

200 KAR 6:070. High performance building standards.

RELATES TO: KRS 56.770, 56.775, 56.777, 56.872, 164A.580

STATUTORY AUTHORITY: KRS 56.777

NECESSITY, FUNCTION, AND CONFORMITY: KRS 56.777(7) requires that the Finance and Administration Cabinet promulgate administrative regulations to establish high performance building standards for state building projects, considering recommendations from the High-Performance Buildings Advisory Committee established by KRS 56.777(7). This administrative regulation establishes the criteria for the high performance building standards and the benchmarks by which the standards will be measured in consideration of the Committee's recommendations.

Section 1. Definitions.

- (1) "Committee" means the High-Performance Buildings Advisory Committee established by KRS 56.777.
- (2) "ENERGY STAR" is defined by KRS 56.770(17).
- (3) "High performance building" is defined by KRS 56.770(7).
- (4) "LEED" is defined by KRS 56.770(19).
- (5) "Major renovation building project" means a renovation project for which the budget exceeds half of the replacement value of the building being renovated.
- (6) "Replacement value" means the insured value.

Section 2. High Performance Building Standards. The standards established in this section shall apply to high performance buildings, in accordance with KRS 56.777.

- (1) All new construction and major renovation building projects for the amount of \$25 million or more in budget shall be designed, built, and submitted for certification to achieve a rating of Silver Level or higher using the LEED 2009 - New Construction Project Scorecard.
- (2) All new construction and major renovation building projects between \$5 million and \$25 million in budget shall be designed, built, and submitted for certification to achieve a rating of Certified level or higher using the LEED 2009 - New Construction Project Scorecard.
- (3) All new construction and major renovation building projects greater than \$5 million in budget shall additionally achieve a minimum of 7 points for new and for existing buildings under the LEED Energy and Atmosphere Credit 1, Optimize Energy Performance in the LEED 2009 - New Construction for Member Ballot.
- (4) All new construction and major renovation building projects between \$600,000 and \$5 million in budget shall be designed and built using the LEED Rating System as guidance.
- (5) Any new construction or major renovation building project that fails to achieve the LEED rating required under this section shall be considered to have met the requirements of this section, if:
 - (a) The required rating was not achieved due to the sole failure to receive a point for certified wood, credit 7 in the Material and Resource category of the LEED Rating System; and
 - (b) The project used wood products certified under the American Tree Farm System (ATFS) or the Sustainable Forestry Initiative (AFI).

Section 3. Exemption From Standards. A new construction or major renovation building project that is required, or that it will otherwise be in the best interest of the Commonwealth to grant an exemption. to meet the high performance building standards may be granted an exemption from the standards if there is an extraordinary undue burden in accordance with subsections (2) and (3) of this section.

(1) An affected agency may request that the Secretary of the Finance and Administration Cabinet, or in the case of a state university, which manages its own capital construction projects under KRS 164A.580, the university's governing board, grant an exemption from the standards in Section 2 of this administrative regulation. This request for exemption shall be made in writing and fully justified.

(2) The Secretary, or the university's governing board with actual jurisdiction, shall have the nondelegable authority to grant an exemption from the standards in Section 2, if the agency adequately demonstrates that an extraordinary undue burden will be placed upon the agency if project compliance is required, or that it will otherwise be in the best interest of the Commonwealth to grant an exemption. If the Secretary or the university's governing board grants an exemption, the exemption shall specify the extent to which the standards in Section 2 of this administrative regulation shall be waived.

(3) Factors to be considered in determining whether to grant an exemption shall include:

- (a) Whether the cost of compliance exceeds a building's life-cycle cost savings;
- (b) Whether compliance will increase costs beyond the appropriated funding capacity for a project;
- (c) Whether compliance will compromise the historic nature of a building;
- (d) Whether compliance will violate federal, state, or local law;
- (e) Whether the unique nature of a project makes compliance impractical or not feasible.
- (f) Whether another high performance building program, such as the ENERGY STAR rating system or the Green Globes rating system, will be utilized even if an exemption from the standards in Section 2 of this administrative regulation is granted.

(4) If a university's governing board grants an exemption, a copy of the exemption shall be promptly provided to the Secretary of the Finance and Administration Cabinet for informational purposes only.

Section 4. Mandatory Requirement. Pursuant to KRS 56.777(7), each high-performance building shall be designed, constructed, or renovated so that it is capable of being rated as an ENERGY STAR building. An exemption shall not be granted from this requirement.

Section 5. For all new construction and major renovation building projects, agencies shall consider and encourage the use of the items identified in KRS 56.777(8). The use of locally grown lumber shall include wood products certified under the Forest Stewardship Council (FSC), the American Tree Farm System (ATFS), or the Sustainable Forestry Initiative (SFI).

Section 6. In accordance with KRS 56.777(2), the Finance and Administration Cabinet and universities that manage their own capital construction projects under KRS 164A.580 shall give a preference in the leasing process to high performance buildings over other buildings that do not meet these standards, unless an exemption is granted in accordance with Section 2 of this administrative regulation.

Section 7. Universities that manage their own capital construction projects under KRS 164.580 shall provide the Finance and Administration Cabinet with a report on or before September 1 of each odd-numbered year, on the use of energy-efficiency measures, including improvements in energy efficiency planned or realized through the use of high performance buildings standards, in order to allow the Finance and Administration Cabinet to comply with the reporting requirements of KRS 56.782.

Section 8. Incorporation by Reference.

- (1) The following material is incorporated by reference:
- (a) "LEED 2009 - New Construction Project Scorecard"; and
 - (b) "LEED 2009 - New Construction for Member Ballot".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Facilities and Support Services, Room 340, Bush Building, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
(35 Ky.R. 2371; Am. 2764; 36 Ky.R. 20; eff. 7-29-2009; Crt eff. 2-10-2020.)