

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(Amendment)

702 KAR 3:090. Depository of board, collateral~~[bond, penal sum]~~.

RELATES TO: KRS 156.010, 160.570

STATUTORY AUTHORITY: KRS 156.029(8)~~[(7)]~~, 160.570

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(8)~~[(7)]~~ requires the Board of Education to develop policies and to promulgate administrative regulations by which the Department of Education shall be governed. KRS 160.570(2) requires each local board of ~~education's~~~~[education]~~ designated depository of funds to ~~provide collateral~~~~[execute bond]~~ for the faithful performance of its duties, ~~which~~~~[and the bond]~~ shall be approved by the local board and the Commissioner of Education. KRS 160.570(2) states that collateral shall be provided in accordance with KRS 41.240.~~[KRS 160.570(2) also defines the nature and qualifying sureties for the bond and requires the Kentucky Board of Education to regulate the penal sum of the bond.]~~ This administrative regulation establishes the process for approval of collateral by the local board of education and the Commissioner of Education~~[standards for bonds of depository]~~.

Section 1.

(1) Before any board of education appoints a bank, trust company, or savings and loan association to serve as depository as required pursuant to KRS 160.570, the board shall:~~[A local board of education, on advice of the superintendent, shall determine the penal sum of the bond of depository at least thirty (30) days prior to the depository entering upon its duties and by July 1 of each fiscal year thereafter.]~~

(a) Require the depository to pledge collateral having an aggregate current face value or current quoted market value at least equal to the local board of education deposits as of the last business day of each quarter in which funds are so deposited, or provide to the local board a surety bond or surety bonds in favor of the local board of education in an amount at least equal to the local board of education deposits, as of the last business day of each quarter in which funds are deposited; provided, however, that amounts insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation need not be so collateralized.

(b) As an alternative to subsection (1)(a), a depository insured by the Federal Deposit Insurance Corporation may either pledge to the local board, as collateral, securities or other obligations having an aggregate face value or a current quoted market value or provide to the local board a surety bond or surety bonds in an amount equal to eighty (80) percent of the value of the local board of education deposits including demand and time accounts, if the depository is determined by the State Investment Commission to have very strong credit with little or no credit risk at any maturity level and the likelihood of short-term unexpected problems of significance is minimal or not of a serious or long-term nature.

(2) The value of the local board of education deposit will be determined at the end of the business day of deposit and as of the end of business on the last day of each quarter that funds are so deposited.

Section 2. ~~[The district shall obtain approval for the bond of depository from the Commissioner of Education prior to the depository entering upon its duties.]~~ The local board must submit the affidavit of the depository to the Commissioner of Education for approval. The collateral ~~[A depository bond]~~ shall not be approved by the Commissioner of

Education if the commissioner determines that the ~~collateral bond~~ is inadequate to insure the deposits of the local board of education~~, pursuant to the commissioner's authority in KRS 156.010~~.

Section 3. Incorporation by Reference.

(1) "Affidavit of Depository", is incorporated by reference.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Kentucky Department of Education, Office of Finance and Operations, 300 Sower Building, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.

~~{(1)}~~

~~{(a)} [The penal sum of the depository bond shall be at least equal to either;]~~

~~[1.] [103 percent of the current daily balances in each account as they may fluctuate throughout the life of the bond; or]~~

~~[2.] [The highest daily balance in each account each month for all accounts in the previous year.]~~

~~{(b)} [The penal sum of the depository bond shall be adjusted to reflect expected increases or decreases in the highest daily balances due to anticipated changes of deposit amounts in the current year.]~~

~~{(2)}~~

~~{(a)} [The escrow agent for a depository choosing to use a collateral bond shall file safekeeping receipts with the local board of education as evidence of any collateral that has been pledged in accordance with the provisions of the bond executed by the depository institution.]~~

~~{(b)} [To reduce the penal sum of a collateral bond, the local board of education shall submit a notice, with reasons for the reduction, to the Commissioner of Education. A local board of education shall not permit a reduction of the collateral of a bond without execution of a new bond with prior approval of the Commissioner of Education.]~~

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON GLASS, Commissioner

LU YOUNG, Chair

APPROVED BY AGENCY: February 11, 2022

FILED WITH LRC: February 11, 2022 at 4 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on April 29, 2022 at 10:00 a.m. in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2022 Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does:

The proposed amendment establishes the collateral requirements for school district depositories.

(b) The necessity of this administrative regulation:

KRS 160.570 requires school districts to name a bank, savings and loan or trust company as depository to receive school district funds. Per the statute, district deposits must be secured by collateral as set forth in KRS 41.240. This regulation amendment conforms the regulatory requirements to KRS 41.240.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 160.570 requires school districts to name a bank, savings and loan or trust company as depository to receive school district funds and to provide collateral pursuant to Kentucky Board of Education Administrative Regulations consistent with KRS 41.240. This proposed amendment conforms the regulation to the statutory requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation establishes the collateral requirements for school district deposits in conformance and as required by KRS 160.570 and 41.240.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment conforms the collateral requirements to KRS 41.240 as required by KRS 160.570. The amendment provides for additional types of collateral for school district deposits.

(b) The necessity of the amendment to this administrative regulation:

It is necessary to amend the regulation to conform to the current statutory requirements of KRS 160.570 and 41.240

(c) How the amendment conforms to the content of the authorizing statutes:

KRS 160.570 and 41.240 establish the collateral requirements for school district deposits. The amendment provides for additional types of collateral consistent with the aforementioned statutes.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment sets forth school district depository collateral requirements consistent with KRS 160.570 and 41.240.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

School districts and their depositories (banks, savings and loans and trust companies).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Under the existing regulation, school districts are currently required to provide proof of collateral in the form of a bond. The proposed amendment permits additional forms of collateral consistent with KRS 160.570 and 41.240. Under the amendment, districts will continue to provide proof of the collateral.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There should be no new costs to districts or their depositories in providing collateral. District depositories currently have to provide a bond. Any cost would be related to acquiring a bond. However, the amendment permits other forms of collateral such as securities owned by the depository. There may be no cost to the depository in pledging owned securities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Conforming the regulation to the requirements of KRS 160.570 and 41.240 provide additional collateral options to secure district deposits.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

Any costs are expected to be minimal to nil.

(b) On a continuing basis:

Any costs are expected to be minimal to nil.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

General funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No fees are expected.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This regulation does not establish or increase fees.

(9) TIERING: Is tiering applied?

Tiering was not applied. The regulation is applicable to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

School Districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 160.570 and 41.240

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This regulation is not expected to generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This regulation is not expected to generate revenue.

(c) How much will it cost to administer this program for the first year?

Any costs are expected to be minimum.

(d) How much will it cost to administer this program for subsequent years?

Any costs are expected to be minimum.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):N/A

Expenditures (+/-):N/A

Other Explanation:

Districts are required to obtain collateral for school district deposits currently. The proposed amendment permits additional collateral to secure district deposits consistent with KRS 160.570 and 41.240.