

CHAPTER 134**(SB 132)**

AN ACT relating to school facilities and making an appropriation therefor.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

It is the intent of Sections 1 and 2 of this Act to:

- (1) *Support the construction of new school buildings and the renovation of existing school buildings in a manner that will create a healthy environment for students and teachers while saving energy, resources, and operational expenses; and*
- (2) *Encourage the use of a life-cycle cost, holistic approach to building design that considers school design, construction, operation, and maintenance in the initial decision-making process.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

(a) *"Life-cycle cost analysis" means to calculate and compare different building designs to identify which is the best investment over the long term. Life-cycle costs include design and construction costs, operating costs, maintenance costs, and repair and replacement costs, adjusted for the time value of money;*

(b) *"Net zero building" means a building in which the amount of energy provided by on-site renewable energy sources is equal to the amount of energy used by the building; and*

(c) *"Efficient school design" means a school building design:*

1. *That meets, at a minimum, the requirements of the United States Green Building Council's Leadership in Energy and Environmental Design (LEED) for schools at the "Certified" level or certification under a comparable system with equivalent requirements or other building performance certification systems, such as the United States Department of Energy's Energy Star program;*
2. *That ensures energy savings from a building design that equates to or exceeds ten (10) percent over the American Society of Heating, Refrigerating, and Air Conditioning Engineers energy standard 90.1-2007; and*
3. *For which whole building life-cycle cost analysis illustrates that the design is cost-effective.*

(2) *The General Assembly hereby finds that schools that are constructed or renovated using efficient school design are proven effective vehicles for accomplishing some or all of the following beneficial public purposes:*

(a) *Lower operating costs and increased asset value;*

(b) *Reduced waste sent to landfills;*

(c) *Conservation of energy and water;*

(d) *Reduced storm drainage runoff;*

(e) *Healthier, safer environments for occupants;*

(f) *Reduced emissions of greenhouse gases; and*

(g) *Improved student attendance and performance by:*

1. *Using the building as a teaching tool;*
2. *Using the local environment as a context for curriculum integration;*
3. *Providing rigorous, highly relevant, and applied learning; and*

(f) A list of new school buildings completed during the prior year without using efficient school design and an explanation of why efficient school design was not used.

➔Section 3. 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) (a) 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 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:
 1. For direct payment of construction costs;
 2. For debt service on voted and funding bonds;
 3. For payment or lease-rental agreements under which the board eventually will acquire ownership of a school plant;
 4. 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
 5. As a reserve fund for the above-named purposes, to be carried forward in ensuing budgets.
- (b) A district may submit a request to the commissioner of education to use funds from the per pupil capital outlay allotment to purchase land for a new school or to modify an existing school if the project is included on the district facility plan for completion within eight (8) years. The land shall not be included in the calculation of the school district's unmet need. The commissioner may grant or deny the district's request at his or her discretion.
- (c) A district which has experienced an increase in adjusted average daily attendance, as defined by administrative regulation, of twenty percent (20%) or more over a five (5) year period may submit a request to the commissioner of education to use capital outlay funds for the operation of a new school for the first two (2) years following its opening. The commissioner may grant or deny the district's request at his or her discretion.
- (d) A local school district may submit a request to the commissioner of education to use capital outlay funds for maintenance expenditures or for the purchase of property insurance without forfeiting the district's

participation in the School Facilities Construction Commission program. Maintenance requests may include other priorities that are not considered major renovations, such as repair, renovation, or system upgrades that are necessary to maintain the integrity of an existing school facility.

- (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 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, except when the current expenditures are approved by the commissioner of education under subsection (4)(b) or (c) of this section.
- (7) If a survey shows that a school district has no capital outlay needs as shown in subsection (4)(a)1., 2., 3., and 4. of this section, upon approval of the commissioner of education, 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) ***Beginning in fiscal year 2011-2012, the Kentucky Department of Education shall standardize the process for evaluating the overall quality and condition of all school buildings across the state. The evaluation process shall:***
 - (a) ***Result in consistent categorization of buildings for local planning purposes and for the distribution of state general fund moneys designated for capital construction;***
 - (b) ***Be based on measurable, objective criteria;***
 - (c) ***Include numerical scoring with weights to recognize building components and characteristics that address:***

1. *Life safety issues;*
 2. *Compliance with state and federal codes;*
 3. *Compliance with requirements under the Americans with Disabilities Act;*
 4. *Community spaces;*
 5. *Instructional areas;*
 6. *Mechanical, electrical, plumbing, and other technology systems;*
 7. *Site and exterior building conditions;*
 8. *Age of the buildings;*
 9. *Feasibility of building additions or major renovations;*
 10. *The districts' facility capacities;*
 11. *Current use of temporary facilities; and*
 12. *Projected enrollment growth; and*
- (d) *Use of a third-party evaluator that utilizes an already established software based system to perform the first, base-line evaluation.*

(10) *The Kentucky Board of Education shall promulgate an administrative regulation upon recommendation of the Kentucky Department of Education and the School Facilities Construction Commission to implement subsection (9) of this section.*

(11) 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.

(12)~~(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 KRS 157.360(15) 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.

➔Section 4. By June 1, 2011, the Department of Education shall determine the estimated amount of money that local school districts are expending for architect and engineering evaluations in preparation of the existing district facility plans and report that amount to the Interim Joint Committee on Education and the Interim Joint Committee on Appropriations and Revenue.

➔Section 5. By January 15, 2011, the Kentucky Department of Education with advice from the School Facilities Construction Commission shall issue a Request for Proposal for contracting with a third party for conducting statewide evaluations required by subsection (9) of Section 3 of this Act.

Signed by Governor April 13, 2010.