

CHAPTER 178

(HB 178)

AN ACT relating to the Kentucky Board of Education.

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

➔Section 1. KRS 156.029 is amended to read as follows:

- (1) There is hereby established a Kentucky Board of Education, which shall consist of eleven (11) *voting* members appointed by the Governor and confirmed by the Senate ~~and the House of Representatives~~ of the General Assembly, with the president of the Council on Postsecondary Education *and the secretary of the Education and Workforce Development Cabinet* serving as ~~an~~ *ex officio nonvoting members, and an active public elementary or secondary school teacher and a public high school student appointed by the board as described in subsection (3) of this section serving as nonvoting members* ~~member~~. Seven (7) *voting* members shall represent each of the Supreme Court districts as established by KRS 21A.010, and four (4) *voting* members shall represent the state at large. Each of the *voting* ~~appointed~~ members shall serve for a four (4) year term, except the initial appointments shall be as follows: the seven (7) members representing Supreme Court districts shall serve a term which shall expire on April 14, 1994; and the four (4) at-large members shall serve a term which shall expire on April 14, 1992. Subsequent appointments shall be submitted to the Senate ~~and to the House of Representatives~~ for confirmation in accordance with KRS 11.160. ~~Each appointment by the Governor shall be agreed upon by both chambers in order for the person to be confirmed. Each confirmed appointee shall take office on April 15.~~
- (2) Appointments *of the voting members* shall be made without reference to occupation~~, political affiliation, or similar consideration~~. No *voting* member at the time of his appointment or during the term of his service shall be engaged as a professional educator. *Beginning with voting members appointed on or after the effective date of this Act, appointments to the group of members representing Supreme Court districts and to the group of at-large members, respectively, shall reflect equal representation of the two (2) sexes, inasmuch as possible; reflect no less than proportional representation of the two (2) leading political parties of the Commonwealth based on the state's voter registration and the political affiliation of each appointee as of December 31 of the year preceding the date of his or her appointment; and reflect the minority racial composition of the Commonwealth based on the total minority racial population using the most recent census or estimate data from the United States Census Bureau. If the determination of proportional minority representation does not result in a whole number of minority members, it shall be rounded up to the next whole number. A particular political affiliation shall not be a prerequisite to appointment to the board generally; however, if any person is appointed to the board that does not represent either of the two (2) leading political parties of the Commonwealth, the proportional representation by political affiliation requirement shall be determined and satisfied based on the total number of members on the board less any members not affiliated with either of the two (2) leading political parties.* Pursuant to KRS 63.080, a member shall not be removed except for cause *or, beginning with voting members appointed on or after the effective date of this Act, in accordance with subsection (3) of Section 3 of this Act. Notwithstanding KRS 12.028, the board shall not be subject to reorganization by the Governor.*
- (3) *The nonvoting teacher and student members shall be selected by the board from the state's six (6) congressional districts on a rotating basis from different districts. The public high school student shall be classified as a junior at the time of appointment. The teacher and student members shall serve for a one (1) year term, except the initial appointments shall serve a term which shall expire on April 14, 2022. The board shall promulgate an administrative regulation establishing the process for selecting the nonvoting teacher and student members.*
- (4) A vacancy in the *voting* membership of the board shall be filled by the Governor for the unexpired term with the consent of the Senate ~~and the House of Representatives~~. In the event that the General Assembly is not in session at the time of the appointment, the consent of the Senate ~~and the House of Representatives~~ shall be obtained during the time the General Assembly next convenes.
- (5)~~(4)~~ At the first regular meeting of the board in each fiscal year, a chairperson shall be elected from its voting membership.

~~(6)(5)~~ The members shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.

~~(7)(6)~~ The commissioner of education shall serve as the executive secretary to the board.

~~(8)(7)~~ The primary function of the board shall be to develop and adopt policies and administrative regulations, with the advice of the Local Superintendents Advisory Council, by which the Department of Education shall be governed in planning, coordinating, administering, supervising, operating, and evaluating the educational programs, services, and activities within the Department of Education which are within the jurisdiction of the board.

➔Section 2. KRS 156.040 is amended to read as follows:

- (1) As used in this section, "relative" means father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.
- (2) A member of the Kentucky Board of Education shall:
 - (a) Be at least thirty (30) years of age;
 - (b) Have at least an associate degree or its equivalent;
 - (c) Have been a resident of Kentucky for at least three (3) years preceding the member's appointment;
 - (d) Not hold a state office requiring the constitutional oath;
 - (e) Not be a member of the General Assembly;
 - (f) Not hold or discharge the duties of any civil or political office, deputyship, or agency under the city or county of his or her residence;
 - (g) Not be directly or indirectly interested in the sale to the Kentucky Board of Education or the Department of Education of books, stationery, or any other property, materials, supplies, equipment, or services for which board or department funds are expended;
 - (h) Not have a relative as defined in subsection (1) of this section who is employed by the Department of Education;
 - (i) Not have been removed from the board for cause; and
 - (j) Not be engaged as an elementary or secondary education professional educator.

~~{(3) Appointments to the board shall be made without reference to occupation, political affiliation, or similar considerations.}~~

➔Section 3. KRS 63.080 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section and otherwise provided by law, any person appointed by the Governor, either with or without the advice and consent of the Senate, may be removed from office by the Governor for any cause the Governor deems sufficient, by an order of the Governor entered in the executive journal removing the officer.
- (2)
 - (a) Except as provided in subsections (3) and (4) of this section, members of ***the Kentucky Board of Education***; the board of trustees of the University of Kentucky;~~{;}~~ the board of trustees of the University of Louisville; ***and***~~{, members of}~~ the board of regents respectively of Eastern Kentucky University, Western Kentucky University, Morehead State University, Kentucky State University, Northern Kentucky University, Murray State University, and the Kentucky Community and Technical College System shall not be removed except for cause.
 - (b) Members of the ~~{Kentucky Board of Education and the}~~ Council on Postsecondary Education shall not be removed except for cause.
 - (c) A member of a board of trustees or board of regents specified in paragraph (a) of this subsection may be removed for cause as follows:
 1. The Governor or the board of trustees or board of regents, as applicable, shall notify, in writing, the member and the Council on Postsecondary Education that the member should be removed for cause and shall specify the conduct warranting removal;

2. The member shall have seven (7) days to voluntarily resign or to provide evidence to the Council on Postsecondary Education that the member's conduct does not warrant removal;
 3. Within thirty (30) days after receipt of notice from the Governor or the board, the Council on Postsecondary Education shall review the written notice, investigate the member and the conduct alleged to support removal, and make a nonbinding recommendation, in writing, to the Governor as to whether the member should be removed, a copy of which shall also be provided to the Legislative Research Commission;
 4. The Governor shall then make a determination, in writing, whether the member should be removed and shall notify the member, the applicable board, the Council on Postsecondary Education, and the Legislative Research Commission of the determination; and
 5. If the Governor's determination is to remove the member, the Governor shall remove the member by executive order, and shall replace the member with a new appointment according to the applicable statutes for the board of trustees or board of regents.
- (d) For the purposes of this subsection, a member may be removed for cause for conduct including but not limited to malfeasance, misfeasance, incompetence, or gross neglect of duty.
- (3) For a board specified in subsection (2)(a) of this section that is required by law to have proportional representation in its membership based on residence, political affiliation, gender, minority racial composition, or professional qualifications, the Governor or other appointing authority may remove any member of the board and replace him or her with another individual in order to bring the membership into compliance with the statutory proportional representation requirement for the board, provided that the Governor or other appointing authority shall:
- (a) Only exercise the removal authority granted in this subsection if appointment at the end of the next expiring term of a member, or at the end of the next expiring term of members if two (2) or more members' terms expire at the same time, cannot cure the deficiency in the proportional representation requirement;
 - (b) Remove the fewest number of members necessary to bring the membership into compliance with the proportional representation requirement for the board;
 - (c) Identify the order in which the members were appointed to their current terms on the board and, beginning with the most recently appointed member who may be removed and replaced to bring the membership into compliance with the proportional representation requirement, remove the member or members according to the length of their tenure on the board, without taking into account any prior term of service on the board by the member;
 - (d) Provide any member proposed to be removed with the following:
 1. Written notice, at least seven (7) days prior to the member's removal from the board, stating the statutory proportional representation requirement that the member does not satisfy; and
 2. An opportunity during the seven (7) day notice period for the member to voluntarily resign or to provide evidence to the Governor or other appointing authority that the member does satisfy the proportional representation requirement or that another member on the board who also does not satisfy the requirement has a shorter tenure than the member proposed to be removed;
 - (e) Replace any removed member with only those individuals who will bring the board into compliance with the proportional representation requirement; and
 - (f) Appoint any new member in the same manner as provided by law for the member being removed and to fill the remainder of the removed member's unexpired term.
- (4) For a board of trustees or board of regents specified in subsection (2)(a) of this section, the Governor may remove for cause all appointed members of the board and replace the entire appointed membership as follows:
- (a) The Governor shall notify, in writing, the board and the Council on Postsecondary Education that the entire appointed membership of the board should be removed for cause and shall specify the conduct warranting removal;

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- (b) The board or its members shall have seven (7) days to voluntarily resign or to provide evidence to the Council on Postsecondary Education that the conduct of the board or of individual members does not warrant removal;
- (c) Within thirty (30) days after receipt of notice from the Governor, the Council on Postsecondary Education shall review the written notice, investigate the board and the conduct alleged to support removal, and make a nonbinding recommendation, in writing, to the Governor as to whether the appointed board membership should be removed, a copy of which shall also be provided to the Legislative Research Commission;
- (d) The Governor shall then make a determination, in writing, whether the entire appointed board membership should be removed and shall notify the members, the Council on Postsecondary Education, and the Legislative Research Commission of the determination; and
- (e) If the Governor's determination is to remove the entire appointed membership of the board, the Governor shall remove the members by executive order, and shall replace the members with new appointments according to the applicable statutes for the board of trustees or board or regents.

For the purposes of this subsection, the entire appointed membership of a board of trustees or board of regents may be removed for cause if the board is no longer functioning according to its statutory mandate as specified in the enabling statutes applicable to the board, or if the board membership's conduct as a whole constitutes malfeasance, misfeasance, incompetence, or gross neglect of duty, such that the conduct cannot be attributed to any single member or members.

➔Section 4. The General Assembly confirms Executive Order 2020-610, dated July 21, 2020, relating to the reorganization of the Kentucky Board of Education, to the extent not otherwise confirmed or superseded by this Act.

Signed by Governor April 5, 2021.