

**CHAPTER 74****(HB 408)**

AN ACT relating to state funds allocations to local school districts.

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

➔Section 1. KRS 157.360 is amended to read as follows:

- (1) In determining the cost of the program to support education excellence in Kentucky, the statewide guaranteed base funding level, as defined in KRS 157.320, shall be computed by dividing the amount appropriated for this purpose by the prior year's statewide average daily attendance.
- (2) Each district shall receive an amount equal to the base funding level for each pupil in average daily attendance in the district in the previous year. Each district's base funding level shall be adjusted by the following factors:
  - (a) The number of at-risk students in the district. At-risk students shall be identified as those approved for the free lunch program under state and federal guidelines. The number of at-risk students shall be multiplied by a factor to be established by the General Assembly. Funds generated under this paragraph may be used to pay for:
    1. Alternative programs for students who are at risk of dropping out of school before achieving a diploma; and
    2. A hazardous duty pay supplement as determined by the local board of education to the teachers who work in alternative programs with students who are violent or assaultive;
  - (b) The number and types of exceptional children in the district as defined by KRS 157.200. Specific weights for each category of exceptionality shall be used in the calculation of the add-on factor for exceptional children; and
  - (c) Transportation costs. The per-pupil cost of transportation shall be calculated as provided by KRS 157.370. Districts which contract to furnish transportation to students attending nonpublic schools may adopt any payment formula which assures that no public school funds are used for the transportation of nonpublic students.
- (3) The program to support education excellence in Kentucky shall be fully implemented by the 1994-95 school year.
- (4)
  - (a) Except for those schools which have implemented school-based decision making, the **commissioner of education**~~{chief state school officer}~~ shall enforce maximum class sizes for every academic course requirement in all grades except in vocal and instrumental music, and physical education classes. Except as provided in subsection (5) of this section, the maximum number of pupils enrolled in a class shall be as follows:
    1. Twenty-four (24) in primary grades (kindergarten through third grade);
    2. Twenty-eight (28) in grade four (4);
    3. Twenty-nine (29) in grades five (5) and six (6);
    4. Thirty-one (31) in grades seven (7) to twelve (12).
  - (b) Except for those schools which have implemented school-based decision making, class size loads for middle and secondary school classroom teachers shall not exceed the equivalent of one hundred fifty (150) pupil hours per day.
  - (c) The **commissioner of education**~~{chief state school officer}~~, upon approval of the Kentucky Board of Education, shall adopt administrative regulations for enforcing this provision. These administrative regulations shall include procedures for a superintendent to request an exemption from the Kentucky Board of Education when unusual circumstances warrant an increased class size for an individual class. A request for an exemption shall include specific reasons for the increased class size with a plan for reducing the class size prior to the beginning of the next school year. A district shall not receive in any one (1) year exemptions for more classes than enroll twenty percent (20%) of the pupils in the primary grades and grades four (4) through eight (8).

- (d) In all schools the *commissioner of education*~~{chief state school officer}~~ shall enforce the special education maximum class sizes set by administrative regulations adopted by the Kentucky Board of Education. A superintendent may request an exemption pursuant to paragraph (c) of this subsection. A local school council may request a waiver pursuant to KRS 156.160(2). An exemption or waiver shall not be granted if the increased class size will impede any exceptional child from achieving his individual education program in the least restrictive environment.
- (5) In grades four (4) through six (6) with combined grades, the maximum class size shall be the average daily attendance upon which funding is appropriated for the lowest assigned grade in the class. There shall be no exceptions to the maximum class size for combined classes. In combined classes other than the primary grades, no ungraded students shall be placed in a combined class with graded students. In addition, there shall be no more than two (2) consecutive grade levels combined in any one (1) class in grades four (4) through six (6). However, this shall not apply to schools which have implemented school-based decision making.
- (6) If a local school district, through its admission and release committee, determines that an appropriate program in the least restrictive environment for a particular child with a disability includes either part-time or full-time enrollment with a private school or agency within the state or a public or private agency in another state, the school district shall count as average daily attendance in a public school the time that the child is in attendance at the school or agency, contingent upon approval by the *commissioner of education*~~{chief state school officer}~~.
- (7) Pupils attending a center for child learning and study established under an agreement pursuant to KRS 65.210 to 65.300 shall, for the purpose of calculating average daily attendance, be considered as in attendance in the school district in which the child legally resides and which is party to the agreement. For purposes of subsection (1) of this section, teachers who are actually employees of the joint or cooperative action shall be considered as employees of each school district which is a party to the agreement.
- (8) Program funding shall be increased when the average daily attendance in any district for the first two (2) months of the current school year is greater than the average daily attendance of the district for the first two (2) months of the previous school year. The program funds allotted the district shall be increased by the percent of increase. The average daily attendance in kindergarten is the kindergarten full-time equivalent pupils in average daily attendance.
- (9) If the average daily attendance for the current school year in any district decreases by ten percent (10%) or more than the average daily attendance for the previous school year, the average daily attendance for purposes of calculating program funding for the next school year shall be increased by an amount equal to two-thirds (2/3) of the decrease in average daily attendance. If the average daily attendance remains the same or decreases in the succeeding school year, the average daily attendance for purposes of calculating program funding for the following school year shall be increased by an amount equal to one-third (1/3) of the decrease for the first year of the decline.
- (10) If the percentage of attendance of any school district shall have been reduced more than two percent (2%) during the previous school year, the program funding allotted the district for the current school year shall be increased by the difference in the percentage of attendance for the two (2) years immediately prior to the current school year less two percent (2%).
- (11) (a) Instructional salaries for vocational agriculture classes shall be for twelve (12) months per year. Vocational agriculture teachers shall be responsible for the following program of instruction during the time period beyond the regular school term established by the local board of education: supervision and instruction of students in agriculture experience programs; group and individual instruction of farmers and agribusinessmen; supervision of student members of agricultural organizations who are involved in leadership training or other activity required by state or federal law; or any program of vocational agriculture established by the Division of Career and Technical Education in the Department of Education. During extended employment, no vocational agriculture teacher shall receive salary on a day that the teacher is scheduled to attend an institution of higher education class which could be credited toward meeting any certification requirement.
- (b) Each teacher of agriculture employed shall submit an annual plan for summer program to the local school superintendent for approval. The summer plan shall include a list of tasks to be performed, purposes for each task, and time to be spent on each task. Approval by the local school superintendent shall be in compliance with the guidelines developed by the ~~{State}~~ Department of Education. The

supervision and accountability of teachers of vocational agriculture's summer programs shall be the responsibility of the local school superintendent. The local school superintendent shall submit to the **commissioner of education**~~{chief state school officer}~~ a completed report of summer tasks for each vocational agriculture teacher. Twenty percent (20%) of the approved vocational agriculture programs shall be audited annually by the State Department of Education to determine that the summer plan has been properly executed.

- (12) (a) In allotting program funds for home and hospital instruction, statewide guaranteed base funding, excluding the capital outlay, shall be allotted for each child in average daily attendance in the prior school year who has been properly identified according to Kentucky Board of Education administrative regulations. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported monthly on forms provided by the Department of Education; and
- (b) Pursuant to administrative regulations of the Kentucky Board of Education, local school districts shall be reimbursed for home and hospital instruction for pupils unable to attend regular school sessions because of short term health impairments. A reimbursement formula shall be established by administrative regulations to include such factors as a reasonable per hour, per child allotment for teacher instructional time, with a maximum number of funded hours per week, a reasonable allotment for teaching supplies and equipment, and a reasonable allotment for travel expenses to and from instructional assignments, but the formula shall not include an allotment for capital outlay. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported annually on forms provided by the Department of Education.
- (13) Except for those schools which have implemented school-based decision making and the school council has voted to waive this subsection, kindergarten aides shall be provided for each twenty-four (24) full-time equivalent kindergarten students enrolled.
- (14) Effective July 1, 2001, there shall be no deduction applied against the base funding level for any pupil in average daily attendance who spends a portion of his or her school day in a program at a state-operated career and technical education or vocational facility.
- (15) *During a fiscal year, a school district may request that the Department of Education recalculate its funds allocated under this section if the current year average daily attendance for the twenty (20) day school month as defined in KRS 158.060 (1) that contains the most days within the calendar month of January exceeds the prior year adjusted average daily attendance plus growth by at least one percent (1%). Any adjustments in the allotments approved under this subsection shall be proportional to the remaining days in the school year and subject to available funds under the program to support education excellence in Kentucky.*
- (16) *To calculate the state portion of the program to support education excellence in Kentucky for a school district, the Department of Education shall subtract the local effort required under KRS 157.390(5) from the calculated base funding under the program to support education excellence in Kentucky, as required by this section. The value of the real estate used in this calculation shall be the lesser of the current year assessment or the prior year assessment increased by four percent (4%) plus the value of current year new property. The calculation under this subsection shall be subject to available funds.*

➔Section 2. KRS 157.420 is amended to read as follows:

Public school funds made available to the credit of each district during any year shall be received, held, and expended by the district board, subject to the provisions of law and administrative regulations of the Kentucky Board of Education. The following restrictions shall govern the expenditure of funds from the public school fund:

- (1) The salary paid any rank of teachers shall be at least equivalent to the amount set forth in the biennial budget schedule for each rank and experience for a term of one hundred eighty-five (185) days for full-time service during the regular school year.
- (2) Beginning with the 2004-2006 biennium, the Kentucky Board of Education shall not approve any working budget or salary schedule for local boards of education for any school year unless the one hundred eighty-five (185) day salary schedule for certified staff has been adjusted over the previous year's salary schedule by a percentage increase at least equal to the cost-of-living adjustment that is provided state government workers under the biennial budget. The base funding level in the program for support education excellence in Kentucky as defined in KRS 157.320 shall be increased by the statewide dollar value of the annual required cost-of-

living percentage adjustment that shall be estimated on the sum of the previous year's statewide teachers' salaries.

- (3) A district that compensates its teachers or employees for unused sick leave at the time of retirement, pursuant to KRS 161.155, may create an escrow account to maintain the amount of funds necessary to pay teachers or employees who qualify for receipt of the benefit. The fund is limited to not more than fifty percent (50%) of the maximum liability for the current year to be determined according to the number of staff employed by the district on September 15. Interest generated by the account shall be calculated as part of the total amount. The funds shall not be used for any purpose other than compensation for unused sick leave at the time of retirement and shall not be considered as part of the general fund balance in determining available local revenue for purposes of KRS 157.620.
- (4) The per pupil capital outlay allotment for each district from the public school fund and from local sources shall be kept in a separate account and may be used by the district only for capital outlay projects approved by the **commissioner of education**~~[chief state school officer]~~ in accordance with requirements of law, and based on a survey made in accordance with administrative regulations of the Kentucky Board of Education. These funds shall be used for the following capital outlay purposes:
  - (a) For direct payment of construction costs;
  - (b) For debt service on voted and funding bonds;
  - (c) For payment or lease-rental agreements under which the board eventually will acquire ownership of a school plant;
  - (d) For the retirement of any deficit resulting from overexpenditure for capital construction, if such deficit resulted from an emergency declared by the Kentucky Board of Education under KRS 160.550; and
  - (e) As a reserve fund for the above-named purposes, to be carried forward in ensuing budgets.
- (5) The district may contribute capital outlay funds for energy conservation measures under guaranteed energy savings contracts pursuant to KRS 45A.345, 45A.352, and 45A.353. Use of these funds, provided in KRS 45A.353, 56.774, and 58.600, shall be based on the following:
  - (a) The energy conservation measures shall include facility alteration;
  - (b) The energy conservation measures shall be identified in the district's approved facility plan;
  - (c) The current facility systems are consuming excess maintenance and operating costs;
  - (d) The savings generated by the energy conservation measures are guaranteed;
  - (e) The capital outlay funds contributed to the energy conservation measures shall be defined as capital cost avoidance as provided in KRS 45A.345(2) and shall be subject to the restrictions on usage as specified in KRS 45A.352(9); and
  - (f) The equipment that is replaced shall have exceeded its useful life as determined by a life-cycle cost analysis.
- (6) If any district has a special levy for capital outlay or debt service that is equal to the capital outlay allotment or a proportionate fraction thereof, and spends the proceeds of that levy for the above-named purposes, the **commissioner of education**~~[chief state school officer]~~ under administrative regulations of the Kentucky Board of Education, may authorize the district to use all or a proportionate fraction of its capital outlay allotment for current expenses. However, a district which uses capital outlay funds for current expenses shall not be eligible to participate in the School Facilities Construction Commission funds.
- (7) If a survey shows that a school district has no capital outlay needs as shown in paragraphs (a), (b), (c), and (d) of subsection (4) of this section, upon approval of the **commissioner of education**~~[chief state school officer]~~, these funds may be used for school plant maintenance, repair, insurance on buildings, replacement of equipment, purchase of school buses, and the purchase of modern technological equipment, including telecommunications hardware, televisions, computers, and other technological hardware to be utilized for educational purposes only.
- (8) In surveying the schools, the Department of Education shall designate each school facility as a permanent, functional, or transitional center.

- (a) "Permanent center" means a center which meets the program standards approved by the Kentucky Board of Education, is located so that students are not subjected to an excessive amount of time being transported to the site, and has established an attendance area which will maintain enrollment at capacity but will also avoid overcrowding.
  - (b) "Functional center" means a center which does not meet all the criteria established for a permanent facility, but is adequate to meet accreditation program standards to insure no substantial academic or building deficiency. The facility plan shall include additions and renovations necessary to meet current accreditation standards for which federal, state, and local funds may be used.
  - (c) "Transitional center" means a center which the local board of education has determined shall no longer be designated permanent or functional. The center shall be destined to be closed and shall not be eligible for new construction, additions, or major renovation. However, the board of education shall maintain any operating transitional center to provide a safe and healthy environment for students.
- (9) If a local school board authorized elementary, middle, or secondary education classes in a facility of a historical settlement school on January 1, 1994, the board shall continue to use the facilities provided by the settlement school if the facilities meet health and safety standards for education facilities as required by administrative regulations. The local school board and the governing body of the settlement school shall enter into a cooperative agreement that delineates the role, responsibilities, and financial obligations for each party.
- (10) *Notwithstanding the provisions of subsections (4) and (6) of this section, a local district that has requested a mid-year adjustment in the support education excellence in Kentucky funding under subsection (15) of Section 1 of this Act may request permission from the commissioner of education to use capital outlay funds for the purchase of school buses or to use the capital outlay funds for increased operational expenses for the first three (3) years following the increased growth in the district without forfeiture of the district's participation in the School Facilities Construction Commission Program. The commissioner may grant or deny the district's request.*

**Signed by the Governor March 24, 2009.**