

## CHAPTER 95

## ( HB 320 )

AN ACT relating to consolidated local governments.

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

➔Section 1. KRS 67C.117 is amended to read as follows:

- (1) (a) It shall be the policy of the consolidated local government to ensure that opportunities generated directly or indirectly by the consolidated local government are equally available to all citizens without regard to race, color, religion, national origin, marital status, physical handicap, sex, or age.
- (b) It shall also be the policy of the consolidated local government to include the minority community in all aspects of governance in the consolidated local government. Minority citizens and business shall be represented in all actions of the consolidated government, including but not limited to government employment, appointments to boards or commissions, contracting, and purchasing.
- (2) The percentage of minority citizens who shall be employed by the consolidated local government ***shall be no less than the percentage of minority citizens available in the consolidated local government's Metropolitan Statistical Area defined by the United States Office of Management and Budget as used by the United Census Bureau survey. The percentage of minority citizens who shall be***~~to~~ appointed to each of its boards and commissions shall be no less than the percentage of minority citizens in the community, or the percentage of minority representatives on the consolidated local government's legislative body, whichever is greater.
- (3) The consolidated local government shall adopt ordinances and develop policies to achieve the mandate set forth in this section.

➔Section 2. KRS 67C.119 is amended to read as follows:

- (1) The consolidated local government shall have an affirmative action plan that complies with all current federal guidelines and requirements relevant to local governments.
- (2) The mayor shall prepare and implement an affirmative action plan.
- (3) There shall be established under the direction of the mayor an office that shall be called the "Affirmative Action Office."
- (4) The Affirmative Action Office shall aid the mayor in preparing the plan, and shall be responsible for the day-to-day operation and implementation of the affirmative action plan.
- (5) An affirmative action plan, in addition to following all federal requirements, shall include good faith efforts to:
  - (a) Determine the extent to which minorities and women are underutilized in major categories;
  - (b) Identify and eliminate the specific causes of the underutilization;
  - (c) Identify and eliminate all employment practices that have an adverse impact on minorities, women, and others protected by applicable law and the relationship of which to job performance has not been clearly established;
  - (d) Rely exclusively on practices that are based on merits and other valid job related criteria;
  - (e) Develop substantial applicant pools of validly qualified minorities and women, special recruitment efforts, and other measures to insure that sufficient numbers of these groups are included to help reduce their underutilization;
  - (f) Develop, through special recruitment efforts and other measures, applicant pools in which handicapped persons are represented equitably;
  - (g) Project goals and timetables to include estimates of the representation of minorities and women likely to result from the operation of this affirmative action plan; and
  - (h) Establish organizational structures and monitoring systems that will ensure effective operation of its goals, and means for modification of the plan as needed.
- (6) All contracts, leases, or other agreements for materials, supplies, equipment, or, contractual services other than professional that, in the aggregate, exceed ***the amount for small purchases in KRS 45A.385***~~ten thousand~~

dollars (\$10,000)) in any ~~fiscal~~calendar year shall be awarded in compliance with KRS 424.260 or with KRS 45A.343 to 45A.460, if applicable.

- (7) Notwithstanding anything to the contrary in this section, the provisions of this section shall apply to every person, firm, corporation, and association that has been awarded contracts, leases, or other agreements as provided by KRS 424.260 or with KRS 45A.343 to 45A.460, if applicable, that, in the aggregate, exceed *the amount for small purchases in KRS 45A.385*~~ten thousand dollars (\$10,000))~~ in any ~~fiscal~~calendar year.
- (8) Employment opportunities generated directly or indirectly by the government of the consolidated local government shall be equally available to all citizens without regard to race, color, religion, national origin, marital status, physical handicap, sex, or age. In order to ensure that employment opportunities generated directly or indirectly by the consolidated local government are equally available, contractors and vendors shall be approved as provided by this section prior to the awarding of any contract, lease, or other agreement that requires an expenditure in excess of *the amount for small purchases in KRS 45A.385*~~ten thousand dollars (\$10,000))~~ with the consolidated local government.
- (9) No person, firm, corporation, or association shall be awarded a contract, lease, or other agreement that requires an expenditure in excess of *the amount for small purchases in KRS 45A.385*~~ten thousand dollars (\$10,000))~~ until and unless that person, firm, corporation, or association has been prequalified as determined by procedures and requirements enacted by ordinance by the consolidated local government.
- (10) No officer, employee, or agent of the consolidated local government shall accept a contract, lease, or other agreement that requires an expenditure in excess of *the amount for small purchases in KRS 45A.385*~~ten thousand dollars (\$10,000))~~ with the consolidated local government until and unless that person, firm, corporation, or association has been prequalified as determined by procedures and requirements enacted by ordinance by the consolidated local government.
- (11) All persons, firms, corporations, or associations seeking to bid on contracts, leases, or other agreements that require an expenditure exceeding *the amount for small purchases in KRS 45A.385*~~ten thousand dollars (\$10,000))~~ with the consolidated local government shall submit a request for prequalification as an eligible contractor, pursuant to the procedures and requirements enacted by ordinance by the consolidated local government.
- (12) The consolidated local government shall make available a list of all bidders who have been prequalified and shall distribute the list to the appropriate purchasing officers, employees, or agents of the consolidated local government.
- (13) Any person, firm, corporation, or association that submits an otherwise qualified bid for a contract, lease, or other agreement pursuant to the provisions of KRS 424.260, but that has not prequalified pursuant to this section, may be approved by the consolidated local government as provided by this section. Any person, firm, or corporation that is approved by the consolidated local government shall thereafter be qualified and considered eligible for award for a contract, lease, or other agreement.
- (14) The consolidated local government shall prequalify persons, firms, corporations, and associations seeking a contract, lease, or other agreement that requires an expenditure exceeding *the amount for small purchases in KRS 45A.385*~~ten thousand dollars (\$10,000))~~ with the consolidated local government if, on an analysis of the workforce of that entity, the consolidated local government determines that:
  - (a) The entity is not deficient in the utilization of minority groups or women;
  - (b) The entity has an acceptable, bona fide affirmative action plan;
  - (c) The entity is a small business that employs ten (10) or fewer individuals;
  - (d) The entity has a federally approved affirmative action program; or
  - (e) The consolidated local government has made a finding based on other reasonable criteria, and after consideration of the provisions of 41 C.F.R. 60-2, determines the entity does not require an affirmative action plan.
- (15) An acceptable affirmative action plan for an entity seeking a contract, lease, or other agreement with a consolidated local government shall include:
  - (a) An analysis of the areas of the entity's workforce within which it is deficient in the utilization of minority groups and women; and

- (b) Timetables to which the entity's good faith efforts shall be directed to correct the deficiencies and to achieve prompt and full utilization of minorities and women at all levels and in all segments of its workforce where deficiencies exist.
- (16) A bona fide affirmative action plan for an entity seeking a contract, lease, or other agreement with a consolidated local government shall include a set of specific and result-oriented procedures, goals, and timetables to which an entity commits itself to apply every good faith effort in order to achieve equal employment opportunity. Procedures without effort to make them work are meaningless and effort undirected by specific and meaningful procedures is inadequate.
- (17) In reviewing an affirmative action plan for an entity seeking a contract, lease, or other agreement with a consolidated local government, the consolidated local government shall be guided by the relevant provisions of 41 C.F.R. 60-2 which outlines the requirements of affirmative action plans for federal contractors and vendors.
- (18) The consolidated local government shall use its best efforts, directly and through contracting agencies, other interested federal, state, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work pursuant to contracts, leases, and agreements that are the subject matter of this section or any agency referring workers or providing or supervising apprenticeship or training for or in the course of this work to cooperate in the implementation of the purposes of this section.
- (19) The consolidated local government on its own motion or on motion of any interested party shall cause hearings as it deems necessary for compliance or enforcement of this section.
- (20) The consolidated local government shall hold a hearing prior to imposing or recommending the imposition of penalties and sanctions for violation of this section. No penalty that would prohibit any contractor from obtaining future contracts under this section shall be made without affording the contractor an opportunity for a hearing.
- (21) Notice of any final decision or determination of the consolidated local government that affects the running of time for taking an appeal shall be mailed to all parties in the matter, including the proposed contractor, lessor or other party, and the affected local government offices.
- (22) The consolidated local government shall establish an affirmative action appeals board for purposes of hearing appeals from any final decision relating to matters pertaining to this section. The board shall be composed of the county attorney, or his or her designee, the council president of the consolidated local government, or his or her designee, and a representative of the financial department of the consolidated local government, or his or her designee.
- (23) Any appeal from a decision of the consolidated local government shall be hand-delivered or mailed by certified mail to the affirmative action appeals board not later than thirty (30) days from the date of the local government's decision. The appeal shall set forth the grounds for the appeal. The appeals board shall notify all parties in writing of the time and place of a hearing. The hearing committee may issue subpoenas for any witnesses requested by either of the parties or in the appeals board's opinion necessary to the proper disposition of the matter to be heard. All parties shall be allowed legal representation, witnesses may be cross-examined, and the proceeding shall be recorded. The local government shall transmit, within ten (10) days after receipt of notice of appeal, all the original papers in action to the appeals board.
- (24) The appeals board shall have the power to require the contractor to furnish all necessary records and give testimony as to enable the board to render a fair and competent decision. The duty of the board shall be to review all records, hear all testimonies of witnesses, and determine whether the decision of the local government was correct. The decision of the appeals board shall be final. The decision of the appeals board shall be transmitted in writing to the appropriate offices of the local government for implementation and shall set forth specifically its findings of fact and conclusions relative to its determination. The administration of sanctions and penalties in accordance with that determination shall be the duty of the appropriate department or contracting agency of the consolidated local government.
- (25) (a) On request of the adversely affected party the appeals board may, on terms as are just, relieve a party from its final order of determination on the following grounds:
1. Mistake, inadvertence, surprise, or excusable neglect;
  2. Newly discovered evidence that by due diligence could not have been discovered in time for the hearing;

3. Perjury or falsified evidence; or
  4. Fraud affecting the proceedings other than perjury or falsified evidence.
- (b) The request shall be made within thirty (30) days after notification of the appeals board's final determination. A request under this subsection does not affect the finality of the order or determination or suspend its operation.
- (26) In accordance with the enforcement provisions of this section, the consolidated local government may cancel, terminate, suspend, or cause to be canceled, terminated, or suspended, any contract, lease, or agreement that is the subject matter of this section for failure of the contractor or vendor to comply. Contracts, leases, and agreements may be canceled, terminated, or suspended absolutely or continuance of contracts, leases, and agreements may be conditioned on a program for future compliance as approved by the consolidated local government.
- (27) Any contracting agency shall refrain from entering into further contracts or extensions or other modifications of existing contracts, with any noncomplying contractor, until the contractor has established and will carry out personnel and employment policies in compliance with the provisions of this section.
- (28) Whenever the consolidated local government makes a determination regarding noncompliance by a contractor pursuant to this section, it shall promptly notify the appropriate contracting agency and other affected local government agencies and offices of the action recommended. The contracting agency shall take the action recommended and shall report the results of that action to the consolidated local government.
- (29) If the appeals board shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this order or submits a program for compliance acceptable to the consolidated local government.

➔Section 3. KRS 67C.323 is amended to read as follows:

In all cases provided for in KRS 67C.321, the action of the chief shall be final except in the following cases:

- (1) Every action in the nature of a dismissal, suspension, or demotion of a nonprobationary officer made by the chief shall be subject to review by the board at the request of any officer affected by KRS 67C.301 to 67C.327. An appeal to the board of a dismissal, demotion, or forty (40) hour or more suspension of a nonprobationary officer shall be heard by the full board. The board shall give notice and hold a public hearing. After the hearing, the board shall retire in executive session to discuss the evidence introduced at the hearing and to make its determination and conclusion. While in executive session, the board shall not receive any further evidence or communication from any source prior to reaching its determination and conclusion. The board, while in executive session, may request and receive legal advice from board counsel on specific legal issues which may arise during deliberations. If a majority of the members of the board are of the opinion that the action of the chief is unjustified or unsupported by proper evidence, the order of the chief may be set aside and revoked by the board, and the board may impose the penalty or punishment it deems necessary and appropriate, if any; provided however, the board shall not impose a penalty or punishment in excess of the action of the chief. No officer shall be removed or dismissed except as provided for in this section.
- (2) An appeal to the board of a suspension of a nonprobationary officer of less than forty (40) hours may be heard by the full board or any hearing officer secured by the board. If the appeal is heard by a hearing officer, all rules established by the board relating to appeals of disciplinary actions shall be applicable. After the hearing, the hearing officer shall complete and submit to the board, no later than thirty (30) days after the hearing, a written recommended order which shall include his findings of fact, conclusions of law, and recommended disposition of the appeal, which may include recommended penalties. The recommended order shall also include a statement advising the appealing officer and chief fully of their exception and appeal rights. A copy of the hearing officer's recommended order shall be sent to the appealing officer and chief. Each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the board. The board shall consider the record including the recommended order in any exceptions duly filed to a recommended order, and accept and adopt or reject or modify, in whole or in part, the recommended order, or remand the appeal of the matter, in whole or in part, to the hearing officer for further proceedings as appropriate. The final order of the board shall be in writing. If the final order differs from the recommended order, it shall include separate statements of findings of fact and conclusions of law. The board shall render a final order in an administrative hearing within thirty (30) days after receipt of the hearing officer's recommended order.

- (3) (a) Every action of a dismissal, suspension, or demotion made by the board shall be final, except that any person aggrieved may, within thirty (30) days after the action, appeal to the Circuit Court of the county in which the board meets. The board shall be named respondent as the consolidated local government police force merit board, and service shall be had on the chairman of the board. ***Notice of the appeal shall be given to the chief or the officer if not already a party to the appeal as real parties in interest.*** The appeal taken to the Circuit Court shall be docketed by the clerk as a civil action with appropriate judicial review of an administrative action or decision.
- (b) The judgment of the Circuit Court shall be subject to appeal to the Court of Appeals. The procedure as to the appeal to the Court of Appeals shall be the same as in any civil action.

➔Section 4. KRS 100.137 is amended to read as follows:

- (1) Except in a consolidated local government, counties with a population of 300,000 or more inhabitants shall be a planning unit and shall have a planning commission which commission shall be composed of three (3) members, who are nonresidents of the largest city of the county, appointed by the county judge/executive of such county; three (3) members who are residents of the largest city of the county appointed by the mayor of that city; and the mayor of the largest city, or his designee; the county judge/executive, or his designee; the director of works of the largest city in the county; and the county road engineer. The county judge/executive and the mayor together shall ensure that three (3) of the six (6) appointees are citizens who have no direct financial interest in the land development and construction industry. If the commission appoints a citizen member to fill a vacancy, the commission shall ensure that the balance is maintained. All ten (10) members of the planning commission shall be required to disclose any personal or family commercial interest relevant to land use, new development supply, or new development construction. The disclosure shall be a written, signed statement of the general nature of the member's interest. The disclosure shall be filed with the commission's records under KRS 100.167 and shall be available for public inspection during regular business hours. A member shall not vote on an issue in which the member or member's family has an interest. The willful failure of a member to disclose an interest, or a member's voting on an issue in which the member or member's family has a known interest, shall subject the member to removal proceedings under KRS 100.157.
- (2) A county with a consolidated local government created pursuant to KRS Chapter 67C shall be a planning unit and shall have a planning commission which shall include eight (8) members who are residents of the planning unit, approved by the mayor of the consolidated local government pursuant to the provisions of KRS 67C.139. The membership of the planning commission shall also include the mayor of the consolidated local government, or his or her designee, or the county engineer as determined by the mayor. ***If the director of public works designates a designee, the designee shall either be a civil or highway engineer licensed under KRS Chapter 322, and shall have at least three (3) years' practical road building, road design, or transportation planning experience.*** The mayor shall ensure that four (4) of the eight (8) appointees are citizens who have no direct financial interest in the land development and construction industry. If the commission appoints a citizen member to fill a vacancy, the commission shall ensure that the balance is maintained. All ten (10) members of the planning commission shall be required to disclose any personal or family commercial interest relevant to land use, new development supply, or new development construction. The disclosure shall be a written, signed statement of the general nature of the member's interest. The disclosure shall be filed with the commission's records pursuant to KRS 100.167 and shall be available for public inspection during regular business hours. A member shall not vote on an issue in which the member or member's family has an interest. The willful failure of a member to disclose an interest, or a member's voting on an issue in which the member or member's family has a known interest, shall subject the member to removal proceedings pursuant to KRS 100.157.
- (3) In counties containing a city of the first class or a consolidated local government, all legislation implementing or amending the plan or amended plan which affects cities of the first through fourth classes shall be enacted by such cities and all other legislation implementing the plan or amended plan shall be enacted by the fiscal court or, in the case of a consolidated local government, by the consolidated local government.
- (4) In all other counties the establishment of a planning unit is optional, but any planning unit established in other counties shall comply with the remaining provisions of this chapter.

➔Section 5. KRS 100.214 is amended to read as follows:

When in any planning unit containing any portion of a county containing a city of the first class or a consolidated local government a hearing is scheduled on a proposal by a property owner to amend any zoning map, the following notice shall be given in addition to any other notice required by statute, local regulation, or ordinance to be given:

- (1) Notice of the hearing shall be posted conspicuously on the property the classification of which is proposed to be changed **at least fourteen (14)**~~thirty (30)~~ days immediately prior to the hearing. Posting shall be as follows:
  - (a) The sign shall state "zoning change" and the proposed classification change in letters three (3) inches in height. The time, place, and date of hearing shall be in letters at least one (1) inch in height; and
  - (b) The sign shall be constructed of durable material and shall state the telephone number of the appropriate zoning commission;
- (2) Notice of the hearing shall be given at least **fourteen (14)**~~thirty (30)~~ days in advance of the hearing by first-class mail, with certification by the commission secretary or other officer of the planning commission that the notice was mailed, to the mayor and city clerk of any city of the fifth or sixth class so affected, to an owner of every parcel of property adjoining at any point the property the classification of which is proposed to be changed, to an owner of every parcel of property directly across the street from said property, and to an owner of every parcel of property which adjoins at any point the adjoining property or the property directly across the street from said property; provided, however, that no first-class mail notice, required by this subsection, shall be required to be given to any property owner whose property is more than five hundred (500) feet from the property which is proposed to be changed. It shall be the duty of the person or persons proposing the map amendment to furnish to the planning commission the names and addresses of the owners of all property as described in this subsection. Records maintained by the property valuation administrator may be relied upon conclusively to determine the identity and address of said owner. In the event such property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairman of the owner group which administers property commonly owned by the condominium or cooperative owners. A joint notice may be mailed to two (2) or more co-owners of an adjoining property who are listed in the property valuation administrator's records as having the same address;
- (3) If the hearing has been scheduled for a time during normal working hours, and if, within **ten (10)**~~fifteen (15)~~ days of the scheduled date of the hearing the planning commission shall receive a petition from two hundred (200) property owners living within the planning unit requesting that the hearing be rescheduled for a time after normal working hours, then the planning commission shall reschedule the hearing for a time after normal working hours on a date no earlier than the date of the original hearing. The planning commission shall then publish notice of the new hearing time and date according to the provisions of KRS 100.211, except that notice shall occur at least seven (7) days prior to the public hearing. The sign required by subsection (1) of this section shall be changed to reflect the new hearing time and date at least seven (7) days prior to the public hearing. The persons who receive mail notice according to the provisions of subsection (2) of this section shall again be notified in the same manner of the new hearing time and date at least seven (7) days prior to the hearing. The hearing time shall not be changed more than once by the procedures of this section except in the event of intervening emergency which requires the cancellation of a hearing; and
- (4) Notice by mail shall include a list of the names and addresses of each person so notified, and a description of the procedure by which those notified can petition for a change in the hearing time.

**Signed by Governor March 22, 2013.**