

**CHAPTER 1****(HB 143)**

AN ACT amending the 2008-2010 branch budget bills, making an appropriation therefor, and declaring an emergency.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. 2008 Kentucky Acts Chapter 127, Part VI, General Fund Budget Reduction Plan, at page 597, is amended to read as follows:

**PART VI****A. FISCAL YEAR 2008-2009 GENERAL FUND BUDGET REDUCTION PLAN**

*Notwithstanding KRS 48.130 and 48.600, a General Fund Budget Reduction Plan is enacted for fiscal year 2008-2009 for state government pursuant to the Consensus Forecasting Group's official revenue revision dated November 26, 2008, that estimated General Fund revenue receipts of \$8,548,390,000 in fiscal year 2008-2009 and that projected a revenue shortfall of \$457,347,000 in fiscal year 2008-2009, as modified by related Acts and actions of the General Assembly in an extraordinary or regular session.*

*The Governor, the Chief Justice, and the Legislative Research Commission shall direct and implement reductions in appropriations and allotments only for their respective branch budget units as may be necessary, as well as take other measures which shall be consistent with the provisions of this Subpart and general branch budget bills.*

*Given the fiscal year 2008-2009 revenue shortfall as identified by the Consensus Forecasting Group, General Fund budget reduction actions shall be implemented in the following sequence:*

*(1) The Local Government Economic Assistance and the Local Government Economic Development Funds shall be adjusted by the Secretary of the Finance and Administration Cabinet to equal revised estimates of receipts pursuant to KRS 42.4582 as modified by the provisions of this Act;*

*(2) Transfers of excess unappropriated Restricted Funds, other than fiduciary funds, to the General Fund shall be applied as determined by the head of each branch for its respective budget units. No transfers to the General Fund shall be made from the following:*

*(a) Local Government Economic Assistance and Local Government Economic Development Funds;*

*(b) Unexpended debt service from the Tobacco-Settlement Phase I Funds in fiscal year 2007-2008;*

*(c) Tobacco Unbudgeted Interest Income-Rural Development Trust Fund; and*

*(d) Multi-County Coal Severance Fund;*

*(3) Any unanticipated Phase I Master Settlement Agreement revenues in fiscal year 2008-2009 shall be appropriated according to KRS 248.654. The General Fund (Tobacco) fund transfer from the Governor's Office of Agricultural Policy to the General Fund shall be limited to the amounts contained in Part V, A., 1. of this Act as adjusted in Part X, B., 1., (4) of this Act;*

*(4) Pursuant to KRS 18A.2254(3)(a), the General Assembly authorizes, subject to the following conditions, the Governor to direct a one-time transfer of up to \$50,000,000 from the Public Employee Health Insurance Trust Fund's surplus to the General Fund:*

*(a) The Secretary of the Personnel Cabinet and the Secretary of the Finance and Administration Cabinet may request the Governor to transfer surplus funds from the Public Employee Health Insurance Trust Fund in fiscal year 2008-2009. Any such request shall include written documentation that:*

- 1. Funds are or will be available to pay all expenses that have been incurred in all plan years including plan year 2009 to date and all projected claims for all plan years including the remainder of plan year 2009;*

2. *Any transfer will not jeopardize the solvency of the Public Employee Health Insurance Trust Fund;*
  3. *Any transfer will not jeopardize the Public Employee Health Insurance Trust Fund's qualified tax status under the Internal Revenue Code; and*
  4. *Any transfer will not jeopardize the Commonwealth's ability to offer a health reimbursement account; and*
- (b) *After receipt and consideration of such a request, the Governor is authorized to transfer surplus funds in accordance with this section and shall report to the Legislative Research Commission the amount being transferred;*
- (5) *Funds available in the Budget Reserve Trust Fund may be applied in an amount not to exceed \$219,000,000 in fiscal year 2008-2009;*
- (6) *Any language provision that expresses legislative intent regarding a specific appropriation shall not be reduced by a greater percentage than the reduction to the General Fund appropriation for that budget unit;*
- (7) *Reduce General Fund appropriations in Executive Branch Agencies' operating budget units by a sufficient amount to balance fiscal year 2008-2009. No reductions of General Fund appropriations shall be made from the following budget units:*
- (a) *Local Government Economic Assistance Fund;*
  - (b) *Local Government Economic Development Fund;*
  - (c) *Executive Branch Ethics Commission;*
  - (d) *Teachers' Retirement System;*
  - (e) *Parks;*
  - (f) *Support Education Excellence in Kentucky (SEEK);*
  - (g) *County Costs;*
  - (h) *Medicaid Administration;*
  - (i) *Medicaid Benefits;*
  - (j) *Mental Health and Mental Retardation Services;*
  - (k) *Adult Corrections Institutions;*
  - (l) *Community Services and Local Facilities; and*
  - (m) *Kentucky Higher Education Assistance Authority.*

*No reductions shall be made to the Health and Family Services Cabinet's Division of Family Resource and Youth Services Centers.*

*Should an Executive Branch reorganization change the name of any budget unit listed in this subsection, then the reduction prohibition outlined in this subsection shall fall to the budget unit's successor;*

(8) *Excess General Fund appropriations which accrue as a result of personnel vacancies and turnover, and reduced requirements for operating expenses, grants, and capital outlay shall be determined and applied by the heads of the executive, judicial, and legislative departments of state government for their respective branches. The branch heads shall certify the available amounts which shall be applied to budget units within the respective branches and shall promptly transmit the certification to the Secretary of the Finance and Administration Cabinet and the Legislative Research Commission. The Secretary of the Finance and Administration Cabinet shall execute the certified actions as transmitted by the branch heads.*

*Branch heads shall take care, by their respective actions, to protect, preserve, and advance the fundamental health, safety, legal and social welfare, and educational well-being of the citizens of the Commonwealth; and*

(9) *If the actions contained in subsections (1) to (8) of this Subpart are insufficient to eliminate an actual or projected revenue shortfall in the enacted General Fund revenue receipts, then the Governor is*

*empowered and directed to take necessary actions with respect to the Executive Branch budget units to balance the budget by such actions conforming with the criteria expressed in subsections (2), (3), (6), and (7) of this Subpart.*

#### **B. FISCAL YEAR 2009-2010 GENERAL FUND BUDGET REDUCTION PLAN**

Pursuant to KRS 48.130 and 48.600, a General Fund Budget Reduction Plan is enacted for *fiscal year 2009-2010* for state government in the event of an actual or projected deficit in estimated General Fund revenue receipts of ~~\$9,005,737,000 in fiscal year 2008-2009 and~~ \$9,258,789,000 in fiscal year 2009-2010 as modified by related Acts and actions of the General Assembly in an extraordinary or regular session. Direct services, obligations essential to the minimum level of constitutional functions, and other items that may be specified in this Act, are exempt from the requirements of this Plan. Each branch head shall prepare a specific plan to address a proportionate share of the General Fund revenue shortfall applicable to the respective branch. No budget revision action shall be taken by a branch head in excess of the actual or projected deficit.

The Governor, the Chief Justice, and the Legislative Research Commission shall direct and implement reductions in **appropriations and** allotments ~~and appropriations~~ only for their respective branch budget units as may be necessary, as well as take other measures which shall be consistent with the provisions of this **Subpart**~~Part~~ and general branch budget bills.

In the event of a revenue shortfall under the provisions of KRS 48.120, General Fund budget reduction actions shall be implemented in the following sequence:

(1) The Local Government Economic Assistance and the Local Government Economic Development Funds shall be adjusted by the Secretary of the Finance and Administration Cabinet to equal revised estimates of receipts pursuant to KRS 42.4582 as modified by the provisions of this Act;

(2) Application of unbudgeted surplus from the previous fiscal year and transfers of excess unappropriated Restricted Funds other than fiduciary funds shall be applied as determined by the head of each branch for its respective budget units;

(3) Funds available in the Budget Reserve Trust Fund shall be applied in an amount not to exceed ~~25 percent of the trust fund balance in fiscal year 2008-2009 and~~ 50 percent of the trust fund balance in fiscal year 2009-2010;

(4) Excess General Fund appropriations which accrue as a result of personnel vacancies and turnover, and reduced requirements for operating expenses, grants, and capital outlay shall be determined and applied by the heads of the executive, judicial, and legislative departments of state government for their respective branches. The branch heads shall certify the available amounts which shall be applied to budget units within the respective branches and shall promptly transmit the certification to the Secretary of the Finance and Administration Cabinet and the Legislative Research Commission. The Secretary of the Finance and Administration Cabinet shall execute the certified actions as transmitted by the branch heads.

Branch heads shall take care, by their respective actions, to protect, preserve, and advance the fundamental health, safety, legal and social welfare, and educational well-being of the citizens of the Commonwealth; and

(5) Notwithstanding KRS 48.130 and 48.600, if the actions contained in subsections (1) to (4) of this **Subpart**~~Part~~ are insufficient to eliminate an actual or projected revenue shortfall **of five percent or less in aggregate** in the enacted General Fund revenue receipts, then the Governor is empowered and directed to take necessary actions with respect to the Executive Branch budget units to balance the budget by such actions conforming with the criteria expressed in this **Subpart**~~Part~~. ***If the actual or projected revenue shortfall is greater than five percent in aggregate, the Governor is not empowered nor directed to take necessary actions with respect to the Executive Branch budget units to balance the budget by such actions conforming with the criteria expressed in this Subpart.***

***If, after passage of this Act, KRS 48.130 and 48.600 are amended, this Subpart shall be governed by KRS 48.130 and 48.600 as amended by the 2009 Regular Session of the Kentucky General Assembly.***

➔Section 2. 2008 Kentucky Acts Chapter 127, Part II, Capital Projects Budget; F. Environmental and Public Protection Cabinet; 1. General Administration and Program Support; 001. Kentucky Heritage Land Conservation Fund - Additional, at page 549, is amended to read as follows:

#### **001. Kentucky Heritage Land Conservation Fund - Additional**

Restricted Funds	3,000,000	3,000,000
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Federal Funds	1,000,000	1,000,000
Bond Funds	<del>17,000,000</del> <del>[10,000,000]</del>	-0-
TOTAL	<del>21,000,000</del> <del>[14,000,000]</del>	4,000,000

➔Section 3. 2008 Kentucky Acts Chapter 127, Part V, Funds Transfer; E. Environmental and Public Protection Cabinet; 1. General Administration and Program Support, at page 593, is amended to read as follows:

**1. General Administration and Program Support**

Kentucky Heritage Land

Conservation Fund	<del>-0-17,000,000</del> <del>[10,000,000]</del>	-0-
(KRS 146.570)		

A ~~\$17,000,000~~~~[10,000,000]~~ capital appropriation from bond funds in Part II, Capital Projects Budget, of this Act will be used to replace this transfer of funds to the General Fund.

➔Section 4. 2008 Kentucky Acts Chapter 127, Part V, Funds Transfer; F. Finance and Administration Cabinet; after 10. Finance and Administration, at page 595, is amended to read as follows:

**11. Finance and Administration**

*Capital Construction and Equipment*

<i>Purchase Contingency Account</i>	<del>-0-</del>	<i>2,000,000</i>	<del>-0-</del>
(KRS 45.770)			

➔Section 5. 2008 Kentucky Acts Chapter 127, Part VII, General Fund Contingency Plan, at pages 597 to 599, as amended by 2008 Kentucky Acts Chapter 174 is further amended to read as follows:

**PART VII**

**GENERAL FUND CONTINGENCY PLAN**

Notwithstanding KRS ~~48.130(7)~~, 48.140, and 48.700, there is established a Contingency Plan for the expenditure of the undesignated balance in the General Fund.

- (1) The undesignated balance in the General Fund shall be determined as provided in Part III, 27., of this Act.
- (2) The undesignated balance in the General Fund in excess of the amount designated for budget purposes as provided in Part III, 27., of this Act are appropriated as provided in subsection (3) of this Part, subject to the following conditions:
  - (a) Expenditures shall be made in the priority order set forth in subsection (3) of this Part; and
  - (b) If funds available are not sufficient to completely fund a listed priority, then the next priority on the list that can be completely funded shall be funded.
- (3) The priority list for the Contingency Plan for the expenditure of General Fund surplus moneys is as follows:
  - (a) Provide, in addition to the salary increase provided in Part I, D., 4., (15) and Part IV of this Act, a one percent annual salary increase to all state employees and all certified and classified employees of local school districts. This increase shall not be provided unless the surplus funds available are sufficient to pay 100 percent of the General Fund cost of the salary and associated fringe benefits;
  - (b) Provide, in addition to the salary increase provided in Part I, D., 4., (15) and Part IV of this Act and paragraph (a) of this subsection, a one percent annual salary increase to all state employees and all certified and classified employees of local school districts. This increase shall not be provided unless the surplus funds available are sufficient to pay 100 percent of the General Fund cost of the salary and associated fringe benefits;

(c) Provide \$6,535,000 for one-half year of debt service to support the entirety of the following Capital Projects:

1. Advanced Technology Center - Owensboro CTC
 

Bond Funds	\$14,055,000
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2. Construct Carrollton Campus - Jefferson CTC
 

Bond Funds	\$12,000,000
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3. Energy and Advanced Technology Center - Madisonville CTC
 

Bond Funds	\$4,000,000
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4. Licking Valley Campus - Phase II Maysville CTC
 

Bond Funds	\$1,000,000
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5. Advanced Manufacturing Facility - Bluegrass CTC
 

Bond Funds	\$22,000,000
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6. Urban Campus - Gateway CTC
 

Bond Funds	\$21,319,000
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7. Construct Materials Characterization/ICSET - Phase II -  
Western Kentucky University
 

Bond Funds	\$4,500,000
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8. Renovate Science Complex Phase III - Western Kentucky  
University
 

Bond Funds	\$9,000,000
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9. Replace Ford College of Business - Grise Hall Phase I -  
Western Kentucky University
 

Bond Funds	\$5,800,000
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## 10. EKU-UK Dairy Research Project (Meadowbrook Farm) -

Eastern Kentucky University

Bond Funds \$5,300,000

## 11. Expand/Renovate, Construct, or Acquire Existing

Structure for Betty White Nursing Complex -

Kentucky State University

Bond Funds \$4,900,000

## 12. Renovate Downtown Campus Phase II - Jefferson CTC

Bond Funds \$28,612,000

## 13. Construct Business Continuance Datacenter - Morehead State University

Bond Funds \$2,500,000;

and

## (d) Increase support for the Budget Reserve Trust Fund.

➔Section 6. 2008 Kentucky Acts Chapter 127, after Part XII, Insurance Coverage, Affordability and Relief to Small Employers (ICARE) program, at page 611, is amended to read as follows:

**PART XIII****AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

*The General Assembly recognizes that the American Recovery and Reinvestment Act of 2009, H.R. 1, 111 Cong. (2009), or its successor, gives certain discretion to the Governor. As the only body in the Commonwealth that has the constitutional power to make appropriations, the General Assembly empowers and directs the Governor to spend funds from the American Recovery and Reinvestment Act of 2009, or its successor. It is recognized that the federal dollars received will not be recurring in nature; therefore, the intent of the General Assembly is that funds received from the American Recovery and Reinvestment Act of 2009, or its successor, are not used to permanently expand existing programs, permanently create new programs, or in any way increase the requirements to be placed on the General Fund, Restricted Funds, or Road Fund above the adjusted appropriation level as of June 30, 2009. It is also the intent of the General Assembly that the funds received from the American Recovery and Reinvestment Act of 2009, or its successor, be used for the following purposes:*

- (1) *Restore support to programs that have been reduced in fiscal years 2007-2008 and 2008-2009;*
- (2) *Support programs that shall be eliminated when American Recovery and Reinvestment Act of 2009 funds are no longer available;*
- (3) *Provide funding for one-time expenditures in accordance with the American Recovery and Reinvestment Act of 2009;*
- (4) *Agencies that receive funding for capital or infrastructure projects shall proceed with projects that have been identified and recommended by the Capital Planning Advisory Board;*
- (5) *Local school districts that receive funding for capital or infrastructure projects shall proceed where possible with projects identified and prioritized in the District Facilities Plan as approved by the Kentucky Board of Education;*

- (6) *Transportation infrastructure funding shall be expended on specific road projects as approved in the Biennial Highway Construction Plan. Any funds allocated specifically for Metropolitan Planning Organizations (MPO's) shall be expended on road projects included within the Statewide Transportation Improvement Program (STIP); and*
- (7) *Any General Fund dollars that are not required for expenditure, due to the receipt of American Recovery and Reinvestment Act of 2009 funds, shall be transferred to the Budget Reserve Trust Fund.*

➔Section 7. 2008 Kentucky Acts Chapter 127, Part I, Operating Budget; H. Health and Family Services Cabinet; 3. Medicaid Services; b. Medicaid Benefits; after (20) Appeals, at page 521, is amended to read as follows:

*(21) Timely Payment to Providers: To the extent that funds from the American Recovery and Reinvestment Act of 2009, H.R. 1, 111 Cong. (2009), or its successor, are available, Medicaid Benefits payments shall be utilized to ensure that timely payments are made to providers that have provided services in a timely manner and, to the extent possible, that all payments for such prior services shall be made by June 30, 2009.*

*(22) Oakwood Intermediate Care Facility for the Mentally Retarded/Developmentally Disabled Services: To the extent that funds from the American Recovery and Reinvestment Act of 2009, H.R. 1, 111 Cong. (2009), or its successor, are available, adequate funds shall be provided to directly pay the provider, or to transfer to the Department for Mental Health and Mental Retardation Services for payment to the provider, for all services provided to clients of Oakwood Intermediate Care Facility for the Mentally Retarded/Developmentally Disabled in fiscal year 2008-2009. To the extent possible, all payments for such prior services shall be made by June 30, 2009.*

➔Section 8. 2008 Kentucky Acts Chapter 127, after Part XII, Insurance Coverage, Affordability and Relief to Small Employers (ICARE) program, and after Section 6 of this Act is inserted, at page 611, is amended to read as follows:

#### **PART XIV**

##### **LEGISLATIVE BRANCH FUND TRANSFER**

*The Legislative Branch shall transfer \$2,108,500 to the General Fund in fiscal year 2008-2009.*

#### **PART XV**

##### **JUDICIAL BRANCH FUND TRANSFER**

*The Judicial Branch shall transfer \$7,622,400 to the General Fund in fiscal year 2008-2009.*

➔Section 9. Whereas the Commonwealth of Kentucky is facing a projected revenue shortfall, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Signed by the Governor February 13, 2009.**