

Table of Contents

2022 First Extraordinary Session

CHAPTER 1 (HB 1, Blanton, Stivers, and others)	1
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Tables and Indexes

Members and Officers of the General Assembly	A-1
Table of KRS Sections Affected	B-1
Acts Disposition Table	C-1
Legislation with Special Effective Dates	D-1

CHAPTER 1

(HB 1)

AN ACT relating to disaster relief, making an appropriation therefor, and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

- (1) *The East Kentucky State Aid Funding for Emergencies (EKSAFE) fund is established and shall be:*
 - (a) *Administered by the Department of Military Affairs, Division of Emergency Management, in accordance with this section;*
 - (b) *A separate fund to provide financial assistance for those located in the areas named in the Presidential Declaration of a Major Disaster, designated FEMA-4663-DR-KY, and impacted by the July 2022 storms and flooding that occurred in the eastern Kentucky region; and*
 - (c) *Used to provide financial support to those located in the areas named in the Presidential Declaration of a Major Disaster, designated FEMA-4663-DR-KY, in the eastern Kentucky region to recover from the devastation caused by the storms and flooding.*
- (2) *The Department of Military Affairs or the Division of Emergency Management shall not publicly advertise or solicit contributions from the general public that could potentially impact fundraising efforts of not-for-profit disaster relief agencies.*
- (3) *The EKSAFE fund may receive state appropriations, gifts, grants, federal funds, and any other funds, both public and private.*
- (4) *Moneys in the EKSAFE fund as of June 30, 2023, through June 30, 2024, shall not lapse and shall carry forward until June 30, 2024.*
- (5) *Any interest earnings of the EKSAFE fund shall become a part of the EKSAFE fund and shall not lapse.*
- (6) (a) *Eligibility to receive financial support from the EKSAFE fund shall be limited to a:*
 1. *City, county, urban-county government, consolidated local government, unified local government, or charter county government;*
 2. *Nonprofit or public utility service provider;*
 3. *State agency; or*
 4. *School district;**that has disaster-related needs as a result of the devastation experienced from the July 2022 storms and flooding.*
 - (b) *An eligible recipient may receive moneys for expenses to provide disaster and recovery relief if the recipient:*
 1. *Is located in the areas named in the Presidential Declaration of a Major Disaster, designated FEMA-4663-DR-KY, relating to the storms and flooding that occurred in July 2022; and*
 2. *Has disaster-related needs in response to the storms and flooding that occurred in July 2022.*
 - (c) *The financial support shall not cover any new construction inside the one hundred (100) year floodplain area.*
 - (d) *Eligible expenses shall be those used to support disaster and recovery relief, including but not limited to:*
 1. *Replacement or renovation of publicly owned buildings damaged by the storms and flooding, but only to the extent of damage directly caused by the storms and flooding;*
 2. *Reimbursement for services, personnel, and equipment provided during the response and recovery to communities impacted by the storms and flooding, but only to the extent of damage directly caused by the storms and flooding;*

3. *Funding to cities, counties, and publicly owned utilities for the costs of replacement or repair of publicly owned buildings and their contents due to the damage from the storms and flooding, but only to the extent of damage directly caused by the storms and flooding;*
 4. *Assistance to cities and counties for expenses related to planning efforts for rebuilding and recovering from the damage, but only to the extent of damage directly caused by the storms and flooding;*
 5. *Assistance to support disaster recovery and relief needs of local school districts, but only to the extent of loss or damage directly caused by the storms and flooding, including but not limited to:*
 - a. *Financial support for school districts that will experience a default in bond payments; and*
 - b. *Financial support to assist school districts with building and tangible property replacement needs; and*
 6. *Contracted employees to administer and report on the funds.*
- (7) *Each recipient of moneys from the EKSAFE fund, including any agency of Kentucky state government, shall:*
- (a) *Retain documentation of a timely application for any applicable reimbursement, including but not limited to federal emergency disaster grant assistance, other financial disaster assistance, and insurance proceeds; and*
 - (b) *Adhere to the terms of the EKSAFE fund regarding reimbursement to the Commonwealth if funds from other sources are subsequently received after the receipt of financial assistance from the Commonwealth.*
- (8) (a) *Moneys in the EKSAFE fund may be used for the advancement of moneys to cities, counties, school districts, and nonprofit or public utility service providers experiencing strained fiscal liquidity while awaiting reimbursement from federal emergency management assistance or insurance claims and shall not be used for capital improvements.*
- (b) *Reimbursement of the advancement under paragraph (a) of this subsection shall:*
1. *Be determined by the:*
 - a. *State-local finance officer within the Department for Local Government for cities and counties, and nonprofit or public utilities; and*
 - b. *Department of Education for school districts; and*
 2. *Include a quarterly accounting of the advancement released and the outstanding balance through June 30, 2024.*
- (9) (a) *If a recipient of moneys from the EKSAFE fund subsequently receives moneys from any other source, the recipient shall reimburse the Commonwealth for the amount of the moneys received from the EKSAFE fund.*
- (b) *Before July 1, 2024, all moneys reimbursed to the Commonwealth under paragraph (a) of this subsection shall be deposited in the EKSAFE fund within thirty (30) days, and shall be continuously appropriated.*
- (c) *After June 30, 2024, all moneys reimbursed to the Commonwealth under paragraph (a) of this subsection shall be deposited into the budget reserve trust fund account established in KRS 48.705 within thirty (30) days.*
- (10) *The Division of Emergency Management shall promulgate administrative regulations to carry out this section.*
- (11) *The following reports shall be submitted to the Senate Standing Committee on Appropriations and Revenue and the House Standing Committee on Appropriations and Revenue or the Interim Joint Committee on Appropriations and Revenue by the tenth day of each month, beginning September 10, 2022, and ending July 10, 2024:*
- (a) *A report from the Office of State Budget Director that includes:*

1. *The name of each recipient of moneys from the EKSAFE fund;*
 2. *The dollar amount of moneys issued and the dates of issuance;*
 3. *A description of how the moneys were used; and*
 4. *A list of all requests:*
 - a. *Submitted, including the amount requested;*
 - b. *Denied, including a description of the reason for the denial; and*
 - c. *Where the amount awarded was greater than or less than the amount requested, including a description of the reason for the increase or decrease; and*
- (b) *A report from the Department of Education that includes:*
1. *The name of each school district receiving moneys from the EKSAFE fund;*
 2. *The dollar amount of moneys issued and the dates of issuance;*
 3. *A description of how the moneys were used; and*
 4. *A list of all requests:*
 - a. *Submitted, including the amount requested;*
 - b. *Denied, including a description of the reason for the denial; and*
 - c. *Where the amount awarded was greater than or less than the amount requested, including a description of the reason for the increase or decrease.*

➔Section 2. KRS 39A.305 is amended to read as follows:

- (1) The West Kentucky State Aid Funding for Emergencies (**WKSAFE**)~~[(SAFE)]~~ fund is established and shall be:
 - (a) Administered by the Department of Military Affairs, Division of Emergency Management, in accordance with this section;
 - (b) A separate fund to provide financial assistance for those impacted by the December 2021 storms and tornadoes that occurred in the west Kentucky region; and
 - (c) Used to provide financial support to the west Kentucky region to recover from the devastation caused by the storms and tornadoes.
- (2) The Department of Military Affairs or the Division of Emergency Management shall not publicly advertise or solicit contributions from the general public that could potentially impact fundraising efforts of not-for-profit disaster relief agencies.
- (3) The **WKSAFE** fund may receive state appropriations, gifts, grants, federal funds, and any other funds, both public and private.
- (4) Moneys in the **WKSAFE** fund as of June 30, 2022, *through June 30, 2026*~~[and June 30, 2023]~~, shall not lapse and shall carry forward until June 30, *2026*~~[2024]~~.
- (5) Any interest earnings of the **WKSAFE** fund shall become a part of the **WKSAFE** fund and shall not lapse.
- (6) (a) Eligibility to receive financial support from the **WKSAFE** fund shall be limited to a:
 1. City, county, urban-county government, consolidated local government, unified local government, or charter county government;
 2. Nonprofit or public utility service provider;
 3. State agency;
 4. School district; or
 5. Qualified lender as defined in KRS 154.20-580;

that has disaster-related needs as a result of the devastation experienced from the December 2021 storms and tornadoes.

- (b) An eligible recipient may receive moneys for expenses to provide disaster and recovery relief if the recipient:
 - 1. Is located in the areas named in a Presidential Declaration of Emergency relating to the storms and tornadoes that occurred in December 2021; and
 - 2. Has disaster-related needs in response to the storms and tornadoes that occurred in December 2021.
- (c) Eligible expenses shall be those used to support disaster and recovery relief, including but not limited to:
 - 1. Replacement or renovation of **publicly owned**~~public~~ buildings damaged by the storms and tornadoes, but only to the extent of damage directly caused by the storms **and tornadoes**;
 - 2. Reimbursement for services, personnel, and equipment provided during the response and recovery to communities impacted by the storms and tornadoes, **but only to the extent of damage directly caused by the storms and tornadoes**;
 - 3. Funding to cities, counties, and publicly owned utilities for the costs of replacement or repair of publicly owned buildings and their contents due to the damage from the storms and tornadoes, but only to the extent of damage directly caused by the storms **and tornadoes**;
 - 4. Assistance to cities and counties for expenses related to planning efforts for rebuilding and recovering from the damage, but only to the extent of damage directly caused by the storms **and tornadoes**;
 - 5. Assistance to support disaster recovery and relief needs of local school districts, **but only to the extent of damage directly caused by the storms and tornadoes**, including but not limited to:
 - a. Financial support for school districts that will experience a default in bond payments; and
 - b. Financial support to assist school districts with building and tangible property replacement needs;~~and~~
 - 6. Contracted employees to administer and report on the funds; **and**
 - 7. *a. Financial assistance to cities, counties, and school districts for realized revenue losses, but only to the extent the loss is directly caused by the storms and tornadoes, and to be determined on a quarterly basis by the:*
 - i. State-local finance officer within the Department for Local Government for cities and counties; and*
 - ii. Department of Education for school districts.**b. The financial assistance determined in subdivision a. of this subparagraph shall be limited to:*
 - i. One hundred percent (100%) of the lost revenue in fiscal year 2022-2023;*
 - ii. Sixty-six percent (66%) of the lost revenue in fiscal year 2023-2024; and*
 - iii. Thirty-three percent (33%) of the lost revenue in fiscal year 2024-2025.*
- (7) Each recipient of moneys from the **WKSAFE** fund, including any agency of Kentucky state government, shall:
 - (a) Timely apply for federal emergency disaster grant assistance, other financial disaster assistance, and insurance proceeds; and
 - (b) Adhere to the terms of the **WKSAFE** fund regarding reimbursement to the Commonwealth if funds from other sources are subsequently received after the receipt of financial assistance from the **Commonwealth**~~state~~.
- (8) (a) Moneys in the **WKSAFE** fund may be used for the advancement of moneys to cities, counties, and nonprofit or public utility service providers experiencing strained fiscal liquidity while awaiting reimbursement from federal emergency management assistance or insurance claims and shall not be used for capital improvements.
- (b) Reimbursement of the advancement under paragraph (a) of this subsection shall:

1. Be determined by the:
 - a. *State-local finance officer within the Department for Local Government for cities and counties, and nonprofit or public utilities*~~[Government's state-local finance officer]~~; and
 - b. *Department of Education for school districts; and*
 2. Include a quarterly accounting of the advancement released and the outstanding balance through June 30, ~~2026~~~~[2024]~~.
- (9) (a) If a recipient of moneys from the **WKSAFE** fund subsequently receives moneys from any other source, the recipient shall reimburse the Commonwealth for the amount of the moneys received from the **WKSAFE** fund.
- (b) Before July 1, ~~2026~~~~[2024]~~, all moneys reimbursed to the Commonwealth under paragraph (a) of this subsection shall be deposited in the West Kentucky State Aid Funding for Emergencies (**WKSAFE**)~~[(SAFE)]~~ fund within thirty (30) days, and shall be continuously appropriated.
- (c) After June 30, ~~2026~~~~[2024]~~, all moneys reimbursed to the Commonwealth under paragraph (a) of this subsection shall be deposited into the *budget reserve trust fund account established in KRS 48.705*~~[general fund]~~ within thirty (30) days.
- (10) The Division of Emergency Management shall promulgate administrative regulations to carry out this section.
- (11) The following reports shall be submitted to the Senate Standing Committee on Appropriations and Revenue and the House Standing Committee on Appropriations and Revenue or the Interim Joint Committee on Appropriations and Revenue by the tenth day of each month, beginning May 10, 2022, and ending July 10, ~~2026~~~~[2024]~~:
- (a) A report from the Office of State Budget Director that includes:
 1. The name of each recipient of moneys from the **WKSAFE** fund;
 2. The dollar amount of moneys *issued and the dates of issuance*~~[received]~~;
 3. A description of how the moneys were used; and
 4. A list of all requests:
 - a. Submitted, including the amount requested;
 - b. Denied, including a description of the reason for the denial; and
 - c. Where the amount awarded was greater than or less than the amount requested, including a description of the reason for the increase or decrease; and
 - (b) A report from the Department of Education that includes:
 1. The name of each school district receiving moneys from the **WKSAFE** fund;
 2. The dollar amount of moneys *issued and the dates of issuance*~~[received]~~;
 3. A description of how the moneys were used; and
 4. A list of all requests:
 - a. Submitted, including the amount requested;
 - b. Denied, including a description of the reason for the denial; and
 - c. Where the amount awarded was greater than or less than the amount requested, including a description of the reason for the increase or decrease.
- (12) A report shall be submitted to the Senate Standing Committee on Appropriations and Revenue and the House Standing Committee on Appropriations and Revenue or the Interim Joint Committee on Appropriations and Revenue by the tenth day following the end of each calendar quarter by the Cabinet for Economic Development, beginning July 10, ~~2026~~~~[2024]~~, and ending when no further applications for a loss payment may be submitted under KRS 154.20-589(7), including:
- (a) The name of each qualified lender receiving a loss payment;
 - (b) The dollar amount of the payment received;

- (c) A description of the loan terms; and
- (d) An explanation regarding why the loss payment was needed.

➔Section 3. There hereby is appropriated General Fund moneys from the Budget Reserve Trust Fund Account (KRS 48.705) in the amount of \$200,000,000 in fiscal year 2022-2023 to the East Kentucky State Aid Funding for Emergencies (EKSAFE) Fund. The financial support provided by the EKSAFE Fund shall not cover any new construction inside the 100-year floodplain area. Notwithstanding KRS 45.229, the General Fund appropriation balance for this purpose at the end of each fiscal year shall not lapse and shall carry forward through June 30, 2024.

➔Section 4. There hereby is appropriated Restricted Funds from the East Kentucky State Aid Funding for Emergencies (EKSAFE) Fund in the amount of \$75,000,000 in fiscal year 2022-2023 to the Military Affairs budget unit to be used by the Division of Emergency Management in providing financial assistance for those located in the areas named in the Presidential Declaration of a Major Disaster, designated FEMA-4663-DR-KY, and impacted by the July 2022 storms and flooding in the eastern Kentucky region, according to the criteria established in Section 1 of this Act. Notwithstanding KRS 45.229, the Restricted Funds appropriation balance for this purpose at the end of fiscal year 2022-2023 shall not lapse and shall carry forward to fiscal year 2023-2024.

➔Section 5. There hereby is appropriated Restricted Funds from the East Kentucky State Aid Funding for Emergencies (EKSAFE) fund in the amount of \$40,000,000 in fiscal year 2022-2023 to the Military Affairs budget unit to be used by the Division of Emergency Management for the advancement of moneys to school districts and nonprofit or public utility service providers for the purposes set out in subsection (8)(a) of Section 1 of this Act. No moneys from this appropriation shall be awarded until all moneys appropriated in Section 4 of this Act have been awarded. The Restricted Funds appropriation balance that has not been awarded for this purpose as of January 7, 2023, shall lapse to the Budget Reserve Trust Fund Account (KRS 48.705).

➔Section 6. There hereby is appropriated Restricted Funds from the East Kentucky State Aid Funding for Emergencies (EKSAFE) Fund in the amount of \$40,000,000 in fiscal year 2022-2023 to the Operations and Support Services budget unit of the Department of Education to be used by the department in providing financial assistance for school districts according to the criteria established in this section. Notwithstanding KRS 45.229, the Restricted Funds appropriation balance for this purpose at the end of fiscal year 2022-2023 shall not lapse and shall carry forward to fiscal year 2023-2024. Eligible expenses under this section shall be those used to support disaster and recovery relief for those located in the areas named in the Presidential Declaration of a Major Disaster, designated FEMA-4663-DR-KY, relating to the storms and flooding that occurred in July 2022, including but not limited to:

(1) Providing the necessary wrap-around services for school children and their families in recovering from the impact of the storms and flooding, including after-school services and activities held at the school facilities or elsewhere for mental health counseling services, outside-of-school tutoring, and other services to advance the scholastic progress of students;

(2) Assisting school districts in addressing the additional transportation costs to provide transportation to students that are displaced from their district or county; and

(3) Transferring a portion to the School Facilities Construction Commission to offer funding for repairs of school building facilities that have been severely damaged, but only to the extent of damage directly caused by the storms and flooding. If a school district receives insurance funds for the facility, the school district shall reimburse the EKSAFE fund an amount equal to the amount received from insurance proceeds.

➔Section 7. There hereby is appropriated Restricted Funds from the East Kentucky State Aid Funding for Emergencies (EKSAFE) Fund in the amount of \$45,000,000 in fiscal year 2022-2023 to the Highways budget unit within the Transportation Cabinet for the non-federal share of state road and bridge repair projects that are eligible for reimbursement from federal emergency disaster assistance in areas named in a Presidential Declaration of a Major Disaster, designated FEMA-4663-DR-KY, relating to the flooding that occurred in July 2022. Notwithstanding KRS 45.229, the Restricted Funds appropriation balance for this purpose at the end of fiscal year 2022-2023 shall not lapse and shall carry forward to fiscal year 2023-2024.

➔Section 8. Notwithstanding 2022 Ky. Acts Ch. 199, sec. 1, Part III, 2., the Restricted Funds appropriation for the Highways budget unit within the Transportation Cabinet may be increased pursuant to KRS 48.630 for expenditures relating to the response and recovery from flooding related to the Presidential Declaration of a Major Disaster, designated FEMA-4663-DR-KY.

➔Section 9. There hereby is appropriated Federal Funds in the amount of \$12,662,200 in fiscal year 2022-2023 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 to the East Kentucky State Aid Funding for Emergencies (EKSAFE) Fund for water and sewer infrastructure related to the July 2022 flooding that

occurred in the eastern Kentucky region, but only to the extent of damage directly caused by the flooding. The moneys shall be used for water and sewer infrastructure projects necessary for recovery, the rebuilding of replacement school facilities, and not previously utilized housing sites designed to mitigate the risk of future flooding.

➔Section 10. Notwithstanding 2022 Ky. Acts Ch. 199, sec. 1, Part III, 2., any budget unit receiving insurance claim receipts relating to the response and recovery from flooding related to the Presidential Declaration of a Major Disaster, designated FEMA-4663-DR-KY, may request a Restricted Funds appropriation increase pursuant to KRS 48.630 to enable expenditures from those receipts.

➔Section 11. (1) The provisions of this section shall apply only to school districts located in counties included in the Presidential Declaration of a Major Disaster, designated FEMA-4663-DR-KY, resulting from the July 2022 storms and flooding in the eastern Kentucky region. Subsection (10) of this section also shall apply to school districts located in counties included in a Presidential Declaration of Emergency relating to the storms and tornadoes that occurred in December 2021 in the western Kentucky region.

(2) Notwithstanding the requirement in KRS 158.070 that the student instructional year be not less than 170 student attendance days and any other statute or administrative regulation to the contrary, the commissioner of education, as used in KRS 156.005, shall waive up to 15 student attendance days for days missed by school districts through January 20, 2023, as a result of the July 2022 flooding.

(3) Notwithstanding any other statute or administrative regulation to the contrary, student attendance days waived under this section shall be applied on a district-wide basis, except the commissioner of education may waive additional days on a per school basis for schools that were closed on days that the closure was not district-wide.

(4) Notwithstanding any other statute, administrative regulation, or local board of education policy to the contrary, each classified and certified employee of a local board of education who did not perform his or her employment contract work duties on one or more student attendance days waived under the provisions of this section shall be considered to have completed one day of his or her employment contract for each day waived.

(5) Student attendance days waived under this section shall not be counted against student attendance days authorized under a school district's approved nontraditional instruction plan.

(6) In addition to the days set forth under this section, and notwithstanding KRS 161.152 and any other statute or administrative regulation to the contrary, until January 20, 2023, a local board of education may allow emergency leave to any full-time or part-time classified or certified employee if the local board determines it is necessary due to the disaster. If a local school board determines to allow emergency leave under this section, it shall waive any requirement under local board policy necessary to provide the emergency leave.

(7) (a) Notwithstanding any other statute or administrative regulation to the contrary, until January 20, 2023, and with the approval of the commissioner of education, a school district may temporarily assign students at the school, grade, classroom, or student group level to remote instruction due to uninhabitable school buildings.

(b) With prior authorization from the local board of education, the decision to temporarily assign students to remote instruction shall be at the discretion of the superintendent.

(c) Remote instruction may be provided to a particular school, grade, classroom, or group of students up to 20 days under this section. No school district shall utilize remote instruction under this section for more than 20 days.

(d) Students temporarily assigned to remote instruction shall receive at least the minimum daily instruction required pursuant to KRS 158.060, which shall include the content standards as provided under Kentucky's academic standards.

(8) Notwithstanding any statute or administrative regulation to the contrary, a local board of education may modify its district facility plan without convening the local planning committee for the sole purpose of construction or repair related to the disaster, including alteration of other facilities to meet the district's response. Any modification shall identify the related construction or repair as the highest priority on the modified district facility plan, subject to approval by the commissioner of education or designee.

(9) (a) For the 2022-2023 school year, a school district may revise its school calendar under the requirements of this subsection.

(b) For purposes of this subsection, notwithstanding the requirement in KRS 158.070 that the student instructional year not be less than 170 student attendance days and any other statute or administrative regulation to the contrary, students shall receive a minimum of 1,062 instructional hours, less any waiver of instructional time provided in accordance with this Act, KRS 158.070(3)(f), and 702 KAR 7:140.

(c) Notwithstanding KRS 158.070(4)(b), a school district may reach the required instructional hours by adding time to the day. A day shall not exceed seven hours of instructional time unless the district submitted and received approval from the commissioner of education for an innovative alternative calendar.

(d) If a local board of education seeks to revise its school calendar under this section, the board shall submit a plan for approval to the Kentucky Department of Education demonstrating how the required instructional hours will be completed.

(10) Notwithstanding KRS 157.360(10) or any other statute or administrative regulation to the contrary, if the average daily attendance for the 2022-2023 school year of a school district included in this section decreases by three percent or more than the average daily attendance from the 2018-2019 school year, the average daily attendance for purposes of calculation of program funding for the 2023-2024 school year shall be increased by an amount equal to two-thirds of the decrease in average daily attendance. If the average daily attendance remains the same or decreases in the 2023-2024 school year, the average daily attendance for purposes of calculating program funding for the 2024-2025 school year shall be increased by an amount equal to one-third of the decrease for the first year of the decline.

➔Section 12. Whereas support and relief efforts are imperative for the Commonwealth to recover from the considerable damage caused by the recent disasters in the Commonwealth, 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.

Signed by Governor August 26, 2022.