

CHAPTER 163**(HB 518)**

AN ACT relating to the State Fair Board and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

(1) The State Fair Board shall:

(a) Conduct all procurements necessary for the performance of its duties in accordance with KRS Chapter 45A and this chapter, provided that this chapter, controls in the event that, and to the extent that, any provision in this chapter is expressly inconsistent with any provision of KRS Chapter 45A; or

(b) Promulgate administrative regulations pursuant to KRS Chapter 13A establishing its procurement procedures.

(2) If the State Fair Board elects to promulgate administrative regulations establishing its procurement procedures rather than conduct procurements in accordance with KRS Chapter 45A, the State Fair Board may include sections of KRS Chapter 45A as part of its administrative regulations and shall require review of personal service contracts, tax incentive agreements, and memorandum of agreements by the Government Contract Review Committee as established by KRS 45A.705.**(3) Procurements for personal service contracts shall not be subject to the requirements of KRS 45A.695(2)(b), due to the unique operational activities conducted for state government by the State Fair Board as recognized in this chapter.****(4) The State Fair Board's procurement procedures or administrative regulations shall be designed to provide for the purchase of supplies, equipment, services, and construction items that provide the greatest long-term benefit to the state, the greatest integrity for the State Fair Board, and the best service and products for the public.****(5) In its bidding and negotiation processes, the State Fair Board may:**

(a) Perform its own bidding and procurement;

(b) Utilize the services of the Finance and Administration Cabinet; or

(c) Utilize a combination thereof.

(6) The president and chief executive officer of the State Fair Board may, in lieu of the secretary of the Finance and Administration Cabinet, declare an emergency for purchasing purposes.

➔Section 2. KRS 247.090 is amended to read as follows:

(1) The State Fair Board shall be composed of *sixteen (16) voting members and five (5) ex officio, nonvoting*~~eighteen (18)~~ members, as follows:

(a) The Governor or his or her designee;

(b) The Commissioner of Agriculture or his or her designee;

(c) *The President of the Senate or his or her designee, who shall serve as an ex officio, nonvoting member for the duration of his or her service as President of the Senate;*

(d) *The Speaker of the House of Representatives or his or her designee, who shall serve as an ex officio, nonvoting member for the duration of his or her service as Speaker of the House of Representatives;*

(e) The secretary of the Finance and Administration Cabinet or his or her designee, who shall serve as an ex officio, nonvoting member for the duration of his or her service as secretary of the cabinet. The secretary shall provide additional financial expertise to the Kentucky State Fair Board, with no resulting personnel impact, fiscal impact, nor expense to Kentucky state government;

(f)~~(d)~~ The dean of the University of Kentucky College of Agriculture, Food and Environment or his or her designee;

- (g)~~(e)~~ **Four (4)**~~Five (5)~~ members appointed by the Governor from the state at large with due consideration to geographical distribution throughout the state;
- (h)~~(f)~~ **Three (3) members**~~One (1) member~~ appointed by the **Commissioner of Agriculture**~~Governor~~ from the state at large who **are**~~is~~ involved with, or experienced in, **agriculture or agriculture-related businesses**~~agribusiness~~;
- (i)~~(g)~~ One (1) member appointed by the **Commissioner of Agriculture**~~Governor~~ from a list of six (6) nominees that are representative of all segments of animal agriculture provided by trade organizations and commodity groups that may include but not be limited to the Kentucky Cattlemen's Association, Kentucky Dairy Development Council, Kentucky Livestock Improvement Association, Kentucky Pork Producers Association, Kentucky Poultry Federation, and Kentucky Sheep and Goat Development Office;
- (j)~~(h)~~ One (1) member appointed by the **Commissioner of Agriculture**~~Governor~~ from a list of six (6) nominees that are representative of all segments of crop or plant production provided by trade organizations or commodity groups that may include but not be limited to Kentucky Corn Growers Association, Kentucky Grape and Wine Council, Kentucky Horticulture Council, Kentucky Small Grain Growers Association, and Kentucky Soybean Association;
- (k)~~(i)~~ One (1) member appointed by the **Commissioner of Agriculture**~~Governor~~ from a list of six (6) nominees submitted by the governing body of the American Saddlebred Horse Association;
- (l)~~(j)~~ One (1) member appointed by the **Commissioner of Agriculture**~~Governor~~ from a list of six (6) nominees provided by the Kentucky Farm Bureau Federation;
- (m)~~(k)~~ One (1) member appointed by the **Commissioner of Agriculture**~~Governor~~ from a list of six (6) nominees provided by the Kentucky Association of Fairs and Horse Shows;
- (n)~~(l)~~ One (1) member appointed by the Governor from a list of six (6) nominees provided by the Louisville Convention and Visitors Bureau representing the hospitality and tourism industry;
- (o)~~(m)~~ The state president of the Kentucky FFA Association, who shall serve as an ex officio, nonvoting member for the duration of his or her term as student leader of the association; and
- (p)~~(n)~~ The state president of the Kentucky 4-H Organization, who shall serve as an ex officio, nonvoting member for the duration of his or her term as student leader of the organization.
- (2) The terms of the members of the board appointed by the **Commissioner of Agriculture or the Governor, respectively**, shall be staggered terms **and shall be subject to confirmation as provided in KRS 11.160(2)**. Members of the board shall be appointed to a term of four (4) years and shall serve until their successors are duly appointed and qualified. Members of the board shall be appointed to no more than three (3) terms that began on or after **the effective date of this Act**~~April 27, 2016~~. Terms that began prior to **the effective date of this Act**~~April 27, 2016~~, shall not count toward the term limits established by this subsection. As the terms of each group of members expire, the **Commissioner of Agriculture or the Governor, as the case may be**, shall appoint successors for terms of four (4) years and until their successors are appointed and qualify. The initial appointments **of the members designated in subsection (1)(g) and (h) of this section** shall be for staggered terms, as follows:
- (a) **Pursuant to subsection (1)(g) of this section, the Governor shall appoint one (1) at-large member in 2022, one (1) at-large member in 2023, and two (2) at-large members in 2024 to replace or reappoint current members whose terms expire in each of these years**~~Three (3) members shall be appointed for one (1) year~~;
- (b) **Pursuant to subsection 1(h) of this section, the Commissioner of Agriculture shall appoint one (1) at-large member in 2021, one (1) at-large member in 2022, and one (1) at-large member in 2023 to replace or reappoint current members whose terms expire in each of these years**~~Three (3) members shall be appointed for two (2) years~~;
- (c) **On the effective date of this Act and pursuant to subsection (1)(h) of this section, the Commissioner of Agriculture shall appoint one (1) at-large member to serve a one (1) year term in order to establish the number of voting members as required by this section**~~Three (3) members shall be appointed for three (3) years~~; and
- (d) **Those members whose terms expire in 2021 shall be appointed by the Commissioner of Agriculture**~~Three (3) members shall be appointed for four (4) years~~.

~~[Initial members shall be appointed by the Governor within thirty (30) days of April 27, 2016.]~~ It is the intention of the General Assembly that the political affiliation of the appointed members shall be as evenly divided as possible between the two (2) political parties polling the largest number of votes in the state at general elections.

- (3) In case of a vacancy among the appointed members of the board, the unexpired term shall be filled pursuant to the requirements and procedures for original appointments.

(4) ***The State Fair Board shall not be subject to reorganization under KRS Chapter 12.***

➔Section 3. KRS 247.100 is amended to read as follows:

- (1) ***As used in this section, "solely for administrative purposes" means those limited functions and purposes expressly requested by the State Fair Board to be performed by the Tourism, Arts and Heritage Cabinet. The State Fair Board shall have sole discretion as to which functions shall be deemed necessary for the efficient operation of the State Fair Board and the properties in its custody and control.***

- (2) The State Fair Board shall be a body corporate with ~~full~~~~the usual~~ corporate powers. ***The General Assembly hereby recognizes and reaffirms that the operations of the State Fair Board and the operation of its facilities are unique activities for state government and that an independent corporate structure is best to enable the State Fair Board to be managed in an entrepreneurial and business-like manner. The State Fair Board shall be an independent, de jure municipal corporation and political subdivision of the Commonwealth of Kentucky, which shall be a public body corporate and politic. The State Fair Board shall be deemed a public agency within the meaning of KRS 61.805 and 61.870. The State Fair Board shall be attached to the Tourism, Arts and Heritage Cabinet solely for administrative purposes.***

- (3) Full minutes and records shall be kept of all meetings of the board and all official actions of the board shall be recorded therein, and such minutes and records shall constitute public records and be available at all reasonable times for public inspection.

- (4) ***It is the intent of the General Assembly that the State Fair Board shall be accountable to the Governor, the Commissioner of Agriculture, the General Assembly, and the people of the Commonwealth through a system of audits, reports, and thorough financial disclosures.***

- (5) ***On the effective date of this Act, any records, files, or documents associated with functions previously performed by the Tourism, Arts and Heritage Cabinet, but for which it is no longer deemed responsible, shall be transferred to the State Fair Board.***

➔Section 4. KRS 247.110 is amended to read as follows:

- (1) ***The members of the State Fair Board shall select a chair and vice chair from among the voting membership, effective on the effective date of this Act. The chair and vice chair shall serve in that capacity for one (1) year and shall be eligible for reelection. The chair shall preside at all meetings and shall have all of the powers and privileges of the other members. The vice chair shall preside in the absence of the chair at all meetings and shall have all the powers and privileges of the other members***~~[The Governor shall appoint one (1) member of the board to serve as its chair. The Governor shall further designate a second member to serve as vice chair with authority to act in the absence of the chair. The chair and vice chair shall each serve for a period of one (1) year and may be reappointed by the Governor for subsequent years to those positions].~~

- (2) The board shall meet monthly, a minimum of ten (10) months per year. A majority of the voting members of the board shall constitute a quorum for the transaction of business.

- (3) The board shall adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations, and policies in connection with the performance of its function and duties.

- (4) The board shall elect and employ a secretary who shall be responsible directly to the board as the keeper of all records pertaining to the operation of the fair or the business of the board. The president and chief executive officer provided for in KRS 247.130 shall be ex officio treasurer to the board.

- (5) ***The board as set out in the bylaws adopted under subsection (3) of this section may establish an executive committee from among its membership with full authority to act between its meetings to the extent delegated by the board.***

➔Section 5. KRS 247.130 is amended to read as follows:

- (1) The State Fair Board ***shall have the sole authority to*** ~~may~~ employ or contract with a president who shall not be one of their number. The president shall be the chief executive officer for the board. The employment or contract of a president shall be on the basis of training, ability, and experience. A president shall hold his position during the pleasure of the board, but may be removed only by an affirmative vote of a majority of the members of the board and upon thirty (30) days written notice. A president shall be responsible for the administration of the policies set by the board and shall devote his entire time and attention to the performance of such duties and work as may be required of him by law or be assigned to him by the board. The board shall determine the term, conditions, and compensation of its president, provided such term does not exceed four (4) years.
- (2) The president ***shall have the authority to*** ~~may~~ organize such administrative divisions as may be necessary and may designate chiefs of such divisions who, under his control and supervision, shall have the duties of direction of such divisions. The president shall organize a Division for Personnel Management and Staff Development which shall manage all personnel matters, including staff development and training and programs for affirmative action. The director of this division shall be appointed ~~with the prior written approval of the Governor,~~ by the president, ***and said appointment shall be subject to confirmation by the board.*** The president ***shall*** ~~may~~ employ such other employees and agents as he deems necessary for the carrying out of the policies of the board and to conduct the affairs of the State Fair, and ***shall*** ~~may~~ fix the duties and compensation of any employees or agents with the approval of the board.
- (3) The board ***shall have the sole authority to*** ~~may~~ employ or contract with such other persons, firms, or corporations as the board may deem necessary or desirable to accomplish its duties and functions; ***shall*** ~~may~~ fix the compensation and the terms of employment or contract of those employed or contracted with; and may assign to them such duties and responsibilities as the board may determine, including the responsibility of actual operation of any or all of the facilities under the control of the board.
- (4) The president and any persons employed under this section shall not be subject to the provisions of KRS Chapter 18A.

➔Section 6. KRS 247.145 is amended to read as follows:

- (1) The state fair board in governing the operation, maintenance, or use of property under its custody and control is authorized to ***promulgate*** ~~establish~~ such reasonable and lawful ***administrative*** regulations, ***as provided in KRS Chapter 13A,*** as are necessary:
 - (a) To maintain decency and good order; ~~or~~
 - (b) To protect the peace or safety of the general public; ~~or~~
 - (c) To protect the public interest, convenience, or necessity; ***or***
 - (d) ***To govern the operation, maintenance, or use of property under its custody and control.***
- (2) All ***administrative*** regulations ***promulgated*** ~~established~~ by the state fair board shall be printed and posted at not less than three (3) public places on the property under its custody and control.
- (3) All persons using, occupying or going upon any property under the custody and control of the state fair board shall comply with all ***administrative*** regulations ***promulgated*** ~~made~~ by it.

➔Section 7. KRS 247.160 is amended to read as follows:

- (1) The State Fair Board shall have exclusive control of ***all operations and events occurring upon the state fairgrounds and exhibition center and any other properties under the custody and control of the State Fair Board, including but not limited to*** concessions, exhibitions, shows, ***facility rental, property development,*** entertainments, and attractions at any place on the state fairgrounds and exhibition center and may, in the discretion of the board, operate any or all of such concessions, exhibitions, shows, entertainments and attractions, but the board shall not allow the operation of any gambling device or game of chance therein. It may delegate such control or operation to any of its employees or agents, or to an executive committee. This section shall not apply to the sale of lottery tickets sold under the provisions of KRS Chapter 154A.
- (2) The State Fair Board shall have a prior lien upon the property of any concessionaire, exhibitor, ***lessee,*** or person, immediately upon its coming or being brought on the grounds, or the center, to secure existing or future indebtedness.
- (3) Any designated employee or agent of the State Fair Board may sell the property to satisfy the indebtedness after giving ten (10) days' notice to the owner or agent of the owner or, if notice cannot be given to the owner,

after a notice is posted for ten (10) days in the office of the State Fair Board on the grounds, announcing that the property is to be sold. The State Fair Board, through its designated agent, may bid and buy in the property offered for sale for the use and benefit of the State Fair.

➔Section 8. KRS 247.165 is amended to read as follows:

None of the provisions of KRS Chapter 137 and none of the provisions of KRS 91.200 shall apply to any operations on state fairgrounds, ~~or~~ the exhibition center, ***or any other properties under the custody and control of the State Fair Board*** wherein the State Fair Board shares in the receipts and proceeds of such operations.

➔Section 9. KRS 247.190 is amended to read as follows:

- (1) All revenues derived by the State Fair Board from the use of properties and facilities under its custody and control shall be used exclusively for the purpose of defraying the expenses of the board, the cost of the management and operation of such properties and facilities, the payment of interest and principal upon any indebtedness incurred by the board for such properties and facilities, the creation of adequate reserves for the repair and replacement thereof, and for the financing of further extensions, improvements, and additions thereto. Included in the cost of operation may be such promotional activities as the State Fair Board may determine upon as calculated to stimulate and increase the use and the revenues of such facilities, and to increase and stimulate the interest and usefulness of the State Fair. Any surplus revenues remaining after full provision for the above purposes shall be used to reduce the admission fees and charges to the public for attendance upon the State Fair and for public use by the citizens of the Commonwealth of the facilities of the State Fair Board, and shall on no account be appropriated to any other agency or function.
- (2) The State Fair Board shall generally cause its funds to be deposited in the State Treasurer's office, to be withdrawn on appropriate vouchers approved by the board, but may create special accounts in other depositories for the purpose of securing the prompt payment of interest and principal on any of its bonded indebtedness if in the judgment of the board, or, if as determined by competitive bids, the creation of such special accounts and depositories is advantageous and economical to the board.
- (3) ***The State Fair Board may receive tax revenues from any governmental unit and financial contributions from local governments, private persons, or foundations.***
- (4)~~(3)~~ An annual accounting of the funds of the state fair board shall be made by the Auditor of Public Accounts and reported to the Governor ***and the Legislative Research Commission*** for the benefit of Governor and the General Assembly.

➔Section 10. Whereas, the Kentucky State Fair Board is a vital part of the agricultural and tourism economies within the Commonwealth and due to the COVID-19 pandemic, Kentucky's tourism and agricultural industries have experienced massive economic losses, and it is necessary to ensure that the actions and decisions of the Kentucky State Fair Board are carried out in an independent and corporate-like manner, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Veto overridden March 29, 2021.