provide notice to participants detailing the steps he or she shall take to become a potential candidate.

(b) A participant shall only be a potential candidate if he or she:

1. Is a member of the system in which he or she is seeking placement on the ballot, or is a retired member with the majority of his or her service in that system;
2. Is not statutorily prohibited by virtue of term limits as established in KRS 61.645(3) and 78.782(3);
3. Completes the requirements of paragraph (c) of this subsection;
4. Passes the background check in accordance with subsection (4)(b) of this section;
5. Is determined constitutionally compatible in accordance with subsection (4)(c) of this section;
6. Is not a current or former employee of the agency or the Board in which he or she is seeking placement on the ballot; and
7. Is not in violation of any provision of KRS 11A.020 or 11A.040 by a court of competent jurisdiction or any other statute.

(c) Each participant seeking to be a potential candidate shall file in accordance with the notice indicated in paragraph (a) of this subsection:

1. A valid Application for Trustee;
2. A resume with cover letter;
3. A recent color photograph; and
4. An authorization for the agency to complete a background check.

(4)

(a) The agency shall review the filed documentation to ensure a potential candidate meets the requirements established in subsection (3)(b) of this section, and completed the requirements established in subsection (3)(c) of this section and KRS 61.645 and 78.782.

(b) A background check shall be completed for each potential candidate.

(c) If currently employed, the Kentucky Attorney General's Office shall review the potential candidate's employment to determine if it is constitutionally compatible with the trustee position in accordance with KRS 61.080, 61.645, 78.782, and the Kentucky Constitution Section 165. If the Kentucky Attorney General's Office indicates that the potential candidate's employment is not constitutionally compatible with the trustee position, the potential candidate shall:

1. Be excluded from placement on the ballot; or
2. Be included for possible placement on the ballot if he or she agrees to resign from his or her current position if elected, and provides a written statement as such.

Section 4. Nomination by the Board.

(1) The agency shall provide the respective system's Board with a list of potential candidates who meet the requirements of Section 3(3) and (4) of this administrative regulation, and each of his or her completed corresponding Applications for Trustee.

(2) The name of each candidate nominated by the respective Board within six (6) months prior to the end of a term of office shall be placed on the ballot.

Section 5. Petitions.

(1) To be included on the ballot by petition, the potential candidate shall file a valid petition no later than four (4) months from the end of the term of office set to expire.

(2) A valid petition is a petition that:

- (a) Meets the requirements of Section 3(3) and (4) of this administrative regulation; and
- (b) KRS 61.645(4)(b) ~~or~~**and** 78.782(4)(b).

(3) Each petition shall be reviewed by the agency to verify each signature belongs to a participant of the respective system.

(4) The name of each candidate who meets the requirements of this section shall be placed on the ballot.

Section 6. ~~Section 2.~~ Default to electronic ballots ~~[Paper Ballot Request].~~

~~(1) [Between November 1 and November 30 of the year preceding the expiration of the term of office and the trustee election, an eligible voter may request a paper ballot through Member or Retiree Self-Service.] The agency ~~[Systems]~~ shall notify each ~~[the]~~ eligible voter that an electronic ballot shall ~~[will]~~ be provided unless he or she requests a modification to the ~~[a paper]~~ ballot type received in accordance with subsection (2) of this section ~~[is requested during the requisite time. The Systems shall request that the eligible voter verify the email address attached to his or her account].~~~~

~~(2)~~

~~(a) A ~~[An eligible voter may also submit a written]~~ request to modify the ~~[for a paper]~~ ballot type shall ~~be~~ ~~[if]~~ received on or before November 30 of the year preceding the election year in order to be effective for the upcoming ~~[expiration of the term of office and the trustee]~~ election. Modifications of the ballot type include:~~

- ~~1. From an electronic ballot to ~~[Once an eligible voter elects to receive]~~ a paper ballot; and~~
- ~~2. From a paper ballot to an electronic ballot ~~[, the voter shall receive paper ballots for all subsequent elections unless the voter requests to vote electronically].~~~~

~~(b) An eligible voter shall ~~[A]~~ request a change ~~[to modify]~~ in the type of ballot:~~

- ~~1. Through the Self-Service Web site;~~
- ~~2. Via phone by calling the agency and providing his or her agency issued personal identification number (PIN); or~~
- ~~3. By filing a signed written request ~~[shall be received on or before November 30 of the year preceding the expiration of the term of office and the trustee election in order to be effective for the upcoming election].~~~~

~~(3) Once an eligible voter modifies the ballot type he or she receives, the eligible voter shall receive the specified ballot type until he or she requests a change in the ballot type in accordance with subsection (2) of this section.~~

Section 7. ~~Section 3.~~ Ballot Preparation and Delivery.

~~(1) The agency or its third-party vendor ~~[Systems]~~ shall prepare the official ballot no later than three (3) months prior to the expiration of the term of office. The ballot ~~[, whether electronic or paper,]~~ shall:~~

- ~~(a) Provide a unique voter identification number;~~
- ~~(b) Provide details on how to vote by telephone;~~
- ~~(c) Contain ~~[contain]~~ instructions defining what constitutes a valid vote; and~~
- ~~(d) Indicate ~~[ballot. The System shall notify the eligible voter on the ballot]~~ that any invalid vote ~~[ballot]~~ shall not be counted.~~

(2) ~~[For both electronic and paper ballots, the eligible voter shall check a square opposite of the candidate of his or her choice pursuant to KRS 61.645(4)(f), or write in the name of an eligible member, for each position to be elected.]~~

~~[Section 4.] [Delivery of Ballots.]~~

~~[(1)]~~

~~[(a)] [Electronic ballots] Ballots shall be provided[emailed] to the eligible voter on or before January 20 of the election year[of the expiration of the term of office and the trustee election].~~

~~[(b)] [For an electronic ballot, [The Systems shall use] the email address on file on or before December 31 of the year preceding the [expiration of the term of office and the trustee] election year shall be used. If the eligible voter does not have a valid[an] email address on file, [or the Systems receives notification that the email address is invalid so that] the electronic ballot shall not[cannot] be sent, [the Systems shall mail] If the agency discovered the invalid email address on or before one (1) week prior to the deadline to cast a valid vote, a paper ballot shall be mailed in accordance with paragraph (b) of this subsection] [to the mailing address on file with the Systems. If the Systems receives a returned paper ballot with notification of a new mailing address from the United States Postal Service, the ballot will be sent to the new address if the notification is received].~~

~~[(c)] [The Systems shall be held harmless for any incorrect email address submitted by the member or inadvertently entered by the Systems.]~~

~~[(2)]~~

~~[(a)] [Paper ballots shall be mailed to the eligible voter on or before January 20 of the year of the expiration of the term of office and the trustee election.]~~

~~(b) For a paper ballot, the valid physical[The Systems shall use the] mailing address on file [with the Systems] on or before December 31 of the year preceding the election year shall be used [expiration of the term of office and the trustee election]. If [the Systems receives] a returned paper ballot is received:~~

~~1. With[with] notification of a new mailing address from the United States Postal Service, the ballot will be mailed[sent] to the new address if the notification is received on or before one (1) week prior to the date the vote shall be cast; or[-]~~

~~2. With no notification of a new mailing address from the United States Postal Service on or before one (1) week prior to deadline to cast a valid vote, if the participant has a valid email address on file, an electronic ballot shall be sent in accordance with paragraph (a) of this subsection.~~

~~(c) The ballot shall not be provided if there is no valid physical mailing address and no valid email address on file.~~

~~(3) The agency and its third-party vendor[The Systems] shall be held harmless for any incorrect email address or mailing address submitted by the participant[member] or inadvertently entered by the agency or its third-party vendor[Systems].~~

~~Section 8.[Section 5.] Casting of Votes[Ballots].~~

~~(1)~~

~~(a) For **an electronic vote or vote by telephone**[a vote] to be accepted and counted as a valid vote, it [If an electronic ballot, the ballot] shall be cast on or before the end of day on March 1 of the election year [**for an electronic vote or vote by telephone**], except as provided in paragraph (b) of this subsection.~~

~~(b)[(2)] For [If a] paper voting, the vote[ballot, the ballot] shall be on a ballot postmarked to the required address by the end of day on[or before] March 1 of the election year.~~

~~(2)~~

(a) For an electronic or paper ballot, the eligible voter shall:

1. Indicate the candidate or candidates of his or her choice pursuant to KRS 61.645(4)(f) and 78.782(4)(f); or
2. Indicate a write-in option and add the name of an eligible participant as specified by the Board for which the vote is being cast.

(b) To cast a vote by electronic ballot, the eligible voter shall electronically sign the completed ballot on the Web site provided to him or her and follow any other prompts.

(c) To cast a vote by paper ballot, the eligible voter shall sign the completed ballot and mail it to the address indicated on the paper ballot.

(3) To cast a vote by telephone, the eligible voter shall:

- (a) Call the number provided on the paper or electronic ballot;
- (b) Provide his or her unique voter identification number;
- (c) Indicate the candidate or write-in candidate of his or her choice verbally; and
- (d) Follow any other prompts. [Any ballot that does not meet this standard as established in subsection (1) or (2) of this Section shall be invalid and not accepted.]

(4) Each eligible voter shall cast only one (1) vote per open position in each applicable system and any subsequent vote received or submitted shall be invalid and not accepted.

Section 9. Review of Cast Votes.

(1) The third-party vendor shall be limited to the board's contracted auditing firm. Access to the ballots shall be limited to the contracted auditing firm. The contracted auditor shall review each cast vote to ascertain whether it is a valid vote.

(2)

(a) Invalid votes shall include ballots:

1. Returned to the agency or third-party vendor for faulty or invalid physical mailing addresses or email addresses;
2. Incorrectly returned or mailed to the street address of the agency or third-party vendor; or
3. That do not comply with Section 8 of this administrative regulation.

(b) Invalid votes shall not be considered or counted. Once the final results are announced, the invalid ballots from these invalid votes shall be shredded or otherwise electronically destroyed by the third-party vendor and a certificate shall be provided to the agency confirming the shredding or destruction of these invalid ballots.

Section 10. Tabulation of Votes.

(1) After totaling the valid votes, the third-party vendor shall certify the results of the election in writing to the Chair of the respective Board in care of the Chief Executive Officer. The certified results shall be provided to the agency on or before March 15 of the election year.

(2) Once all valid votes have been counted and the results are final, the third-party vendor shall destroy all ballots, including ballots or data generated and stored from electronic or telephone votes, and provide a certificate confirming the destruction of the ballots or data to the agency.

(3) The candidate or write-in candidate with the

~~[Section 8.] [Term of Office.] [Candidates elected by a]~~ plurality of ***[the valid]*** votes~~[cast by eligible voters]~~ is elected to the vacant trustee position and shall begin his or her~~[their]~~ term of office on April 1 of the election year.

(4) The agency shall notify each candidate and write-in candidate of the outcome of the election.

~~[Section 9.] [Deadlines. If any due date in this administrative regulation falls on a Saturday, Sunday, or day that the Systems is closed due to state holiday, the due date or time period deadline shall extend to the close of business of the next business day.]~~

Section 11. Incorporation by reference.

(1) "Application for Trustee", March 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the agency's Web site at <https://kyret.ky.gov>.