

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(Amendment)

815 KAR 7:110. Criteria for expanded local jurisdiction.

RELATES TO: KRS 67A, 67C, 82.105(1), 83, 83A, 198B.040(7), 198B.050, 198B.060, 198B.070, 212.626(5), 227.489

STATUTORY AUTHORITY: KRS 198B.050(5), 198B.060(5), (6), (18)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.060(5) and (6) authorize a local government to petition the commissioner to request additional plan review and inspection functions. This administrative regulation establishes the requirements for local governments to request and be granted expanded jurisdiction for building code plan review and inspection.

Section 1. Definitions. (1) "Local governing body" means the chief governing body of a city, county, consolidated local government, or urban-county having legislative powers.

(2) "Local government" means:

- (a) A city, as established by KRS Chapters 67A, 67C, 83, and 83A;
- (b) A county, as defined by KRS 212.626(5);
- (c) A consolidated local government; or
- (d) An urban-county government.

Section 2. Uniform Criteria for Granting Expanded Jurisdiction. (1) Inspector requirements. A local government shall employ or execute a local~~legal~~ contract with at least one (1):

(a) Individual certified as a building inspector, level III, in accordance with 815 KAR 7:070. The building inspector, level III, shall be responsible for reviewing plans, reviewing specifications, and performing building inspections; and

(b) Certified electrical inspector in accordance with KRS 227.489 and 815 KAR 35:015. The certified electrical inspector shall enforce the National Electrical~~Electric~~ Code (NFPA 70) as adopted and incorporated into the Kentucky Building Code and Kentucky Residential Code.

(2) Record retention.

(a) The local government shall be responsible for maintaining all records in compliance with the department's record retention schedule in accordance with 725 KAR 1:061.

(b) If the local government contracts with a person, firm, or company to perform plan ad~~and~~ specification inspections or building inspection functions pursuant to KRS 198B.060(15), the local government shall be responsible for the records produced by the person, firm, or company in compliance with paragraph (a) of this subsection.

(3) Minimum jurisdiction responsibilities. The local government shall maintain the minimum responsibilities required by KRS 198B.060(2), unless additional responsibilities are specifically agreed upon in writing between the local government and the department pursuant to KRS 198B.060(5) and this administrative regulation.

(4) State jurisdiction. The department shall retain plan review, inspection, and enforcement responsibility pursuant to the Kentucky Building Code, 815 KAR 7:120, for all buildings that are:

- (a) Institutional buildings;
- (b) Educational buildings, unless specifically agreed in writing by the local government and the department;
- (c) Licensed facilities as mandated by the Cabinet for Health and Family Services, including

day care centers, hospitals, and nursing homes;

(d) State-owned and state-leased buildings and facilities;

(e) High-hazard occupancies, unless specifically agreed in writing by the local government and the department; and

(f) Industrialized building systems (including modular homes), except for site placement and assembly of individual modular homes. A local government may permit placement and assembly locally. Local placement and assembly shall not commence until the local government submits written notification to the department for each placement.

Section 3. Application for Expanded Jurisdiction. (1) Application. An authorized representative of a local government shall submit to the department:

(a) A completed Application for Local Expanded Jurisdiction, Form BCE/EJ #1;

(b) An affidavit certifying the local government employs or contracts with a certified building inspector, level III, and a certified electrical inspector, and the name and job title for each inspector;

(c) A complete list of code enforcement personnel employed by or contracted with the local government, including the name, job title, and certification status of each individual;

(d) Documentation of all permits issued and fees collected for the previous calendar year, if any, and an estimation of the anticipated increase in activity if granted expanded jurisdictional authority;

(e) A complete list of each:

1. Building occupancy, classification, and size for which expanded jurisdiction is requested; and

2. Building occupancy, classification, and size for which expanded jurisdiction is not requested;

(f) A copy of the local ordinance requiring single-family dwelling plan review and inspection within the jurisdiction;

(g) A copy of the schedule of relevant fees adopted by the local governing body;

(h) A copy of any agreement between the applicant and another local government pursuant to KRS 198B.060(14); and

(i) A copy of any agreement between the applicant and any person, firm, or company to perform plan and specification inspections or building inspection functions pursuant to KRS 198B.060(15).

(2) Expanded jurisdiction agreement.

(a) If the application is approved by the department, the department and the local government shall enter into an expanded jurisdiction agreement.

(b) Each agreement for expanded jurisdiction shall be in effect for three (3) years, unless:

1. Canceled by one or both parties in writing; or

2. Preempted in whole or in part pursuant to subsection (1) of this section.

(c) The local government shall notify the department within thirty (30) days of any changes in personnel or fees that differ from the terms of the agreement.

Section 4. Procedures for Maintaining Expanded Jurisdiction. (1) Renewal. Before the expiration of the agreement, the local jurisdiction shall submit a Renewal Application for Expanded Jurisdiction on Form BCE/EJ #2. The renewal application shall include the submissions required by Section 3 of this administrative regulation.

(2) Renewal application review. After receiving and reviewing the local government's application for renewal, the department shall:

(a) Reevaluate the building code enforcement program of the local government; and

(b) Renew the local government's expanded jurisdiction agreement or deny the renewal request within forty-five (45) days of receiving the local program's renewal application and supporting documentation.

(3) Expanded jurisdiction monitoring. The department shall monitor the program of each local government granted expanded jurisdiction responsibilities. If a local government violates the requirements of this administrative regulation, the Kentucky Building Code, 815 KAR 7:120, the Kentucky Residential Code, 815 KAR 7:125, the terms of the expanded jurisdiction agreement, or KRS Chapters 198B, 236, or 318, the local government shall be subject to preemption, in whole or in part, by the department.

(4) The department shall retain plan review, inspection, and enforcement responsibility pursuant to the Kentucky Building Code, 815 KAR 7:120, for all buildings as specified in the [original] agreement for expanded local jurisdiction with the local government.

Section 5. Local Appeals Board. (1) The local government with expanded jurisdiction may establish a local appeals board. A local appeals board shall operate in accordance with KRS 198B.070.

(2) If the local government establishes a local appeals board, the local government shall send a written notice to the department, which shall:

(a) Identify each member by name and qualifications for being appointed to the appeals board; and

(b) Include contact information for the local appeals board.

(3) If a local appeals board is not established, all costs incurred by the department to conduct hearings for appeals filed pursuant to KRS 198B.070(5) shall be charged to the local government.

Section 6. One (1) and Two (2) Family Dwellings. (1) The local building inspection program shall not include the plan review and inspection for one (1) and two (2) family dwellings that are:

(a) Manufactured homes;

(b) Modular homes; or

(c) Farm dwellings.

(2) The local building inspection program shall include permits and inspections for the foundation system and other on-site construction related to modular home installations.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Local Expanded Jurisdiction", Form BCE/EJ #1, May 2018; and

(b) "Renewal Application for Expanded Jurisdiction", Form BCE/EJ #2, May 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, Monday Through Friday, 8 a.m. to 4:30 p.m. and is available online at dhbc.ky.gov.

KERRY B. HARVEY, Secretary

RICK W. RAND, Commissioner

APPROVED BY AGENCY: July 6, 2021

FILED WITH LRC: July 6, 2021 at 12:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 10:00 a.m., eastern time, in the De-

partment of Housing, Buildings and Construction, 500 Mero Street, First Floor, Frankfort, Kentucky 40601. Individuals interest in being heard at this hearing shall notify this agency in writing by five working days 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 canceled. The 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 September 30, 2021 at 11:59 p.m., eastern time. Send written notification of the intent to be head at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person below:

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604
fax (502) 573-1057, email benjamin.siegel@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Benjamin Siegel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for local governments to request and obtain expanded jurisdiction for building code plan review, inspection, and enforcement pursuant to KRS 198B.060(5) and (6).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process by which a local government may apply and be approved to operate a local building inspection program with additional responsibilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.060(5) authorizes a local government to petition the commissioner to request additional plan review and inspection functions to be allocated to that local government. KRS 198B.050(5) requires the department to promulgate administrative regulations necessary to carry out the department's responsibilities under KRS Chapter 198B.

(d) How this administrative regulation current assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements for a local government when petitioning the commissioner to form or renew a local building inspection program through an expanded jurisdiction agreement.

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

(a) How the amendment will change the existing administrative regulation: This amendment allows a local government to request plan review, inspection, and enforcement responsibilities for educational buildings from the department and will allow the department to evaluate the local government's qualifications and capability to conduct plan review, inspection, and enforcement of the Kentucky Building Code as it pertains to educational buildings.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow a local government to request plan review, inspection, and enforcement responsibilities for educational buildings and to enable proper evaluation of the local government's qualifications and capability to do so.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.060(5) authorizes a local government to petition the commissioner to request additional plan review and inspection functions to be allocated to that local government. KRS

198B.050(5) requires the department to promulgate administrative regulations to carry out the department's responsibilities under KRS Chapter 198B.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will enable local governments to request plan review, inspection, and enforcement responsibilities for educational buildings from the department and will allow the department to evaluate the local government's qualifications and capability to conduct plan review, inspection, and enforcement of the Kentucky building code as it pertains to educational buildings.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Housing, Buildings and Construction, as well as all local governments and building inspection programs with, or applying for, expanded jurisdiction responsibilities.

(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 comply with this administrative regulation or amendment: This amendment will require additional action only if a local government wishes to request plan review, inspection, and enforcement responsibilities for educational facilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local governments will benefit from being able to request plan review, inspection, and enforcement responsibilities for educational buildings from the department.

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

(a) Initially: There are no anticipated additional costs to administer these regulatory amendments initially.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer these regulatory amendments on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the department. Any costs resulting from these amendments will be met with existing agency 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: This amendment will not necessitate an increase in fees or require funding from the department for implementation.

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

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not applied as this administrative regulation applies equally to all local governments with an expanded jurisdiction agreement or applying for an expanded jurisdiction agreement.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(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? The Department of Housing, Buildings and Construction, Division of Building Code Enforcement and local governments with an expanded jurisdiction agreement or applying for an expanded juris-

diction agreement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorized the action taken by the administrative regulation. KRS 198B.060(5) authorizes a local government to petition the commissioner to request additional plan review and inspection functions to be allocated to that local government. KRS 198B.050(5) requires the department to promulgate administrative regulations necessary to carry out the department's responsibilities under KRS Chapter 198B.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not anticipated to generate additional revenue for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not anticipated to generate additional revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this amendment for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None