Kentucky Teachers' Retirement System

Board of Trustees
GOVERNANCE MANUAL

Adopted March 16, 2009
Amended September 21, 2009;
September 17, 2012;
December 17, 2012
December 16, 2013
June 15, 2015
December 9, 2015

Kentucky Teachers' Retirement System

Board Governance Manual

TABLE OF CONTENTS

1. Introduction: Purpose of the Board Governance Manual 4

2. Brief Overview of the Retirement System 5

3. Members of the Board 5

4. Organizational Structure 5

5. Board Organization; Board Conduct; Board Operations; Board Member Roles and Responsibilities; Executive Secretary Roles and Responsibilities 5

6. Board Committees and Assignments 11

7. Board Policies and Charters 13

8. Service Provider Selection 13

9. Disaster Recovery Plan 13

10. Strategic Planning 14

Appendices

Appendix 1.....Members of the Board

Appendix 2.....Organizational Structure

Appendix 3.....KTRS Law Book

Appendix 4.....Commonwealth of Kentucky, Executive Branch Ethics Commission, "Guide to the Executive Branch Code of Ethics for All Executive Branch Public Servants, Including Merit and Non-Merit Employees"

Appendix 5.....Office of the Attorney General, "Your Duty under the Law," The Kentucky Open Records and Open Meetings Acts

Appendix 6.....KRS Chapter 13B

Appendix 7.....KTRS Conflict of Interest and Confidentiality Policy

Appendix 8.....KTRS Communication Policy

Appendix 9.....KTRS Trustee Education Policy

Appendix 10.....State Travel Regulation

Appendix 11.....Investment Statutes and Investment Policies Established by Administrative Regulations

Appendix 12.....Charter of the Insurance Committee

Appendix 13.....Charter of the Legislative Committee

Appendix 14.....Charter of the Personnel Committee

Appendix 15.....Charter of the Appeals Committee

Appendix 16.....Charter of the Governance and Audit Committee

Appendix 17.....Policy on Annual Retirement Appropriations Payable by the State

Appendix 18.....Procurement Policy

Kentucky Teachers' Retirement System
Board Governance Manual

1. INTRODUCTION: Purpose of the Board Governance Manual

The laws governing the operations of the Kentucky Teachers' Retirement System provide that the Board of Trustees is responsible for the general administration, management, and proper operation of the retirement system. In satisfying this responsibility, each board member acts in a fiduciary capacity. The obligation of a fiduciary is the highest duty under law. Each KTRS board member is, at all times, subject to the statutory and common law duties of a fiduciary and the board policies governing board member conduct.

This Board Governance Manual is a guide to assist the KTRS board in fulfilling its fiduciary responsibilities and to facilitate the organized, efficient, and cohesive functioning of the board. This Board Governance Manual is to be provided to all KTRS board members.

The Board Governance Manual, and all attached documents and policies, shall be reviewed and, if necessary, amended by the board at least every three years. However, the Board Governance Manual, and all attached documents and policies, shall be reviewed and amended by the board whenever circumstances warrant action.

Vision and Mission Statement/Core Values
The board, acting in its fiduciary capacity, is dedicated to seeing that KTRS accomplishes its vision and mission.

- The KTRS vision statement is: "As provided by law, KTRS will provide retirement security for the Commonwealth's retired educators."

- The KTRS mission statement is: "KTRS will achieve its vision by acting in the best interest of its participants, maintaining the financial security of the trust fund, and providing exceptional service to members, benefit recipients and employers."

- KTRS staff supports the vision statement and mission statement by exemplifying the following core values when serving the public: professionalism and integrity, exceptional teamwork, and excellence in service.

2. BRIEF OVERVIEW OF THE RETIREMENT SYSTEM

History. Teachers' Retirement System of the State of Kentucky (KTRS) was established as a defined benefit retirement plan by legislative enactment during the 1938 Session of the General Assembly. Two years later, in 1940, the retirement system received funding by the General Assembly and became fully operational.

The establishment of KTRS followed a study conducted in 1936 by the University of Kentucky that found that teachers could not afford to retire, that school districts were experiencing continued employment of teachers who would have retired if able and therefore were often not performing effectively, that teachers were not allowed to participate in Social Security, and that Kentucky was finding it difficult to attract and retain teachers.

The mission of KTRS is to provide retirement security for the Commonwealth's retired educators. It is established and governed under the provisions of KRS 161.220 to 161.716 and KRS 161.990. It provides retirement annuities to qualifying members as well as survivorship benefits, life insurance benefits, disability retirement benefits and, since 1964, medical insurance benefits.

Established by Law. KTRS was established by the General Assembly under statutory law. The state laws governing the administration of KTRS are set forth in the "law book" attached in Appendix 3.

3. MEMBERS OF THE BOARD

The current roster of members of the KTRS board, and their committee assignments, are set forth in the "Members of the Board" document attached in Appendix 1. The "Members of the Board" document may be amended from time to time to account for changes in the roster of members of the KTRS board and their committee assignments.

4. ORGANIZATIONAL STRUCTURE

The current list of primary employees of KTRS and selected service providers are set forth in the "Organizational Structure" document attached in Appendix 2. The "Organizational Structure" document may be amended from time to time to account for employee turnover and changes to service providers.

5. BOARD ORGANIZATION; BOARD CONDUCT; BOARD OPERATIONS; BOARD MEMBER ROLES AND RESPONSIBILITIES; EXECUTIVE SECRETARY ROLES AND RESPONSIBLITIES

A. Board Organization.

- Function and Composition. The laws governing the operations of the Kentucky Teachers' Retirement System provide that the Board of Trustees is responsible for the general administration, management, and proper operation of the retirement system. The

General Assembly has granted the retirement system all of the "powers and privileges" of a corporation to satisfy its statutory obligations. Among its many duties, the board is responsible for prudently investing members' assets, paying benefits due to retirees and beneficiaries, adopting administrative regulations and policies concerning the operations of the system, contracting for services and office space, keeping records and actuarial data, and publishing certain reports on the status of the system.

The KTRS board is established by KRS 161.250, which describes the board's composition and qualifications. The board consists of nine members as follows: the chief state school officer, the State Treasurer, and seven elected members. The chief state school officer and the State Treasurer are considered ex officio members of the board and may designate a person to represent them on the board. Elected board members serve four-year terms. The process of nomination and election of members is set forth in KRS 161.260.

Elected board members shall not serve more than three (3) consecutive four (4) year terms. An elected board member who has served three (3) consecutive terms may be elected again after an absence of four (4) years from the KTRS board.

Board members are not penalized for absences from their regular employment while attending authorized board meetings. Although board members serve without compensation, elected board members receive ninety dollars ($90) each day that the board is in session, and the board may authorize a per diem of ninety dollars ($90) for members representing the board on official business. Additionally, board members are reimbursed for reasonable and necessary expenses incurred while serving the system.

- Oath of Office. Within ten (10) days of appointment or election, each board member will be required to sign an oath pledging to support the U.S. and Kentucky Constitutions, and that the member will diligently and honestly administer the affairs of the board and will not knowingly violate, or permit to be violated, any provision of the law applicable to the retirement system. The oath, signed by the member, will be filed with the Kentucky Secretary of State.

B. Board Code of Conduct.

- Fiduciary Duty. Board members are trustees of the retirement system funds and as such are subject to strict fiduciary standards of conduct. The board members must act solely in the best interests of the participants and beneficiaries of the system and for the exclusive purposes of providing them with benefits and defraying reasonable administrative expenses. The U.S. Supreme Court has concluded that this duty of loyalty means board members must wear only one hat as a trustee and not at the same time wear a second hat as a representative of outside interests. The members are required to discharge their duties with respect to the system with the care, skill, prudence, and diligence under the

circumstances then that a prudent person acting in a like capacity and familiar with such matters use in the conduct of an enterprise of a like character and with like aims.

- Conflict of Interest and Confidentiality. Board members are prohibited by law from engaging in certain party-in-interest transactions (e.g., furnishing of goods or services between the system and a relative of a board member), and are prohibited from using assets of the system for their own interests. Board members are prohibited from receiving any consideration for their own personal account from any party dealing with the system in connection with a transaction involving the system's assets. Board members may not act on behalf of a party whose interests are adverse to the system, its participants or beneficiaries. Board members are prohibited from having any direct or indirect interest in the gains or profits of any board investment. Furthermore, b oard members are prohibited by law from releasing information about KTRS or any of its members that would breach any duty to protect such information.

  See the Conflict of Interest and Confidentiality Policy attached as Appendix 7.

- Kentucky Ethics Laws. Board members are subject to the Kentucky Executive Branch Code of Ethics, KRS Chapter 11A. In addition to adhering to the provisions set forth in the Kentucky ethics laws, board members are prohibited from soliciting or accepting payment of travel expenses, including expenses incurred with the travel for lodging, meals, food and beverages from anyone other than KTRS. Additionally, board members are also prohibited from accepting anything of value from persons or corporations doing business or seeking to do business with the system. See Appendix 4.

C. Board Operations.

- Meetings. Attendance at board meetings is considered to be an essential element of a board member's fiduciary duty. Therefore, members are expected to attend all meetings unless there are extenuating circumstances that prevent such attendance.

- Notice of regular meetings. Regular meetings of the board occur on the third Monday during the months of March, June, September, and December each year.

- Notice of special meetings. Special meetings may be called by the Chair upon giving reasonable notice to each member. Notice of a special meeting will be delivered and posted in a conspicuous place at KTRS as soon as practicable but at least twenty-four (24) hours before the scheduled meeting. The business to be transacted at special meetings shall be specified in the notice of meeting.

- Quorum. The board must have a quorum of its members present at a meeting to conduct business and take official action. Five (5) members of the board constitute a quorum. Each member is entitled to one (1) vote. Four (4) votes or a majority of the members

present at the meeting, whichever is the larger number, will be necessary for a decision by the board. A majority of the voting members of a committee constitute a quorum of the committee.

- Kentucky's Open Meetings Law. The law requires that meetings of the board, including committees of the board, be open to observation by the public. All meetings of a quorum of the members of the board, or a committee of the board, where public business is discussed or action is taken must be conducted in public. Meetings of the board must be open to the public at all times unless the subject of the meeting falls within one or more of the open meetings exceptions found in the statute. Any person may attend any public meeting and cannot be required to identify themselves in order to attend. See "Your Duty Under the Law," The Kentucky Open Records and Open Meetings Acts, Office of the Attorney General, in Appendix 5.

- Robert's Rules of Order. When a question of parliamentary procedure arises, the most current edition of Robert's Rules of Order will be followed, unless Robert's Rules of Order are in conflict with KTRS statutes and regulations.

D. Board Member Roles and Responsibilities.

1. Basic Responsibilities of the Board. The board will undertake its oversight role with an emphasis on: outward vision rather than an internal preoccupation; encouragement of diversity in viewpoints; strategic leadership more than administrative detail; clear distinction of board and staff roles; collective rather than individual decisions; the future rather than past or present; and acting proactively rather than reactively.

    - The board will cultivate a sense of group responsibility.
    - The board will direct, control, and inspire the organization through the careful establishment of broad written policies reflecting the board's values and perspectives.
    - The board's major policy focus will be on the intended long-term impacts outside the organization, not on the administrative or programmatic means of attaining those effects.
    - The board will enforce upon itself matters such as attendance, preparation for meetings, policymaking principles, respect of roles, and ensuring the continuance of governance capability.
    - Continual board development will include orientation of new board members in the board's governance process and periodic board discussion of process improvement.
    - Determine agency vision and mission. It is the board's responsibility to create and review a statement of mission and purpose that articulates KTRS goals and means.
    - Contract for the services of an Executive Secretary to act as the "chief

administrative officer" of the board.

- Provide proper financial oversight. The board approves the annual budget and ensures that proper financial controls are in place.
- Ensure legal and ethical integrity, adhere to fiduciary duties, and maintain accountability. The board is ultimately responsible for ensuring adherence to legal standards and ethical norms.
- Ensure effective organizational planning. The board will be involved in the strategic planning process and assist in monitoring the system's goals.
- Support the Executive Secretary and assess his/her performance. The board should ensure that the Executive Secretary has the moral and professional support he or she needs to further the system's goals.

2. Responsibilities of Individual Board Members. Board members should:

- Be informed about KTRS's mission and policies.
- Attend board and committee meetings.
- Review agenda and supporting materials prior to board and committee meetings.
- Serve on committees and offer to take on special assignments.
- Keep up to date on developments in the pension and public fund arena.
- Follow conflict of interest, disclosure, and confidentiality policies.
- Assist the board in carrying out its fiduciary responsibilities.
- At all times meet high ethical standards to avoid even the appearance of impropriety.

3. Responsibilities of Board Chair and Vice Chair.

- The June regular meeting each year shall be the annual meeting, at which time as the first order of business, the board shall elect from its members a chair and a vice chair who shall take office immediately following their election.

- The chair shall not serve more than four (4) consecutive years as chair or vice chair of the board. The vice chair shall not serve more than four (4) consecutive years as chair or vice chair of the board. A trustee who has served four (4) consecutive years as chair or vice chair of the board may be elected chair or vice chair of the board after an absence of two (2) years from the positions.

The Chair shall:

- Preside over meetings of the board and may call upon the vice chair to preside during a meeting, or during the chair's absence.
- Call special meetings if necessary.

- Appoint all committee chairs as well as those who serve on such committees.
- Develop and review the agenda for board meetings with the Executive Secretary.
- Start and end meetings within scheduled time parameters.
- Set time-line for each agenda item.
- Keep discussions focused on topic.
- Help clarify participants' comments, summarize often so the board can see and feel the progress being made and so that staff has clear direction on decisions made and any necessary follow-up.
- Elicit full participation from all members of the board.
- Request additional information when chair feels board needs more data to make a decision and ensure appropriate staff follow-up on agenda items.
- Periodically consult with board members on their roles and help them assess their performance.

The Vice Chair shall:

- Perform the duties of chair in the absence of the chair or upon the chair's incapacity or request to act.
- Succeed the chair in the event of resignation, retirement, or death of the chair.
- Participate as a vital part of the board leadership.

4. Responsibilities of Committee Chair. Each committee chair shall:
   - Chair committee meetings and provide leadership to the committee.
   - Develop and review agenda for committee meeting with the Executive Secretary or appropriate staff and set tone for the committee work.
   - Report to the full board on committee's decisions, policies, and recommendations.

E. Executive Secretary Roles and Responsibilities for Meetings.

- Meeting Agenda. The Executive Secretary, in coordination with the board chair and committee chairs, will prepare, and distribute a written agenda for all meetings of the board and committees. The agenda items and related materials for board and committee meetings will generally be distributed to board members in advance of the meeting. In addition, the agenda and general action items will be posted to the System's public website.
- Routine Reporting. A system of routine reporting will be developed to monitor the performance of the System and ensure that the board is carrying out its fiduciary responsibilities. The following written reports and oral reports will be provided regularly to the board:

  - Executive Secretary reports providing a status of major issues and system activities;
  - Investment reports, including asset allocation and performance reports;

- Comprehensive annual financial report, annual operating budget, and interim financial reports;
- Retirement, Disability, and Death reports;
- Committee reports;
- Annual actuarial valuation and other reports;
- Legislative reports;
- Litigation status reports;
- Strategic plan progress reports; and
- Potential material issues or problems on a timely basis to the board.

6. BOARD COMMITTEES AND ASSIGNMENTS

The board creates committees to assist the board in effectively fulfilling its fiduciary responsibilities. All committees report to the board. Any policies developed by committees are to be recommended to the full board for the board's approval. Appointments of the committee chairs and appointments of members to the regular committees are concurrent with the board chair that makes the appointment. The chair shall announce committee appointments for the coming year preferably in July but no later than the regular September meeting. The composition of the committees shall remain the same until the new appointments. Unless otherwise stated for a shorter period in the appointment, temporary or special committee appointments shall be concurrent with the board chair that makes such appointment.

There are currently eight (8) standing committees of the board. The chair may appoint temporary or special committees for such purposes as the chair deems necessary.

The standing committees of the board are as follows:

A. Insurance Committee. The committee will consist of three (3) members appointed by the chair and will act on behalf of the board in fulfilling its oversight responsibilities for administration of retiree health benefits. The chair will designate the committee chair.
    1. Meetings. The committee will meet annually or more frequently, if necessary.
    2. Authority. See KRS 161.675 and Charter of the Insurance Committee.

B. Investment Committee. The committee will be composed of seven (7) persons appointed by the board and will act on behalf of the board on investment related matters in fulfilling its oversight responsibilities for the prudent investment of retirement system assets to achieve long-term funding goals.
    1. Meetings. The committee will meet quarterly or more frequently, if necessary. The committee will meet on the first Friday of February, May, August, and November.
    2. Authority. See KRS 161.430, KRS 161.677, 102 KAR 1:175, 102 KAR 1:178 and Strategy for Implementation of Investment Policies Established by Administrative Regulations.

C. Legislative Committee. The committee shall consist of three (3) members appointed by the chair and will act on behalf of the board in fulfilling its oversight responsibilities for reviewing proposed legislation. The chair will designate the committee chair.

1. Meetings. The committee will not have regularly scheduled meetings and shall convene as needed to review proposed legislation.
2. Authority. See KRS 161.250 and Charter of the Legislative Committee.

D. Personnel Committee. The committee shall consist of five (5) members appointed by the chair and will act on behalf of the board in fulfilling its oversight responsibilities to evaluate the Executive Secretary. Also, when necessary, the committee will screen candidates and make a recommendation to the board for hiring an Executive Secretary. The chair will designate the committee chair.

1. Meetings. The committee will not have regularly scheduled meetings and shall convene as needed to evaluate the Executive Secretary.
2. Authority. See KRS 161.340(1), (2), 102 KAR 2:025, and Charter of the Personnel Committee.

E. Scholarship Committee. The committee shall consist of four (4) members appointed by the chair and will make recommendations and reports to the board concerning the Junita Losey Scholarship Fund. The chair will designate the committee chair.

1. Meetings. The committee will not have regularly scheduled meetings and shall convene as needed to act on the scholarship fund.
2. Authority. See KRS 161.250.

F. Nominating Committee. The committee shall consist of three (3) members appointed by the chair and will act on behalf of the board in fulfilling its responsibilities set forth in KRS 161.270.

1. Meetings. The committee will not have regularly scheduled meetings and shall convene as needed to satisfy its obligations.
2. Authority. See KRS 161.270.

G. Appeals Committee. The committee shall consist of three (3) members appointed by the chair and will act on behalf of the board in fulfilling its responsibilities to act on appeals as set forth in KRS 161.250(2) and KRS Chapter 13B. The chair will designate the committee chair.

1. Meetings. The committee will not have regularly scheduled meetings and shall convene as needed to act on appeals.
2. Authority. See KRS 161.250, KRS Chapter 13B, and Charter of the Appeals Committee.

H. Governance and Audit Committee. The committee shall consist of three (3) members appointed by the chair and will act on behalf of the board in fulfilling its oversight responsibilities for governance processes and financial reporting processes.

1. Meetings. The committee will not have regularly scheduled meetings and shall

convene as needed to satisfy its obligations.

2. Authority. See KRS 161.250 and Charter of the Governance and Audit Committee.

7. BOARD POLICIES AND CHARTERS

A. Policies

- Ethics Policy: Board members are subject to the Kentucky Executive Branch Code of Ethics, KRS Chapter 11A. Appendix 4.
- Conflict of Interest and Confidentiality Policy: Appendix 7.
- Communication Policy: Appendix 8.
- Trustee Education Policy: Appendix 9.
- Board Travel and Board Expense Reimbursement Policy: KRS 161.290 provides that the board shall be reimbursed "necessary expenses" for official business of the system. The board will follow the provisions of the State Travel Policy for reimbursement of travel expenses. See Appendix 10.
- Investment Statutes and Investment Policies Established by Administrative Regulations: Appendix 11.
- Policy on Annual Retirement Appropriations Payable by the State: Appendix 17.

B. Charters

- Charter of the Insurance Committee: Appendix 12.
- Charter of the Legislative Committee: Appendix 13.
- Charter of the Personnel Committee: Appendix 14.
- Charter of the Appeals Committee: Appendix 15.
- Charter of the Governance and Audit Committee: Appendix 16.

8. SERVICE PROVIDER SELECTION

The Executive Secretary or his/her designee will negotiate and execute all agreements in connection with service providers retained by the system. All contracts will be reviewed by the General Counsel or his/her designee as to form and legal sufficiency prior to execution. All service providers will be subject to regular monitoring of performance and periodic reviews, as appropriate, throughout the term of their contracts. The board, or particular committee of the board, will establish the relevant standards for service provider selection, which will be implemented by staff.

The board, or particular committee of the board, generally approves retaining or terminating major service providers for the system. However, the Executive Secretary shall have the power, subject to the

authority of the board, to retain or terminate any service provider as required to transact the business of the system. Any action to retain or terminate a major service provider by the Executive Secretary shall be reported to the board, or particular committee of the board, at the next meeting following the action.

9. DISASTER RECOVERY PLAN

The KTRS disaster recovery plan will be implemented by the appropriate staff and reviewed frequently for relevance and appropriateness.

10. STRATEGIC PLANNING

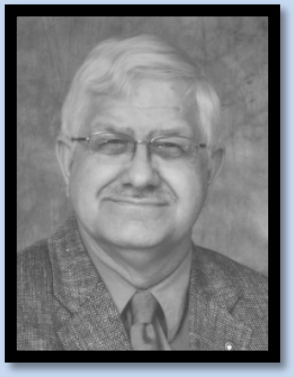
To systematically plan for the immediate and long-term challenges and needs of the retirement system staff will engage in an annual strategic planning process. The Executive Secretary will initiate the strategic planning process and report to the board. The strategic plan will generally cover a 3-5 year period. The board will be responsible for:

- Providing management with input on the strategic plan, including goals and strategic initiatives;
- Approving the final strategic plan and operating budget to support the plan; and
- Monitoring the implementation of the strategic plan

Staff will provide periodic updates to the board. The strategic plan will be modified from time to time as needed.

APPENDIX 1
KENTUCKY TEACHERS' RETIREMENT SYSTEM

Members of the Board of Trustees



Arthur Green
Chair
Retired Teacher Trustee
Elkton, Kentucky

Dr. Jay Morgan
Vice Chair
Active Teacher Trustee
Murray, Kentucky

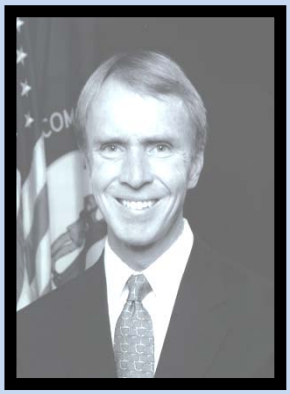
Mary Adams
Active Teacher Trustee
Brodhead, Kentucky

Hollis Gritton
Lay Trustee
Union, Kentucky

Ronald L. Sanders
Lay Trustee
Hodgenville, Kentucky

Quin Sutton
Active Teacher Trustee
Eddyville, Kentucky

Alison Wright
Active Teacher Trustee
Georgetown, Kentucky



Todd Hollenbach
Ex-Officio Trustee
Kentucky State Treasurer

Dr. Stephen Pruitt
Ex-Officio Trustee
Commissioner, Dept. of Education

2015-2016 Committee Appointments

The Chair of the Board identifies standing committees that are to report and make recommendations to the full Board. The Chair also appoints members of the Board to the committees for terms that correspond to the term of the Chair. The following committees are currently in effect, with members indicated:

Administrative Appeals
(3 members)
Hollis Gritton, Chair
Ron Sanders, Vice Chair
Mary Adams
Alison Wright, Alternate

Governance & Audit
(3 members)
Quin Sutton, Chair
Ron Sanders, Vice Chair
Jay Morgan
Mary Adams, Alternate

Insurance
(3 members)
Charles Harman, Chair
Arthur Green, Vice Chair
Quin Sutton
Jay Morgan, Alternate

Investments
(5 members)
Ron Sanders, Chair
Arthur Green, Vice Chair
Hollis Gritton
Jay Morgan
Alison Wright
Quin Sutton, Alternate
Mary Adams, Alternate

Legislative
(3 members)
Arthur Green, Chair
Quin Sutton, Vice Chair
Jay Morgan
Ron Sanders, Alternate

Nominating
(3 members)
Alison Wright, Chair
Jay Morgan, Vice Chair
Arthur Green
Hollis Gritton, Alternate

Personnel
(5 members)
Jay Morgan, Chair
Mary Adams, Vice Chair
Hollis Gritton
Ron Sanders
Alison Wright
Charles Harman, Alternate

Scholarship
(4 members)
Mary Adams, Chair
Alison Wright, Vice Chair
Charles Harman
Hollis Gritton
Arthur Green, Alternate

Special Committee on Benefits and Funding
Jay Morgan, Chair
Arthur Green, Vice Chair
Todd Hollenbach
Quin Sutton, Alternate

APPENDIX 2

KENTUCKY TEACHERS' RETIREMENT SYSTEM
Organizational Structure

List of Primary Employees

Gary L. Harbin, CPA	Executive Secretary
Robert B. Barnes, JD	Deputy Executive Secretary of Operations & General Counsel
Eric Wampler, JD	Deputy Executive Secretary
Paul Yancey, CFA	Chief Investment Officer
Kevin Carrico, CFA	Investment Management
Mark Whelan, CPA	Chief Financial Officer
Nick Byers, CPA	Accounting
Tamela Biggs, JD	Staff Attorney
Becky Niece	Member Services
Debi Newman	Member Benefits
Jane C. Gilbert, CPA	Retiree Health Care
Glenn Tucker	Information Technology
Nathan VanSickel	Internal Auditor
Phil Webb	Investment Accounting Manager

List of Selected Service Providers for the Retirement Annuity Fund

Actuary
Cavanaugh Macdonald Consulting, LLC

Auditor
Mountjoy Chilton Medley, LLC

Attorney
Ice Miller LLP

Investment Consultant
Hewitt EnnisKnupp, Inc.

Investment Custodian
The Bank of New York Mellon

Fixed Income Managers
Galliard Capital Management
Ft. Washington Investment Advisors

Domestic Equity Managers
Todd-Veredus Asset Management LLC
UBS Global Asset Management
Wellington Management Company
GE Asset Management

International Equity Managers
Todd-Veredus Asset Management LLC
UBS Global Asset Management
Baring Asset Management, Inc.
Baillie Gifford

Real Estate Managers
Prudential Real Estate Investors
Carlyle Realty Partners
Blackstone Real Estate Partners

Alternative Investment Managers
Molpus Woodlands Group
Hancock Natural Resources Group
Kohlberg Kravis Roberts & Co.
Chrysalis Ventures
Ft. Washington Private Equity Investors
Alinda Capital Partners, LLC
Riverstone Holdings, LLC
CapitalSouth Partners
Landmark Partners
Lexington Partners
Oaktree Capital Management
Stepstone Pioneer Capital
Audax Group
J.P. Morgan Asset Management
Marathon Legacy Securities GP, LLC
AG GECC PPIF GP, LLC
Avenue Capital Group
Hellman & Friedman Capital Partners
Natural Gas Partners
Marathon Asset Management

List of Selected Service Providers for the Health Insurance Trust

Actuary
Cavanaugh Macdonald Consulting, LLC

Auditor
Mountjoy Chilton Medley, LLC

Attorney
Ice Miller LLP

Investment Consultants
Hewitt EnnisKnupp, Inc.

Investment Custodian
The Bank of New York Mellon

Fixed Income Manager
Ft. Washington Investment Advisors

Global Equity Manager
BlackRock Institutional Trust Company

Alternative Investment Manager
Ft. Washington Private Equity Investors

APPENDIX 3

Teachers' Retirement System of the State of Kentucky

LAW

2011 EDITION

UNOFFICIAL TEXT OF STATUTES
FOR INFORMATION ONLY

KENTUCKY TEACHERS' RETIREMENT LAW

2011 EDITION

UNOFFICIAL TEXT OF STATUTES FOR INFORMATION ONLY

This printing of a portion of the *Kentucky Revised Statutes* does not constitute an official version of these statutes and is provided for informational purposes only. For the official text of statutes and for current supplementation, the user should consult an official edition of the *Kentucky Revised Statutes*.

The Kentucky General Assembly convenes annually and the statutes contained in this unofficial text are subject to change following each yearly session. Any discrepancies between this unofficial text and the current official text are always resolved in favor of the latter.

At the time of the printing of this edition, official codification of 2011 legislation enacted during the Regular and Special Sessions was not available and therefore is not included. The only legislation enacted during these Sessions that amends the statutes herein was HB 358 which will allow designated beneficiaries of the KTRS life insurance benefit to assign that benefit to a bank or licensed funeral home upon the death of the member. This legislation becomes effective June 8, 2011.

The cost of printing was paid from state funds pursuant to KRS 57.375

Teachers' Retirement System of the State of Kentucky

Board of Trustees —— Elected by members:

Ms. Barbara G. Sterrett, Chairperson _____ Lexington
Mr. Robert M. Conley _____ Paintsville
Mr. Charles Ludwig _____ Louisville
Mr. Ronald L. Sanders _____ Hodgenville
Dr. Tom Shelton _____ Owensboro
Ms. Ruth Ann Sweazy _____ Taylorsville
Ms. Laura A. Zimmerman _____ Lexington

Ex-officio:

Chief State School Officer _____ Frankfort

Mr. Todd Hollenbach _____ State Treasurer, Frankfort

Staff

Mr. Gary L. Harbin, CPA _____ Executive Secretary

Mr. Robert B. Barnes, JD _____ Deputy Executive Secretary of Operations and General Counsel

Mr. J. Eric Wampler, JD _____ Deputy Executive Secretary for Finance & Administration

Mr. Paul L. Yancey, CFA, MBA _____ Chief Investment Officer

Mr. Kevin Carrico, CFA _____ Director, Investment Management

Ms. Tamela Biggs, JD _____ Staff Attorney

Mr. Mark Whelan, CPA _____ Chief Financial Officer

Mr. Bill Leach _____ Director, Member Services and Acting Director, Member Benefits

Ms. Jane C. Gilbert, CPA _____ Director, Retiree Health Care

Mr. Glenn Tucker _____ Director, Information Technology

Mr. Daryl Dunagan _____ Internal Auditor

Mr. Phil Webb _____ Investment Accounting Manager

Table of Contents

161.220 Definitions for KRS 161.220 through 161.716 and 161.990 1

161.230 Retirement system — Purpose — Name 7

161.250 Board of trustees to control retirement — Membership — Appeals — Trustee education program — Public disclosure of best practices model — Administrative regulations for authorized benefit improvements 7

161.260 Election of members of board of trustees 11

161.270 Vacancies, how filled 11

161.280 Oath of board members 11

161.290 Meetings, compensation and expenses of board members 12

161.300 Quorum 12

161.310 Administrative regulations — Rules, regulations and policies of participating employers to conform to chapter — Retirement incentives 12

161.320 Record of proceedings — Annual report 13

161.330 Cost of administration, how paid — Office space 13

161.340 Officers of board — Personnel of system — Contracting for services — Bonds of officers and employees — Leave balances 14

161.370 Treasurer, auditor and legal adviser of board — Annual audit of Teachers' Retirement System 15

161.380 Duties of treasurer — Custodian of securities 15

161.390 Actuarial data to be kept 16

161.400 Actuary 16

161.420 Funds of the retirement system 17

161.430 Investment of funds 20

161.440 Assignment of interest to funds 22

161.460 Interest in investments 22

161.470 Membership — Forfeiture of service credit Termination of membership — Forfeiture of benefits — Reinstatement — Payment of accumulated contributions 22

161.480 Statement of member — Designation of beneficiary 24

161.490 Investigation of statement 25

161.500 Service credit 26

161.507 Prior service credit for veterans — Credit for military service and uniformed service by active contributing member 26

161.515 Out-of-state service credit — Contribution — Kentucky Peace Corps and Federal Peace Corps service credit 28

161.520 Payment of accumulated contribution on death 30

161.522 Survivor of member retired for disability may elect annuity 34

161.525 Death of member eligible to retire Options of beneficiary — Monthly minimum allowance to surviving spouse 34

161.530 Restoration of forfeited account — Exception 35

161.540 Members' contributions — Picked up contributions 35

161.545 Contributions and service credit for substitute service, part-time service, or leave of absence — Contributions not to be picked up — Purchases of service credit by individuals becoming members on or after July 1, 2008, for leaves of absence for health, child-rearing, and educational improvement reasons 38

161.5461 Purchase of service credit with rolled-over or transferred retirement funds 39

161.5465 Member with twenty years' service credit may purchase five years' service credit 39

161.547 Member having service as legislator may purchase 4 years' credit in the retirement system 40

161.548 Purchase of service credit for service at a regional community mental health and mental retardation service program 40

161.549 Purchase of service credit for service at a Federal Head Start agency 40

161.550 State's contribution to system 41

161.553 Funding of past statutory benefit improvements — Schedules for appropriations — Cost of Living Increases 43

161.555 Employer contributions for members employed in positions established under federal education acts 45

161.556 Employer contributions for members employed by regional educational cooperatives 45

161.560 Deduction and forwarding of teachers' contributions — Picked-up employee contributions Correction of omitted member contributions 46

161.565 Reduction and pick-up of contributions by university faculty members 46

161.567 Authorization for optional retirement plan for designated employees of certain public universities 47

161.568 Eligibility to participate in optional retirement plan — Election to change from optional retirement plan to Kentucky Teachers' Retirement System. 48

161.569 Effect of election to participate Payment of benefits — Taxation and attachment of benefits — Employer contributions 51

161.580 Individual accounts to be kept — Other data Summary plan description Publication — Recipients 51

161.585 Account of member, and medical records on file, confidential — Production of records in response to a subpoena or court order 53

161.590 Service credit at retirement 55

161.595 Service credit 55

161.597 Installment payments for purchase of service credit by active contributing members 55

161.600 Retirement conditions 56

161.605 Resumption of employment by retired member — Continuation of retirement allowance — Waiver of annuity — Nonteaching employment 58

161.607 Employment in position covered by other Kentucky retirement system 65

161.608 Computation of benefits of member who has an account with another state system 66

161.611 Supplemental Retirement Benefit Plan 66
Purpose — Administration — Eligibility — Payments

161.612 Membership of individuals providing part-time and substitute services — Service credit — Participation in benefits 67

161.614 Court-ordered back salary and reinstatement 69

161.615 Limited Defined Contribution Plan 70
Purpose — Administration — Eligibility — Payments

161.620 Retirement allowances — Amount 71

161.623 Use of unused sick-leave days to determine service credit — Applicability to individuals becoming members on or after July 1, 2008. 75

161.624 Responsibilities of members 76

161.630 Benefit options — Change in benefit option Beneficiary redesignation after retirement 77

161.640 Payment of annuities — Payroll deductions — Electronic fund transfer, exception 78

161.643 Records and annual reports for annuitants employed by school districts or agencies — Penalty for noncompliance 78

161.650 Death of retired member — Payment to beneficiaries — Effect of divorce decree — Failure to designate beneficiary. 79

161.655 Life insurance benefit 79

161.661 Disability retirement 81

161.662 Status of disabled teachers and superintendents 85

161.663 Disability retirement with less than required years of service 86

161.675 Hospital and medical benefits and health insurance coverage for eligible recipients of retirement allowances from Teachers' Retirement System — Applicability to individuals becoming members on or after July 1, 2008 — Health insurance supplement payments — Coverage for spouses, dependents, and disabled children of retirees — Exemption from premium tax. 87

161.677 KTRS insurance trust fund 90

161.680 Mistake in payment — Correction of error 91

161.690 Falsifying record prohibited 91

161.700 Funds exempt from taxation and process — Taxability after December 31, 1997 — Benefits not considered marital property 92

161.710 Local system merged with state system 95

161.714 Inviolable contract — Exception 95

161.716 Federal laws take precedence over Kentucky statutes pertaining to Teachers' Retirement System 96

161.990 Penalties 96

6.350 Actuarial analysis required for bill before General Assembly to increase benefits or participation in public retirement system 96

6.696 Effect of felony conviction on state retirement benefits 98

61.552 Service credit regained or obtained — Purchase of current service and service credit — Interest paid Delayed contribution Installment payments 98

61.621 Fred Capps Memorial Act — Eligibility for benefits for duty-related injury 111

61.680 Consent of employees to deductions — Consolidation for determination of eligibility and determination of benefits — Waiver — Choice among retirement systems — Reciprocal arrangements 112

61.702 Group hospital and medical insurance & managed care plan coverage — Employee and employer contributions — Minimum service requirements 116

151B.040 Employee benefits 125

158.070 School term — Professional development — Holidays and days closed — Continuing education for certain students — Breakfast program — Missed school days due to emergencies and service credit. 126

161.155 Definitions for section — Salary, benefits, and leave for employee or teacher when victim of assault — Sick leave for employee or teacher — Sick leave bank — Sick leave donation program — Payment for unused sick leave upon retirement or death. 131

161.168 Certified employee granted leave of absence for active military service — Medical insurance — Contribution to retirement system to be retroactive — Credit given -- Exclusions. 136

161.770 Leaves of absence 136

403.190 Disposition of property 137

427.150 Property totally or partially exempt 138

161.220 Definitions for KRS 161.220 to 161.716 and KRS 161.990.
As used in KRS 161.220 to 161.716 and KRS 161.990:

(1) "Retirement system" means the arrangement provided for in KRS 161.220 to 161.716 and 161.990 for payment of allowances to members;

(2) "Retirement allowance" means the amount annually payable during the course of his natural life to a member who has been retired by reason of service;

(3) "Disability allowance" means the amount annually payable to a member retired by reason of disability;

(4) "Member" means the commissioner of education, deputy commissioners, associate commissioners, and all division directors in the State Department of Education, employees participating in the system pursuant to KRS 196.167(3)(b)1., and any full-time teacher or professional occupying a position requiring certification or graduation from a four (4) year college or university, as a condition of employment, and who is employed by public boards, institutions, or agencies as follows:

(a) Local boards of education;

(b) Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Western Kentucky University, and any community colleges established under the control of these universities;

(c) State-operated secondary area vocational education or area technology centers, Kentucky School for the Blind, and Kentucky School for the Deaf;

(d) The Education Professional Standards Board, other public education agencies as created by the General Assembly, and those members of the administrative staff of the Teachers' Retirement System of the State of Kentucky whom the board of trustees may designate by administrative regulation;

(e) Regional cooperative organizations formed by local boards of education or other public educational institutions listed in this subsection, for the purpose of providing educational services to the participating organizations;

(f) All full-time members of the staffs of the Kentucky Association of School Administrators, Kentucky Education Association, Kentucky Vocational Association, Kentucky High School Athletic Association, Kentucky Academic Association, and the Kentucky School Boards Association who were members of the Kentucky Teachers' Retirement System or were qualified for a position covered by the system at the time of employment by the association in the event that the board of directors of the

respective association petitions to be included. The board of trustees of the Kentucky Teachers' Retirement System may designate by resolution whether part-time employees of the petitioning association are to be included. The state shall make no contributions on account of these employees, either full-time or part-time. The association shall make the employer's contributions, including any contribution that is specified under KRS 161.550. The provisions of this paragraph shall be applicable to persons in the employ of the associations on or subsequent to July 1, 1972;

(g) Employees of the Council on Postsecondary Education who were employees of the Department for Adult Education and Literacy and who were members of the Kentucky Teachers' Retirement System at the time the department was transferred to the council pursuant to Executive Order 2003-600;

(h) The Office of Career and Technical Education, except that the executive director shall not be a member;

(i) The Office of Vocational Rehabilitation;

(j) The Kentucky Educational Collaborative for State Agency Children;

(k) The Governor's Scholars Program;

(l) Any person who is retired for service from the retirement system and is reemployed by an employer identified in this subsection in a position that the board of trustees deems to be a member;

(m) Employees of the former Cabinet for Workforce Development who are transferred to the Kentucky Community and Technical College System and who occupy positions covered by the Kentucky Teachers' Retirement System shall remain in the Teachers' Retirement System. New employees occupying these positions, as well as newly created positions qualifying for Teachers' Retirement System coverage that would have previously been included in the former Cabinet for Workforce Development, shall be members of the Teachers' Retirement System;

(n) Effective January 1, 1998, employees of state community colleges who are transferred to the Kentucky Community and Technical College System shall continue to participate in federal old age, survivors, disability, and hospital insurance, and a retirement plan other than the Kentucky Teachers' Retirement System offered by Kentucky Community and Technical College System. New employees occupying positions in the Kentucky Community and Technical College System as referenced in KRS 164.5807(5) that would not have

previously been included in the former Cabinet for Workforce Development, shall participate in federal old age, survivors, disability, and hospital insurance and have a choice at the time of employment of participating in a retirement plan provided by the Kentucky Community and Technical College System, including participation in the Kentucky Teachers' Retirement System, on the same basis as faculty of the state universities as provided in KRS 161.540 and 161.620;

(o) Employees of the Office of General Counsel, the Office of Budget and Administrative Services, and the Office of Quality and Human Resources within the Office of the Secretary of the former Cabinet for Workforce Development and the commissioners of the former Department for Adult Education and Literacy and the former Department for Technical Education who were contributing to the Kentucky Teachers' Retirement System as of July 15, 2000; and

(p) Employees of the Kentucky Department of Education only who are graduates of a four (4) year college or university, notwithstanding a substitution clause within a job classification, and who are serving in a professional job classification as defined by the department.

(5) "Present teacher" means any teacher who was a teacher on or before July 1, 1940, and became a member of the retirement system created by 1938 (1st Extra. Sess.) Ky. Acts ch. 1, on the date of the inauguration of the system or within one (1) year after that date, and any teacher who was a member of a local teacher retirement system in the public elementary or secondary schools of the state on or before July 1, 1940, and continued to be a member of the system until he, with the membership of the local retirement system, became a member of the state Teachers' Retirement System or who becomes a member under the provisions of KRS 161.470(4);

(6) "New teacher" means any member not a present teacher;

(7) "Prior service" means the number of years during which the member was a teacher in Kentucky prior to July 1, 1941, except that not more than thirty (30) years' prior service shall be allowed or credited to any teacher;

(8) "Subsequent service" means the number of years during which the teacher is a member of the Teachers' Retirement System after July 1, 1941;

(9) "Final average salary" means the average of the five (5) highest annual salaries which the member has received for service in a covered position and on which the member has made contributions, or on which the public board, institution, or agency has picked-up

member contributions pursuant to KRS 161.540(2), or the average of the five (5) years of highest salaries as defined in KRS 61.680(2)(a), which shall include picked-up member contributions. Additionally, the board of trustees may approve a final average salary based upon the average of the three (3) highest salaries for members who are at least fifty-five (55) years of age and have a minimum of twenty-seven (27) years of Kentucky service credit. However, if any of the five (5) or three (3) highest annual salaries used to calculate the final average salary was paid within the three (3) years immediately prior to the date of the member's retirement, the amount of salary to be included for each of those three (3) years for the purpose of calculating the final average salary shall be limited to the lesser of:

(a) The member's actual salary; or

(b) The member's annual salary that was used for retirement purposes during each of the prior three (3) years, plus a percentage increase equal to the percentage increase received by all other members employed by the public board, institution, or agency, or for members of school districts, the highest percentage increase received by members on any one (1) rank and step of the salary schedule of the school district. The increase shall be computed on the salary that was used for retirement purposes.

This limitation shall not apply if the member receives an increase in salary in a percentage exceeding that received by the other members, and this increase was accompanied by a corresponding change in position or in length of employment. This limitation shall also not apply to the payment to a member for accrued annual leave if the individual becomes a member before July 1, 2008, or accrued sick leave which is authorized by statute and which shall be included as part of a retiring member's annual compensation for the member's last year of active service;

(10) "Annual compensation" means the total salary received by a member as compensation for all services performed in employment covered by the retirement system during a fiscal year. Annual compensation shall not include payment for any benefit or salary adjustments made by the public board, institution, or agency to the member or on behalf of the member which is not available as a benefit or salary adjustment to other members employed by that public board, institution, or agency. Annual compensation shall not include the salary supplement received by a member under KRS 157.197(2)(c), 158.6455, or 158.782 on or after July 1, 1996. Under no circumstances shall annual compensation include compensation that is earned by a member while on assignment to an organization or

agency that is not a public board, institution, or agency listed in subsection (4) of this section. In the event that federal law requires that a member continue membership in the retirement system even though the member is on assignment to an organization or agency that is not a public board, institution, or agency listed in subsection (4) of this section, the member's annual compensation for retirement purposes shall be deemed to be the annual compensation, as limited by subsection (9) of this section, last earned by the member while still employed solely by and providing services directly to a public board, institution, or agency listed in subsection (4) of this section. The board of trustees shall determine if any benefit or salary adjustment qualifies as annual compensation. For an individual who becomes a member on or after July 1, 2008, annual compensation shall not include lump-sum payments upon termination of employment for accumulated annual or compensatory leave;

(11) "Age of member" means the age attained on the first day of the month immediately following the birthdate of the member. This definition is limited to retirement eligibility and does not apply to tenure of members;

(12) "Employ," and derivatives thereof, means relationships under which an individual provides services to an employer as an employee, as an independent contractor, as an employee of a third party, or under any other arrangement as long as the services provided to the employer are provided in a position that would otherwise be covered by the Kentucky Teachers' Retirement System and as long as the services are being provided to a public board, institution, or agency listed in subsection (4) of this section;

(13) "Regular interest" means interest at three percent (3%) per annum, except for an individual who becomes a member on or after July 1, 2008, "regular interest" means interest at two and one-half percent (2.5%) per annum for purposes of crediting interest to the teacher savings account or any other contributions made by the employee that are refundable to the employee upon termination of employment;

(14) "Accumulated contributions" means the contributions of a member to the teachers' savings fund, including picked-up member contributions as described in KRS 161.540(2), plus accrued regular interest;

(15) "Annuitant" means a person who receives a retirement allowance or a disability allowance;

(16) "Local retirement system" means any teacher retirement or annuity system created in any public school district in Kentucky in accordance with the laws of Kentucky;

(17) "Fiscal year" means the twelve (12) month period from July 1 to June 30. The retirement plan year is concurrent with this fiscal year. A contract for a member employed by a local board of education may not exceed two hundred sixty-one (261) days in the fiscal year;
(18) "Public schools" means the schools and other institutions mentioned in subsection (4) of this section;
(19) "Dependent" as used in KRS 161.520 and 161.525 means a person who was receiving, at the time of death of the member, at least one-half (1/2) of the support from the member for maintenance, including board, lodging, medical care, and related costs;
(20) "Active contributing member" means a member currently making contributions to the Teachers' Retirement System, who made contributions in the next preceding fiscal year, for whom picked-up member contributions are currently being made, or for whom these contributions were made in the next preceding fiscal year;
(21) "Full-time" means employment in a position that requires services on a continuing basis equal to at least seven-tenths (7/10) of normal full-time service on a fiscal year basis;
(22) "Full actuarial cost," when used to determine the payment that a member must pay for service credit means the actuarial value of all costs associated with the enhancement of a member's benefits or eligibility for benefit enhancements, including health insurance supplement payments made by the retirement system. The actuary for the retirement system shall determine the full actuarial value costs and actuarial cost factor tables as provided in KRS 161.400;
(23) "Last annual compensation" means the annual compensation, as defined by subsection (10) of this section and as limited by subsection (9) of this section, earned by the member during the most recent period of contributing service, either consecutive or nonconsecutive, that is sufficient to provide the member with one (1) full year of service credit in the Kentucky Teachers' Retirement System, and which compensation is used in calculating the member's initial retirement allowance, excluding bonuses, retirement incentives, payments for accumulated sick, annual, personal and compensatory leave, and any other lump-sum payment. For an individual who becomes a member on or after July 1, 2008, payments for annual or compensatory leave shall not be included in determining the member's last annual compensation;
(24) "Participant" means a member, as defined by subsection (4) of this section, or an annuitant, as defined by subsection (15) of this section;
(25) "Qualified domestic relations order" means any judgment, decree, or order, including approval of a property settlement agreement, that:
(a) Is issued by a court or administrative agency; and

(b) Relates to the provision of child support, alimony payments, or marital property rights to an alternate payee; and

(26) "Alternate payee" means a spouse, former spouse, child, or other dependent of a participant, who is designated to be paid retirement benefits in a qualified domestic relations order.

161.230 Retirement system — Purpose — Name.

The Teachers' Retirement System is established as of July 1, 1940, for the purpose of providing retirement allowances for teachers, their beneficiaries, and survivors under the provisions of KRS 161.155 and 161.220 to 161.714. The Teachers' Retirement System of the State of Kentucky shall be an independent agency and instrumentality of the Commonwealth and this status shall only be amended or changed by the General Assembly. It shall have the powers and the privileges of a corporation and shall be known as the "Teachers' Retirement System of the State of Kentucky." Its business shall be transacted, its funds invested, and its cash and securities held in that name, or in the name of its nominee provided that its nominee is authorized by board of trustees' resolution solely for the purpose of facilitating the transfer of securities. The board of trustees may designate a nominee as provided in KRS 286.3-225; or it may name as nominee a partnership composed of selected trustees and employees of the system, and formed for the sole purpose of holding legal or registered title of such securities, and for the transfer of securities in accordance with directions of the board of trustees.

161.250 Board of trustees to control retirement — Membership — Appeals — Trustee education program — Public disclosure of best practices model — Administrative regulations for authorized benefit improvements.

(1) (a) The general administration and management of the retirement system, and the responsibility for its proper operation and for making effective provisions of KRS 161.155 and 161.220 to 161.714 are vested in a board of trustees to be known as the "Board of Trustees of the Teachers' Retirement System of the State of Kentucky."

(b) The board of trustees shall consist of the chief state school officer, the State Treasurer, and seven (7) other trustees elected as provided in KRS 161.260. Four (4) of the elective trustees shall be members of the retirement system, to be known as teacher trustees, two (2) shall be persons who are not members of the teaching profession, to be known as the lay trustees, and one (1) shall be an annuitant of the retirement system to be known as

the retired teacher trustee. One (1) teacher trustee shall be elected annually for a four-year term. The retired teacher trustee shall be elected every four (4) years. The chief state school officer and the State Treasurer are considered ex officio members of the board of trustees and may designate in writing a person to represent them at board meetings.

(c) Elective trustees shall not serve more than three (3) consecutive four (4) year terms. An elective trustee who has served three (3) consecutive terms may be elected again after an absence of four (4) years from the board of trustees.

(2) A member, retired member, or designated beneficiary may appeal the retirement system's decisions that materially affect the amount of service retirement allowance, amount of service credit, eligibility for service retirement, or eligibility for survivorship benefits to which that member, retired member, or designated beneficiary claims to be entitled. All appeals must be in writing and filed with the retirement system within thirty (30) days of the claimant's first notice of the retirement system's decision. For purposes of this section, notice shall be complete and effective upon the date of mailing of the retirement system's decision to the claimant at the claimant's last known address. Failure by the claimant to file a written appeal with the retirement system within the thirty (30) day period shall result in the decision of the retirement system becoming permanent with the effect of a final and unappealable order. Appeals may include a request for an administrative hearing which shall be conducted in accordance with the provisions of KRS Chapter 13B. The board of trustees may establish an appeals committee whose members shall be appointed by the chairperson and who shall have the authority to act upon the report and recommendation of the hearing officer by issuing a final order on behalf of the full board of trustees. A member, retired member, or designated beneficiary who has filed a timely, written appeal of a decision of the retirement system may, following the administrative hearing and issuance of the final order by the board of trustees, appeal the final order of the board of trustees to the Franklin Circuit Court in accordance with the provisions of KRS Chapter 13B.

(3) The board of trustees shall establish a formal trustee education program for all trustees of the board. The program shall include but not be limited to the following:

(a) A required orientation program for all new trustees to the board. The orientation program shall include training on:

1. Benefits and benefits administration;
2. Investment concepts, policies, and current composition and administration of retirement system investments;

3. Laws, bylaws, and administrative regulations pertaining to the retirement system and to fiduciaries; and
4. Actuarial and financial concepts pertaining to the retirement system.

If a trustee fails to complete the orientation program within one (1) year from the beginning of his or her first term on the board, the retirement system shall withhold payment of the per diem and travel expenses due to the board member under KRS 161.290 until the trustee has completed the orientation program;

(b) Annual required training for trustees on the administration, benefits, financing, and investing of the retirement system. If a trustee fails to complete the annual required training during the calendar or fiscal year, the retirement system shall withhold payment of the per diem and travel expenses due to the board member under KRS 161.290 until the board member has met the annual training requirements; and

(c) The retirement system shall incorporate by reference in an administrative regulation, pursuant to KRS 13A.2251, the trustee education program.

(4) In order to improve public transparency regarding the administration of the system, the board of trustees shall adopt a best practices model by posting the following information to the retirement system's Web site and shall make available to the public:

(a) Meeting notices and agendas for all meetings of the board. Notices and agendas shall be posted to the retirement system's Web site at least seventy-two (72) hours in advance of the board or committee meetings, except in the case of special or emergency meetings as provided by KRS 61.823;

(b) The Comprehensive Annual Financial Report with the information as follows:

1. A general overview and update on the retirement system by the executive secretary;
2. A listing of the board of trustees;
3. A listing of key staff;
4. An organizational chart;
5. Financial information, including a statement of plan net assets, a statement of changes in plan net assets, an actuarial value of assets, a schedule of investments, a statement of funded status and funding progress, and other supporting data;

6. Investment information, including a general overview, a list of the retirement system's professional consultants, a total return on retirement system investments over a historical period, an investment summary, contracted investment management expenses, transaction commissions, and a schedule of investments;
7. The annual actuarial valuation report on the pension benefit and the medical insurance benefit; and
8. A general statistical section, including information on contributions, benefit payouts, and retirement system demographic data;

(c) All external audits;

(d) All board minutes or other materials that require adoption or ratification by the board of trustees. The items listed in this paragraph shall be posted within seventy-two (72) hours of adoption or ratification of the board;

(e) All bylaws, policies, or procedures adopted or ratified by the board of trustees;

(f) The retirement system's summary plan description;

(g) The retirement system's law book;

(h) A listing of the members of the board of trustees and membership on each committee established by the board, including any investment committees;

(i) All investment holdings and commissions for each fund administered by the board. The board shall update the list of holdings and commissions on a quarterly basis for fiscal years beginning on or after July 1, 2008; and

(j) An update of investment returns, asset allocations, and the performance of the funds against benchmarks adopted by the board for each fund and for each asset class administered by the board. The update shall be posted on a quarterly basis for fiscal years beginning on or after July 1, 2008.

(5) Notwithstanding the requirements of subsection (4) of this section, the retirement system shall not be required to furnish information that is protected under KRS 161.585, exempt under KRS 61.878, or that, if disclosed, would compromise the retirement system's ability to competitively invest in real estate or other asset classes or to competitively negotiate vendor fees.

(6) For any benefit improvements the General Assembly has authorized the board of trustees to establish under KRS 161.220 to 161.716 and that require formal adoption by the board, the board shall

establish the benefits by promulgation of administrative regulations in accordance with KRS Chapter 13A.

161.260 Election of members of board of trustees.

An election shall be held on or before June 1 of each year to elect trustees. The trustees to be elected each year shall depend upon the respective terms of the trustees elected under Acts 1938 (1st Ex. Sess.), Ch. 1, paragraph 7 and Acts 1940, Ch. 192, paragraph 7a, and KRS 161.250. Each trustee shall assume office on July 1 following his election and shall serve for a term of four (4) years. The elections shall be conducted by ballot under the supervision of the chief state school officer. Each person who is a contributing member as a result of full-time employment in a position covered by the retirement system or who is an annuitant of the retirement system shall have the right to vote. Each person who is a contributing member as a result of part-time or substitute employment in a position covered by the retirement system shall be permitted to vote as provided in KRS 161.612. Nominations for trustees shall be made by a nominating committee consisting of one (1) committee member selected by the retirement system membership of each of the districts of the Kentucky Education Association, and one (1) committee member to be selected by retired teachers, on a statewide basis, from among the annuitants of the retirement system. No person may be a member of the nominating committee who is not a member of the system, except for the committee member to be selected from among the annuitants of the system. The president of the Kentucky Education Association shall preside over the meeting of the nominating committee and the secretary of the Teachers' Retirement System shall act as secretary to the committee. Two (2) persons shall be nominated by the nominating committee for each position to be filled. All expenses of the election shall be paid by the board of trustees out of its general expense fund.

161.270 Vacancies, how filled.

Vacancies occurring during the terms of the elective members shall be filled by the remaining members of the board of trustees by election for the unexpired terms.

161.280 Oath of board members.

Each member of the board of trustees shall, within ten (10) days after his appointment or election, take an oath that he will support the Constitution of the United States and the Constitution of Kentucky, that he will diligently and honestly administer the affairs of the

board, and that he will not knowingly violate or willingly permit to be violated any provisions of the law applicable to the retirement system. The oath of office shall be subscribed to by the member making it and certified to by the officer before whom it is taken, and shall be immediately filed in the office of the Secretary of State.

161.290 Meetings, compensation, and expenses of board members.

(1) The board of trustees shall meet on the third Monday during the months of March, June, September, and December of each year. Special meetings may be called by the chairperson upon giving adequate notice to each member of the board of trustees. The business to be transacted at special meetings shall be specified in the notice of the meeting.

(2) The members of the board of trustees shall serve without compensation, except that elective trustees shall receive ninety dollars ($90) for each day the board is in session and all elected trustees shall be reimbursed from the expense fund for all necessary expenses they incur through service to the board without limitation of the provisions of KRS Chapters 44 and 45.

(3) The board of trustees may authorize a per diem, not to exceed ninety dollars ($90) per day, for trustees representing the system on committees or commissions established by statute or for service as an official representative of the board of trustees.

(4) The school district which employs a teacher trustee who is required to attend regular or special meetings of the board of trustees, represent the system on committees or commissions, or serve as an official representative of the board of trustees shall provide the teacher trustee with special leave with pay and pay the compensation for a substitute for the teacher trustee during periods of absence upon certification by the teacher trustee that the trustee is performing these duties for the system.

161.300 Quorum.

Five (5) members of the board of trustees shall constitute a quorum. Each trustee shall be entitled to one (1) vote. Four (4) votes or a majority of the trustees present whichever is the larger number shall be necessary for a decision by the trustees at any meeting of the board.

161.310 Administrative regulations — Rules, regulations, and policies of participating employers to conform to chapter — Retirement incentives.

(1) The board of trustees shall from time to time promulgate administrative regulations for the administration of the funds of the

retirement system and for the transaction of business.

(2) All rules, regulations, or policies adopted by school districts, universities, or other employers participating in the Teachers' Retirement System that pertain to the retirement system shall conform to this chapter.

(3) All rules, regulations, or policies adopted, or decisions made, by school districts, universities, or other employers participating in the Teachers' Retirement System that pertain to retirement incentives for members as defined in KRS 161.220(4) shall contain provisions for the school district, university, or other employer to make full payment to the retirement system at the time a member retires for all actuarial obligations that occur to the retirement system as a result of retirement incentive payments. Any payment made by the employer to a member on the condition that the member terminate employment with the employer shall be deemed a retirement incentive for purposes of this subsection if the member retires within six (6) months following the member's termination in employment. This subsection shall not apply to retirement incentive plans adopted by local boards of education prior to December 31, 1997, and to those employees of local school districts who retired on or before July 1, 1998.

161.320 Record of proceedings — Annual report.

The board of trustees shall keep a record of all its proceedings which shall be open to public inspection. It shall publish on or before January 1 of each year a report giving an account of the operation of the system, showing the fiscal transactions of the system for the preceding year and the amount of the accumulated cash and securities of the system, and containing the last balance sheet showing the financial condition of the system.

161.330 Cost of administration, how paid — Office space.

The cost of administration of the retirement system shall be paid out of the expense fund established for that purpose by the board of trustees. The board of trustees shall be responsible for the approval and administration of the expense fund budget, subject to the limitations imposed by KRS 161.420(1). Expenses for the operation of the retirement system shall be in such amounts as the board of trustees approves. The board of trustees is authorized to purchase or lease suitable office quarters for the operation of the retirement system.

161.340 Officers of board — Personnel of system — Contracting for services — Bonds of officers and employees — Leave balances.

(1) The board of trustees shall elect from its membership a chairperson and a vice chairperson on an annual basis as prescribed by the administrative regulations of the board of trustees. The board of trustees shall employ an executive secretary by means of a contract not to exceed a period of four (4) years and fix the compensation and other terms of employment for this position without limitation of the provisions of KRS Chapters 18A, 45A, 56, and KRS 64.640. The executive secretary shall be the chief administrative officer of the board. The executive secretary, at the time of employment, shall be a graduate of a four (4) year college or university, and shall possess qualifications as the board of trustees may require. The executive secretary shall not have held by appointment or election an elective public office within the five (5) year period next preceding the date of employment.

(2) The board shall employ clerical, administrative, and other personnel as are required to transact the business of the retirement system. The compensation of all persons employed by the board shall be paid at the rates and in amounts as the board approves. Anything in the Kentucky Revised Statutes to the contrary notwithstanding, the power over and the control of determining and maintaining an adequate complement of employees in the system shall be under the exclusive jurisdiction of the board of trustees.

(3) The board shall contract for actuarial, auditing, legal, medical, investment counseling, and other professional or technical services, and commodities, as are required to carry out the obligations of the board in accordance with the provisions of this chapter without limitations, including KRS Chapters 12, 13B, 45, 45A, 56, and 57, and shall provide for legal counsel and other legal services as may be required in defense of trustees, officers, and employees of the system who may be subjected to civil action arising from the performance of their legally assigned duties if counsel and services are not provided by the Attorney General.

(4) The board shall require the trustees, executive secretary, and employees it determines proper to execute bonds for the faithful performance of their duties notwithstanding the limitations of KRS Chapter 62.

(5) The board of trustees may expend funds from the expense fund as necessary to insure the trustees, employees, and officials of the Teachers' Retirement System against any liability arising out of an act or omission committed in the scope and course of performing legal duties.

(6) Notwithstanding any statute to the contrary, employees shall not be considered legislative agents as defined in KRS 6.611.
(7) Notwithstanding any statute to the contrary, the executive branch of government shall accept from the Kentucky Teachers' Retirement System all accrued annual and sick leave balances and service credits of employees leaving the Kentucky Teachers' Retirement System and accepting appointments within the executive branch. These leave balances shall be attested to by the Kentucky Teachers' Retirement System and shall not exceed those limits established by statute or administrative regulation for employees of the executive branch.

161.370 Treasurer, auditor, and legal adviser of board — Annual audit of Teachers' Retirement System.
(1) The State Treasurer, the Auditor of Public Accounts, and the Attorney General shall be treasurer, auditor, and legal adviser, respectively, of the board of trustees, and shall be liable upon their official bonds for the faithful performance of such duties. They shall serve without compensation. When the board of trustees deems it for the best interests of the retirement system, it may employ attorneys and pay reasonable fees for the services rendered.
(2) The board shall annually procure an audit of the Teachers' Retirement System. The audit shall be conducted in accordance with generally accepted auditing standards. The board may select an independent certified public accountant and pay reasonable fees for the services rendered. If the audit is performed by an independent certified public accountant, the Auditor of Public Accounts shall not be required to perform an audit pursuant to KRS 43.050(2)(a), but may perform an audit at his discretion.
(3) The board shall make copies of the audit required by this section available for examination by any active contributing member or annuitant in the office of the executive secretary of the Teachers' Retirement System and in such other places as may be necessary to make the audit available to all active contributing members and annuitants. A copy of the annual audit shall be sent to the Legislative Research Commission no later than ten (10) days after receipt by the board.

161.380 Duties of treasurer — Custodian of securities.
(1) The State Treasurer is the custodian of all cash funds of the retirement system. He shall honor and pay all vouchers drawn on the retirement funds. The Treasurer shall honor and pay all vouchers drawn on the retirement funds for payment of securities purchased

upon order of the board. All payments from the several funds of the retirement system shall be made only upon vouchers signed by the executive secretary, the chairman of the board of trustees of the retirement system, or persons delegated in writing by the board.

(2) The board of trustees shall appoint a custodian or custodians of the securities acquired under authority of KRS 161.430 and the custodian or custodians shall be responsible for the safekeeping of all securities placed in his custody. The custodian shall collect dividends, interests, and payments on principal as they become due, and deposit such funds with the State Treasurer for credit to the guarantee fund of the system. The custodian shall, upon delivery of the securities to him, make payment for same as authorized by the board of trustees. When securities are sold by the board of trustees, the custodian shall deliver such securities to the purchaser upon receipt of payment from said purchaser.

(3) The board of trustees may require such surety from the custodian as they deem necessary for the protection of securities held by such custodian.

161.390 Actuarial data to be kept.

The board of trustees shall keep in convenient form the data necessary for the actuarial valuation of the various funds of the retirement system and for determining the administrative costs of the system.

161.400 Actuary.

(1) The board of trustees shall designate as actuary a competent person who shall be a fellow of the Conference of Consulting Actuaries or a member of the American Academy of Actuaries. He shall be the technical adviser of the board on matters regarding the operation of the funds of the system and shall perform such other duties as are required in connection therewith. At least once in each six (6) year period after the first year of operation of the system, the actuary shall make an actuarial investigation into the actuarial assumptions used, including but not limited to mortality, investment rate of return, and service and compensation of the members and beneficiaries of the retirement system; and make a valuation of the assets and liabilities of the funds of the system. At least annually the actuary shall make an actuarial valuation of the retirement system. The valuation shall include a description of the actuarial assumptions used, and the assumptions shall be reasonably related to the experience of the system and represent the actuary's best estimate of anticipated experience. On the basis of the results of the valuations, the board of trustees shall make necessary changes in the retirement system within

the provisions of law and shall recommend the contributions payable by the state within the limits specified in KRS 161.550.

(2) Actuarial factors and actuarial cost factor tables in use by the retirement system for all purposes shall be determined by the actuary of the retirement system and approved by the board of trustees by resolution and implemented without the necessity of an administrative regulation. The assets of the system shall be valued at market value, or at a modified market value determined by the board to be a prudent measure of asset value. Effective July 1, 1992, the spread between investment and salary assumptions shall be reviewed and adjusted at the time of actuarial valuation, based upon the most recent five (5) year experience of the system.

(3) A copy of each actuarial investigation and valuation shall be forwarded to the Legislative Research Commission no later than ten (10) days after receipt by the board.

161.420 Funds of retirement system.

All of the assets of the retirement system are for the exclusive purpose of providing benefits to members and annuitants and defraying reasonable expenses of administering the system. The board of trustees shall be the trustee of all funds of the system and shall have full power and responsibility for administering the funds. It is hereby declared that the restrictions and rights provided herein shall not be subject to reduction or impairment by alteration, amendment, or repeal. All the assets of the retirement system shall be credited according to the purpose for which they are held to one (1) of the following funds:

(1) The expense fund shall consist of the funds set aside from year to year by the board of trustees to defray the expenses of the administration of the retirement system. Each fiscal year an amount not greater than four percent (4%) of the dividends and interest income earned from investments during the immediate past fiscal year shall be set aside into the expense fund or expended for the administration of the retirement system;

(2) The teachers' savings fund shall consist of the contributions paid by members of the retirement system into this fund and regular interest assigned by the board of trustees from the guarantee fund. A member may not borrow any amount of his or her accumulated contributions to this fund, or any interest earned thereon. The accumulated contributions of a member returned to him upon his withdrawal or paid to his estate or designated beneficiary in the event of his death shall be paid from the teachers' savings fund. Any accumulated contributions forfeited by a failure of a teacher or his estate to claim these contributions shall be transferred from the teachers' savings

fund to the guarantee fund. The accumulated contributions of a member shall be transferred from the teachers' savings fund to the allowance reserve fund in the event of retirement by reason of service or disability;

(3) The state accumulation fund shall consist of funds appropriated by the state for the purpose of providing annuities and survivor benefits, including any sums appropriated for meeting unfunded liabilities, together with regular interest assigned by the board of trustees from the guarantee fund. At the time of retirement or death of a member there shall be transferred from the state accumulation fund to the allowance reserve fund an amount which together with the sum transferred from the teachers' savings fund will be sufficient to provide the member a retirement allowance and provide for benefits under KRS 161.520 and 161.525;

(4) The allowance reserve fund shall be the fund from which shall be paid all retirement allowances and benefits provided under KRS 161.520 and 161.525. In addition, whenever a change in the status of a member results in an obligation on this fund, there shall be transferred to this fund from the teachers' savings fund and the state accumulation fund, the amounts as may be held in those funds for the account or benefit of the member;(

(5) (a) The medical insurance fund, which is an account established according to 26 U.S.C. sec. 401(h), shall consist of amounts accumulated for the purpose of providing benefits as provided in KRS 161.675, including:

1. For individuals who become members before July 1, 2008, one and one-half percent (1.5%) of the gross annual payroll of all members shall be deposited to this fund. Of this amount, three-quarters of a percent (0.75%) shall derive from member contributions as provided by KRS 161.540 and three-quarters of a percent (0.75%) from a state appropriation;
2. For individuals who become members on or after July 1, 2008, two and one-half percent (2.5%) of the gross annual payroll of all members shall be deposited to this fund. Of this amount, one and three-quarters percent (1.75%) shall derive from member contributions as provided by KRS 161.540 and three-quarters of a percent (0.75%) from a state appropriation;
3. Effective July 1, 2010, the member contributions required under KRS 161.540(1)(c);
4. Effective July 1, 2010, local board of education, agency, and organization contributions required under KRS 161.550(3), unless the board of trustees establishes a trust

fund under 26 U.S.C. sec. 115 for health care purposes, in which case the board may direct those contributions to that trust fund;

5. Employer medical insurance fund stabilization contributions as set forth in KRS 161.550, unless the contributions are made to a trust fund under 26 U.S.C. sec. 115 established by the board for this purpose; and
6. Interest income from the investments of the fund from contributions received by the fund under subparagraphs 1. to 5. of this paragraph, and from income earned on those investments.

(b) All claims for benefits under KRS 161.675 shall be paid from this fund or from any trust fund under 26 U.S.C. sec. 115 as established by the board for this purpose. Any amounts deposited to the fund that are not required to meet current costs shall be maintained as a reserve in the fund for these benefits. The board shall take the necessary and appropriate steps, including promulgating administrative regulations and procedures to maintain the status of the medical insurance fund as an account subject to 26 U.S.C. sec. 401(h);

(6) The guarantee fund shall be maintained to facilitate the crediting of uniform interest on the amounts of the other funds, except the expense fund, to finance operating expenses directly related to investment management services, and to provide a contingent fund out of which special requirements of any of the other funds may be covered. All income, interest, and dividends derived from the authorized deposits and investments shall be paid into the guarantee fund. Any funds received from gifts and bequests, which the board is hereby authorized to accept and expend without limitation in a manner either expressed by the donor or deemed to be in the best interest of the membership, shall be credited to the guarantee fund. Any funds transferred from the teachers' savings fund by reason of lack of claimant or because of a surplus in any fund and any other moneys whose disposition is not otherwise provided for, shall also be credited to the guarantee fund. The interest allowed by the board of trustees to each of the other funds shall be paid to these funds from the guarantee fund. Any deficit occurring in any fund that would not be automatically covered shall be met by the payments from the guarantee fund to that fund;

(7) The school employee annuity fund shall consist of those funds voluntarily contributed under the provisions of Section 403(b) of the Internal Revenue Code by a retired member of the Teachers' Retirement System with accounts that existed on or after July 1, 1996. The contributions shall not be picked up as provided in KRS

161.540(2). Separate member accounts shall be maintained for each member. The board of trustees may promulgate administrative regulations pursuant to KRS Chapter 13A to manage this program;

(8) The supplemental retirement benefit fund shall consist of those funds contributed by the employer for the purpose of constituting a qualified government excess benefit plan as described in Section 415 of the Internal Revenue Code for accounts that existed on or after July 1, 1996. The board of trustees shall promulgate administrative regulations pursuant to KRS Chapter 13A to administer this program; and

(9) The life insurance benefit fund shall consist of amounts accumulated for the purpose of providing benefits provided under KRS 161.655. The board of trustees may allocate to this fund a percentage of the employer and state contributions as provided under KRS 161.550. The allocation to this fund will be in an amount that the actuary determines necessary to fund the obligation of providing the benefits provided under KRS 161.655.

161.430 Investment of funds.

(1) The board of trustees shall be the trustee of the funds of the retirement system and shall have full power and responsibility for the purchase, sale, exchange, transfer, or other disposition of the investments and moneys of the retirement system. The board shall, by administrative regulation, establish investment policies and procedures to carry out their responsibilities. The board shall employ experienced competent investment counselors to advise it on all matters pertaining to investment, except the board may employ qualified investment personnel to advise it on investment matters not to exceed fifty percent (50%) of the book value of the system's assets. All individuals associated with the investment and management of retirement system assets, whether contracted investment advisors or staff employees, shall adhere to "The Code of Ethics" and "The Standards of Professional Conduct" promulgated by the Association for Investment Management and Research. Effective July 1, 1991, no investment counselor shall manage more than forty percent (40%) of the funds of the retirement system. The board may appoint an investment committee consisting of the executive secretary and two (2) trustees to act for the board in all matters of investment, subject to the approval of the board of trustees. The board of trustees, in keeping with their responsibilities as trustees and wherever consistent with their fiduciary responsibilities, shall give priority to the investment of funds in obligations calculated to improve the industrial development and enhance the economic welfare of the Commonwealth. Toward this end, the board shall develop procedures

for informing the business community of the potential for in-state investments by the retirement fund, accepting and evaluating applications for the in-state investment of funds, and working with members of the business community in executing in-state investments which are consistent with the board's fiduciary responsibilities. The board shall include in the criteria it uses to evaluate in-state investments their potential for creating new employment opportunities and adding to the total job pool in Kentucky. The board may cooperate with the board of trustees of Kentucky Retirement Systems in developing its program and procedures, and shall report to the Legislative Research Commission annually on its progress in placing in-state investments. The first report shall be submitted by October 1, 1991, and subsequent reports shall be submitted by October 1 of each year thereafter. The report shall include the number of applications for in-state investment received, the nature of the investments proposed, the amount requested, the amount invested, and the percentage of applications which resulted in investments.

(2) The board members and investment counselor shall discharge their duties with respect to the assets of the system solely in the interests of the active contributing members and annuitants and:

(a) For the exclusive purpose of providing benefits to members and annuitants and defraying reasonable expenses of administering the system;

(b) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims;

(c) By diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(d) In accordance with the laws, administrative regulations, and other instruments governing the system.

(3) (a) In choosing and contracting for professional investment management services the board must do so prudently and in the interest of the members and annuitants. Any contract that the board makes with an investment counselor shall set forth policies and guidelines of the board with reference to standard rating services and specific criteria for determining the quality of investments. Expenses directly related to investment management services shall be financed from the guarantee fund in amounts approved by the board.

(b) An investment counselor appointed under this section shall acknowledge in writing his fiduciary responsibilities to the fund.

To be eligible for appointment, an investment counselor must be:

1. Registered under the Federal Investment Advisors Act of 1940; or
2. A bank as defined by that Act; or
3. An insurance company qualified to perform investment services under the laws of more than one (1) state.

(4) No investment or disbursement of funds shall be made unless authorized by the board of trustees, except that the board, in order to ensure timely market transactions, shall establish investment guidelines, by administrative regulation, and may permit its staff and investment counselors employed pursuant to this section to execute purchases and sales of investment instruments within those guidelines without prior board approval.

(5) In discharging his or her administrative duties under this section, a trustee shall strive to administer the retirement system in an efficient and cost-effective manner for the taxpayers of the Commonwealth of Kentucky.

161.440 Assignment of interest to funds.

At the end of each fiscal year the board of trustees shall assign from the guarantee fund interest at the regular interest rate to the teachers' savings fund, the state accumulation fund, and the allowance reserve fund. The amounts so allowed shall be due and payable to the funds and shall be annually credited thereto by the board of trustees from interest and other earnings on money of the retirement system.

161.460 Interest in investments.

No member or employee of the board of trustees shall have any interest in the gain or profits of any investment made by the board, or for himself or as an agent for another use any of the assets of the retirement system in any manner except to make current and necessary payments authorized by the board, or become an endorser, surety, or obligor for moneys loaned to or borrowed from the board, or otherwise profit from any transaction of the board.

161.470 Membership — Forfeiture of service credit — Termination of membership — Forfeiture of benefits — Reinstatement — Payment of accumulated contributions.

(1) The membership of the retirement system shall consist of all new members, all present teachers, and all persons participating under the retirement system as of June 30, 1986, except as provided in Acts 1938 (1st Ex. Sess.), Ch. 1, paragraph 29. The board of trustees of the Teachers' Retirement System shall be responsible for final

determination of membership eligibility and may direct employers to take whatever action that may be necessary to correct any error relating to membership.

(2) Service credit shall be forfeited upon withdrawal. If a member again enters service it shall be as a new member, except that any teacher who withdraws by claiming his deposits may repay the system the amount withdrawn plus interest and reestablish his service credit as provided in subsection (3) of this section.

(3) Effective July 1, 1988, and thereafter, an active contributing member of the retirement system with contributing service equal to one (1) year may regain service credit by depositing in the teachers' savings fund the amount withdrawn with interest at the rate to be set by the board of trustees, and computed from the first of the month of withdrawal and including the month of redeposit.

(4) Effective July 1, 1974, any active contributing member with at least two (2) years of contributing service credit who declined membership as provided in Acts 1938 (1st Ex. Sess.), Ch. 1, paragraph 29, may secure service credit for prior service, and for any subsequent service prior to date of membership, by depositing in the teachers' savings fund contributions for each year of subsequent service prior to date of membership, with interest at the rate of eight percent (8%) compounded annually to the date of deposit.

(5) Membership in the retirement system shall be terminated:

(a) By retirement for service;

(b) By death;

(c) By withdrawal of the member's accumulated contributions;

(d) When a member, having less than five (5) years of Kentucky service is absent from service for more than three (3) consecutive years; or

(e) For persons hired on or after August 1, 2000, when a member is convicted, in any state or federal court of competent jurisdiction, of a felony related to his employment as provided in subparagraphs 1. and 2. of this paragraph.

1. Notwithstanding any provision of law to the contrary, a member hired on or after August 1, 2000, who is convicted, in any state or federal court of competent jurisdiction, of a felony related to his employment shall forfeit rights and benefits earned under the retirement system, except for the return of his accumulated contributions and interest credited on those contributions.

2. The payment of retirement benefits ordered forfeited shall be stayed pending any appeal of the conviction. If the conviction is reversed on final judgment, no retirement benefits shall be forfeited.

Except for paragraph (e) of this subsection, upon termination of member accounts under this subsection, funds in the account shall be transferred to the guarantee fund. Inactive members may apply for refunds of these funds at any time. The terminated service shall be reinstated, if not withdrawn by the member, in the event that the member returns to active contributing service.

(6) In case of withdrawal from service prior to eligibility for retirement, the board of trustees shall on request of the member return all of his accumulated contributions with regular interest, including any payments made by the member to the state accumulation fund, but the member shall have no claim on any contributions made by the state with a view to his retirement or to contributions made to the medical insurance fund. If the member is eligible for an immediate service retirement allowance as provided in KRS 161.600, no withdrawal and refund shall be permitted, unless the allowance would prohibit the member from qualifying for Social Security benefits or the member elects to withdraw part or all of his service for the purpose of obtaining credit in another retirement plan. Requests for refund of contributions by the member must be filed on forms prescribed by the Teachers' Retirement System and the employer shall be financially responsible for all information that is certified on the prescribed form. A member may not withdraw any part of his or her contributions to the retirement system except as provided by this subsection.

(7) Except as provided in KRS 161.520 and 161.525, in case of death prior to retirement, the board of trustees shall pay to the estate of the deceased member, unless a beneficiary was otherwise applicably designated by the deceased member, then to the beneficiary, all of his accumulated contributions, with regular interest, including any payments made by the member to the state accumulation fund, but the estate or beneficiary shall have no claim on any contributions made by the state with a view to the retirement of the member or to contributions made to the medical insurance fund.

(8) Any active contributing member of the Kentucky Employees Retirement System, the County Employees Retirement System, the State Police Retirement System, or the Judicial Retirement System may use service, under that retirement system for the purpose of meeting the service requirement of subsections (3) and (4) of this section.

161.480 Statement of member — Designation of beneficiary.

Each person, upon becoming a member of the retirement system, shall file a detailed statement as required by the board of trustees and shall

designate a primary beneficiary or two (2) or more cobeneficiaries to receive any benefits accruing from the death of the member. A contingent beneficiary may be designated in addition to the primary beneficiary or cobeneficiaries. The member may name more than one (1) contingent beneficiary. Any beneficiary designation made by the member, including the estate should the estate become the beneficiary by default, shall remain in effect until changed by the member on forms prescribed by the Kentucky Teachers' Retirement System, except in the event of subsequent marriage or divorce. Subsequent marriage by the member shall void the primary beneficiary and any cobeneficiary designation, even that of a trust, and the spouse of the member at death shall be considered as the primary beneficiary, unless the member subsequent to marriage designates another beneficiary. A final divorce decree shall terminate an ex-spouse's status as either primary beneficiary, cobeneficiary, or contingent beneficiary, unless subsequent to divorce the member redesignates the former spouse as primary beneficiary, cobeneficiary, or contingent beneficiary. To the extent permitted by the Internal Revenue Code, a trust may be designated as beneficiary for receipt of a member's contributions to the retirement system as provided under KRS 161.470(7). A final divorce decree shall not terminate the designation of a trust as beneficiary regardless of who is designated as beneficiary of the trust. In the event that a member fails to designate a beneficiary, or all designated beneficiaries predecease the member, the member's estate shall be deemed to be the beneficiary. Members may designate as beneficiaries only presently identifiable and existing individuals, or trusts where otherwise permitted, without contingency instructions, on forms prescribed by the retirement system. The provisions of this section shall be retroactive as they relate to election of beneficiaries by members still in active status on the effective date of this section. The provisions of this section shall not apply to any account from which a member is drawing a retirement allowance or to the life insurance benefit available under KRS 161.655.

161.490 Investigation of statement.

To the extent to which it is used in determining the liability of any fund of the retirement system, the board of trustees shall ascertain the correctness of the statement filed under KRS 161.480 by the best evidence it is able to obtain. If official records are not available as to length of service, age, salary, or other information required for the administration of the retirement system, the board may use its discretion as to the evidence to be accepted.

161.500 Service credit.

(1) At the close of each fiscal year, the retirement system shall add service credit to the account of each member who made contributions to his or her account during the year. Members shall be entitled to a full year of service credit if their total paid days were not less than one hundred eighty (180) days of a one hundred eighty-five (185) day contract for a regular school or fiscal year. In the event a member is paid for less than one hundred eighty (180) days, the member may purchase credit according to administrative regulations established by the board of trustees. In no case shall more than one (1) year of service be credited for all service performed in one (1) fiscal year. Members who complete their employment contract prior to the close of a fiscal year and elect to retire prior to the close of a fiscal year shall have their service credit reduced by eight percent (8%) for each calendar month that the retirement becomes effective prior to July 1.

(2) Members who are employed and paid for less than the number of days required in their normal employment year shall be entitled to pro rata service credit for the fractional service. Such credit shall be based upon the number of days employed and the number of days in the member's annual employment agreement or normal employment year.

(3) Service credit may not exceed the ratio between the school or fiscal year and the number of months or fraction of a month the member is employed during that year.

(4) No service credit shall be granted in the Teachers' Retirement System for service that has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds.

161.507 Prior service credit for veterans — Credit for military service and uniformed service by active contributing member.

(1) An active contributing member of the Teachers' Retirement System may receive service credit for active service rendered in the uniformed services of the Armed Forces of the United States, including the commissioned corps of the Public Health Service, subject to the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 and to administrative regulations promulgated by the board of trustees. Military service includes service in the uniformed services that occurs before the employment of a member in a position covered by the retirement system or where a member leaves covered employment without giving advance written or verbal notice of performing duty in the uniformed services. Service in the uniformed services also includes uniformed service that occurs after

employment in a position covered by the retirement system where the member has given advance written or verbal notice of performing duty in the uniformed services and the member returns directly from uniformed services to covered employment. Military service may be credited only if discharge was honorable or was not terminated upon the occurrence of any of the events listed in 38 U.S.C. sec. 4304. Service shall be considered as Kentucky teaching service, except that service may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1) unless the service occurred after the member gave written or verbal notice of performing duty in the uniformed services and the member returned directly from uniformed services to covered employment. A maximum of six (6) years of military service may be credited, but in no case a greater number of years than the actual years of contributing service in Kentucky.

(2) No credit shall be granted for military service which has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds.

(3) A member having twenty (20) years or more of active duty in the military service, and who is qualified for regular federal retirement benefits based on this military service, may not receive credit for any military service in the Teachers' Retirement System. This subsection shall apply to service presented for credit on July 1, 1975, and after this date.

(4) (a) A member receiving retirement credit for active duty in the armed services of the United States prior to employment in a position covered by the retirement system or where the member leaves covered employment without giving advance written or verbal notice of performing duty in the uniformed services shall pay to the retirement system the full actuarial cost of the service credit purchased as provided under KRS 161.220(22). These contributions shall not be picked up, as described in KRS 161.540(2). In purchasing retirement credit for active duty in the armed services, the latest years of service shall be considered first in allowing credit toward retirement. The board of trustees shall adopt a table of actuarial factors to be used in calculating the amount of contribution required for crediting this service.

(b) If military service occurred after the member gave written or verbal notice of performing duty in the uniformed services and the member returns directly from uniformed services to covered employment, the member shall contribute the regular member contribution required by KRS 161.540. The member may make the payment of delayed contributions in a lump sum payment or in installments not to exceed five (5) years beginning with

the member's date of reemployment. Interest at the rate of eight percent (8%) per annum shall be charged for delayed contributions beginning with the member's date of reemployment until paid.

(5) An active contributing member of the Teachers' Retirement System may receive service credit for service in the military reserves of the United States or the National Guard. The member may purchase one (1) month of service for each six (6) months of service in the reserves or the National Guard. Notwithstanding any other statute, regulation, or policy to the contrary, the system shall provide a member, upon request, the estimated actuarial cost of the National Guard or military reserves service purchase based upon the information available at the time of the request. The member shall be entitled to enter into a contract with the system at the time of the request to purchase the National Guard or military reserve service by paying to the system the estimated actuarial cost, either by installments or in lump sum. The member shall pay the full actuarial cost of this service in the military reserves or the National Guard as provided in KRS 161.220(22). Service in the military reserves or the National Guard shall be treated as service earned prior to participation in the system and shall not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1). The payment shall not be picked up by the employer, as described in KRS 161.540(2).

161.515 Out-of-state service credit — Contribution — Kentucky Peace Corps and federal Peace Corps service credit.

(1) For the purposes of this section, "out-of-state service" shall mean service in any state in a comparable position on a full-time basis, which would be covered if in Kentucky.

(2) (a) An active contributing member who has been a contributing member of the retirement system for at least one (1) full scholastic year subsequent to the latest out-of-state service, may present for credit service rendered out of state, not to exceed ten (10) years actually taught as a certified or licensed teacher. All members who elect to purchase this service shall pay to the retirement system the full actuarial cost as provided under KRS 161.220(22). For each year of which the retirement system shall accept payment, one (1) year of service credit shall be given. For members who purchased this service under the cost formula as it existed under this subsection on June 30, 2005, this credit may not be used to meet the service requirements of KRS 161.525, 161.600, or 161.661, except as provided in

subsection (2)(c) of this section. No credit shall be granted for service which has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds.

(b) A member of the retirement system having teaching service in the elementary or secondary schools operated by the United States overseas or in this country, or in a public college or university in Kentucky, not included in the Teachers' Retirement System of the State of Kentucky, may present this service for credit in the retirement system on the same basis as provided above for out-of-state service credit; however, no service may be presented which shall be used as a basis for retirement benefits in any program supported wholly or in part by a public institution or governmental agency. This service when added to service credited under subsection (2)(a) of this section shall not exceed a total of ten (10) years' service credit.

(c) A member having service referred to in subsection (2)(a) or (2)(b) of this section who purchased this service under the cost formula as it existed under those subsections on June 30, 2005, may elect to use this service for meeting the requirements of KRS 161.600(1)(c) by making an additional contribution to the state accumulation fund equal to a member contribution rate of eight percent (8%) for each year so used. These payments shall not be picked up as described in KRS 161.540(2). The salary base to be used in determining this additional contribution shall be the final average salary which is used in calculating the member's regular retirement annuity.

(3) Members entering the Teachers' Retirement System for the first time, July 1, 1976, and after this date, shall not receive credit for service defined in subsections (2)(a) or (2)(b) of this section in excess of one (1) year of credit for each two (2) years of Kentucky service in a covered position or ten (10) years, whichever is the lesser number.

(4) A member, having completed service as a volunteer in the Kentucky Peace Corps created by KRS 154.01-720, may purchase service credit for the time served in the corps on the same basis as provided in this section for the purchase of out-of-state service credit. A member, having completed service as a federal Peace Corps volunteer, may purchase up to two (2) years of service credit for time served in the Peace Corps on the same basis as provided in this section for the purchase of out-of-state service credit.

(5) Service purchased under this section by members who at the time of purchase are employed by employers other than those described in KRS 161.220(4)(b) or (n) shall be credited, as described in KRS

161.620(1)(a) and (b), with a retirement factor of two and one-half percent (2.5%) for each year of service that was originally performed on or after July 1, 1983, and two percent (2.0%) for each year of service performed before July 1, 1983. Service purchased under this section by members who at the time of purchase are employed by employers described in KRS 161.220(4)(b) or (n) shall be credited, as described in KRS 161.620(1)(a), with a retirement factor of two percent (2.0%) for each year of service, regardless of when the service was performed.

161.520 Payment of accumulated contribution on death.

Upon the death of an active contributing member or upon the death of a member retired for disability, except as provided in KRS 161.661(6), the survivors of the deceased member in the following named order, may elect to receive a survivor's benefit payable as follows:

(1) Where there is a surviving widow or widower who is named as the primary beneficiary of the member's retirement account, the benefit shall be:

(a) One hundred eighty dollars ($180) per month with no restriction on other income;

(b) Two hundred forty dollars ($240) per month when the surviving widow or widower's total income from all sources does not exceed six thousand six hundred dollars ($6,600) per year or five hundred fifty dollars ($550) per month; or

(c) If the deceased member has a minimum of ten (10) years of service credit with the Teachers' Retirement System, the surviving widow or widower may apply for an annuity actuarially equivalent to the annuity that would have been paid to the deceased member when eligibility conditions were met. Eligibility for payments would begin at the time the age of the deceased member would have met the requirements of KRS 161.600(1). In exercising this right, the surviving widow or widower shall be entitled to receive an annuity for life, except as provided in subsection (6) of this section. This subsection applies to surviving spouses of members who die on or after July 1, 1978. A surviving widow or widower of a member who dies after July 1, 1978, shall be eligible for benefit payments provided under paragraphs (a) and (b) of this subsection until they begin receiving payments under this provision;

(2) (a) Where there are surviving unmarried children under age eighteen (18) or under age nineteen (19) if a full-time student in high school, the benefit shall be two hundred dollars ($200)

per month in the case of one (1) child, three hundred forty dollars ($340) per month in the case of two (2) children, four hundred dollars ($400) per month in the case of three (3) children, and four hundred forty dollars ($440) per month in the case of four (4) or more children. Benefits under this subsection shall apply in addition to benefits which may be payable under subsections (1) and (3) of this section.

(b) Notwithstanding any provision of law to the contrary, the surviving spouse may elect to receive a lump-sum refund of the member's account in lieu of the survivorship benefits payable under this subsection and subsection (1) of this section only if the surviving spouse is designated as the primary beneficiary and:

1. Is a biological or adoptive parent of all children eligible for a benefit under this subsection and has not had his or her parental rights terminated; or
2. Has been appointed as legal guardian of all of the children eligible under paragraph (a) of this subsection.

(c) To elect a lump-sum refund of the member's account under paragraph (b) of this subsection, the surviving spouse who is designated as the primary beneficiary must sign a waiver on forms prescribed by the retirement system of his or her rights and the member's children's rights to the survivorship benefits payable under this subsection and subsection (1) of this section. The surviving spouse shall not waive the survivorship benefits available under this subsection or subsections (1) and (6) of this section if any of the member's children have attained age eighteen (18) or older unless all of those children consent in writing on forms prescribed by the retirement system to waive their survivorship benefits available under this subsection;

(3) (a) Where the survivor is a child age eighteen (18) or older whose mental or physical condition is sufficient to cause his dependency on the deceased member at the time of the member's death, the benefit shall be two hundred dollars ($200) per month, payable for the life of the child or until the time as the mental or physical condition creating the dependency no longer exists or the child marries. The mental or physical condition of the adult child shall be revealed by a competent examination by a licensed physician and shall be approved by a majority of a medical review committee as defined in KRS 161.661(14). Benefits under this subsection shall apply in addition to benefits which may be payable under subsections (1) and (2) of this section.

(b) Notwithstanding any provision of law to the contrary, the surviving spouse shall not elect to receive a lump-sum refund of the member's account in lieu of the survivorship benefits payable under this subsection and subsection (1) of this section unless:

1. The surviving spouse is designated as the primary beneficiary;
2. The surviving spouse has been appointed by the court as guardian, conservator, or other fiduciary with sufficient general or specific authority to waive the survivorship benefits available under this subsection for any child or children age eighteen (18) or older who have been adjudicated incompetent to make decisions on their own behalf by a court of law; and
3. Any child or children age eighteen (18) or older who are mentally competent to make decisions on their own behalf as attested to by two (2) physicians' statements consent in writing on forms prescribed by the retirement system to waive their survivorship benefits available under this subsection.

(c) If eligible to elect a lump-sum refund of the member's account, the surviving spouse shall sign a waiver on forms prescribed by the retirement system of his or her rights and the member's children's rights to the survivorship benefits payable under this subsection and subsections (1) and (2) of this section;

(4) Where the sole eligible survivors are dependent parents aged sixty-five (65) or over, the benefit shall be two hundred dollars ($200) per month for one (1) parent or two hundred ninety dollars ($290) per month for two (2) parents. Dependency of a parent shall be established as of the date of the death of the member;

(5) Where the sole eligible survivor is a dependent brother or sister, the benefit shall be one hundred sixty five dollars ($165) per month. In order to qualify the brother or sister must have been a resident of the deceased member's household for at least one (1) full year prior to the member's death or must have been receiving care in a hospital, nursing home, or other institution at the member's expense for same period;

(6) The benefit to a child as defined in subsection (2) of this section shall terminate upon the attainment of age eighteen (18) or upon reaching age nineteen (19), if a full-time student in high school, or upon marriage, except that benefits shall continue until the attainment of age twenty-three (23) for an unmarried child who is a full-time student in a recognized educational program beyond the high school

level. The benefit to a widow, widower, dependent parent, or dependent brother or sister or dependent child age eighteen (18) or older shall terminate upon marriage, or upon termination of the condition creating the dependency;

(7) The board of trustees shall be the sole judge of eligibility or dependency of any beneficiary, and may require formal application or information relating to eligibility or dependency, including proof of annual income satisfactory to the board. The board of trustees may subpoena records and individuals whenever it deems this action necessary;

(8) No payment of benefits shall be made unless the board of trustees authorizes the payment. The board shall promulgate administrative regulations for the administration of the provisions in this section and in every case the decision of the board of trustees shall be final as to eligibility, dependency, or disability, and the amount of benefits payable;

(9) In the event that there are no eligible survivors as defined in subsections (1) to (5) of this section, or in the event that the surviving spouse elects not to receive survivorship benefits on his or her own behalf or on behalf of any of the member's children as permitted under subsections (2) and (3) of this section, the board of trustees shall pay to the estate or the designated beneficiaries of the deceased member a refund of his accumulated contributions as provided in KRS 161.470(7). If the benefits paid or payable under subsections (1) to (5) of this section and KRS 161.661 shall amount to a sum less than the member's accumulated contributions at the time of death, the board of trustees shall pay to the estate or designated beneficiaries of the deceased member the balance of the accumulated contributions;

(10) Any person who is receiving benefits and becomes disqualified from receiving those benefits under this section shall immediately notify the Teachers' Retirement System of this disqualification in writing and shall return all benefits paid after the date of disqualification. Failure to comply with these provisions shall create an indebtedness of that person to the Teachers' Retirement System. Interest at the rate of eight percent (8%) per annum shall be charged if the debt is not repaid within sixty (60) days after the date of disqualification. Failure to repay this debt creates a lien in favor of the Teachers' Retirement System upon all property of the person who improperly receives benefits and does not repay those benefits; and

(11) Benefits under subsections (2) and (3) of this section shall apply to a child who is a legally adopted survivor at the time of the death of the member. This provision shall be retroactive to include a child who

was born after January 1, 1990, and is a legally adopted survivor of a member whose death occurred prior to July 15, 2008.

161.522 Survivor of member retired for disability may elect annuity. Upon the death of a member retired for disability who had a minimum of twenty-seven (27) years of service at the time of death, except as provided in KRS 161.661(6), the spouse, if named as the primary beneficiary of the member's account, shall be entitled to elect, in lieu of a refund of the member's account, an annuity actuarially equivalent to the annuity that would have been paid to the deceased member had retirement for service been effective on the day immediately preceding the member's death. This option shall be available only during the entitlement period described under KRS 161.661(3) and (4) prior to the recalculation of the member's disability allowance under KRS 161.661(5). In selecting this right, the spouse shall be limited to selecting an option providing a straight life annuity with refundable balance or a term certain option. There shall be a monthly minimum allowance of three hundred dollars ($300) as the basic straight life annuity. This section applies to surviving spouses of members who were receiving benefit payments under KRS 161.520 as of June 30, 1988, and to surviving spouses of members who die on or after July 1, 1984, except that the member shall have been retired for disability with a minimum of thirty (30) years of service if either of these two (2) conditions were met prior to July 1, 1990.

161.525 Death of member eligible to retire — Options of beneficiary — Monthly minimum allowance to surviving spouse.

(1) Upon death of a member in active contributing status at the time of death, who was eligible to retire by reason of service, the spouse, if named as the primary beneficiary of the member's retirement account, or in the absence of an eligible spouse a legal dependent of the member, if named as the primary beneficiary, shall be entitled to elect, in lieu of a refund of the member's account or benefits provided in KRS 161.520, an annuity actuarially equivalent at the attained age of the beneficiary to the annuity that would have been paid to the deceased member had retirement been effective on the day immediately preceding the member's death. Under the provisions of KRS 61.680, benefits shall be processed as if the member retired for service. In exercising this right the spouse or legal dependent shall be limited to selecting an option providing either a straight life annuity with refundable balance or a term certain option. A spouse may receive the annuity provided by this section at the same time as

children are qualifying for survivors' benefits under the provisions of KRS 161.520; however, a legal dependent, other than a spouse, may not receive these payments if children have qualified for benefits under that section.

(2) A spouse qualifying for an annuity under subsection (1) of this section may defer the payments in order to reduce the actuarial discounts to be applied due to age.

(3) Upon death of a member in active contributing status at the time of his death, who had a minimum of twenty-seven (27) years of service, the spouse, if named as the primary beneficiary of the member's account shall be entitled to a monthly minimum allowance of three hundred dollars ($300) as the basic straight life annuity. This provision applies to surviving spouses of members who were receiving benefit payments under KRS 161.520 as of June 30, 1986, and to surviving spouses of members who die on or after July 1, 1986.

161.530 Restoration of forfeited account — Exception.

Except as provided in KRS 6.696, if a member, whose account has been forfeited under previous provisions of this section, shall return to teaching in a covered position in Kentucky, and reinstates the lost service credit as provided in KRS 161.470(3), the funds transferred from the member's account shall be restored to his account, without interest, and shall be credited against the payment required for reinstatement of service credit.

161.540 Members' contributions — Picked-up contributions.

(1) (a) Effective July 1, 1988, each individual who first becomes a member before July 1, 2008, shall contribute to the retirement system nine and eight hundred fifty-five thousandths percent (9.855%) of annual compensation, except that university employees who participate in the Kentucky Teachers' Retirement System shall contribute eight and three hundred seventy-five thousandths percent (8.375%) of annual compensation.

(b) Each individual who first becomes a member on or after July 1, 2008, shall contribute to the retirement system ten and eight hundred fifty-five thousandths percent (10.855%) of annual compensation, except that university employees who participate in the Kentucky Teachers' Retirement System shall contribute nine and three hundred seventy-five thousandths percent (9.375%) of annual compensation.

(c) 1. Effective July 1, 2010, members shall, in addition to those contributions required under paragraphs (a) and (b) of this

subsection, make a contribution to the medical insurance fund established under KRS 161.420(5) according to the following schedule:

a. For each individual who first became a member of the retirement system before July 1, 2008, a total amount of annual compensation equal to and effective on:

July 1, 2010..... Twenty-five hundredths percent (.25%)
July 1, 2011..... One-half percent (0.50%)
July 1, 2012.....One percent (1.0%)
July 1, 2013..... One and one-half percent (1.5%)
July 1, 2014..... Two and twenty-five hundredths percent (2.25%)
July 1, 2015,
and thereafter.....Three percent (3.0%) for a total of three and
seventy-five hundredths percent (3.75%) when added to the contributions required under KRS 161.420(5)(a); or

b. For each individual who first becomes a member of the retirement system on or after July 1, 2008, a total amount of annual compensation equal to and effective on:

July 1, 2013.....One-half percent (0.50%)
July 1, 2014..... One and twenty-five hundredths percent (1.25%)
July 1, 2015,
and thereafter.....Two percent (2.0%) for a total of three and
seventy-five hundredths percent (3.75%) when added to thecontributions required under KRS 161.420(5)(a)

2. Notwithstanding subparagraph 1. of this paragraph, members employed by any employer identified in KRS 161.220(4)(b) or (n) shall contribute, as a percentage of their total annual compensation, the actuarial equivalent of the percentage contributed by members under subparagraph 1. of this paragraph, not to exceed the percentages established under the schedules set forth in subparagraph 1. of this paragraph. The actuarial equivalent to be contributed under this subsection shall be determined by the retirement system's actuary. These contributions shall be in lieu of those contributions required under subparagraph 1. of this paragraph.
3. When the medical insurance fund established under KRS 161.420(5) achieves a sufficient prefunded status as determined by the retirement system's actuary, the board of

trustees shall recommend to the General Assembly that the contributions required under subparagraphs 1. and 2. of this paragraph shall, in an actuarially accountable manner, be either decreased, suspended, or eliminated.

(d) Payments authorized by statute that are made to retiring members, who became members of the system before July 1, 2008, for not more than sixty (60) days of unused accrued annual leave shall be considered as part of the member's annual compensation, and shall be used only for the member's final year of active service. The contribution of members shall not exceed these applicable percentages on annual compensation. When a member retires, if it is determined that he has made contributions on a salary in excess of the amount to be included for the purpose of calculating his final average salary, any excess contribution shall be refunded to him in a lump sum at the time of the payment of his first retirement allowance. In the event a member is awarded a court-ordered back salary payment the employer shall deduct and remit the member contribution on the salary payment, plus interest to be paid by the employer, to the retirement system unless otherwise specified by the court order.

(2) Each public board, institution, or agency listed in KRS 161.220(4) shall, solely for the purpose of compliance with Section 414(h) of the United States Internal Revenue Code, pick up the member contributions required by this section for all compensation earned after August 1, 1982, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010(10). The picked-up member contribution shall satisfy all obligations to the retirement system satisfied prior to August 1, 1982, by the member contribution, and the picked-up member contribution shall be in lieu of a member contribution. Each employer shall pay these picked-up member contributions from the same source of funds which is used to pay earnings to the member. The member shall have no option to receive the contributed amounts directly instead of having them paid by the employer to the system. Member contributions picked-up after August 1, 1982, shall be treated for all purposes of KRS 161.220 to 161.714 in the same manner and to the same extent as member contributions made prior to August 1, 1982.

161.545 Contributions and service credit for substitute service, part-time service, or leave of absence — Contributions not to be picked up — Purchases of service credit by individuals becoming members on or after July 1, 2008, for leaves of absence for health, child-rearing, and educational improvement reasons.

(1) Members may make contributions and receive service credit for substitute, part-time, or any service other than regular full-time teaching as provided in the administrative regulations of the board of trustees if contributions were not otherwise made as a result of the service. Members placed on leave of absence during a period of full-time employment as defined in KRS 161.220(21) may make contributions and receive service credit for this leave only if contributions are made by the end of the fiscal year next succeeding the year in which the leave was effective as provided in administrative regulations promulgated by the board of trustees. Contributions permitted after August 1, 1982, shall not be picked-up pursuant to KRS 161.540(2).

(2) Active contributing members of the Teachers' Retirement System, or former members who are currently participating in a state-administered retirement system, who were granted leaves of absence during a period of full-time employment as defined in KRS 161.220(21) since July 1, 1964, for reasons of health as defined under the Federal Family Medical Leave Act of 1993, 29 U.S.C. secs. 2601 et seq., child rearing, or to improve their educational qualifications, and did not purchase the leave of absence as provided in subsection (1) of this section may obtain credit for the leave of absence as provided under the administrative regulations of the board of trustees and under the following conditions:

(a) The leave of absence shall be verified by a copy of the board of education minutes which granted the leave of absence or by other documentation that was generated contemporaneously with the leave that is determined by the retirement system to reasonably establish that a leave of absence was granted; and

(b) The member shall contribute the required percentage based on the salary received for the year immediately preceding the leave of absence plus interest at the rate of eight percent (8%) compounded annually from the beginning of the school year following the year of the leave of absence, and by depositing in the state accumulation fund an amount equal to this total.

(c) The member shall receive credit for no more than two (2) years under the provisions of this subsection.

(3) Contributions permitted under this section after August 1, 1982, shall not be picked-up pursuant to KRS 161.540(2).

(4) Notwithstanding any other provisions of this section to the contrary, purchase of service credit under subsection (2) of this section for individuals who become members on or after July 1, 2008, shall be purchasable only at the full actuarial cost.

161.5461 Purchase of service credit with rolled-over or transferred retirement funds.

(1) Any active contributing member may purchase service credit as authorized under KRS Chapter 161 by rolling over funds from a previous plan to the extent that rollovers are permitted by the rules set forth in the Internal Revenue Code. The rollovers may be made directly from a previous qualified plan or through a conduit individual retirement account as permitted by the rules set forth in the Internal Revenue Code.

(2) Any active contributing member may purchase service credit as authorized under KRS Chapter 161 by transferring funds directly from a retirement plan maintained by the Commonwealth of Kentucky to the extent that transfers are permitted by the rules set forth in the Internal Revenue Code.

(3) The amount of any transfer or rollover purchase as permitted under subsections (1) and (2) of this section, excluding that portion credited to the medical insurance fund under KRS 161.420(5), shall be credited to the individual member's account and shall be considered accumulated contributions of the member.

161.5465 Member with twenty years' service credit may purchase five years' service credit.

On or after August 1, 1998, a member of the Teachers' Retirement System in active contributing status who has a minimum of twenty (20) years of service credit may purchase up to a maximum of five (5) years of service credit that is not otherwise purchasable under any of the provisions of KRS 161.220 to 161.716 and that meets the definition of nonqualified service as provided in Section 1526 of the Federal Taxpayer Relief Act of 1997. The member shall pay the full actuarial cost of the service credit as provided in KRS 161.220(22). The payment shall not be picked up by the employer as described in KRS 161.540(2), and the member's payment shall be credited to the member's contribution account and shall be considered accumulated contributions of the member. Payment by the member may be by lump sum or by installment payments as provided in KRS 161.597. Notwithstanding any other statute to the contrary, the Kentucky Teachers' Retirement System shall recognize nonqualified service credit purchased with another retirement system only to the extent

that the member had an equivalent number of full months of active employment in the position covered by the other retirement system during the period that the nonqualified service was purchased. This section shall not apply to individuals who become members on or after July 1, 2008, except that a teacher of a local school board may purchase up to ten (10) months of service under this section if the teacher is retiring and has completed the prior school year with at least twenty-six (26) years and two (2) months of service but less than twenty-seven (27) years of service.

161.547 Member having service as legislator may purchase 4 years' credit in the retirement system.
A member of the retirement system having service as a Kentucky legislator which is not credited by any retirement system administered by the Commonwealth of Kentucky may present such service, not to exceed four (4) years, for credit in the retirement system by paying the full actuarial cost of the service as determined by the system actuary. The member may purchase all or part of his service as a legislator, but no less than one (1) year of service. The entire payment shall be placed in the teachers' saving fund.

161.548 Purchase of service credit for service at a regional community mental health and mental retardation service program.
A member of the Teachers' Retirement System who is in an active contributing status with the system, and who was formerly employed in a regional community mental health and mental retardation service program, organized and operated under the provisions of KRS 210.370 to 210.480, which does not participate in a state-administered retirement system, may obtain credit for the period of his service in the regional community mental health and mental retardation program by paying to the Teachers' Retirement System the full actuarial cost of the service credit purchased, as provided in KRS 161.220(22). The service credit purchased may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1). The payment shall not be picked up, as described in KRS 161.540(2), and the entire payment shall be placed in the teachers' savings fund.

161.549 Purchase of service credit for service at a Federal Head Start agency.
A member of the Teachers' Retirement System who is in an active contributing status with the system, and who was formerly employed by a Federal Head Start agency, operated under 42 U.S.C. secs. 9831

et seq., which does not participate in a state-administered retirement system, may obtain credit for the period of the member's service in the Head Start program by purchasing this service credit under the same conditions that out-of-state service credit may be purchased under KRS 161.515. The service credit purchased may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1). Payment for the service credit purchased may be made in installments in lieu of a lump-sum payment. The payment shall not be picked up, as described in KRS 161.540(2), and the entire payment shall be placed in the teachers' savings fund.

161.550 State's contribution to system.

(1) Beginning with July 1, each employer, except as provided under KRS 161.555, shall contribute annually to the Kentucky Teachers' Retirement System a permanent amount equal to that contributed by members of the retirement system it employs less the amount contributed by employees under KRS 161.540(1)(c), plus an additional three and one-fourths percent (3.25%) of the total of salaries of members of the retirement system it employs to discharge the system's unfunded obligations with interest assumed by the state and to provide funding to the medical insurance fund as provided under KRS 161.420(5). If the board of trustees establishes a trust fund under 26 U.S.C. sec. 115, the board may deposit the employer contribution dedicated to retiree health in that trust fund.

(2) In addition to the required contributions in subsection (1) of this section, the state shall contribute annually to the Kentucky Teachers' Retirement System a percentage of the total salaries of the state-funded and federally funded members it employs to pay the cost of health insurance coverage for retirees who are not eligible for Medicare and who retire on or after July 1, 2010, less the amounts that are otherwise required to be paid by the retirees under KRS 161.675. The Kentucky Teachers' Retirement System may also request an additional amount necessary to ensure payment of medical insurance costs through fiscal year 2015-2016 which shall not be subject to the limitations of paragraph (c) of this subsection. The board shall deposit funds in the medical insurance fund unless the board of trustees has established a trust fund under 26 U.S.C. sec. 115 for this purpose. In this case, the board may deposit the employer contribution in that trust fund. This contribution shall be known as the state medical insurance fund stabilization contribution. The percentage to be contributed by the state under this subsection:

(a) Shall be determined by the retirement system's actuary for each biennial budget period;

(b) May be suspended or adjusted by the General Assembly if in its

judgment the welfare of the Commonwealth so demands; and

(c) Shall not exceed the lesser of the actual benefit cost for retirees not eligible for Medicare who retire on or after July 1, 2010, or the amount contributed by employers under subsection (3) of this section.

(3) Effective July 1, 2010, all local boards of education, agencies, and organizations identified in KRS 161.220(4), with the exception of those institutions identified under paragraphs (b) and (n) of KRS 161.220(4), shall make a contribution for each payroll on behalf of their active employees who participate in the Kentucky Teachers' Retirement System in an amount equal to the percentage of payroll of those active employees, according to the schedule as follows:
July 1, 2010.....Twenty-five hundredths percent (.25%)
July 1, 2011.....One-half percent (.50%)
July 1, 2012.....One percent (1.0%)
July 1, 2013.....One and one-half percent (1.5%)
July 1, 2014.....Two and twenty-five hundredths percent (2.25%)
July 1, 2015, and thereafter..... Three percent (3.0%)

(4) Institutions identified under KRS 161.220(4)(b) and (n) shall make a contribution for each payroll on behalf of their active employees who participate in the Kentucky Teachers' Retirement System of an amount equal to a percentage of these employees' payroll that is actuarially equivalent to the percentage contributed by local boards of education, agencies, and organizations identified under subsection (3) of this section, not to exceed the percentages established under the schedule set forth in subsection (3) of this section. The actuarial equivalent to be contributed under this subsection shall be determined by the Kentucky Teachers' Retirement System's actuary.

(5) When the medical insurance fund established under KRS 161.420(5) achieves a sufficient prefunded status as determined by the Kentucky Teachers' Retirement System's actuary, the board of trustees shall recommend to the General Assembly that the contributions required under subsections (3) and (4) of this section shall, in an actuarially accountable manner, be either decreased, suspended, or eliminated.

(6) Each employer shall remit the required employer contributions to the retirement system under the terms and conditions specified for member contributions under KRS 161.560. The state shall provide annual appropriations based upon estimated funds needed to meet the requirements of KRS 161.155; 161.168; 161.507(4); 161.515; 161.545; 161.553; 161.605; 161.612; and 161.620(1), (3), (5), (6), and (7). In the event an annual appropriation is less than the amount of these requirements, the state shall make up the deficit in

the next biennium budget appropriation to the retirement system. Employer contributions to the retirement system are for the exclusive purpose of providing benefits to members and annuitants and these contributions shall be considered deferred compensation to the members.

161.553 Funding of past statutory benefit improvements — Schedules for appropriations — Cost-of-living increases — Feasibility study of employer contribution rate stabilization.

(1) The cost of providing statutory benefit improvements for annuitants may be funded by annual appropriations from the state on an actuarial amortized basis over the lifetime of the annuitants. The schedules in paragraphs (a), (b), and (c) of this subsection are the annual appropriations which shall be made by the state for benefit improvements approved in the respective fiscal years or bienniums prior to July 1, 2010:

(a)

Cost of Living Allowance	**2010-2011**	**Each Succeeding Fiscal Year**
1994-1996		
1996-1998	$4,459,000	
1998-2000	$15,333,900	$15,333,900 through 2012-2013 $7,938,600 in 2013-2014
2000-2002	$12,511,400	$12,511,400 through 2014-2015 and $7,227,700 in 2015-2016
2002-2004	$21,405,700	$21,405,700 through 2021-2022 and $11,204,100 in 2022-2023
2004-2006	$15,413,700	$15,413,700 through 2023-2024 and $7,421,400 in 2024-2025
2006-2008	$15,730,200	$15,730,200 through 2025-2026 and $7,104,600 in 2026-2027;

(b)

Minimum Value Annuities	**2010-2011**	**Each Succeeding Fiscal Year**
2002-2004	$3,375,900	

		$3,375,900 through 2016-2017 and $2,027,800 in 2017-2018; and

(c)

Sick Leave Allowance	2010-2011	Each Succeeding Fiscal Year
1998-2000	$4,660,300	$4,660,300 through 2012-2013 and $2,425,900 in 2013-2014
2000-2002	$6,167,100	$6,167,100 through 2014-2015 and $3,579,100 in 2015-2016
2002-2004	$5,337,000	$5,337,000 through 2021-2022 and $3,022,800 in 2022-2023
2004-2006	$5,480,300	$5,480,300 through 2023-2024 and $2,558,700 in 2024-2025
2006-2008	$5,814,400	$5,814,400 through 2025-2026 and $3,499,200 in 2026-2027
2008-2010	$8,969,000	$8,969,000 through 2027-2028 and $6,281,300 in 2028-2029.
2010-2012	$6,516,600	$13,674,800 through 2029-2030 and $7,158,200 in 2030-2031

(2) The cost of providing the transitional funding for the state medical insurance fund stabilization contribution as provided by KRS 160.550(2) may be funded by annual appropriations from the state on an amortized basis. The schedule in this subsection is the annual appropriation which shall be made by the state in the respective fiscal years or biennium prior to July 1, 2010:

Amortization of Transitional Funding	2010-2011	Each Succeeding Fiscal Year
2004-2006	$13,325,100	$13,325,100 through 2014-2015 and $9,075,500 in 2015-2016
2006-2008	$28,487,400	$28,487,400 through 2016-2017 and $18,280,000 in 2017-2018
2008-2010	$36,554,100	$36,554,100 through 2018-2019 and $18,266,100 in 2019-2020

Amortization of Fiscal Year Medical Subsidy	2010-2011	Each Succeeding
2008-2010	$2,574,100	$2,574,100 through 2018-2019 and $1,345,200 in 2019-2020

(3) The present values of providing statutory cost-of-living increases for annuitants not included in subsection (1) of this section are to be assigned to the unfunded obligations of the retirement system and are identified as follows:

1986-1988	$34,689,893
1990-1992	$68,107,473
1992-1994	$15,749,976

161.555 Employer contributions for members employed in positions established under federal educational acts.

Each employer employing members of the Teachers' Retirement System in positions established under educational acts adopted by the federal Congress shall contribute to the Teachers' Retirement System an amount equal to that contributed by the members of that employer plus an additional two and forty-five hundredths percent (2.45%) for fiscal years 2003 and 2004. Beginning fiscal year 2005 and each year thereafter, each employer shall contribute an amount equal to the employer contribution provided under KRS 161.550.

161.556 Employer contributions for members employed by regional educational cooperatives.

Each regional educational cooperative referred to in KRS 161.220(4)(e) employing members of the Teachers' Retirement System

shall have the employer contributions provided in the same manner as for members employed by local boards of education.

161.560 Deduction and forwarding of teachers' contributions — Picked-up employee contributions — Correction of omitted member contributions.

(1) Each agency employing members of the retirement system shall deduct from the compensation of each member for each payroll period subsequent to the date the individual became a member, the percentage of his compensation due under the rates prescribed in KRS 161.540. No later than fifteen (15) days following the end of each payroll period, the agency shall forward all amounts deducted to the Teachers' Retirement System. The retirement system shall charge the employing agency interest at an annual rate not to exceed twelve percent (12%) for deductions not remitted within the specified fifteen (15) days. Payroll reports, contributions lists, and other data required by administrative regulation of the board of trustees shall be submitted. Employers shall submit an annual report, in compliance with requirements of the retirement system, of member contributions and periods employed to the retirement system no later than August 1 following the completion of each fiscal year. The retirement system may impose a penalty on the employer not to exceed one thousand dollars ($1,000) when the employer does not meet the August 1 reporting date. The deductions shall be made notwithstanding the fact that the salary as a result may be less than the minimum compensation provided by law. Every member shall be deemed to consent and agree to the deductions, and the deductions shall be considered as having been paid to the member. After August 1, 1982, member contributions shall be picked up by the agency pursuant to KRS 161.540(2).

(2) If an employer fails to deduct the correct retirement contribution from a member's compensation, the member may make the contribution that should have been deducted by the employer and receive retirement credit for the payment. For correction of omitted member contributions that occur more than one (1) year after the year in which the error was made, the employer shall be responsible for paying interest to the retirement system at a rate of eight percent (8%) from the end of the year in which the service was performed to the date of payment.

161.565 Reduction and pick-up of contributions by university faculty members.

Notwithstanding any other provisions of KRS Chapter 161, the contribution of university faculty members may be reduced by

amounts up to two and two hundred fifteen thousandths percent (2.215%) if amounts sufficient to replace the reduction are authorized and contributed to the Teachers' Retirement System by the board of regents of the employing university. After August 1, 1982, any contribution by a university faculty member shall be picked up by the employing university pursuant to KRS 161.540(2).

161.567 Authorization for optional retirement plan for designated employees of certain public universities.

(1) An optional retirement plan is hereby authorized for designated employees of public postsecondary education institutions who are also eligible for membership in the Kentucky Teachers' Retirement System under KRS 161.220(4)(b) and 161.470(1). The purpose of the optional retirement plan shall be to provide suitable retirement and death benefits, while affording the maximum portability of these benefits to the eligible employees as an alternative to membership in the retirement system. Benefits shall be provided by the purchase of annuity contracts, mutual fund accounts, or similar investment products, or a combination thereof, collectively referred to as contracts or annuity contracts, at the option of the participant and offered by the selected provider for plans established under Section 403(b) of the Internal Revenue Code. The specific provisions of provider contracts with respect to the benefits payable to members and their beneficiaries shall prevail over specific provisions relating to the same subjects found in KRS 161.220 to 161.716, other than this section.

(2) The boards of regents of those institutions identified in KRS 161.220(4)(b) shall select no less than two (2) but no more than four (4) companies from which to purchase contracts under the optional retirement plan. As criteria for this selection, the boards of regents shall consider, among other things, and as appropriate for the type of contract provider, the following:

(a) The portability of the contracts offered or to be offered by a company, based on the number of states in which the company provides contracts under similar plans;

(b) The efficacy of the contracts in the recruitment and retention of employees for the various state public postsecondary education institutions;

(c) The nature and extent of the rights and benefits to be provided by the contracts for participating employees and their beneficiaries;

(d) The relation of the rights and benefits to the amount of contributions required;

(e) The suitability of the rights and benefits to the needs and

interests of eligible employees and the various state public postsecondary education institutions; and

(f) The ability of the designated companies to provide the rights and benefits under those contracts.

161.568 Eligibility to participate in optional retirement plan -- Election to change from optional retirement plan to Kentucky Teachers' Retirement System.

(1) Eligibility to participate in the optional retirement plan shall be determined by the board of regents of each of the state public postsecondary education institutions identified in KRS 161.220(4)(b). The employees of these institutions of higher education who are initially employed on or after the implementation date of the optional retirement plan may make an election to participate in the optional retirement plan within thirty (30) days after their employment date. This election shall be irrevocable except as otherwise provided in this subsection. No member of the Kentucky Teachers' Retirement System who terminates employment and is subsequently reemployed by the same or another public postsecondary education institution which participates in the Kentucky Teachers' Retirement System may be eligible to elect to participate in the optional retirement plan unless the date of reemployment is at least six (6) months after the date of termination. All elections made under this subsection shall be in writing and shall be filed with the appropriate officer of the employer institution. Persons who originally elected to participate in the optional retirement plan may later change their elections only as follows:

(a) Any person otherwise eligible for membership in the Kentucky Teachers' Retirement System may irrevocably elect one (1) time during his or her lifetime to change his or her election and to prospectively participate in the Kentucky Teachers' Retirement System. This election to change from the optional retirement plan to Kentucky Teachers' Retirement System shall be effective beginning on the first day of the first month immediately following the date that written application for the election is received in the retirement system's office on forms prescribed by the system. Any person exercising this election shall not be entitled to purchase as service credit in the Kentucky Teachers' Retirement System any prior service with his or her postsecondary education institution employer;

(b) Any person otherwise eligible for membership in the Kentucky Teachers' Retirement System who previously elected to participate in the optional retirement plan may irrevocably elect one (1) time within his or her first six (6) years and six (6)

months of continuous service in any one (1) or more of the institutions identified in KRS 161.220(4)(b), to change his or her election and to prospectively participate in the Kentucky Teachers' Retirement System and also become eligible to purchase as service credit his or her prior service with his or her postsecondary education employer. This election to change from the optional retirement plan to the Kentucky Teachers' Retirement System shall be effective beginning on the first day of the first month immediately following the date that written application for the election is received in the retirement system's office on forms prescribed by the retirement system. Persons electing to change from the optional retirement plan to the Kentucky Teachers' Retirement System may purchase service credit only for their prior years of service for a postsecondary education institution identified in KRS 161.220(4)(b) during which they participated in the optional retirement plan. The election to purchase prior service as service credit shall be received in the retirement system's office on forms prescribed by the retirement system within the six (6) year and six (6) month period provided to make the election to begin participation in the Kentucky Teachers' Retirement System. The cost of purchasing this service shall be calculated by adding both the employer and member contributions that would have been paid to the Kentucky Teachers' Retirement System had the individual purchasing this service participated in the Kentucky Teachers' Retirement System instead of the optional retirement plan, less the amount contributed to the Kentucky Teachers' Retirement System by the postsecondary education institution as provided by KRS 161.569(5), or KRS 161.569(5)(a)2. as it existed on June 30, 2007. Interest at Kentucky Teachers' Retirement System's actuarially assumed rate shall be paid on these net contributions by the person electing to change to the Kentucky Teachers' Retirement System from the optional retirement plan. These payments shall not be picked up as described in KRS 161.540(2). Persons who elect to change from the optional retirement plan to the Kentucky Teachers' Retirement System may elect to purchase as service credit, beginning with the most recent years, any portion of their prior years of service during which time they participated in the optional retirement plan, or none of those years. Members may purchase service credit for prior years of service by rolling over funds from their optional retirement plan account as provided under KRS 161.5461, or by rolling over or transferring other plan funds as permitted by the rules set forth

in the Internal Revenue Code, or by making an after-tax lump-sum cash payment;

(c) Effective July 1, 2008, persons otherwise eligible for membership in the Kentucky Teachers' Retirement System may irrevocably elect one (1) time to change their election and to prospectively participate in the Kentucky Teachers' Retirement System and purchase service credit for their prior years of service during which they participated in the optional retirement plan. This election shall be filed in writing with the Kentucky Teachers' Retirement System no later than December 31, 2008. Persons who change their election prior to July 1, 2008, to prospectively participate in the Kentucky Teachers' Retirement System may purchase service credit for their prior years of service during which they participated in the optional retirement plan. The purchase of prior years of service under this paragraph shall be subject to the same conditions and purchase costs as described in paragraph (b) of this subsection, except that the election to purchase service credit shall be on file with the Kentucky Teachers' Retirement System no later than December 31, 2008; and

(d) Persons electing to change to the Kentucky Teachers' Retirement System under paragraphs (a), (b), and (c) of this subsection shall be eligible to participate, based upon their age and allowable service credit, in the disability, survivorship, and medical insurance programs under the conditions and in the degree as they exist on the date that they file their election with the retirement system, but shall be subject to any changes to those programs from that date forward, including any changes that may affect their eligibility for or degree of participation in those programs. Prior service purchased as service credit as permitted under paragraphs (b) and (c) of this subsection shall not be considered for meeting eligibility requirements or determining the extent of participation in these programs. Persons electing to change to the Kentucky Teachers' Retirement System shall not be eligible for the survivorship or disability programs based upon medical conditions that existed prior to the filing of their elections.

(2) Elections of eligible employees hired on or after the implementation date of the optional retirement plan at their employer institution shall be effective on the date of their employment. If an eligible employee hired subsequent to the implementation date at the employer institution fails to make the election provided for in this section, the employee shall become a member of the regular retirement plan of the Kentucky Teachers' Retirement System.

161.569 Effect of election to participate — Payment of benefits — Taxation and attachment of benefits — Employer contributions.

(1) Any person electing to participate in the optional retirement plan shall be ineligible for membership in the regular retirement plan of the Kentucky Teachers' Retirement System for as long as the participant is employed in a position for which the optional retirement plan is available, except as provided in KRS 161.568(1).

(2) Any person electing to participate in the optional retirement plan shall acknowledge in writing that the benefits payable to participants are not the obligation of the Commonwealth of Kentucky or the Kentucky Teachers' Retirement System, and that these benefits and other rights of the optional retirement plan are the liability and responsibility solely of the designated companies to which contributions have been made.

(3) Benefits shall be payable to optional retirement plan participants or their beneficiaries by the designated companies in accordance with the contracts issued by each company and the retirement plan provisions adopted by each public institution.

(4) Annuity contracts issued under the optional retirement plan and all rights of a participant in the optional retirement plan shall be exempt from any state, local, or municipal tax; assessment for the insolvency of any life, health, or casualty insurance company; any levy or sale, garnishment, or attachment; or any process whatsoever, and shall be unassignable except as otherwise specifically provided by the contracts offered under the optional retirement plan adopted by the respective public institutions of higher education. Except contracts issued and rights accrued in the optional retirement plan on or after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent provided in KRS 141.010 and 141.0215.

(5) Each institution shall contribute for each payroll period of each fiscal year to the Kentucky Teachers' Retirement System, an amount equal to five and one-tenth percent (5.1%) of the total salaries of all persons who elect or elected to participate in the optional retirement plan instead of the Kentucky Teachers' Retirement System. This payment shall continue to be made until July 1, 2048.

161.580 Individual accounts to be kept — Other data — Summary plan description — Publication — Recipients.

(1) The board of trustees shall provide for the maintenance of an individual account for each member showing the amount of the member's contribution and interest accumulations. Such individual accounts shall be identified in the records of the system by name, date of birth, and Social Security number. It shall collect and keep in

convenient form such data as is necessary for the preparation of the required mortality and service tables and for the compilation of such other information as is required for the actuarial valuation of the assets and liabilities of the various funds of the retirement system.

(2) The board shall prepare and furnish to all active contributing members a summary plan description, written in a manner calculated to be understood by the average member or annuitant, and sufficiently accurate and comprehensive to reasonably apprise them of their rights and obligations under the Teachers' Retirement System. The board may furnish the summary plan description by posting it on the retirement system's Web site.

(3) The summary plan description shall include:

(a) The name of the retirement system, the name and address of the executive secretary, and the name, address, and title of each member of the board of trustees;

(b) The name and address of the person designated for the service of legal process;

(c) The system's requirements for participation and benefits;

(d) A description of retirement formulas for normal, early, and disability retirement, and survivor benefits;

(e) A description of the requirements for vesting of pension benefits;

(f) A list of circumstances which would result in disqualification, ineligibility, or denial or loss of benefits;

(g) The sources of financing retirement benefits, and statutory requirements for funding;

(h) A statement after each actuarial valuation as to whether funding requirements are being met; and

(i) The procedures to be followed in presenting claims for benefits under the plan, and the remedies available under the plan for the redress of claims which are denied in whole or in part.

(4) The board may publish the summary plan description in the form of a comprehensive pamphlet or booklet, or in the form of periodic newsletters which shall incorporate all the information required in the summary plan description within a period of two (2) years. Any changes in statutory requirements or administrative practices which alter the provisions of the plan as described in the summary plan description shall be summarized as required in subsection (2) of this section and furnished to active contributing members in the form of a supplement to a comprehensive booklet, or reported in the periodic newsletter.

(5) The board shall provide to annuitants so much of the summary plan description as they need to understand changes in benefits which apply to them.

161.585 Account of member, and medical records on file, confidential — Production of records in response to a subpoena or court order.

(1) For purposes of this section, the term "records" shall include retirement estimates, affidavits, and other documents prepared by the Kentucky Teachers' Retirement System in response to information requested in a lawful subpoena or order issued by a court of law.

(2) Each member's account shall be administered in a confidential manner and specific data regarding a member shall not be released for publication unless authorized by the member; however, the board of trustees may release member account information to the employer or to other state and federal agencies as it deems necessary or in response to a lawful subpoena or order issued by a court of law.

(3) Medical records which are included in a member's file maintained by the Teachers' Retirement System are confidential and shall not be released unless authorized by the member in writing or as otherwise provided by law or in response to a lawful subpoena or order issued by a court of law.

(4) (a) When a subpoena is served upon any employee of the Kentucky Teachers' Retirement System requiring the production of any data, information, or records, it is sufficient if the employee of the Kentucky Teachers' Retirement System charged with the responsibility of being custodian of the original, or his or her designated staff, delivers within five (5) working days by certified mail or by personal delivery to the person specified in the subpoena either of the following:

(b) The production of records or an affidavit shall be in lieu of any personal testimony of any employee of the Kentucky Teachers' Retirement System unless, after the production of records or an affidavit, a separate subpoena is served upon the retirement system specifically directing the testimony of an employee of the retirement system. When a subpoena is served on any employee of the retirement system requiring the employee to give testimony or produce records for any purpose, in the absence of a court order requiring the testimony of or production of records by a specific employee, the system may designate an employee to give testimony or produce records upon the matter referred to in the subpoena. The board of trustees may promulgate an administrative regulation for the recovery of reasonable travel and administrative expenses for those occasions when an employee of the retirement system is required to travel from his or her home or office to provide testimony or records. Recoverable expenses may include the

wages, salary, and overtime paid to the employee by the retirement system for the period of time that the employee is away from the office. The cost of these expenses shall be borne by the party issuing the subpoena compelling the employee's travel. The board of trustees may also promulgate an administrative regulation establishing a reasonable fee for the copying, compiling, and mailing of requested records.

1. Legible and durable copies of records certified by the employee or designated staff; or
2. An affidavit stating the information required by the subpoena.

(5) The certification shall be signed before a notary public by the employee and shall include the full name of the member, the member identification number assigned to the member by the retirement system, and a legend substantially to the following effect: "The records are true and complete reproductions of the original, microfiched, or electronically stored records which are housed in the retirement system's office. This certification is given in lieu of the undersigned's personal appearance."

(6) When an affidavit or copies of records are personally delivered, a receipt shall be presented to the person receiving the records for his or her signature and shall be immediately signed and returned to the person delivering the records. When an affidavit or copies of records are sent via certified mail, the receipt used by the postal authorities shall be sufficient to prove receipt of the affidavit or copies of records.

(7) When the affidavit or copies of records are delivered to a party for use in deposition they shall, after termination of the deposition, be delivered personally or by certified mail to the clerk of the court or other body before which the action or proceeding is pending.

(8) Upon completion of delivery by the retirement system of copies of records by their deposit in the mail or by their personal delivery to the requesting party, the retirement system shall cease to have any responsibility or liability for the records and their continued maintenance in a confidential manner.

(9) Records of the Kentucky Teachers' Retirement System that are susceptible to reproduction may be proved as to foundation, identity, and authenticity without preliminary testimony, by use of legible and durable copies, certified in accordance with the provisions of this section.

(10) The provisions of this section shall not be construed to prohibit the Kentucky Teachers' Retirement System from asserting any exemption, exception, or relief provided under the Kentucky Rules of Civil Procedure or other applicable law.

161.590 Service credit at retirement.

(1) At retirement the total service credited to a teacher shall consist of prior and subsequent service rendered by him for which service credit has been allowed.

(2) Kentucky service, presented at the time of retirement, may not be used in calculating benefits under KRS 161.525, 161.620, or 161.661, if such service has been used to increase benefits in another retirement system, not including Old Age and Survivors Insurance Benefits under the Social Security Administration.

(3) No service credit shall be added to a member's account after the effective date of retirement for service.

161.595 Service credit.

(1) Upon service retirement, a member of the Teachers' Retirement System may obtain credit for all or any part of the service otherwise creditable under the Kentucky Employees Retirement System, the County Employees Retirement System, or in the service of the United States government for which service credit is not otherwise given, upon the payment by the member of the full actuarial cost of the service credit purchased as defined in KRS 161.220(22). Such payments shall not be picked up, as described in KRS 161.540(2).

(2) The amount paid under this section shall be considered as accumulated contributions of the individual member.

(3) No person shall be allowed credit for the same period of service in more than one (1) of these three (3) retirement systems.

161.597 Installment payments for purchase of service credit by active contributing members.

(1) A member in active contributing status may purchase any service credit which the member is authorized to purchase by making installment payments in lieu of a lump-sum payment.

(2) To initiate an installment payment plan, a member shall make a written request to the retirement system for an estimate to purchase service credit by making installment payments.

(3) To qualify for installment payments, the total cost of the service purchase, including any chargeable interest, shall exceed one thousand dollars ($1,000).

(4) Installment payments shall be at least fifty dollars ($50) per month and shall be made for a period of time which is not less than twelve (12) months nor more than sixty (60) months. Interest at eight percent (8%) per annum, unless the board specifies in an administrative regulation a different interest rate, shall be charged on all installment payment purchases of service credit that are

purchasable at less than full actuarial cost.

(5) Installment payments shall be made on a monthly basis by payroll deduction or electronic fund transfer and forwarded separately to the Teachers' Retirement System on forms or by computer format not later than fifteen (15) days following the end of each month. The payments shall be considered accumulated contributions and shall not be picked up as provided in KRS 161.560, except that subject to approval by the Internal Revenue Service and only as permitted by the Internal Revenue Code, installment payments by payroll deduction shall be made on a tax-deferred basis.

(6) A member may elect to terminate payroll deductions at any time and purchase the remaining service credit by lump-sum payment. A member on a leave of absence may make personal installment payments. Termination of employment in a covered position shall terminate installment payments. If the member is later employed by a different employer in a covered position, the member may request a new estimate and reinstate installment payments. A member that misses two (2) consecutive installment payments shall be in default. A member in default shall receive service credit on a pro rata basis for the total amount of contributions made by installment payments. A member in default may not reinstate installment payments for twelve (12) months from the date the member was in default.

(7) If a member dies before completing scheduled installment payments, the named beneficiary of the member's retirement account may pay the remaining balance due by a lump-sum payment within thirty (30) days of the death of the member.

161.600 Retirement conditions.

(1) Effective July 1, 1988, a member of the retirement system may qualify for service retirement by meeting one (1) of the following requirements:

(a) Attainment of age sixty (60) years and completion of five (5) years of Kentucky service;

(b) 1. For an individual who becomes a member before July 1, 2008, attainment of age fifty-five (55) years and completion of a minimum of five (5) years of Kentucky service with an actuarial reduction of the basic allowance of five percent (5%) for each year the member's age is less than sixty (60) years or for each year the member's years of Kentucky service credit is less than twenty-seven (27), whichever is the lesser number; and

2. For an individual who becomes a member on or after July 1, 2008, attainment of age fifty-five (55) years and

completion of a minimum of ten (10) years of Kentucky service with an actuarial reduction of the basic retirement allowance of six percent (6%) for each year the member's age is less than sixty (60) years or for each year the member's years of Kentucky service credit is less than twenty-seven (27), whichever is the lesser number;

(c) Completion of twenty-seven (27) years of Kentucky service. Out-of-state service earned in accordance with the provisions of KRS 161.515(2) may be used to meet this requirement; or

(d) Completion of the necessary years of service under provisions of KRS 61.559(2)(c) if the member is retiring under the reciprocity provisions of KRS 61.680. A member retiring under this paragraph who has not attained age fifty-five (55) shall incur an actuarial reduction of the basic allowance determined by the system's actuary for each year the member's service credit is less than twenty-seven (27).

(2) Any person who has been a member in Kentucky for twenty-seven (27) years or more and who withdraws from covered employment may continue to pay into the fund each year until the end of the fiscal year in which he reaches the age of sixty-five (65) years, the current contribution rate based on the annual compensation received during the member's last full year in covered employment, less any payment received for accrued sick leave or accrued leave from an employer. The member shall be entitled to receive a retirement allowance as provided in KRS 161.620 at any time after withdrawing from covered employment and payment of contributions under this subsection. No member shall make contributions as provided for in this subsection if the member is at the same time making contributions to another retirement system in Kentucky supported wholly or in part by public funds.

(3) Service credit in the Kentucky Employees Retirement System, the State Police Retirement System, the Legislators' Retirement Plan, the County Employees Retirement System, or the Judicial Retirement System may be used in meeting the service requirements of subsection (1)(a), (b), and (c) of this section, provided the service is subsequent to July 1, 1956. Upon death, disability, or service retirement, a member's accounts under all state supported retirement systems shall be consolidated, as provided by this section and by KRS 61.680, for the purpose of determining eligibility and amount of benefits, which shall include medical benefits. Upon determination of benefits, each system shall pay the applicable percentage of total benefits. The effective date of retirement under this subsection shall be determined by each retirement system for the portion of the payments that will be made.

(4) No retirement annuity shall be effective until written application and option election forms are filed with the retirement office in accordance with administrative regulations of the board of trustees. A member may withdraw his or her retirement application, postpone his or her effective retirement date, or change his or her retirement option if these elections are made no later than the fifteenth day of the month in which the member has made application for retirement.

(5) The surviving spouse of an active contributing member, if named as beneficiary of the member's account, may purchase retirement credit that the member was eligible to purchase prior to the member's death.

161.605 Resumption of employment by retired member -- Continuation of retirement allowance -- Waiver of annuity -- Nonteaching employment.

Any member retired by reason of service may return to work in a position covered by the Kentucky Teachers' Retirement System and continue to receive his or her retirement allowance under the following conditions:

(1) Any member who is retired with thirty (30) or more years of service may return to work in a full-time or a part-time position covered by the Kentucky Teachers' Retirement System and earn up to a maximum of seventy-five percent (75%) of the member's last annual compensation measured on a daily rate to be determined by the board of trustees. For purposes of determining whether the salary of a member returning to work is seventy-five percent (75%) or less of the member's last annual compensation, all remuneration paid and benefits provided to the member, on an actual dollar or fair market value basis as determined by the retirement system, shall be considered. Members who were retired on or before June 30, 2002, shall be entitled to return to work under the provisions of this section as if they had retired with thirty (30) years of service. Nonqualified service credit purchased under the provisions of KRS 161.5465 or elsewhere with any state-administered retirement system shall not be used to meet the thirty (30) year requirement set forth in this subsection. Out-of state teaching service provided in public schools for kindergarten through grade twelve (12) may count toward the thirty (30) year requirement set forth in this subsection even if it is not purchased as service credit, if the member obtains from his or her out-of-state employer certification of this service on forms prescribed by the retirement system;

(2) Any member who is retired with less than thirty (30) years of service after June 30, 2002, may return to work in a full-time or part-time position covered by the Kentucky Teachers' Retirement System and

earn up to a maximum of sixty-five percent (65%) of the member's last annual compensation measured on a daily rate to be determined by the board of trustees. For purposes of determining whether the salary of a member returning to work is sixty-five percent (65%) or less of the member's last annual compensation, all remuneration paid and benefits provided to the member, on an actual dollar or fair market value basis as determined by the retirement system, shall be considered;

(3) Reemployment of a retired member under subsection (1) or (2) of this section in a full-time teaching or nonteaching position in a local school district shall be permitted only if the employer certifies to the Kentucky Teachers' Retirement System that there are no other qualified applicants available to fill the teaching or nonteaching position. The employer may use any source considered reliable including but not limited to data provided by the Education Professional Standards Board and the Department of Education to determine whether other qualified applicants are available to fill the teaching or nonteaching position. The Kentucky Board of Education shall promulgate administrative regulations to establish procedures to determine whether other qualified applicants are available to fill a teaching or nonteaching position and, if not, for filling the position with a retired member who will then be permitted to return to work in that position under subsection (1) or (2) of this section. The administrative regulations shall assure that a retired member shall not be hired in a teaching or nonteaching position by a local school district until the superintendent of the school district assures the Kentucky Teachers' Retirement System that every reasonable effort has been made to recruit other qualified applicants for the position on an annual basis;

(4) Under this section, an employer may employ full-time a number of retired members not to exceed three percent (3%) of the membership actively employed full-time by that employer. The board of trustees may reduce this three percent (3%) cap upon recommendation of the retirement system's actuary if a reduction is necessary to maintain the actuarial soundness of the retirement system. The board of trustees may increase the three percent (3%) cap upon a determination that an increase is warranted to help address a shortage in the number of available teachers and upon the determination of the retirement system's actuary that the proposed cap increase allows the actuarial soundness of the retirement system to be maintained. For purposes of this subsection, "full-time" means the same as defined by KRS 161.220(21). A local school district may exceed the quota established by this subsection by making an annual written request to the

Kentucky Department of Education which the department may approve on a year-by-year basis if the statewide quota has not been met. A district's written request to exceed its quota shall be submitted no sooner than two (2) weeks after the start of the school year;

(5) A member returning to work in a full-time or part-time position under subsection (1) or (2) of this section will contribute to an account with the retirement system that will be administered independently from and with no reciprocal impact with the member's original retirement account, or any other account from which the member is eligible to draw a retirement allowance. A member returning to work under subsection (1) or (2) of this section shall make contributions to the retirement system at the rate provided under KRS 161.540. The new account shall independently meet the five (5) year vesting requirement as well as all other conditions set forth in KRS 161.600(1) before any retirement allowance is payable from this account. The retirement allowance accruing under this new account shall be calculated pursuant to KRS 161.620(1)(b). This new account shall not entitle the member to a duplication of the benefits offered under KRS 161.620(7) or 161.675, nor shall this new account provide the benefits offered by KRS 161.520, 161.525, 161.620(3), 161.655, 161.661, or 161.663. A member returning to work under subsection (1) or (2) of this section shall waive his or her medical insurance with the Kentucky Teachers' Retirement System during the period of reemployment and shall receive the medical insurance coverage that is generally provided by the member's active employer to the other members of the retirement system that the active employer employs. If medical insurance coverage is not available from the employer, the Kentucky Teachers' Retirement System may provide coverage for the member. A member returning to work under subsection (1) or (2) of this section shall not be eligible to purchase service credit for any service provided after the member's effective date of retirement but prior to the date that the member returns to work. A member returning to work under subsection (1) or (2) of this section shall not be eligible to purchase service credit that the member would have otherwise been eligible to purchase prior to the member's initial retirement. A member who returns to work under subsection (1) or (2) of this section, or in the event of the death of the member, the member's estate or applicably designated beneficiary, shall be entitled, within ninety (90) days of the posting of the annual report submitted by the employer, to a refund of contributions as permitted and limited by KRS 161.470;

(6) The board of trustees may annually, on July 1, adjust the current daily rate of a member's last annual compensation, for each full twelve (12) month period that has elapsed subsequent to the member

earning his or her last annual compensation, by the percentage increase in the annual average of the consumer price index for all urban consumers for the calendar year preceding the adjustment as published by the Federal Bureau of Labor Statistics, not to exceed five percent (5%) annually. Each annual adjustment shall become part of the member's daily rate base. Failure to comply with the salary limitations set forth in subsections (1) and (2) of this section as may be adjusted by this subsection shall result in a reduction of the member's retirement allowance or any other benefit to which the member would otherwise be entitled on a dollar-for-dollar basis for each dollar that the member exceeds these salary limitations. Notwithstanding any other provision of law to the contrary, a member retiring from a local school district who returns to work for a local school district under subsection (1) or (2) of this section shall be entitled, without any reduction to his or her retirement allowance or any other retirement benefit, to earn a minimum amount equal to one hundred seventy dollars ($170) per day;

(7) (a) A retired member returning to work under subsection (1) or (2) of this section shall have separated from service for a period of at least one (1) year if returning to work for the same employer on a full-time basis, and at least three (3) months if returning to work for a different employer on a full-time basis. A retired member returning to work under subsection (1) or (2) of this section on a part-time basis shall have separated from service for a period of at least three (3) months before returning to work for any employer.

(b) As an alternative to the separation-from-service requirements in paragraph (a) of this subsection, a retired member who is returning to work for the same employer in a full-time position under subsections (1) and (2) of this section may elect a separation-from-service of not less than two (2) months followed by a forfeiture of the retired member's retirement allowance on a month-to-month basis for each month that the member has separated from service for less than twelve (12) full months. A retired member returning to work for the same employer in a part-time position, or for a different employer in a full-time position, may elect an alternative separation-from-service requirement of at least two (2) months followed by a forfeiture of the member's retirement allowance for one (1) month. During the period that the member forfeits his or her retirement allowance and thereafter, member and employer contributions shall be made to the retirement system as a result of employment in any position subject to membership in the retirement system. The member shall contribute to an account

with the retirement system subject to the conditions set forth in subsection (5) of this section. For purposes of measuring the separation-from-service requirements set forth throughout this section, a member's separation-from-service begins on the first day following the last day of paid employment for the member prior to retirement.

(c) Failure to comply with the separation-from-service requirements in this subsection voids a member's retirement and the member shall be required to return all the retirement benefits he or she received, with interest, for the period of time that the member returned to work without a sufficient separation from service;

(8) (a) Effective July 1, 2004, local school districts may employ retired members in full-time or part-time teaching or administrative positions without limitation on the compensation of the retired members that is otherwise required by subsections (1) and (2) of this section. Under provisions of this subsection, a local school district may only employ retired members to fill critical shortage positions for which there are no other qualified applicants as determined by the local superintendent. The number of retired members that a local school district may employ under this subsection shall be no more than two (2) members per local school district or one percent (1%) of the total active members employed by the local school district on a full-time basis as defined under KRS 161.220(21), whichever number is greater. Retired members returning to work under this subsection shall be subject to the separation-from-service requirements set forth in subsection (7) of this section. Retired members returning to work under this subsection shall waive their medical insurance coverage with the retirement system during their period of reemployment and receive medical insurance coverage that is offered to other full-time members employed by the local school district. Retired members returning to work under this subsection shall contribute to an account subject to the conditions set forth in subsection (5) of this section. Retired members returning to work under this subsection shall make contributions to the retirement system at the rate provided under KRS 161.540. The employer shall make contributions at the rate provided under KRS 161.550. Local school districts shall make annual payments to the retirement system on the compensation paid to the reemployed retirees at the rates determined by the retirement system's actuary that reflect any accrued liability resulting from the reemployment of these members.

(b) The Department of Education may employ retired members in

full-time or part-time teaching or nonteaching positions without the limitations on compensation otherwise required by subsections (1) and (2) of this section to fill critical shortage areas in the schools it operates, including the Kentucky School for the Blind, the Kentucky School for the Deaf, and the Kentucky Virtual High School, and to serve on audit teams. The department shall be subject to the same requirements as local school districts as provided in paragraph (a) of this subsection, except the Kentucky Teachers' Retirement System shall determine the maximum number of employees that may be employed under this paragraph;

(9) The return to work limitations set forth in this section shall apply to retired members who are returning to work in the same position from which they retired, or a position substantially similar to the one from which they retired, or a position described in KRS 161.046 or any position listed in KRS 161.220(4) which requires membership in the retirement system. Positions which generally require certification or graduation from a four (4) year college or university as a condition of employment which are created, or changed to remove the position from coverage under KRS 161.220(4) are also subject to the return to work limitations set forth in this section. The board of trustees shall determine whether employment in a nonteaching position is subject to this subsection;

(10) The provisions of subsections (1) to (8) of this section are not subject to KRS 161.714;

(11) Any member retired by reason of service may waive his or her annuity and return to full-time employment in a position covered by the Kentucky Teachers' Retirement System under the following conditions:

(a) The member shall receive no annuity payments while employed in a covered position, shall waive his or her medical insurance coverage with the Kentucky Teachers' Retirement System during the period of reemployment, and shall receive the medical insurance coverage that is generally offered by the member's active employer to the other members of the retirement system employed by the active employer. The member's estate or, if there is a beneficiary applicably designated by the member, then the beneficiary, shall continue to be eligible for life insurance benefits as provided in KRS 161.655. Service subsequent to retirement shall not be used to improve an annuity, except as provided in paragraphs (b) and (c) of this subsection;

(b) Any member who waives regular annuity benefits and returns to teaching or covered employment shall be entitled to make

contributions on the salaries received for this service and have his retirement annuity recalculated as provided in the regular retirement formula in KRS 161.620(1), less any applicable actuarial discount applied to the original retirement allowance due to the election of a joint and last survivor option. Retirement option and beneficiary designation on original retirement shall not be altered by postretirement employment, and dependents and spouses of the members shall not become eligible for benefits under KRS 161.520, 161.525, or 161.661 because of postretirement employment;

(c) When a member returns to full-time teaching or covered employment as provided in subsection (b) of this section, the employer is required to withhold and remit regular retirement contributions. The member must be employed full-time for at least one (1) consecutive contract year to be eligible to improve an annuity. The member shall be returned to the annuity rolls on July 1 following completion of the contract year or on the first day of the month following the month of termination of service if full-time employment exceeds one (1) consecutive contract year. Any discounts applied at the time of the original retirement due to service or age may be reduced or eliminated due to additional employment if full-time employment is for one (1) consecutive contract year or longer; and

(d) A member retired by reason of service who has been employed the equivalent of twenty-five (25) days or more during a school year under KRS 161.605 may waive the member's retirement annuity and return to regular employment covered by the Kentucky Teachers' Retirement System during that school year a maximum of one (1) time during any five (5) year period, beginning with that school year;

(12) Retired members may be employed in a part-time teaching capacity by an agency described in KRS 161.220(4)(b) or (n), not to exceed the equivalent of twelve (12) teaching hours in any one (1) fiscal year. Retired members may be employed for a period not to exceed the equivalent of one hundred (100) days in any one (1) fiscal year in a part-time administrative or nonteaching capacity by an agency described in KRS 161.220(4)(b) or (n) in a position that would otherwise be covered by the retirement system. The return to work provisions set forth in subsections (1) to (8) of this section shall not apply to retired members who return to work solely for an agency described in KRS 161.220(4)(b) or (n). Calculation of the number of days and teaching hours for part-time teaching, substitute teaching, or part-time employment in a nonteaching capacity under this

section shall not exceed the ratio between a school year and the actual months of retirement for the member during that school year. The board of trustees by administrative regulation may establish fractional equivalents of a day of teaching service. Any member who exceeds the twelve (12) hour or one hundred (100) day limitations of this subsection shall be subject to having his or her retirement voided and be required to return all retirement allowances and other benefits paid to the member or on the member's behalf since the effective date of retirement. In lieu of voiding a member's retirement, the system may reduce the member's retirement allowance or any other benefit to which the member would otherwise be entitled on a dollar-for-dollar basis for each dollar of compensation that the member earns in employment exceeding twelve (12) hours, one hundred (100) days, or any apportionment of the two (2) combined;

(13) When a retired member returns to employment in a part-time teaching capacity or in a nonteaching capacity as provided in subsection (12) of this section, the employer shall contribute annually to the retirement system on the compensation paid to the retired member at rates determined by the retirement system actuary that reflect accrued liability for retired members who return to work under subsection (12) of this section; and

(14) For retired members who return to work during any one (1) fiscal year in both a position described in KRS 161.220(4)(b) or (n) and in a position described under another provision under KRS 161.220(4), and for retired members who return to work in a position described under KRS 161.220(4)(b) or (n) in both a teaching and an administrative or nonteaching capacity, the board of trustees shall adopt a methodology for a pro rata apportionment of days and hours that the retired member may work in each position.

161.607 Employment in position covered by other Kentucky retirement system.

(1) Any member of the Teachers' Retirement System who enters employment covered by the Kentucky Employees Retirement System, the State Police Retirement System, or the County Employees Retirement System, prior to July 1, 1976, may retain membership in the Teachers' Retirement System instead of joining the new system.

(2) Retention of membership in the Teachers' Retirement System by any member of the General Assembly who upon election is a contributing member of the Teachers' Retirement System shall be effected by conforming with KRS 61.680(4)(c). Members of the General Assembly who retain membership shall make retirement contributions based upon their annual compensation as defined under KRS

161.220 or on their creditable compensation as defined under KRS 61.510, whichever is the larger amount. Service as a member of the General Assembly may be used to meet the service requirements of KRS 61.680(2)(a) regardless of the system to which contributions are made by the member.

(3) Any member of the Teachers' Retirement System entering employment as described in subsection (1) of this section must exercise the option within ninety (90) days of the beginning of such employment.

(4) Persons who enter service covered by the Teachers' Retirement System prior to July 1, 1976, and who hold membership in a Kentucky retirement system financed in whole or part with public funds may retain membership in that system providing the statutes and regulations governing said system make continued membership possible.

(5) Any person who has elected an option provided in this section may cancel such election and gain membership in the system which normally covers the position in which currently employed, provided that such cancellation of option election must be completed prior to January 1, 1977.

161.608 Computation of benefits of member who has an account with another state system.

The provisions of KRS 61.680 are hereby recognized and shall be followed in computing benefits of any member of the Teachers' Retirement System who also has an account with the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System.

161.611 Supplemental retirement benefit plan — Purpose — Administration — Eligibility — Payments.

(1) The board of trustees is authorized to provide a supplemental retirement benefit plan for the sole purpose of enabling the employer to apply the same formula for determining benefits payable to all members of the retirement system employed by the employer, whose benefits under the retirement system are limited by Section 415 of the Internal Revenue Code of 1986, as amended from time to time. This plan is intended to constitute a qualified governmental excess benefit plan as described in Section 415 of the Internal Revenue Code.

(2) The board of trustees shall administer this plan and have full discretionary fiduciary authority to determine all questions in connection with the plan. The board of trustees may adopt procedural rules and administrative regulations and may employ and rely on any legal counsel, actuaries, accountants, and agents as it

deems advisable to assist in the administration of this plan.

(3) All members and retired former members in the retirement system shall be eligible to participate in this plan whenever their benefits under the retirement system would exceed the limitation on benefits imposed by Section 415 of the Internal Revenue Code.

(4) On or after the effective date of this plan, the employer shall pay to each eligible member in the retirement system who retires on or after that date and to each former member who retired before that date and his or her beneficiaries a supplemental pension benefit, equal to the amount by which the benefit that would have been payable under the retirement system, without regard to any provision therein incorporating the limitation on benefits imposed by Section 415 of the Internal Revenue Code, exceeds the benefit actually payable, taking into account the limitation imposed on the retirement system by Section 415 of the code. These supplemental pension benefits shall be computed and payable under the same terms and conditions and to the same person as the benefits payable to, or on account of, an eligible member under the retirement system.

(5) Benefits payable under this plan shall not be subject to the dollar limit applicable to eligible deferred compensation plans under Section 457 of the Internal Revenue Code, nor to the "substantial risk or forfeiture" rules of Section 457(f) of the code applicable to ineligible deferred compensation plans. In addition, benefits payable under this plan shall not be taken into account in determining whether any other plan of the employer is an eligible deferred compensation plan under Section 457 of the code.

(6) Funding of benefits payable under this plan shall be provided by the state, as employer, and shall be segregated from funds that are maintained by the retirement system for payment of the regular benefits provided by the retirement system. The employer may establish a grantor trust for payment of benefits provided under this plan, with the employer treated as "grantor" thereof for purposes of Section 677 of the Internal Revenue Code. The rights of any person to receive benefits under this plan are limited to those of a general creditor of the employer.

161.612 Membership of individuals providing part-time and substitute services — Service credit — Participation in benefits. Effective July 1, 2002, any individual occupying a position on a part-time basis that requires certification or graduation from a four (4) year college or university as a condition of employment and any individual providing part-time or substitute teaching services that are the same or similar to those teaching services provided by certified, full-time teachers shall be a member of the Kentucky Teachers'

Retirement System, according to the conditions and only to the extent set forth in this section, if the individual is employed by one (1) of the public boards, institutions, or agencies set forth in KRS 161.220, excluding those public boards, institutions, and agencies described in KRS 161.220(4)(b) and (n). Members providing part-time and substitute services shall participate in the retirement system as follows:

(1) Members providing part-time and substitute services shall accrue service credit as provided under KRS 161.500 and be entitled to a retirement allowance upon meeting the service retirement conditions of KRS 161.600. The board of trustees shall adopt a methodology for accrediting service credit to these members on a pro rata basis. The methodology adopted by the board of trustees may be amended as necessary to ensure its actuarial soundness. The retirement allowance for members providing part-time and substitute services shall be calculated pursuant to KRS 161.620, except that the provisions of KRS 161.620(3) shall not apply. Members providing part-time and substitute services who meet the service retirement conditions of KRS 161.600 may also be eligible to participate as approved by the board of trustees in the medical insurance program provided by the retirement system under KRS 161.675. Members providing part-time and substitute services shall make contributions to the Kentucky Teachers' Retirement System at the rate provided under KRS 161.540. A member who provides part-time or substitute services, or in the event of the death of the member, the member's estate or applicably designated beneficiary, will be entitled, within ninety (90) days of the posting of the annual report submitted by the member's employer, to a refund of contributions as permitted and limited by KRS 161.470;

(2) The board of trustees shall adopt eligibility conditions under which members providing part-time and substitute services may participate in the benefits provided under KRS 161.520, 161.655, 161.661, and 161.663. The board of trustees may permit members providing part-time or substitute services to participate in other benefits offered by the retirement system by promulgating administrative regulations that establish eligibility conditions for participation in these benefits. All eligibility conditions adopted by the board of trustees pursuant to this subsection may be amended as necessary to ensure their actuarial soundness;

(3) In addition to the pro rata methodology adopted by the board of trustees under subsection (1) of this section, members providing part-time and substitute services shall be subject to all limitations and conditions regarding the accrual, retention, accreditation, and use of service credit that apply to members providing full-time services. In

addition to the eligibility conditions set forth by the board of trustees under subsection (2) of this section, members providing part-time and substitute services shall be subject to all limitations and conditions regarding both the eligibility to participate and the extent of participation in any benefit offered under KRS 161.220 to 161.716 that apply to members providing full-time services;

(4) Notwithstanding any other provisions of this section to the contrary, instructional assistants who provide teaching services in the local school districts on a full-time basis in positions covered by the County Employees Retirement System who are used as substitute teachers on an emergency basis for five (5) days or less during any one (1) fiscal year shall not be considered members of the Teachers' Retirement System during that period in which they are serving as substitute teachers for five (5) days or less;

(5) The board of trustees may adopt a pro rata methodology to determine the annual compensation of members providing part-time and substitute services in order to determine benefits provided under KRS 161.661 and 161.663. Members providing part-time and substitute services who had retirement contributions posted to their accounts during the previous fiscal year and who have not had those contributions refunded to them are eligible to vote for the board of trustees;

(6) The board of trustees of the Teachers' Retirement System shall be responsible for final determination of membership eligibility and may direct employers to take whatever action that may be necessary to correct any error relating to membership; and

(7) The provisions of this section are not subject to KRS 161.714.

161.614 Court-ordered back salary and reinstatement.

A court order awarding additional back salary to or reinstating a member as a result of employment in a position covered by the Kentucky Teachers' Retirement System shall entitle the member to additional salary or service credit, or both, under the following circumstances:

(1) Members shall make contributions to the Kentucky Teachers' Retirement System at the rate set forth in KRS 161.540 and members' employers shall make contributions at the rate set forth in KRS 161.550, with interest accruing on all contributions at the rate of eight percent (8%) per annum from the end of each fiscal year that back salary or the reinstatement was ordered. Contributions, plus interest, shall be made for each year that back salary or reinstatement was ordered. No service or salary credit shall be credited to a member's account unless full contributions are paid to the Kentucky Teachers' Retirement System;

(2) The member may have court-ordered back salary credited to his or her account only to the extent that the member actually received payment for the back salary and only to the extent that the court-ordered back salary is within the salary scale that was available to the member in the covered position for the years that the back salary was awarded. Court-ordered back salary can be credited to the member's account only as permitted under KRS 161.220(9) and (10). The member may have court-ordered service credited to his or her account only after the retirement system has received the contributions and interest on the full compensation that would normally be earned in the position that is the subject of the litigation;

(3) The member's employer ordered to pay back salary or to reinstate the member by a court of competent jurisdiction shall provide the retirement system with a breakdown of the back salary awarded to the member on a year-by-year basis;

(4) The calculations of the contributions and interest required to be paid for court-ordered back salary or reinstatement shall be provided by the retirement system to the member or the member's employer at the member's or employer's request. Requests for these calculations shall be made with at least two (2) weeks of advance notice to the retirement system to provide these calculations. The retirement system will calculate accrued interest as of the last day of the month during which payment of the full contributions are made;

(5) For purposes of this section, a settlement agreement that provides back salary or reinstatement, and is adopted by order or judgment of a court of competent jurisdiction or is referenced in an order dismissing the action as settled shall have the same effect as a court order adjudicating the matter. Orders entered by a government board or agency as a result of litigation conducted on an administrative hearing level and legally binding arbitration awards shall be considered as court orders for the purposes of this section; and

(6) Under no circumstances shall a member be entitled to service credit as a result of court-ordered reinstatement that is in violation of the provisions of KRS 161.500.

161.615 Limited defined contribution plan — Purpose — Administration — Eligibility — Payments.

(1) The board of trustees is authorized to implement a limited defined contribution plan for the sole purpose of providing retirement allowance payments for retired members who have been approved by the retirement system for full-time reemployment as provided in KRS 161.605.

(2) The defined contribution plan shall be administered separately from

the regular benefits provided for members of the retirement system, except that the contributions to the plan shall be invested in the same manner as other contributions to the retirement system.

(3) The provisions of this section apply only to those retired members who were permitted to return to work under the critical shortage provisions of KRS 161.605(7) as they existed on June 30, 2002. The provisions of this section shall not apply to any retired member returning to work on or after July 1, 2002.

(4) Separate member accounts shall be maintained for participants in this plan which shall reflect the annual contributions made to the participant's account based on the rates and interest levels specified in KRS 161.605.

(5) When the retiree's reemployment terminates, the total contributions and accrued interest in the participant's account will be paid in a lump-sum payment or on an actuarial straight life monthly basis to the retiree. If the member dies prior to making application for a retirement allowance under this plan, the beneficiary designated by the participant for this plan shall receive a refund of the funds in the account. If there is a remaining balance in the account at the death of the participant after retirement from this plan, it shall be paid to the beneficiary designated by the participant for this benefit.

(6) Retired members shall be eligible to receive their retirement annuity when approved for reemployment and participation in this plan. Service as a reemployed retiree may not be used in any manner for credit under the regular retirement benefit plans provided by the retirement system.

161.620 Retirement allowances — Amount — Applicability to persons becoming members on or after July 1, 2008.

(1) The retirement allowance, in the form of a life annuity with refundable balance, of a member retiring for service shall be calculated as follows:

(a) For retirements effective July 1, 1998, and thereafter, except as otherwise provided by this section, the annual allowance for each year of service shall be two percent (2%) of the final average salary for service performed prior to July 1, 1983, and two and one-half percent (2.5%) of the final average salary for service performed after July 1, 1983, for all members not employed by a state college or university. The annual retirement allowance for each year of service performed by members of the Teachers' Retirement System who are members under the provisions of KRS 161.220(4)(b) or (n) shall be two percent (2%) of the final average salary. Actuarial discounts due to age or service credit at retirement may be applied as

provided in this section;

(b) For individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2002, and before July 1, 2008, except those persons who become members under KRS 161.220(4)(b) or (n), and who upon retirement have earned less than ten (10) full years of service credit, the retirement allowance shall be two percent (2%) of the member's final average salary for each year of service. For individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2002, and before July 1, 2008, except those persons who become members under KRS 161.220(4)(b) or (n), and who upon retirement have earned at least ten (10) full years of service credit, the annual allowance for each year of service shall be two and one-half percent (2.5%) of the member's final average salary;

(c) The board of trustees may approve for members who initially retire on or after July 1, 2004, and who become members before July 1, 2008, except those persons who are members under KRS 161.220(4)(b) or (n), a retirement allowance of three percent (3%) of the member's final average salary for each year of service credit earned in excess of thirty (30) years. This three percent (3%) factor shall be in lieu of the two and one-half percent (2.5%) factor provided for in paragraph (b) of this subsection for every year or fraction of a year of service in excess of thirty (30) years. Upon approval of this three percent (3%) retirement factor, the board of trustees may establish conditions of eligibility regarding the type of service credit that will qualify for meeting the requirements of this subsection. This subsection is optional with the board of trustees and shall not be subject to KRS 161.714;

(d) For individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2008, except those persons who become members under KRS 161.220(4)(b) or (n), the retirement allowance shall be:

1. a. One and seven-tenths percent (1.7%) of the member's final average salary for each year of service if the member has earned ten (10) or less years of service at retirement;

   b. Two percent (2%) of the member's final average salary for each year of service if the member has earned greater than ten (10) but no more than twenty (20) years of service at retirement;

   c. Two and three-tenths percent (2.3%) of the member's

final average salary for each year of service if the member has earned greater than twenty (20) but no more than twenty-six (26) years of service at retirement; or

d. Two and one-half percent (2.5%) of the member's final average salary for each year of service if the member has earned greater than twenty-six (26) but no more than thirty (30) years of service at retirement; and

2. Three percent (3%) of the member's final average salary for each year of service earned in excess of thirty (30) years of service at retirement subject to the same terms and conditions as set forth in paragraph (c) of this subsection;

(e) For individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2008, who are members under KRS 161.220(4)(b) or (n), the retirement allowance shall be:

1. One and one-half percent (1.5%) of the member's final average salary for each year of service if the member has earned ten (10) or less years of service at retirement;
2. One and seven-tenths percent (1.7%) of the member's final average salary for each year of service if the member has earned greater than ten (10) but no more than twenty (20) years of service at retirement;
3. One and eighty-five hundredths percent (1.85%) of the member's final average salary for each year of service if the member has earned greater than twenty (20) but less than twenty-seven (27) years of service at retirement; or
4. Two percent (2%) of the member's final average salary for each year of service if the member has earned twenty-seven (27) or more years of service at retirement; and

(f) The retirement allowance of a member at retirement, as measured on a life annuity, shall not exceed the member's last yearly salary or the member's final average salary, whichever is the greater amount. For purposes of this section, "yearly salary" means the compensation earned by a member during the most recent period of contributing service, either consecutive or nonconsecutive, preceding the member's effective retirement date and shall be subject to the provisions of KRS 161.220(9) and (10).

(2) Effective July 1, 2002, and annually on July 1 thereafter, the retirement allowance of each retired member and of each beneficiary of a retirement option shall be increased in the amount of one and one-half percent (1.5%), provided the retired member had been retired for at least the full twelve (12) months immediately preceding

the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase.

(3) Any member qualifying for retirement under a life annuity with refundable balance shall be entitled to receive an annual allowance amounting to not less than four hundred dollars ($400) effective July 1, 2002, and not less than four hundred forty dollars ($440) effective July 1, 2003, multiplied by the service credit years of the member. These minimums shall apply to the retired members receiving annuity payments and to those members retiring on or subsequent to the effective dates listed in this subsection, except the following:

(a) Individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2008; or

(b) Members whose retirement allowance payment is reduced below the minimum allowance as a result of its division in a qualified domestic relations order or any other provision permitted under KRS 161.700.

(4) The minimum retirement allowance provided in this section shall apply in the case of members retired or retiring under an option other than a life annuity with refundable balance in the same proportion to the benefits of the member and his beneficiary or beneficiaries as provided in the duly-adopted option tables at the time of the member's retirement.

(5) Effective July 1, 2008, the monthly allowance of each retired member and each recipient of a retirement option of the retired member may be increased in an amount not to exceed three and one-half percent (3.5%) of the monthly allowance in effect the previous month, provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase. The level of increase provided for in this subsection shall be determined by the funding provided in the 2008-2010 biennium budget appropriation.

(6) Effective July 1, 2009, the monthly allowance of each retired member and each recipient of a retirement option of the retired member may

be increased in an amount not to exceed seven-tenths of one percent (0.7%) of the monthly allowance in effect the previous month, provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase. The level of increase provided for in this subsection shall be determined by the funding provided in the 2008-2010 biennium budget appropriation.

(7) Effective July 1, 1990, monthly payments of two hundred dollars ($200) shall be payable for the benefit of an adult child of a member retired for service when the child's mental or physical condition is sufficient to cause dependency on the member at the time of retirement. Eligibility for this payment shall continue for the life of the child or until the time the mental or physical condition creating the dependency no longer exists or the child marries. Benefits under this subsection shall apply to legally adopted survivors provided the proceedings for the adoption were initiated at least one (1) year prior to the death of the member. The board of trustees shall be the sole judge of eligibility or dependency and may require formal application or information relating thereto.

(8) Members of the Teachers' Retirement System shall be subject to the annuity income limitations imposed by Section 415 of the Internal Revenue Service Code.

(9) Compensation in excess of the limitations imposed by Section 401(a)(17) of the Internal Revenue Code shall not be used in determining a member's retirement annuity. The limitation on compensation for eligible members shall not be less than the amount which was allowed to be taken into account by the retirement system in effect on July 1, 1993. For this purpose, an eligible member is an individual who was a member of the retirement system before the first plan year beginning after December 31, 1995.

161.623 Use of unused sick-leave days to determine service credit — Applicability to individuals becoming members on or after July 1, 2008.

(1) Effective July 1, 1982, and thereafter, a district board of education or other employer of members of the Teachers' Retirement System may compensate, at the time of retirement for service, an active contributing member for unused sick-leave days in accordance with this section.

(2) Upon the member's application for service retirement, the employer shall certify the retiring member's unused accumulated sick-leave balance to the board of trustees of the Kentucky Teachers' Retirement System. The member's sick-leave balance, expressed in days, shall be divided by one hundred eighty-five (185) days to determine the amount of service credit that may be considered for addition to the member's retirement account for the purpose of determining the retirement allowance under KRS 161.620. Notwithstanding any statute to the contrary, sick-leave credit that is accredited under this section or by one (1) of the other state-administered retirement systems shall not be used for the purpose of determining whether the member is eligible to receive a retirement allowance from the Kentucky Teachers' Retirement System.

(3) The board shall compute the cost to the retirement system of the sick-leave credit for each retiring member and shall bill the last employer of the retiring member for such cost. The employer shall pay the cost of such service credit to the retirement system within fifteen (15) days after receiving notification of the cost from the board.

(4) Retiring members who receive service credit under this section shall not be eligible to receive compensation for accrued sick leave under KRS 161.155(10) or any other statutory provision.

(5) Employer participation is optional and the employer may opt to purchase less service credit than the member is eligible to receive provided the same percentage of reduction is made applicable to all retiring members of the employer during a school fiscal year.

(6) The board of trustees shall formulate and adopt necessary rules and regulations for the administration of the foregoing provisions.

(7) Payments to the retirement system for service credit obtained under this section or for compensation credit obtained under KRS 161.155(10) shall be based on the full actuarial cost as defined in KRS 161.220(22).

(8) For an individual who becomes a member on or after July 1, 2008, the maximum amount of unused accumulated sick leave that may be considered for addition to the member's retirement account for purposes of determining the retirement allowance under KRS 161.620 shall not exceed three hundred (300) days.

161.624 Responsibilities of members.

The employees of the Teachers' Retirement System shall endeavor to provide full and complete information to all inquiries presented by members or beneficiaries of members. The members or beneficiaries of the members shall assume full responsibility for obtaining adequate and sufficient information concerning their eligibility for retirement

benefits, for selection of the type of benefit available to them, and for adherence to the employment restrictions applicable to retired members.

161.630 Benefit options — Change in benefit option — Beneficiary redesignation after retirement.

(1) A member, upon retirement, shall receive a retirement allowance in the form of a life annuity, with refundable balance, as provided in KRS 161.620, unless an election is made before the effective date of retirement to receive actuarially equivalent benefits under options which the board of trustees approves. No option shall provide for a benefit with an actuarial value at the age of retirement greater than that provided in KRS 161.620. This section does not apply to disability allowances as provided in KRS 161.661(1).

(2) The retirement option chosen by a retiree at the time of service retirement shall remain in force unless the retiree elects to make a change under the following conditions:

(a) A divorce, annulment, or marriage dissolution following retirement shall, at the election of the retiree, cancel any optional plan selected at retirement that provides continuing benefits to a spousal beneficiary and return the retiree to a single lifetime benefit equivalent as determined by the board; or

(b) Following marriage or remarriage, or the death of the designated beneficiary, a retiree may elect a new optional plan of payment based on the actuarial equivalent of a single lifetime benefit at the time of the election, as determined by the board. The plan shall become effective the first of the month following receipt of an application on a form approved by the board.

(3) Except as otherwise provided in this section, a beneficiary designation shall not be changed after the effective date of retirement except for retirees who elect the life annuity with refundable balance or the predetermined years certain and life thereafter option. A member may remove a beneficiary at any time, but shall not designate a substitute beneficiary. If a member elects to remove a beneficiary, the member's retirement allowance shall not change regardless of the retirement option selected by the member, even if the removed beneficiary predeceases the member.

(4) A member who experiences a qualifying event under subsection (2) of this section and who elects a new optional plan of payment shall make that election within sixty (60) days of the qualifying event.

161.640 Payment of annuities — Payroll deductions — Electronic fund transfer, exception.

(1) Retirement annuities shall be payable monthly. The first payment to an annuitant shall be made at the payment date at the end of one (1) full payment period after his retirement and shall consist of one (1) regular monthly payment. Retirement for a member receiving one (1) full year of service credit during a fiscal year shall be no earlier than July 1 next following the end of such fiscal year. Notwithstanding any other statutory provisions to the contrary, members filling positions that customarily require twelve (12) months of service during a fiscal year cannot retire prior to July 1 without a corresponding pro rata reduction in salary and service credit. The board of trustees may determine which positions customarily require twelve (12) months of service during a fiscal year.

(2) The board of trustees may enter into agreements with retired members for payroll deductions when it is deemed in the best interest of the retired members and the retirement system.

(3) (a) All new retirees, on or after July 1, 1998, shall receive their monthly annuity checks by electronic fund transfer. All retiree, beneficiary, and survivor monthly allowance payments, except as otherwise provided in paragraph (b) of this subsection, shall be made by electronic fund transfer. Except as provided in paragraph (b) of this subsection, all monthly payments shall be made payable only to an account solely in the name of the retiree, beneficiary, or survivor as an individual and natural person, or to a joint account in the name of the retiree, beneficiary, or survivor as an individual and natural person and another individual and natural person.

(b) If the retiree, beneficiary, or survivor is a resident of a nursing or assisted-care home, monthly payments may be made to the order of the nursing or assisted-care home for the benefit of the retiree, beneficiary, or survivor by including the retiree's, beneficiary's, or survivor's name. Monthly annuity checks so paid to a nursing or assisted-care home may be sent by mail rather than electronic fund transfer.

161.643 Records and annual reports for annuitants employed by school districts or agencies — Penalty for noncompliance.

Each school district and agency employing annuitants of the retirement system shall maintain a record of the days employed and the compensation paid to each annuitant and submit an annual report on forms prescribed by the retirement system no later than August 1, following the completion of each fiscal year. The retirement

system may impose a penalty on the employer not to exceed one thousand dollars ($1,000) when the employer does not meet the August 1 reporting date or fails to provide the information required for employment of annuitants of the retirement system.

161.650 Death of retired member — Payment to beneficiaries — Effect of divorce decree — Failure to designate beneficiary.

(1) In the case of death of a member who has retired by reason of service or disability, any portion of the member's accumulated contributions, including member contributions to the state accumulation fund and regular interest to the date of retirement, that has not, and will not be paid as an allowance or benefit shall be paid to the member's beneficiary in such manner as the board of trustees elects.

(2) The member may designate a primary beneficiary or two (2) or more cobeneficiaries to receive any remaining accumulated member contributions payable under this section. A contingent beneficiary may be designated in addition to the primary beneficiary or the cobeneficiaries. The member may designate two (2) or more contingent beneficiaries. To the extent permitted by the Internal Revenue Code, a trust may be designated as beneficiary for receipt of any remaining accumulated member contributions. Members may designate as beneficiaries only presently identifiable and existing individuals, or trusts where otherwise permitted, without contingency instructions, on forms prescribed by the retirement system. Cobeneficiaries shall be composed of a single class of individuals, or trusts where permitted, who will share in equal proportions in any payment that may become available under this section. Any beneficiary designation made by the member shall remain in effect until changed by the member on forms prescribed by the retirement system, except in the event of subsequent divorce. A final divorce decree shall terminate the beneficiary status of an ex-spouse unless, subsequent to divorce, the member redesignates the former spouse as a beneficiary. A final divorce decree shall not terminate the designation of a trust as beneficiary regardless of who is designated as beneficiary of the trust. In the event that the member fails to designate a beneficiary or all designated beneficiaries predecease the member, any remaining accumulated member contributions shall be payable to the member's estate.

161.655 Life insurance benefit.

(1) Effective July 1, 2000, the Teachers' Retirement System shall:

(a) Provide a life insurance benefit in a minimum amount of five thousand dollars ($5,000) for its members who are retired for

service or disability. This life insurance benefit shall be payable upon the death of a member retired for service or disability to the member's estate or to a party designated by the member on a form prescribed by the retirement system; and

(b) Provide a life insurance benefit in a minimum amount of two thousand dollars ($2,000) for its active contributing members. This life insurance benefit shall be payable upon the death of an active contributing member to the member's estate or to a party designated by the member on a form prescribed by the retirement system.

(2) The member may name one (1) primary and one (1) contingent beneficiary for receipt of the life insurance benefit. To the extent permitted by the Internal Revenue Code, a trust may be designated as beneficiary for receipt of the life insurance benefit. Members may designate as beneficiaries only presently identifiable and existing individuals, or trusts where otherwise permitted, without contingency instructions, on forms prescribed by the retirement system. In the event that a member fails to designate a beneficiary, or all designated beneficiaries predecease the member, the member's estate shall be deemed to be the beneficiary. Any beneficiary designation made by the member, including the estate should the estate become the beneficiary by default, shall remain in effect until changed by the member on forms prescribed by the retirement system, except in the event of subsequent marriage or divorce. A valid marriage license shall terminate any previously designated beneficiary, even that of a trust, and establish the spouse as beneficiary unless, subsequent proof of the marriage, the member or retired member redesignates someone other than the new spouse as the beneficiary. A final divorce decree shall terminate the beneficiary status of an ex-spouse unless, subsequent to divorce, the member redesignates the former spouse as a beneficiary. A final divorce decree shall not terminate the designation of a trust as beneficiary regardless of who is designated as beneficiary of the trust.

(3) Application for payment of life insurance proceeds shall be made to the Teachers' Retirement System together with acceptable evidence of death and eligibility. The reciprocal provisions of KRS 61.680(2)(a) shall not apply to the coverage and payment of proceeds by the life insurance benefit under this section.

(4) Suit or civil action shall not be required for the collection of the proceeds of the life insurance benefit provided for by this section, but nothing in this section shall prevent the maintenance of suit or civil action against the beneficiary or legal representative receiving the proceeds of the life insurance benefit.

161.661 Disability retirement.

(1) Any member who has completed five (5) or more years of accredited service in the public schools of Kentucky after July 1, 1941, may retire for disability and be granted a disability allowance if found to be eligible as provided in this section. Application for disability benefits shall be made within one (1) year of the last contributing service in Kentucky, and the disability must have occurred during the most recent period of employment in a position covered by the Teachers' Retirement System and subsequent to the completion of five (5) years of teaching service in Kentucky. A disability occurring during the regular vacation immediately following the last period of active service in Kentucky or during an official leave for which the member is entitled to make regular contributions to the retirement system, shall be considered as having occurred during a period of active service. The annual disability allowance shall be equal to sixty percent (60%) of the member's final average salary. Members with twenty-seven (27) or more years of service credit are eligible for service retirement only.

(2) The provisions of KRS 161.520, 161.525, and subsections (3), (4), and (5) of this section shall not apply to disability retirees whose benefits were calculated on the service retirement formula nor to survivors of these members.

(3) Members shall earn one (1) year of entitlement to disability retirement, at sixty percent (60%) of the member's final average salary, for each four (4) years of service in a covered position, but any member meeting the service requirement for disability retirement shall be credited with no less than five (5) years of eligibility.

(4) A member retired by reason of disability shall continue to earn service credit at the rate of one (1) year for each year retired for disability. This service shall be credited to the member's account at the expiration of entitlement as defined in subsection (3) of this section, or when the member's eligibility for disability benefits is terminated upon recommendation of a medical review committee, and this service shall be used in calculating benefits as provided in subsection (5) of this section, but under no circumstances shall this service be used to provide the member with more than twenty-seven (27) years of total service credit. The service credit shall be valued at the same level as service earned by active members as provided under KRS 161.600 and 161.620.

(5) Any member retired by reason of disability and remaining disabled at the expiration of the entitlement period shall have his disability benefits recalculated using the service retirement formula with service credit as set out in subsection (4) of this section. The retirement

allowance shall be calculated as set forth in KRS 161.620, except that those persons less than sixty (60) years of age shall be considered as sixty (60) years of age. Members having their disability benefits recalculated under this subsection shall not be entitled to a benefit based upon an average of their three (3) highest salaries as set forth in KRS 161.220(9), unless approved otherwise by the board of trustees.

(6) Members who have their disability retirement allowance recalculated at the expiration of the entitlement period shall continue to have coverage under the post-retirement medical insurance program. Restrictions on employment shall remain in effect until the member attains age seventy (70) or until the member's eligibility is discontinued. KRS 161.520 and 161.525 shall not apply to survivors of disability retirees whose retirement allowances have been recalculated at the expiration of the entitlement period. Members who have their disability retirement allowance recalculated at the expiration of their entitlement period shall be entitled to a minimum monthly allowance of five hundred dollars ($500) as the basic straight life annuity. The minimum allowance shall be effective July 1, 1992, and shall apply to those members who have had their allowance recalculated prior to that date and to disability retirees who will have their benefit allowance recalculated on or after that date.

(7) Effective July 1, 1992, members retired for disability prior to July 1, 1964, shall be entitled to a minimum monthly allowance of five hundred dollars ($500) as their basic straight life annuity and their surviving spouse shall be eligible for survivor benefits as provided in KRS 161.520(1)(a) and (b).

(8) Any member retired by reason of disability may voluntarily waive disability benefits and return to teaching or any member, who is age sixty (60) years or older, may elect to waive disability benefits and retire for service on the basis of service credited to the member on the effective date of the disability retirement.

(9) In order to qualify for retirement by reason of disability a member must suffer from a physical or mental condition presumed to be permanent in duration and of a nature as to render the member incapable of being gainfully employed in a covered position. The incapability must be revealed by a competent examination by a licensed physician or physicians and must be approved by a majority of a medical review committee.

(10) A member retired by reason of disability shall be required to undergo periodic examinations at the discretion of the board of trustees to determine whether the disability allowance shall be continued. When examination and recommendation of a medical review committee

indicate the disability no longer exists, the allowance shall be discontinued.

(11) Eligibility for payment shall begin on the first day of the month following receipt of the application in the Teachers' Retirement System office, or the first of the month next following the last payment of salary or sick leave benefits by the employer, whichever is the later date.

(12) No person who receives a disability allowance may be employed in a position that entails duties or qualification requirements similar to positions subject to participation in the retirement system either within or without the State of Kentucky. So doing shall constitute a misdemeanor and shall result in loss of the allowance from the first date of this service. A member who applies for and is approved for disability retirement on or after July 1, 2002, and whose annual disability benefit is less than forty thousand dollars ($40,000) may earn income in any occupation other than covered employment only to the extent that the annual income from the other employment when added to the annual disability benefit does not exceed forty thousand dollars ($40,000). For any member who exceeds this limit as a result of income from other employment, the Kentucky Teachers' Retirement System shall reduce the member's disability benefit on a dollar-for-dollar basis for each dollar that the member's combined annual disability benefit and annual income from other employment exceeds forty thousand dollars ($40,000). The board of trustees may annually increase the forty thousand dollar ($40,000) limit by the percentage increase in the annual average of the consumer price index for all urban consumers for the most recent calendar year as published by the Federal Bureau of Labor Statistics, not to exceed five percent (5%).

(13) All members who applied for disability retirement before July 1, 2002, and were approved as a result of that application shall be subject to the income limitations as they existed on June 30, 2002, until July 1, 2006. Effective July 1, 2006, the twenty-seven thousand dollar ($27,000) limitation shall be increased to forty thousand dollars ($40,000) and may be adjusted by the board of trustees by the consumer price index in the manner described in subsection (12) of this section. The recipient of a disability allowance who engages in any gainful occupation other than covered employment must make a report of the duties involved, compensation received, and any other pertinent information required by the board of trustees.

(14) The board of trustees shall designate medical review committees, each consisting of three (3) licensed physicians. A medical review committee shall pass upon all applications for disability retirement and upon all applicant statements, medical certifications, and

examinations submitted in connection with disability applications. The disposition of each case shall be recommended by a medical review committee in writing to the retirement system. Members of a medical review committee shall follow administrative regulations regarding procedures as the board of trustees may enact and shall be paid reasonable fees and expenses as authorized by the board of trustees in compliance with the provisions of KRS 161.330 and 161.340. The retirement system may secure additional medical examinations and information as it deems necessary. A member may appeal any final agency decision denying his or her disability retirement application pursuant to the provisions of KRS 161.250(2).

(15) A disability may be presumed to be permanent if the condition creating the disability may be reasonably expected to continue for one (1) year or more from the date of application for disability benefits.

(16) Any member who has voluntarily waived disability benefits or whose disability benefits have been discontinued on recommendation of a medical review committee, may apply for reinstatement of disability benefits. The application for reinstatement must be made to the retirement system within twelve (12) months of the date disability benefits terminated. If the termination of benefits were voluntary, the reinstatement may be made without medical examination if application is made within three (3) months of the termination date. Other applications for reinstatement will be processed in the same manner as new applications for benefits.

(17) No person who is receiving disability benefits under this section may be employed in a position which qualifies the person for membership in a retirement system financed wholly or in part with public funds. Employment in a position prohibited by this subsection shall result in disqualification for those disability benefits from the date of employment in the prohibited position.

(18) Any person who is receiving benefits and becomes disqualified from receiving those benefits under this section, or becomes disqualified from receiving a portion of those benefits due to income from other than covered employment, shall immediately notify the Teachers' Retirement System of this disqualification in writing and shall return all benefits paid after the date of disqualification. Failure to comply with these provisions shall create an indebtedness of that person to the Teachers' Retirement System. Interest at the rate of eight percent (8%) per annum shall be charged if the debt is not repaid within sixty (60) days after the date of disqualification. Failure to repay this debt creates a lien in favor of the Teachers' Retirement System upon all property of the person who improperly receives benefits and does not

repay those benefits. The Kentucky Teachers' Retirement System may, in order to collect an outstanding debt, reduce or terminate any benefit that a member is otherwise entitled to receive.

161.662 Status of disabled teachers and superintendents.

(1) Teachers and superintendents with continuing status who retire because of disability shall, notwithstanding provisions of KRS 161.720 to 161.810 to the contrary, retain continuing status in the school district from which they retired for twenty-four (24) calendar months from the date of retirement, if the teacher or superintendent:

(a) Is approved for disability retirement under the provisions of KRS 161.661, or

(b) Is approved for disability retirement but elects to have benefits calculated on the service retirement formula under the provisions of KRS 161.661, or

(c) Is disqualified from receiving disability retirement benefits by KRS 161.661(2) but is otherwise eligible for disability retirement under the remaining provisions of KRS 161.661.

(2) (a) If the superintendent recovers from disability and presents written notice of such recovery, supported by the statement of a licensed physician, to the employing board of education within the twenty-four (24) calendar month period but not later than April 15 prior to the beginning of the school term, the board of education shall reinstate the superintendent to active continuing status at the beginning of the school term. If notice of recovery from disability is not presented to the employing board of education within the twenty-four (24) calendar month period, or if the superintendent states to the board, in a verified document, prior to expiration of the twenty-four (24) calendar month period that he or she will not return to employment in the school system, the continuing service contract of the superintendent shall terminate as by retirement under the provisions of KRS 161.661.

(b) If the teacher recovers from disability and presents written notice of such recovery, supported by the statement of a licensed physician, to the superintendent within the twenty-four (24) calendar month period but not later than April 15 prior to the beginning of the school term, the superintendent shall reinstate the teacher to active continuing status at the beginning of the school term. If notice of recovery from disability is not presented to the superintendent within the twenty-four (24) calendar month period, or if the teacher states

to the superintendent, in a verified document, prior to expiration of the twenty-four (24) calendar month period that he or she will not return to employment in the school system, the continuing service contract of the teacher shall terminate as by retirement under the provisions of KRS 161.661.

(3) Retirement because of disability under this section shall not be cause for termination of the contract of a teacher or superintendent under KRS 161.790 during the twenty-four (24) calendar month period described in this section. A teacher or superintendent who applies for disability retirement under the provisions of KRS 161.661 shall retain continuing service status during the period of time the application for disability retirement is being processed. If the application is not approved, the teacher or superintendent may return to the contract, employment, or leave status held prior to submission of the application.

(4) (a) If the superintendent recovers from the disability and presents written notice of such recovery, supported by the statement of a licensed physician, to the employing board of education within twenty-five (25) through forty-two (42) months from the date of retirement, the board shall give priority consideration to reemployment of the superintendent for the first available position for which the superintendent is qualified and certified.

(b) If the teacher recovers from the disability and presents written notice of such recovery, supported by the statement of a licensed physician, to the superintendent within twenty-five (25) through forty-two (42) months from the date of retirement, the superintendent shall give priority consideration to reemployment of the teacher for the first available position for which the teacher is qualified and certified.

161.663 Disability retirement with less than required years of service. Any active contributing member with less than five (5) years of Kentucky service may apply and be approved for disability retirement under KRS 161.661 if the member is found to be mentally or physically incapacitated as a result of an injury related directly to their covered employment. All conditions and restrictions specified under KRS 161.661 shall be applicable, except that the initial annual disability allowance shall be equal to fifty percent (50%) of the member's current annual contract salary and the member's last annual contract salary shall be used in lieu of the final average salary in the recalculation of the member's benefit at the expiration of the eligibility period.

161.675 Hospital and medical benefits and health insurance coverage for eligible recipients of retirement allowances from Teachers' Retirement System — Applicability to individuals becoming members on or after July 1, 2008 — Health insurance supplement payments — Coverage for spouses, dependents, and disabled children of retirees — Exemption from premium tax.

(1) The board of trustees shall arrange by appropriate contract or on a self-insured basis to provide a broad program of group hospital and medical insurance for present and future eligible recipients of a retirement allowance from the Teachers' Retirement System. The board of trustees may also arrange to provide health insurance coverage through an insurer licensed pursuant to Subtitle 38 of KRS Chapter 304 and offering a managed care plan as defined in KRS 304.17A-500 as an alternative to group hospital and medical insurance for persons eligible for hospital and medical benefits under this section. The board of trustees may authorize eligible recipients of a retirement allowance from the Teachers' Retirement System who are less than age sixty-five (65) to be included in the state-sponsored health insurance that is provided to active teachers and state employees under KRS 18A.225. Members who are sixty-five (65) or older and retired for service shall not be eligible to participate in the state employee health insurance program as described in KRS 18A.225.

(2) (a) The coverage provided shall be as set forth in the contracts and the administrative regulations of the board of trustees. The board of trustees may change the levels of coverage and eligibility conditions to meet the changing needs of the annuitants and, when necessary, to contain the expenses of the insurance program within the funds available to finance the insurance program, except as provided by paragraph (b) of this subsection. The contracts and administrative regulations shall provide for but not be limited to hospital room and board, surgical procedures, doctors' care in the hospital, and miscellaneous hospital costs. An annuitant whose effective date of retirement is July 1, 1974, and thereafter, must have a minimum of five (5) years' creditable Kentucky service in the Teachers' Retirement System or five (5) years of combined creditable service in the state-administered retirement systems if the member is retiring under the reciprocity provisions of KRS 61.680 and 61.702. An annuitant shall not elect coverage through more than one (1) of the state-administered retirement systems. The board of trustees shall offer coverage to the disabled child of an annuitant regardless of the disabled child's age if the annuitant pays the entire premium for the disabled

child's coverage. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.

(b) Individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2008, shall not be eligible for benefits under this section unless the member has at least fifteen (15) or more years of service credited under KRS 161.500 or another state-administered retirement system.

(3) All expenses for benefits under this section shall be paid from the funding provisions contained in KRS 161.420(5), from a trust fund established by the board under 26 U.S.C. sec. 115, premium charges received from the annuitants and the spouses, and from funds that may be appropriated or allocated by statute.

(4) (a) The board of trustees shall determine the amount of health insurance supplement payments that the Teachers' Retirement System will provide to assist eligible annuitants in paying the cost of their health insurance, based on the funds available in the medical insurance fund and any trust fund established by the board for this purpose under 26 U.S.C. sec. 115. The board of trustees shall establish the maximum monthly amounts of health insurance supplement payments that will be made by the Kentucky Teachers' Retirement System for eligible annuitants. The board of trustees shall annually establish the percentage of the maximum monthly health insurance supplement payment that will be made, based on age and years of service credit of eligible recipients of a retirement allowance. Monthly health insurance supplement payments made by the retirement system may not exceed the amount of the single coverage insurance premium chosen by the eligible annuitants. In order to qualify for health insurance supplements, the annuitant must agree to pay the difference between the insurance premium and the applicable supplement payment, by payroll deduction from his retirement allowance, or by a payment method approved by the retirement system.

(b) The board shall, effective July 1, 2010, have the authority to charge retired members who are not paying the Standard Medicare Part B premium an amount equal to the Standard Medicare Part B premium in addition to any other payments determined by the board to be necessary to contain costs within the available funding. If the board determines that retired members who are not paying the Standard Medicare Part B premium should pay the equivalent of the Standard Medicare Part B premium, the board shall phase in the premium according to the following schedule:

July 1, 2010..... Thirty-three percent (33%)
July 1, 2011..... Sixty-seven percent (67%)
July 1, 2012, and thereafter One hundred percent (100%)
Nothing in this paragraph shall limit the board's authority to change the levels of coverage, eligibility conditions, or levels of health insurance supplement for retirees in order to contain costs within available funding.

(c) The board of trustees may offer, on a full-cost basis, health care insurance coverage provided by the retirement system to spouses and dependents of eligible annuitants not otherwise eligible for regular coverage. Recipients of a retirement allowance from the retirement system must agree to pay the cost of this coverage by payroll deduction from their retirement allowance or by a payment method approved by the retirement system.

(d) The board of trustees shall offer, on a full-cost basis, health insurance coverage provided by the retirement system to the disabled child of an annuitant, regardless of the age of the disabled child. A child shall be considered disabled for purposes of this section if the child has been determined to be eligible for federal Social Security disability benefits.

(5) The board of trustees is empowered to require the annuitant and the annuitant's spouse to pay a premium charge to assist in the financing of the hospital and medical insurance program. The board of trustees is empowered to pay the expenses for insurance coverage from the medical insurance fund, from any trust fund established by the board for this purpose under 26 U.S.C. sec. 115, from the premium charges received from the annuitants and the spouses, and from funds that may be appropriated or allocated by statute. The board may provide insurance coverage by making payment to insurance carriers including health insurance plans that are available to active and retired state employees and active teachers, institutions, and individuals for services performed, or the board of trustees may elect to provide insurance on a "self-insurance" basis or a combination of these provisions.

(6) The board of trustees may approve health insurance supplement payments to eligible annuitants who are less than sixty-five (65) years of age, as reimbursement for hospital and medical insurance premiums made by annuitants for their individual coverage. Eligible annuitants or recipients are those annuitants who are not eligible for Medicare and who do not reside in Kentucky or in an area outside of Kentucky where comparable coverage is available. The reimbursement payments shall not exceed the minimum supplement payment that would have been made had the annuitant lived in Kentucky. Eligible

annuitants or recipients shall submit proof of payment to the retirement system for hospital and medical insurance that they have obtained. Reimbursement payments shall be made on a quarterly basis.

(7) Contracts negotiated may include the provision that a stated amount of hospital cost or period of hospitalization shall incur no obligation on the part of the insurance carrier or the retirement system or any trust fund established for this purpose by the board.

(8) The board of trustees is empowered to promulgate administrative regulations to assure efficient operation of the hospital and medical insurance program.

(9) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the medical insurance fund or another trust fund established by the board for this purpose shall not constitute taxable income to an insured recipient.

(10) In the event that a member is providing services on less than a full-time basis under KRS 161.605, the retirement system may pay the full cost of the member's health insurance coverage for the full fiscal year that the member is providing those services, at the conclusion of which, the retirement system may then bill the active employer and the active employer shall reimburse the retirement system for the cost of the health insurance coverage incurred by the retirement system on a pro rata basis for the time that the member was employed by the active employer.

161.677 Kentucky Teachers' Retirement System insurance trust fund.

(1) (a) The Kentucky Teachers' Retirement System insurance trust fund is hereby created. All assets received in the trust fund shall be deemed trust funds to be held and applied solely as provided in this section. Assets of the trust fund shall not be used for any other purpose and shall not be used to pay the claims of creditors or any individual, person, or employer participating in the Kentucky Teachers' Retirement System.

(b) The trust fund is intended to be established as a trust exempt from taxation under 26 U.S.C. sec. 115.

(2) The trust fund is created for the purpose of providing a trust separate from the funds under KRS 161.420. Trust fund assets are dedicated for use for health benefits as provided in KRS 161.675, and as permitted under 26 U.S.C. secs. 105 and 106, for present and future eligible recipients of a retirement allowance from the Kentucky Teachers' Retirement System.

(3) The trust fund shall be administered by the board of trustees

established by KRS 161.250, and the board shall serve as trustees of the fund. The board shall manage the assets of the fund in the same general manner in which it administers the retirement funds, except that the asset allocation may differ and separate accounting and financial reporting shall be maintained for the trust fund.

(4) In addition to the requirements of subsection (2) of this section, the employers participating in the trust fund are limited to the Commonwealth, political subdivisions of the Commonwealth, and entities whose income is exempt from taxation under 26 U.S.C. sec. 115. No other entity may participate in the trust fund.

(5) If the trust fund is terminated, the assets in the trust fund may revert, after the payment of all liabilities, to the participating employers as determined by the board of trustees.

(6) The board of trustees may promulgate administrative regulations and adopt procedures and a trust document to implement this section and take all action necessary and appropriate to provide that the income of the trust fund shall not diminish or expand the rights of any recipients, employees, or dependents to health benefits.

(7) The establishment of the Kentucky Teachers' Retirement System insurance trust fund shall not diminish or expand the rights of any recipients, employees, or dependents to health benefits.

(8) The trust fund established under this section, at the direction of the board of trustees, shall consist of amounts, excluding those amounts that have been deposited to an account established pursuant to 26 U.S.C. sec. 401(h), that have been accumulated for the purpose of providing benefits as provided in KRS 161.675, including:

(a) Contributions required under KRS 161.550;

(b) Contributions required under KRS 161.675(4)(b); and

(c) Interest income from the investments of the fund from contributions received by the fund and from income earned on those investments.

161.680 Mistake in payment — Correction of error.

If any change or error in a record results in any individual receiving from the retirement system more or less than the individual was entitled to receive, the board of trustees shall, when the error is discovered, correct the error, and as far as practicable adjust the payments so that the actuarial equivalent of the benefit to which the individual was entitled shall be paid.

161.690 Falsifying record prohibited.

No person shall knowingly make any false statement, nor shall any person falsify or permit to be falsified any record of the retirement system in an attempt to defraud the system.

161.700 Funds exempt from taxation and process -- Taxability after December 31, 1997 -- Benefits not considered marital property.

(1) Except as otherwise provided by this section, the right of a member to a retirement allowance and to the return of contributions, any benefit or right accrued or accruing to any person under KRS 161.220 to 161.716, and the money in the various funds established pursuant to KRS 161.220 to 161.716 are hereby exempt from any state or municipal tax, and shall not be subject to execution, garnishment, attachment, or other process, and shall not be assigned.

(2) Notwithstanding subsection (1) of this section, retirement benefits accrued or accruing to any person under this retirement system on or after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent provided in KRS 141.010 and 141.0215.

(3) Retirement allowance, disability allowance, accumulated contributions, or any other benefit under the retirement system shall not be classified as marital property pursuant to KRS 403.190(1), except to the extent permitted under KRS 403.190(4). Retirement allowance, disability allowance, accumulated contributions, or any other benefit under the retirement system shall not be considered as an economic circumstance during the division of marital property in an action for dissolution of marriage pursuant to KRS 403.190(1)(d), except to the extent permitted under KRS 403.190(4).

(4) Qualified domestic relations orders issued by a court or administrative agency shall be honored by the retirement system if:

(a) The benefits payable pursuant to the order meet the requirements of a qualified domestic relations order as provided by 26 U.S.C. sec. 414(p). The retirement system shall follow applicable provisions of 26 U.S.C. sec. 414(p) in administering qualified domestic relations orders;

(b) The order meets the requirements established by the retirement system and by subsections (4) to (12) of this section. The board of trustees of the retirement system shall establish the requirements, procedures, and forms necessary for the administration of qualified domestic relations order by promulgation of administrative regulations in accordance with KRS Chapter 13A; and

(c) The order is on the form established by the retirement system pursuant to the retirement system's authority provided under paragraph (b) of this subsection.

(5) A qualified domestic relations order shall not:

(a) Require the retirement system to take any action not authorized under state or federal law;

(b) Require the retirement system to provide any benefit,

allowance, or other payment not authorized under state or federal law;

(c) Grant or be construed to grant the alternate payee any separate right, title, or interest in or to any retirement benefit other than to receive payments from the participant's account in accordance with the administrative regulations promulgated by the system and as provided by subsections (4) to (12) of this section; or

(d) Grant any separate interest to any person other than the participant.

(6) Any qualified domestic relations order submitted to the retirement system shall specify the dollar amount or percentage amount of the participant's benefit to be paid to the alternate payee. In calculating the amount to be paid to the alternate payee, the court or administrative agency that is responsible for issuing the order shall follow the requirements set forth in the administrative regulations promulgated by the board of trustees. Notwithstanding any other statute to the contrary, the board shall not be required to honor a qualified domestic relations order that does not follow the requirements set forth in the administrative regulations promulgated by the board of trustees.

(7) If the qualified domestic relations order meets the requirements established by the system and by subsections (4) to (12) of this section, payments to the alternate payee shall be distributed under the following conditions:

(a) If the participant is retired and is receiving a monthly benefit, the month following the date the retirement system receives a qualified domestic relations order that complies with the administrative regulations promulgated by the retirement system and subsections (4) to (12) of this section; or

(b) If the participant is not retired, the month of the participant's effective retirement date in which the first retirement allowance is payable to the participant or the month in which the participant receives a refund of contributions as provided by KRS 161.470(6).

(8) An alternate payee's benefits and rights under a qualified domestic relations order shall terminate upon the earlier of:

(a) The death of the participant;

(b) The death of the alternate payee; or

(c) The termination of benefits to the participant under any provision of KRS 161.220 to 161.716.

(9) An alternate payee shall not receive a monthly payment under a qualified domestic relations order if the participant is not receiving a monthly retirement allowance.

(10) The cost of living adjustment provided to the participant pursuant to KRS 161.620 shall be divided between the participant and alternate payee in a qualified domestic relations order as follows:
   (a) If the order specifies the alternate payee is to receive a percentage of the participant's benefit, then the cost of living adjustment shall be divided between the participant and the alternate payee based upon the percentage of the total benefit each is receiving upon the participant's retirement or upon the date the order is approved by the retirement system, whichever is later; or
   (b) If the order specifies that the alternate payee is to receive a set dollar amount of the participant's benefit, then the order shall specify that:
      1. The cost of living adjustment shall be divided between the participant and the alternate payee based upon the percentage of the total benefit each is receiving upon the participant's retirement or upon the date the order is approved by the retirement system, whichever is later; or
      2. The alternate payee shall receive no cost of living adjustment.

      If the order does not specify the division of the cost of living adjustment as required by this paragraph, then no cost of living adjustment shall be payable to the alternate payee. If no cost of living adjustment is provided to the alternate payee, then the participant shall receive the full cost of living adjustment he or she would have received if the order had not been applied to the participant's account.

(11) Except in cases involving child support payments, the retirement system may charge reasonable and necessary fees and expenses to the recipient and the alternate payee of a qualified domestic relations order for the administration of the qualified domestic relations order by retirement system. All fees and expenses shall be established by the administrative regulations promulgated by the board of trustees of the retirement system. The qualified domestic relations order shall specify whether the fees and expenses provided by this subsection shall be paid:
   (a) Solely by the participant;
   (b) Solely by the alternate payee; or
   (c) Equally shared by the participant and alternate payee.

(12) The retirement system shall honor a qualified domestic relations order issued prior to July 15, 2010, for prospective benefit payments if the order or an amended version of the order meets the requirements

established by this section and the administrative regulations promulgated by the retirement system. The order shall not apply to benefit payments issued by the retirement system prior to the date the order was approved by the retirement system.

161.710 Local system merged with state system.

(1) The local retirement systems merged with the state retirement system under the provisions of 1938 Ky. Acts (1st Ex. Sess.), ch. 1, sec. 49, shall be discontinued. The payment of all benefits to members on the retired roll at the time of discontinuance shall become the obligation of the school district in which the local system was operated prior to its discontinuance. The method of determining and paying refundable deposits due members of the local system shall be as provided in 1938 Ky. Acts (1st Ex. Sess.), ch. 1, sec. 49.

(2) Payments to annuitants in cities of the first class or in areas formerly constituting a city of the first class which have been consolidated with their county shall not exceed the amount being received by them at the time the local retirement system is discontinued. The sum that remains after the death of all annuitants shall be used by the local board of education for general school purposes.

(3) The local board of education shall continue to invest the funds transferred to it for the benefit of the existing annuitants as long as such annuitants live. Such investment shall be governed by 1934 Ky. Acts, ch. 65, Art. IX, except that the local board of education is substituted for the board of trustees of the local retirement system. The local board of education shall keep all funds transferred to it by the local retirement system and all income from the investment of such funds in a separate fund to be known as the annuity fund. The local board of education may pay from the fund any reasonable expenses necessary for the fund's administration and general management. The local board of education shall safeguard the fund by requiring such additional surety bond of the treasurer as it deems necessary, by providing for an annual audit by a reputable auditing firm, by spreading on the minutes of the board of education at least annually a report of investments, assets, and liabilities, and the names, addresses, and annuities of annuitants, and by making such an appropriation to the fund from local school revenues as will guarantee the full and complete discharge of all obligations to annuitants.

161.714 Inviolable contract — Exception.

It is hereby declared that in consideration of the contributions by members and in further consideration of benefits received by the state

from the member's employment, KRS 161.220 to 161.710 shall constitute, except as provided in KRS 6.696, an inviolable contract of the Commonwealth, and the benefits provided herein shall, except as provided in KRS 6.696, not be subject to reduction or impairment by alteration, amendment, or repeal.

161.716 Federal laws take precedence over Kentucky statutes pertaining to Teachers' Retirement System.
In the event that federal laws are in conflict with the Kentucky Revised Statutes pertaining to the Teachers' Retirement System, federal laws shall take precedence. When necessary to comply with federal laws, the board of trustees may defer or stop payments of allowances until the conflict is resolved. The board of trustees shall adopt such regulations as are necessary to remove any conflicts with federal laws and to protect the

161.990 Penalties.

(1) Any person who violates any provisions of KRS 161.164 shall be guilty of a Class A misdemeanor. Any school board candidate or school board member who willfully violates any provision of KRS 161.164 shall also be disqualified from holding the office of school board member.

(2) Any teacher or employee of a district who willfully violates any provision of KRS 161.164 shall be ineligible for employment in the common schools for a period of five (5) years.

(3) Any person who violates any of the provisions of KRS 161.190 shall be guilty of a Class A misdemeanor.

(4) Any teacher who violates any of the provisions of subsection (2) of KRS 161.210 shall be subject to a fine of fifty dollars ($50) and upon conviction his certificate shall be revoked.

(5) A violation of any of the provisions of KRS 161.661 or 161.690 is a misdemeanor and upon conviction shall be punished by a fine of not more than five thousand dollars ($5,000).

6.350 Actuarial analysis required for bill before General Assembly to increase benefits or participation in public retirement system.

(1) A bill which would increase or decrease the benefits or increase or decrease participation in the benefits or change the actuarial accrued liability of any state-administered retirement system shall not be reported from a legislative committee of either house of the General Assembly for consideration by the full membership of that house unless the bill is accompanied by an actuarial analysis.

(2) (a) An actuarial analysis required by this section must show the

economic effect of the bill on the state-administered retirement system, including:

1. An estimate of the effect on the actuarial accrued liabilities of the affected systems; and
2. A projection of the annual cost to the systems of implementing the legislation for at least twenty (20) years. The annual cost projection shall include the effect on the contributions of participating employers as a percentage of total payroll and in total dollars of contributions.

(b) If a bill affects more than one (1) state-administered retirement system, the actuarial analysis shall project costs for each affected state-administered retirement system.

(c) An actuarial analysis shall state the actuarial assumptions and methods of computation used in the analysis and shall state whether or not the bill or resolution, if enacted, would, in the opinion of the actuary, make the affected state-administered retirement system actuarially unsound or, in the case of a system already actuarially unsound, more unsound. Actuarial cost methods and assumptions that meet actuarial standards of practice established by the Actuarial Standards Board shall be used in all cost projections.

(d) An actuarial analysis required by this section shall be prepared by an actuary who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employees' Retirement Income Security Act of 1974.

(3) (a) An actuary commissioned to make an actuarial analysis that is required by this section, or for the purpose of seeking appropriations for a state-administered retirement system, shall include in the analysis a complete definition of each actuarial term used in the analysis and, either in the analysis or in a separate actuarial valuation report made available as a public record, an enumeration and explanation of each actuarial assumption used to complete the actuarial analysis.

(b) If the actuary commissioned to complete the actuarial analysis is relying upon assumptions that have not been previously established by the actuary in an actuarial valuation of the affected state-administered retirement system, the actuary shall clearly note and describe the new assumption and the basis for selecting the assumption.

(4) The actuarial analysis required by this section shall be completed by the actuary retained by the affected state-administered retirement

system. The state-administered retirement systems shall provide the analysis without cost to the General Assembly.

(5) For purposes of this section, the term "state-administered retirement system" shall include:

(a) The Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System administered by the Kentucky Retirement Systems and established under the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852;

(b) The Kentucky Teachers' Retirement System established under KRS 161.220 to 161.716;

(c) The Judicial Retirement Plan established under KRS 21.345 to 21.580; and

(d) The Legislators' Retirement Plan established under KRS 6.500 to 6.577.

6.696 Effect of felony conviction on state retirement benefits.

(1) A legislator or former legislator convicted of a felony relating to his duties as a legislator, in any state or federal court of competent jurisdiction, shall forfeit rights and benefits earned after September 16, 1993, under the state administered retirement plan to which contributions have been made as a result of his service in the General Assembly, except for the return of his accumulated contributions and interest credited on those contributions.

(2) The payment of retirement benefits ordered forfeited shall be stayed pending any appeal of the conviction. If the conviction is reversed on final judgment, no retirement benefits shall be forfeited.

61.552 Service credit regained or obtained — Purchase of current service and service credit — Interest paid — Delayed contribution — Installment payments.

(1) Any employee participating in one (1) of the state-administered retirement systems who has been refunded his accumulated contributions under the provisions of KRS 16.645(21), 61.625, or 78.545(15), thereby losing service credit, may regain the credit by paying to the system from which he received the refund or refunds the amount or amounts refunded with interest at a rate determined by the board of the respective retirement system. The payment, including interest as determined by the board, shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. The payments shall not be picked up, as described in KRS 61.560(4), by the employer.

(2) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, and who did not elect membership in the County Employees Retirement System, as provided in KRS 78.540(2), may obtain credit in the County Employees Retirement System for prior service and for current service by paying to the County Employees Retirement System a delayed contribution payment for the service he would have received had he elected membership. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.

(3) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, and who did not elect membership in the Kentucky Employees Retirement System, as provided in KRS 61.525(2), may obtain credit in the Kentucky Employees Retirement System for prior service and for current service by paying to the system a delayed contribution payment for the service he would have received had he elected membership. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.

(4) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, may obtain credit in the Kentucky Employees Retirement System for current service between July 1, 1956, and the effective date of participation of his department by paying to the system a delayed contribution payment for the service he would have received had his department participated on July 1, 1956. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.

(5) (a) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65)

in the systems administered by the Kentucky Retirement Systems, may obtain credit in the County Employees Retirement System for current service between July 1, 1958, and the effective date of participation of his county by paying to the County Employees Retirement System a delayed contribution payment for the service he would have received had his county participated on July 1, 1958. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer.

(b) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may obtain credit for the period of his service with an area development district created pursuant to KRS 147A.050 or with a business development corporation created pursuant to KRS 155.001 to 155.230 if that service was not covered by a state-administered retirement system. The member shall pay to the retirement system in which he participates a delayed contribution payment, as determined by the board's actuary. The employee may obtain credit for employment with a business development corporation only if the Kentucky Retirement Systems receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. Payment may be by lump sum or the employee may pay by increments.

(6) After August 1, 2000, service credit obtained under the subsections of this section which do not require the employee to have a minimum number of years of service credit to be eligible to make a purchase shall be disallowed and the recontribution of refund, including interest as determined by the board or other payment, if any, shall be paid to the member if the member does not obtain for service performed six (6) months' additional current service credit in one (1) of the state-administered retirement systems. The service requirement shall be waived if the member dies or becomes disabled as provided for by KRS 16.582 or 61.600.

(7) The members shall not receive benefit of service for the same period of time in another public defined benefit retirement fund.

(8) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months' service if age sixty-five (65) or at least sixty (60) months' service if under age sixty-five (65) in the retirement systems

administered by the Kentucky Retirement Systems, who formerly worked for a state university in a position which would have qualified as a regular full-time position had the university been a participating department, and who did not participate in a defined benefit retirement program at the university may obtain credit in the employee's account in the County Employees Retirement System, the Kentucky Employees Retirement System, or the State Police Retirement System for prior and current service by paying either retirement system a delayed contribution payment for the service he would have received had his period of university employment been covered by the County Employees, Kentucky Employees Retirement System, or State Police Retirement System. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum, or the employee may pay by increments.

(9) (a) Effective August 1, 1980, any county participating in the County Employees Retirement System may purchase current service, between July 1, 1958, and participation date of the county, for present employees of the county who have obtained coverage under KRS 78.540(2);

(b) Effective July 1, 1973, any department participating in the Kentucky Employees Retirement System may purchase current service between July 1, 1956, and participation date of the department, for present employees of the department who were employees on the participation date of the department and elected coverage under KRS 61.525(2);

(c) Cost of the service credit purchased under this subsection shall be determined by computing the discounted value of the additional service credit based on an actuarial formula recommended by the board's consulting actuary and approved by the board. A department shall make payment for the service credit within the same fiscal year in which the option is elected. The county shall establish a payment schedule subject to approval by the board for payment of the service credit. The maximum period allowed in a payment schedule shall be ten (10) years with interest at the rate actuarially assumed by the board; however, a shorter period is desirable and the board may approve any schedule provided it is not longer than a ten (10) year period;

(d) If a county or department elects the provisions of this subsection, any present employee who would be eligible to receive service credit under the provisions of this subsection and has purchased service credit under subsection (4) or (5) of this

section shall have his payment for the service credit refunded with interest at the rate paid under KRS 61.575 or 78.640;

(e) Any payments made by a county or department under this subsection shall be deposited to the retirement allowance account of the proper retirement system and these funds shall not be considered accumulated contributions of the individual members.

(10) Interest paid by a member of the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System under this section or other similar statutes under KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852 prior to June 19, 1976, shall be credited to the individual member's contribution account in the appropriate retirement system and considered as accumulated contributions of the member.

(11) Employees who served as assistants to officers and employees of the General Assembly who have at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems and who were unable to acquire service under KRS 61.510(20) may purchase credit for the service performed after January 1, 1960. Service credit under this section shall be obtained by the payment of a delayed contribution which shall not be picked up by the employer as described in KRS 61.560(4).

(12) (a) Effective August 1, 1988, any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may purchase service credit for interim, seasonal, emergency, or temporary employment or part-time employment averaging one hundred (100) or more hours of work per month on a calendar or fiscal year basis. If the average number of hours of work is less than one hundred (100) per month, the member shall be allowed credit only for those months he receives creditable compensation for one hundred hours of work. The cost will be determined as a delayed contribution payment for the period of time involved, which shall not be picked up by the employer as described in KRS 61.560(4).

(b) Any noncertified employee of a school board who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may

purchase service credit for part-time employment prior to the 1990-91 school year which averaged eighty (80) or more hours of work per month on a calendar or fiscal year basis by paying to the County Employees Retirement System a delayed contribution payment. The delayed contribution payment shall not be picked up, as described in KRS 78.610(4), by the employer. Payment may be by lump sum or the employee may pay by increments. If the average number of hours of work is less than eighty (80) per month, the noncertified employee of a school board shall be allowed credit only for those months he receives creditable compensation for eighty (80) hours of work. The cost will be determined as a delayed contribution payment, which shall not be picked up by the employer as described in KRS 78.610(4).

(13) A retired member, who is contributing to one (1) of the state-administered retirement programs under the provisions of KRS 61.637(1) to (4) and purchases service credit under this section in the system or systems from which he is retired, shall have his retirement allowance recomputed:

(a) Upon termination from employment, if the member is contributing to the same system or systems from which he was retired; or

(b) Upon completion of six (6) months' service credit as required under subsection (6) of this section, if the member is contributing to a system other than the system or systems from which he is retired.

(14) Any employee participating in one (1) of the systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may obtain credit for prior or current service for any period of approved educational leave, or for agency-approved leave to work for a work-related labor organization if the agency subsequently participated in the County Employees Retirement System, by paying to the respective retirement system a delayed contribution payment. The employee may also obtain credit for agency-approved leave to work for a work-related labor organization if the agency subsequently participated in the County Employees Retirement System, but only if the Kentucky Retirement Systems receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by

the employer, and shall be deposited to the individual member's account.

(15) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may obtain credit for prior or current service for any period of authorized maternity leave, unpaid leave authorized under the Federal Family and Medical Leave Act, or for any period of authorized sick leave without pay, by paying to the respective retirement system a delayed contribution payment. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer, and shall be deposited to the individual member's account.

(16) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems may purchase service credit under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852 by making installment payments in lieu of a lump-sum payment.

(a) The cost of the service shall be computed in the same manner as for a lump-sum payment which shall be the principal; and interest, at the actuarial rate in effect at the time the member elects to make the purchase compounded annually, shall be added for the period that the installments are to be made. Multiple service purchases may be combined under a single installment purchase; however, no employee may make more than one (1) installment purchase at the same time. The employee may elect to stop the installment payments by notifying the retirement system; may have the installment purchase recalculated to add one (1) or more additional service purchases; or may pay by lump sum the remaining principal or a portion of the remaining principal.

(b) One (1) year of installment payments shall be made for each one thousand dollars ($1,000) or any part thereof of the total cost, except that the total period allowed for installments shall not be less than one (1) year and shall not exceed five (5) years.

(c) The employee shall pay the installments by payroll deduction. Upon notification by the retirement system, the employer shall report the installment payments either monthly or semimonthly continuously over each twelve (12) month period at the same time as, but separate from, regular employee contributions on the forms or by the computer format specified by the board. The payments made under this subsection shall be considered

accumulated contributions of the member and shall not be picked up by the employer pursuant to KRS 61.560(4) and no employer contributions shall be paid on the installments.

(d) The retirement system shall determine how much of the total cost represents payment for one (1) month of the service to be purchased and shall credit one (1) month of service to the member's account each time this amount has been paid. The first service credited shall represent the first calendar month of the service to be purchased and each succeeding month of service credit shall represent the succeeding months of that service.

(e) If the employee elects to stop the installment payments, dies, retires, or does not continue employment in a position required to participate in the retirement system, the member, or in the case of death, the beneficiary, shall have sixty (60) days to pay the remaining principal or a portion of the remaining principal of the purchase by lump sum, except that payment by the member shall be made prior to the effective retirement date. If the member or beneficiary does not pay the remaining cost, the retirement system shall refund to the member or the beneficiary the payment, payments, or portion of a payment that does not represent a full month of service purchased.

(f) If the employer does not report installment payments on an employee for sixty (60) days, except in the case of employees on military leave or sick leave without pay, the installment purchase shall cease and the retirement system shall refund to the employee the payment, payments, or portion of a payment that does not represent a full month of service purchased. Installment payments of employees on military leave or sick leave without pay shall be suspended during the period of leave and shall resume without recalculation upon the employee's return from leave.

(g) If payments have ceased under paragraph (e) or (f) of this subsection and the member later becomes a participating employee in one (1) of the three (3) systems administered by Kentucky Retirement Systems, the employee may complete the adjusted original installment purchase by lump sum or installment payments. If the employee elects to renew the installment purchase, the cost of the remaining service shall be recalculated in accordance with paragraph (a) of this subsection.

(17) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems may purchase service

credit under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852 by transferring funds through a direct trustee-to-trustee transfer as permitted under the applicable sections of the Internal Revenue Code and any regulations or rulings issued thereunder, or through a direct rollover as contemplated by and permitted under 26 U.S.C. sec. 401(a)(31) and any regulations or rulings issued thereunder. Service credit may also be purchased by a rollover of funds pursuant to and permitted under the rules specified in 26 U.S.C. sec. 402(c) and 26 U.S.C. sec. 408(d)(3). The Kentucky Retirement Systems shall accept the transfer or rollover to the extent permitted under the rules specified in the applicable provisions of the Internal Revenue Code and any regulations and rulings issued thereunder. The amount shall be credited to the individual member's contribution account in the appropriate retirement system and shall be considered accumulated contributions of the member.

(18) After August 1, 1998, any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who is age sixty-five (65) or older and has forty-eight (48) months of service credit or, if younger, who has sixty (60) months of service credit in systems administered by Kentucky Retirement Systems may purchase credit in the system in which the employee has the service credit for up to ten (10) years service in a regular full-time position that was credited to a state or local government-administered public defined benefit plan in another state other than a defined benefit plan for teachers. The employee shall pay a delayed contribution payment. Payment may be by lump sum, or the employee may pay by increments. The employee may transfer funds directly from the other state's plan if eligible to the extent permitted under subsection (17) of this section and to the extent permitted by the other state's laws and shall provide proof that he is not eligible for a retirement benefit for the period of service from the other state's plan.

(19) After August 1, 1998, any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has sixty (60) or more months of service in the State Police Retirement System or in a hazardous position in the Kentucky Employees Retirement System or the County Employees Retirement System, may purchase credit in the system in which the employee has the sixty (60) months of service credit for up to ten (10) years of service in a regular full-time position that was credited to a defined benefit retirement plan administered by a state or local government in another state, if the service could be certified as hazardous pursuant to KRS 61.592. The employee shall pay a delayed contribution

payment. Payment may be by lump sum or by increments. The employee may transfer funds directly from the other unit of government's plan if eligible to the extent permitted under subsection (17) of this section and to the extent permitted by the other state's laws, and the employee shall provide proof that he is not eligible for a retirement benefit for the period of service from the other unit of government's plan.

(20) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems and who has completed service as a volunteer in the Kentucky Peace Corps, created by KRS 154.01-720, may purchase service credit for the time served in the corps by making delayed contribution payments.

(21) An employee participating in any retirement system administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65), or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems, and who was formerly employed in a regional community mental health and mental retardation services program, organized and operated under the provisions of KRS 210.370 to 210.480, which does not participate in a state-administered retirement system may obtain credit for the period of his service in the regional community mental health and mental retardation program, by paying to the state retirement system in which he participates a delayed contribution payment. Payment to one (1) of the retirement systems administered by the Kentucky Retirement Systems may be made by lump sum or in increments.

(22) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, who was employed by a vocational technical school in a noncertified part-time position averaging eighty (80) or more hours per month, determined by using the number of months actually worked within a calendar or fiscal year, may purchase service credit in the Kentucky Employees Retirement System. The cost of the service shall be a delayed contribution payment, which shall not be picked up by the employer as described in KRS 61.560(4).

(23) (a) Any person who is entitled to service credit for employment which was not reported in accordance with KRS 16.543,

61.543, or 78.615 may obtain credit for the service by paying the employee contributions due within six (6) months of notification by the system. No interest shall be added to the contributions. The service credit shall not be credited to the member's account until the employer contributions are received. If a retired member makes the payment within six (6) months, the retired member's retirement allowance shall be adjusted to reflect the added service after the employer contributions are received by the retirement system.

(b) Any employee participating in one (1) of the state-administered retirement systems who is entitled to service credit under paragraph (a) of this subsection and who has not repaid the employee contributions due within six (6) months of notification by the system may regain the credit after the six (6) months by paying to the system the employee contributions plus interest at the actuarially assumed rate from the date of initial notification under paragraph (a) of this subsection. Service credit shall not be credited to the member's account until the employer contributions are received by the retirement system. The payments shall not be picked up, as described in KRS 61.560(4), by the employer.

(c) Service purchased under this subsection by employees who begin participating on or after September 1, 2008, shall be considered service credited under KRS 16.543(1), 61.543(1), or 78.615(1) for purposes of determining eligibility for retirement benefits under KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852.

(24) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems may purchase service credit for employment with a public agency that would have been eligible to participate under KRS 61.520 but which did not participate in the Kentucky Employees Retirement System or a political subdivision that would have been eligible to participate under KRS 78.530 but which did not participate in the County Employees Retirement System if the former public agency or political subdivision has merged with or been taken over by a participating department or county. The cost of the service shall be determined as a delayed contribution payment for the respective retirement system. Payment may be made by lump sum or in increments. The payment shall not be picked up, as described in KRS 61.560(4) or 78.610(4), by the employer.

(25) Any employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems prior to July 15, 2002, who has accrued at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems and who has total service in all state-administered retirement systems of at least one hundred eighty (180) months of service credit may purchase a combined maximum total of five (5) years of retirement service credit which is not otherwise purchasable under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. The purchase price for the retirement service credit shall be calculated and paid for as a delayed contribution payment. The payment shall not be picked up, as described in KRS 16.545(4), 61.560(4), or 78.610(4), by the employer, and the employee's payment shall be paid into the individual member's contribution account in the appropriate retirement system and shall be considered accumulated contributions of the member. Payment by the member may be by lump sum or by increments. The service purchased under this subsection shall not be used in determining a retirement allowance until the member has accrued at least two hundred forty (240) months of service, excluding service purchased under this subsection. If the member does not accrue at least two hundred forty (240) months of service, excluding service purchased under this subsection, upon retirement, death, or written request following termination, the payment, plus interest as provided in KRS 61.575, shall be refunded.

(26) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65), or at least sixty (60) months of service if under age sixty-five (65), in the systems administered by Kentucky Retirement Systems, may obtain credit in the County Employees Retirement System for the period of that employee's service with a community action agency created under KRS 273.405 to 273.453 if that service was not covered by a state-administered retirement system. The member shall pay to the retirement system a delayed contribution payment. Payment may be made by lump sum or in increments. The payment shall not be picked up, as described in KRS 61.560(4) or 78.610(4), by the employer.

(27) The board of trustees is authorized to establish a program, subject to a favorable ruling from the Internal Revenue Service, to provide for the purchase of service credit under any of the provisions of KRS 16.505 to 16.552, 61.510 to 61.705, and 78.510 to 78.852,

pursuant to the employer pick-up provisions in 26 U.S.C. sec. 414(h)(2).

(28) An employee may obtain credit for regular full-time service with an agency prior to August 1, 1998, for which the employee did not receive credit due to KRS 61.637(1), by paying a delayed contribution. The payment shall not be picked up by the employer, except as provided in subsection (27) of this section, and shall be credited to the employee's second retirement account. Service credit obtained under this subsection shall not be used in determining benefits under KRS 61.702. The employee may purchase credit for service prior to August 1, 1998, if:

(a) The employee retired from one (1) of the retirement systems administered by the Kentucky Retirement Systems and was reemployed prior to August 1, 1998, earning less than the maximum permissible earnings under the Federal Social Security Act;

(b) The employee elected to participate in a second retirement account effective August 1, 1998, in accordance with KRS 61.637(7); and

(c) The employee has at least forty-eight (48) months of service if age sixty-five (65), or at least sixty (60) months of service if under age sixty-five (65), in a second account in the systems administered by Kentucky Retirement Systems.

(29) An employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, may obtain credit for the service in a regular full-time position otherwise creditable under the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System for service in the United States government, other than service in the Armed Forces, for which service is not otherwise given, by paying to the system a delayed contribution payment. Payment may be made by lump sum or in increments. No payment made pursuant to this section shall be picked up by the employer, as described in KRS 61.560(4).

(30) An employee participating in a hazardous position in one (1) of the retirement systems administered by the Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, may obtain credit for service in a regular full-

time position in an urban-county government that would qualify for hazardous duty coverage under KRS 61.592 by paying to the system a delayed contribution payment. Payment may be made by lump sum or in increments. No payment made pursuant to this section shall be picked up by the employer, as described in KRS 61.560(4).

61.621 Fred Capps Memorial Act — Eligibility for benefits for duty-related injury.

(1) Notwithstanding any provision of any statutes to the contrary, effective June 1, 2000, any employee participating in one (1) of the state-administered retirement systems who is not in a hazardous duty position, as defined in KRS 61.592, shall be eligible for minimum benefits equal to the benefits payable under this section or KRS 61.702 if the employee dies or becomes totally and permanently disabled to engage in any occupation for remuneration or profit as a result of a duty-related injury.

(2) (a) For purposes of this section, "duty-related injury" means:

1. a. A single traumatic event that occurs while the employee is performing the duties of his position; or

b. A single act of violence committed against the employee that is found to be related to his job duties, whether or not it occurs at his job site; and

2. The event or act of violence produces a harmful change in the human organism evidenced by objective medical findings.

(b) Duty-related injury does not include the effects of the natural aging process, a communicable disease unless the risk of contracting the disease is increased by nature of the employment, or a psychological, psychiatric, or stress-related change in the human organism unless it is the direct result of a physical injury.

(3) (a) If the employee dies as a result of a duty-related injury and is survived by a spouse, the surviving spouse shall be the beneficiary, and this shall supersede the designation of all previous beneficiaries of the deceased employee's retirement account.

(b) The surviving spouse may elect to receive the benefits payable under KRS 61.640 or other applicable death benefit statutes, or may elect to receive a lump-sum payment of ten thousand dollars ($10,000) and a monthly payment equal to twenty-five percent (25%) of the member's monthly final rate of pay beginning in the month following the member's death and continuing each month until death.

(4) If the employee is determined to be disabled as provided in KRS 61.600, or other applicable disability statutes in any other state-

administered retirement system, as the result of a duty-related injury, the employee may elect to receive benefits determined under the provisions of KRS 61.605, or other applicable disability statutes in any other state-administered retirement system, except that the monthly retirement allowance shall not be less than twenty-five percent (25%) of the employee's monthly final rate of pay. For purposes of determining disability, the service requirement in KRS 61.600(1)(a), or other applicable statutes in any other state-administered retirement system, shall be waived.

(5) In the period of time following a member's death or disability during which dependent children survive, a monthly payment shall be made for each dependent child who is alive which shall be equal to ten percent (10%) of the deceased or disabled member's monthly final rate of pay; however, total maximum dependent children's benefits shall not exceed forty percent (40%) of the deceased or disabled member's monthly final rate of pay at the time any particular payment is due. The payment shall commence in the month following the date of death or disability of the member and shall be payable to the beneficiaries, or to a legally appointed guardian, or as directed by the system. Benefits for death as a result of a duty-related injury shall be payable under this subsection notwithstanding an election by a beneficiary to withdraw the deceased member's accumulated contributions as provided in KRS 61.625 or benefits under any other provisions of KRS 61.515 to 61.705 or other applicable death benefit statutes in any other state-administered retirement system.

(6) This section shall be known as "The Fred Capps Memorial Act."

61.680 Consent of employees to deductions — Consolidation for determination of eligibility and determination of benefits — Waiver — Choice among retirement systems — Reciprocal arrangements.

(1) Prior to August 1, 1982, every employee shall be deemed to consent and agree to any deduction from his compensation required by KRS 6.500 to 6.535, 16.505 to 16.652, 61.510 to 61.692, 78.510 to 78.852, and to all other provisions thereof. Thereafter, employee contributions shall be picked up by the employer pursuant to KRS 61.560(4).

(2) (a) Notwithstanding any other provisions of KRS 6.500 to 6.535, 16.505 to 16.652, 61.510 to 61.692, 78.510 to 78.852 and 161.220 to 161.714, upon death, disability, or service retirement, a member's accounts under the Legislators' Retirement Plan, State Police Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, and Teachers' Retirement System, except for service

prohibited by KRS 161.623(2), shall be consolidated for the purpose of determining eligibility and amount of benefits. Vested service credit in a retirement system, other than the Teachers' Retirement System, sponsored by a Kentucky institution of higher education and accepted by the Kentucky Employees Retirement System or the County Employees Retirement System, may be used to determine eligibility for twenty-seven (27) year retirement for an employee who begins participating before September 1, 2008, but not the amount of benefits. The computation of benefits shall be based on the applicable formula in each system and service credit in each system, but the final compensation, excluding compensation earned under KRS 161.155(10), shall be determined as if all service were in one (1) system. If the member has prior service in more than one (1) system, he shall obtain at least twelve (12) months' current service in each system in which he has prior service in order to validate the prior service in each system for purposes of determining consolidated benefits under this section. Upon the determination of benefits, each system shall pay the applicable percentage of total benefits.

(b) The provisions of paragraph (a) of this subsection shall be waived if the member notifies the system of his desire to maintain separate retirement accounts in the State Police Retirement System, Kentucky Employees Retirement System, or County Employees Retirement System.

(c) If the member has not contributed at least one (1) year in a system in which he has prior service, his current service in the system shall be valid for purposes of determining eligibility and in computation of benefits on a consolidated basis.

(3) A member with service credit in the Kentucky Employees Retirement System, State Police Retirement System, or the County Employees Retirement System who becomes the holder of an office entitling him to membership in the Judicial Retirement Plan or the Legislators' Retirement Plan, but who does not elect within thirty (30) days after taking office in such service to participate in the plan, in accordance with KRS 6.505 or 21.360, shall be deemed to have elected to retain membership in the system in which he is a member, either the Kentucky Employees Retirement System, State Police Retirement System, or the County Employees Retirement System. In that event, the agency employing the member shall withhold employee contributions, or picked-up employee contributions after August 2, 1982, make employer contributions and remit these contributions to the system in which the member retained his membership. Any person

entitled to membership in the Judicial Retirement Plan or the Legislators' Retirement Plan, who does not elect within thirty (30) days after taking office to participate in the plan, in accordance with KRS 6.505 or 21.360, and who at the time of taking office is not a contributing member of, or does not have service credit in, any of the retirement systems mentioned in this section, or the Teachers' Retirement System, shall participate in the Kentucky Employees Retirement System. A member of one (1) of the state-administered retirement plans who ceases to contribute to the plan as provided in KRS 21.360 and who is employed in a nonelected position by an agency participating in the Kentucky Retirement Systems or Kentucky Teachers' Retirement System shall be deemed to have elected membership in the system in which the employer of the nonelected position participates. A member of one (1) of the state-administered retirement plans who ceases to contribute to the plan as provided in KRS 21.360 and who is not employed in a nonelected position by an agency participating in the Kentucky Retirement Systems shall be deemed to have elected membership in the Kentucky Employees Retirement System.

(4) (a) Prior to July 1, 1976, a person entering the service of an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System with service credit in the Teachers' Retirement System and who desires to retain membership in the Teachers' Retirement System, and who is permitted by that system to continue, shall be exempt from participating in the Kentucky Employees Retirement System or the County Employees Retirement System.

(b) Any person who has elected to retain membership in the Teachers' Retirement System as provided in paragraph (a) of this subsection may cancel his election and participate in the system under which his position would normally participate, if he elects to cancel his option prior to January 1, 1977.

(c) Any member of the General Assembly who upon election is a contributing member of the Teachers' Retirement System and who does not elect within thirty (30) days after taking office to participate in the Legislators' Retirement Plan, in accordance with KRS 6.505, shall during his term of office participate in the Kentucky Employees Retirement System unless an election to retain membership in the Teachers' Retirement System is filed in writing within ninety (90) days after his term of office begins. No contributions may be made to the Teachers' Retirement System for the same period of service under the Legisla-

tors' Retirement Plan or the Kentucky Employees Retirement System as a member of the General Assembly, but contributions made to the Teachers' Retirement System while a member of the General Assembly shall be transferred to the Legislators' Retirement Plan, as provided for in KRS 6.535, when the member elects to join the Legislators' Retirement Plan, and service credit in the Legislators' Retirement Plan shall be granted as provided for in KRS 6.505(5).

(5) Effective July 1, 1974, any member of the Kentucky Employees Retirement System or County Employees Retirement System who is working in a position covered by one (1) of these retirement systems and his employee contributions, service credit and employer contributions made on his behalf are being transferred to the other retirement system shall contribute to the system in which his employer participates, or after August 1, 1982, the employer shall pick up the employee contributions, and no further contributions or service credit shall be transferred to the system in which he elected to retain membership, as subsection (2) of this section eliminates the necessity of the transfers.

(6) Any member of the Kentucky Employees Retirement System or County Employees Retirement System who is working in more than one (1) position covered by the same retirement system, shall have his wages and contributions consolidated and his retirement account administered as a single account. If part-time positions are involved, an accumulation of all hours worked within the same retirement system shall be used to determine eligibility under KRS 61.510(21).

(7) Notwithstanding the provisions of subsection (2) of this section, a person who does not have the amount of service required for service retirement in the State Police Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, Legislators' Retirement Plan, or Teachers' Retirement System, but who is a member of one (1) of the systems or is a former member of one (1) or more of the systems with valid service credit therein, shall become eligible for service retirement benefits attributable to the amount of his actual service credit in each system in which he has service credit when his combined service credit in all the systems, plus any service credit he has in the Judicial Retirement Plan, is equal to that required for service retirement in each respective system. The computation of benefits shall be based on the applicable formula in each system and service credit in each system, except that total service in all systems, unless prohibited by KRS 161.623(2), shall be used to determine the reduction for early retirement, if any. Except as provided in KRS 21.360, the final compensation shall be determined

by using the creditable compensation reported to the State Police Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, Legislators' Retirement Plan, or Teachers' Retirement System and only as much of the compensation earned in the Judicial Retirement Plan as is needed to satisfy the final compensation requirement applicable in the respective retirement systems.

(8) Each retirement system from which the member retires shall pay a retirement allowance upon receipt of required forms and documents, except that no retirement system shall pay a retirement allowance or annuity until all forms and documents are filed at all retirement systems in compliance with each system's requirements.

61.702 Group hospital and medical insurance and managed care plan coverage — Employee and employer contributions — Minimum service requirements.

(1) (a) The board of trustees of Kentucky Retirement Systems shall arrange by appropriate contract or on a self-insured basis to provide a group hospital and medical insurance plan for present and future recipients of a retirement allowance from the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System, except as provided in subsection (8) of this section. The board shall also arrange to provide health care coverage through an insurer licensed pursuant to Subtitle 38 of KRS Chapter 304 and offering a managed care plan as defined in KRS 304.17A-500, as an alternative to group hospital and medical insurance for any person eligible for hospital and medical benefits under this section. Any person who chooses coverage under a managed care plan shall pay, by payroll deduction from the retirement allowance or by another method, the difference in premium between the cost of the managed care plan coverage and the benefits to which he would be entitled under this section. For purposes of this section, "hospital and medical insurance plan" means any hospital and medical expense policy or certificate, provider-sponsored integrated health delivery network, self-insured medical plan, health maintenance organization contract, or other health benefit plan.

(b) The board may authorize present and future recipients of a retirement allowance from any of the three (3) retirement systems to be included in the state employees' group for hospital and medical insurance and shall provide benefits for recipients equal to those provided to state employees having

the same Medicare hospital and medical insurance eligibility status, except as provided in subsection (8) of this section. Notwithstanding the provisions of any other statute, recipients shall be included in the same class as current state employees in determining medical insurance policies and premiums.

(c) For recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky having the same Medicare hospital and medical insurance eligibility status, the board shall provide a medical insurance reimbursement plan as described in subsection (7) of this section.

(d) Notwithstanding anything in KRS Chapter 61 to the contrary, the board of trustees, in its discretion, may take necessary steps to ensure compliance with 42 U.S.C. secs. 300bb-1 et seq., including but not limited to receiving contributions and premiums from, and providing benefits pursuant to this section to, persons entitled to continuation coverage under 42 U.S.C. secs. 300bb-1 et seq., regardless of whether such persons are recipients of a retirement allowance.

(2) (a) Each employer participating in the State Police Retirement System as provided for in KRS 16.505 to 16.652, each employer participating in the County Employees Retirement System as provided in KRS 78.510 to 78.852, and each employer participating in the Kentucky Employees Retirement System as provided for in KRS 61.510 to 61.705 shall contribute to the Kentucky Retirement Systems insurance trust fund the amount necessary to provide hospital and medical insurance as provided for under this section. Such employer contribution rate shall be developed by appropriate actuarial method as a part of the determination of each respective employer contribution rate to each respective retirement system determined under KRS 61.565.

(b) 1. Each employer described in paragraph (a) of this subsection shall deduct from the creditable compensation of each member having a membership date on or after September 1, 2008, an amount equal to one percent (1%) of the member's creditable compensation. The deducted amounts shall be credited to accounts established pursuant to 26 U.S.C. sec. 401(h), within the funds established in KRS 16.510, 61.515, and 78.520.

2. The employer shall file the contributions as provided by subparagraph 1. of this paragraph at the retirement office in accordance with KRS 61.675 and 78.625. Any interest or penalties paid on any delinquent contributions shall be

credited to accounts established pursuant to 26 U.S.C. sec. 401(h), within the funds established in KRS 16.510, 61.515, and 78.520. Notwithstanding any minimum compensation requirements provided by law, the deductions provided by this paragraph shall be made, and the compensation of the member shall be reduced accordingly.

3. Each employer shall submit payroll reports, contributions lists, and other data as may be required by administrative regulation promulgated by the board of trustees pursuant to KRS Chapter 13A.

4. Every member shall be deemed to consent and agree to the deductions made pursuant to this paragraph, and the payment of salary or compensation less the deductions shall be a full and complete discharge of all claims for services rendered by the person during the period covered by the payment, except as to any benefits provided by KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. No member may elect whether to participate in, or choose the contribution amount to accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520. The member shall have no option to receive the contribution required by this paragraph directly instead of having the contribution paid to accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520. No member may receive a rebate or refund of contributions. If a member establishes a membership date prior to September 1, 2008, pursuant to KRS 61.552(1) or 61.552(23), then this paragraph shall not apply to the member and all contributions previously deducted in accordance with this paragraph shall be refunded to the member without interest. The contribution made pursuant to this paragraph shall not act as a reduction or offset to any other contribution required of a member or recipient under KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852.

5. The board of trustees, at its discretion, may direct that the contributions required by this paragraph be accounted for within accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 through the use of separate accounts.

(3) (a) The premium required to provide hospital and medical benefits under this section shall be paid:

1. Wholly or partly from funds contributed by the recipient of a retirement allowance, by payroll deduction, or otherwise;
2. Wholly or partly from funds contributed by the Kentucky Retirement Systems insurance trust fund;
3. Wholly or partly from funds contributed to accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520;
4. Wholly or partly from funds contributed by another state-administered retirement system under a reciprocal arrangement, except that any portion of the premium paid from the Kentucky Retirement Systems insurance trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 under a reciprocal agreement shall not exceed the amount that would be payable under this section if all the member's service were in one (1) of the systems administered by the Kentucky Retirement Systems;
5. Partly from subparagraphs 1. to 4. of this paragraph, except that any premium for hospital and medical insurance over the amount contributed by the Kentucky Retirement Systems insurance trust fund; accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520; or another state-administered retirement system under a reciprocal agreement shall be paid by the recipient by an automatic electronic transfer of funds. If the board provides for cross-referencing of insurance premiums, the employer's contribution for the working member or spouse shall be applied toward the premium, and the Kentucky Retirement Systems insurance trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 shall pay the balance, not to exceed the monthly contribution; or
6. In full from the Kentucky Retirement Systems insurance trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 for all recipients of a retirement allowance from any of the three (3) retirement systems where such recipient is a retired former member of one (1) or more of the three (3) retirement systems (not a beneficiary or dependent child receiving benefits) and had two hundred and forty (240) months or more of service upon retirement. Should such recipient have less than two hundred forty (240) months of service but have at least one hundred eighty (180) months of

service, seventy-five percent (75%) of such premium shall be paid from the insurance trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, provided such recipient agrees to pay the remaining twenty-five percent (25%) by payroll deduction from his retirement allowance or by another method. Should such recipient have less than one hundred eighty (180) months of service but have at least one hundred twenty (120) months of service, fifty percent (50%) of such premium shall be paid from the insurance trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, provided such recipient agrees to pay the remaining fifty percent (50%) by payroll deduction from his retirement allowance or by another method. Should such recipient have less than one hundred twenty (120) months of service but have at least forty-eight (48) months of service, twenty-five percent (25%) of such premium shall be paid from the insurance trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, provided such recipient agrees to pay the remaining seventy-five percent (75%) by payroll deduction from his retirement allowance or by another method. Notwithstanding the foregoing provisions of this subsection, an employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems who becomes disabled in the line of duty as defined in KRS 16.505(19) or 61.621, shall have his premium paid in full as if he had two hundred forty (240) months or more of service. Further, an employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems who is killed in the line of duty as defined in KRS 16.505(19) or 61.621, shall have the premium for the beneficiary, if the beneficiary is the member's spouse, and for each dependent child paid so long as they individually remain eligible for a monthly retirement benefit. "Months of service" as used in this section shall mean the total months of combined service used to determine benefits under any or all of the three (3) retirement systems, except service added to determine disability benefits shall not be counted as "months of service." For current and former employees of the Council on Postsecondary Education who were employed prior to January 1, 1993, and who earn at least fifteen (15) years of service credit in the Kentucky Employees Retirement System,

"months of service" shall also include vested service in another retirement system other than the Kentucky Teachers' Retirement System sponsored by the Council on Postsecondary Education.

(b) 1. For a member electing insurance coverage through the Kentucky Retirement Systems, "months of service" shall include, in addition to service as described in paragraph (a) of this subsection, service credit in one (1) of the other state-administered retirement plans.

2. Effective August 1, 1998, the Kentucky Retirement Systems shall compute the member's combined service, including service credit in another state-administered retirement plan, and calculate the portion of the member's premium to be paid by the insurance trust fund accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, according to the criteria established in paragraph (a) of this subsection. Each state-administered retirement plan annually shall pay to the insurance trust fund the percentage of the system's cost of the retiree's monthly contribution for single coverage for hospital and medical insurance which shall be equal to the percentage of the member's number of months of service in the other state-administered retirement plan divided by his total combined service. The amounts paid by the other state-administered retirement plans and the insurance trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 shall not be more than one hundred percent (100%) of the monthly contribution adopted by the respective boards of trustees.

3. A member may not elect coverage for hospital and medical benefits under this subsection through more than one (1) of the state-administered retirement plans.

4. A state-administered retirement plan shall not pay any portion of a member's monthly contribution for medical insurance unless the member is a recipient or annuitant of the plan.

5. The premium paid by the Kentucky Retirement Systems insurance trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 shall not exceed one hundred percent (100%) of the monthly contribution rate toward hospital and medical insurance coverage approved by the board of trustees of the Kentucky Retirement Systems.

(4) (a) Group rates under the hospital and medical insurance plan shall be made available to the spouse, each dependent child, and each disabled child, regardless of the disabled child's age, of a recipient who is a former member or the beneficiary, if the premium for the hospital and medical insurance for the spouse, each dependent child, and each disabled child, or beneficiary is paid by payroll deduction from the retirement allowance or by another method. For purposes of this subsection only, a child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits or meets the dependent disability standard established by the Department of Employee Insurance in the Personnel Cabinet.

(b) The other provisions of this section notwithstanding, the insurance trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 shall pay a percentage of the monthly contribution for the spouse and for each dependent child of a recipient who was a member of the General Assembly and is receiving a retirement allowance based on General Assembly service, of the Kentucky Employees Retirement System and determined to be in a hazardous position, of the County Employees Retirement System, and determined to be in a hazardous position or of the State Police Retirement System. The percentage of the monthly contribution paid for the spouse and each dependent child of a recipient who was in a hazardous position shall be based solely on the member's service with the State Police Retirement System or service in a hazardous position using the formula in subsection (3)(a) of this section, except that for any recipient of a retirement allowance from the County Employees Retirement System who was contributing to the system on January 1, 1998, for service in a hazardous position, the percentage of the monthly contribution shall be based on the total of hazardous service and any nonhazardous service as a police or firefighter with the same agency, if that agency was participating in the County Employees Retirement System but did not offer hazardous duty coverage for its police and firefighters at the time of initial participation.

(c) The insurance trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, KRS 61.515, and 78.520 shall continue the same level of coverage for a recipient who was a member of the County Employees Retirement System after the age of sixty-five

(65) as before the age of sixty-five (65), if the recipient is not eligible for Medicare coverage. If the insurance trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 provides coverage for the spouse or each dependent child of a former member of the County Employees Retirement System, the insurance trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 shall continue the same level of coverage for the spouse or each dependent child after the age of sixty-five (65) as before the age of sixty-five (65), if the spouse or dependent child is not eligible for Medicare coverage.

(5) After July 1, 1998, notwithstanding any other provision to the contrary, a member who holds a judicial office but did not elect to participate in the Judicial Retirement Plan and is participating instead in the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System, as provided in KRS 61.680, and who has at least twenty (20) years of total service, one-half (1/2) of which is in a judicial office, shall receive the same hospital and medical insurance benefits, including paid benefits for spouse and dependents, as provided to persons retiring under the provisions of KRS 21.427. The Administrative Office of the Courts shall pay the cost of the medical insurance benefits provided by this subsection.

(6) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the insurance trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 shall not constitute taxable income to an insured recipient. No commission shall be paid for hospital and medical insurance procured under authority of this section.

(7) The board shall promulgate an administrative regulation to establish a medical insurance reimbursement plan to provide reimbursement for hospital and medical insurance premiums of recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky and having the same Medicare hospital and medical insurance eligibility status. An eligible recipient shall file proof of payment for hospital and medical insurance at the retirement office. Reimbursement to eligible recipients shall be made on a quarterly basis. The recipient shall be eligible for reimbursement of substantiated medical insurance

premiums for an amount not to exceed the total monthly premium determined under subsection (3) of this section. The plan shall not be made available if all recipients are eligible for the same coverage as recipients living in Kentucky.

(8) (a) 1. For employees having a membership date on or after July 1, 2003, and before September 1, 2008, participation in the insurance benefits provided under this section shall not be allowed until the employee has earned at least one hundred twenty (120) months of service in the state-administered retirement systems.

2. For an employee having a membership date on or after September 1, 2008, participation in the insurance benefits provided under this section shall not be allowed until the employee has earned at least one hundred eighty (180) months of service credited under KRS 16.543(1), 61.543(1), or 78.615(1) or another state-administered retirement system.

(b) An employee who meets the minimum service requirements as provided by paragraph (a) of this subsection shall be eligible for benefits as follows:

1. For employees who are not in a hazardous position, a monthly insurance contribution of ten dollars ($10) for each year of service as a participating employee.

2. For employees who are in a hazardous position or who participate in the State Police Retirement System, a monthly insurance contribution of fifteen dollars ($15) for each year of service as a participating employee in a hazardous position or as a participating member of the State Police Retirement System. Upon the death of the retired member, the beneficiary, if the beneficiary is the member's spouse, shall be entitled to a monthly insurance contribution of ten dollars ($10) for each year of service the member attained as a participating employee in a hazardous position or as a participating member of the State Police Retirement System.

(c) 1. The minimum service requirement to participate in benefits as provided by paragraph (a) of this subsection shall be waived for a member who is disabled or killed in the line of duty as defined in KRS 16.505(19), and the member or his spouse and eligible dependents shall be entitled to the benefits payable under this subsection as though the member had twenty (20) years of service in a hazardous position.

2. The minimum service required to participate in benefits as provided by paragraph (a) of this subsection shall be waived for a member who is disabled in the line of duty as defined in KRS

61.621, and the member shall be entitled to the benefits payable under this subsection as though the member has twenty (20) years of service in a nonhazardous position.

3. The minimum service required to participate in benefits as provided by paragraph (a) of this subsection shall be waived for a member who is killed in the line of duty as described in KRS 61.621, and the member's spouse and eligible dependents shall be entitled to the benefits payable under this subsection as though the member has twenty (20) years of service in a hazardous position.

(d) The monthly insurance contribution amount shall be increased July 1 of each year by one and one-half percent (1.5%). The increase shall be cumulative and shall continue to accrue after the member's retirement for as long as a monthly insurance contribution is payable to the retired member or beneficiary.

(e) The benefits of this subsection provided to a member whose participation begins on or after July 1, 2003, shall not be considered as benefits protected by the inviolable contract provisions of KRS 61.692, 16.652, and 78.852. The General Assembly reserves the right to suspend or reduce the benefits conferred in this subsection if in its judgment the welfare of the Commonwealth so demands.

(f) An employee whose membership date is on or after September 1, 2008, who retires and is reemployed in a regular full-time position required to participate in one (1) of the systems administered by Kentucky Retirement Systems shall not be eligible for health insurance coverage or benefits provided by this section and shall take coverage with his or her employing agency during the period of reemployment in a regular full-time position.

151B.040 Employee benefits.

(1) All certified, equivalent, and unclassified employees in the Office of Career and Technical Education shall be:

(a) Provided the same health insurance coverage as all other state government employees provided in KRS 18A.225;

(b) Eligible to participate in the deferred compensation system provided for all state government employees by KRS 18A.250 to 18A.265;

(c) Provided the same life insurance coverage provided all state employees pursuant to KRS 18A.205 to 18A.215;

(d) Reimbursed for all reasonable and necessary travel expenses and disbursements incurred or made pursuant to KRS 45.101

in the performance of their official duties; no part of the reimbursement shall be included in or accounted as a part of their salaries;

(e) Ensured equal employment opportunity regardless of race, color, religion, national origin, disability, sex, or age; and

(f) Given those holidays and rights granted state employees pursuant to KRS 18A.190.

(2) Employees under the jurisdiction of the former Department for Technical Education who are members of a state retirement system as of June 30, 1990, shall remain in their respective retirement systems. All new certified and equivalent employees hired by the office shall be placed in the Kentucky Teachers' Retirement System.

158.070 School term — Professional development — Holidays and days closed — Continuing education for certain students — Breakfast program — Missed school days due to emergencies and service credit.

(1) The minimum school term shall be one hundred eighty-five (185) days, including no less than the equivalent of one hundred seventy-five (175) six (6) hour instructional days. A board of education may extend its term beyond the minimum term.

(2) The local board of education, upon recommendation of the local school district superintendent, shall adopt a school calendar for the upcoming school year that establishes the opening and closing dates of the school term, beginning and ending dates of each school month, instructional days, and days on which schools shall be dismissed. The local board may schedule days for breaks in the school calendar that shall not be counted as a part of the minimum school term.

(3) Any local board of education operating its schools on a year-round school program basis shall conform with administrative regulations promulgated and adopted by the Kentucky Board of Education upon the recommendation of the commissioner of education, which regulations must be in conformity with the following criteria:

(a) The year-round school program shall be operated on a fiscal year beginning July 1 and ending June 30;

(b) A pupil's required attendance in school shall be for at least the minimum instructional term; and

(c) No teacher shall be required to teach more than the minimum term during the school year.

(4) (a) Each local board of education shall use four (4) days of the minimum school term for professional development and collegial planning activities for the professional staff without the presence of pupils pursuant to the requirements of KRS

156.095. At the discretion of the superintendent, one (1) day of professional development may be used for district-wide activities and for training that is mandated by federal or state law. The use of three (3) days shall be planned by each school council, except that the district is encouraged to provide technical assistance and leadership to school councils to maximize existing resources and to encourage shared planning.

(b) In addition to the four (4) days required under paragraph (a) of this subsection, a minimum of two (2) hours of self-study review of suicide prevention materials shall be required for all high school and middle school principals, guidance counselors, and teachers each school year.

(c) A local board may approve a school's flexible professional development plan that permits teachers or other certified personnel within a school to participate in professional development activities outside the days scheduled in the school calendar or the regularly scheduled hours in the school work day and receive credit towards the four (4) day professional development requirement within the minimum one hundred eighty-five (185) days that a teacher shall be employed.

1. A flexible schedule option shall be reflected in the school's professional development component within the school improvement plan or consolidated plan and approved by the local board. Credit for approved professional development activities may be accumulated in periods of time other than full day segments.
2. No teacher or administrator shall be permitted to count participation in a professional development activity under the flexible schedule option unless the activity is related to the teacher's classroom assignment and content area, or the administrator's job requirements, or is required by the school improvement or consolidated plan, or is tied to the teacher's or the administrator's individual growth plan. The supervisor shall give prior approval and shall monitor compliance with the requirements of this paragraph. In the case of teachers, a professional development committee or the school council by council policy may be responsible for reviewing requests for approval.

(d) The local board of each school district may use up to a maximum of four (4) days of the minimum school term for holidays; provided, however, any holiday which occurs on Saturday may be observed on the preceding Friday.

(e) Each local board may use two (2) days for planning activities

without the presence of pupils.

(f) Each local board may use the number of days deemed necessary for:

1. National or state disaster or mourning when proclaimed by the President of the United States or the Governor of the Commonwealth of Kentucky;
2. Local disaster which would endanger the health or safety of children; and
3. Mourning when so designated by the local board of education and approved by the Kentucky Board of Education upon recommendation of the commissioner of education.

(5) The Kentucky Board of Education, upon recommendation of the commissioner of education, shall adopt administrative regulations governing the use of school days, including days missed from the regular school day as a result of local disaster, as defined in subsection (4)(f)2. of this section, and regulations setting forth the guidelines and procedures to be observed for the approval of the days utilized for the opening and closing of school and the days utilized for professional development and planning activities for the professional staff.

(6) (a) In setting the school calendar, school may be closed for two (2) consecutive days for the purpose of permitting professional school employees to attend statewide professional meetings. These two (2) days for statewide professional meetings may be scheduled to begin with the first Thursday after Easter, or upon request of the statewide professional education association having the largest paid membership, the commissioner of education may designate alternate dates. If schools are scheduled to operate during days designated for the statewide professional meeting, the school district shall permit teachers who are delegates to attend as compensated professional leave time and shall employ substitute teachers in their absence. The commissioner of education shall designate one (1) additional day during the school year when schools shall be closed to permit professional school employees to participate in regional or district professional meetings. These three (3) days so designated for attendance at professional meetings shall not be counted as a part of the minimum school term. School shall be closed on the day of a regular election and on the day of a primary election, and those days may be used for professional development activities, professional meetings, or parent-teacher conferences.

(b) All schools shall be closed on the third Monday of January in observance of the birthday of Martin Luther King, Jr. Districts may:
1. Designate the day as one (1) of the four (4) holidays permitted under subsection (4)(d) of this section; or
2. Not include the day in the minimum school term specified in subsection (1) of this section.

(7) (a) The Kentucky Board of Education, or the organization or agency designated by the board to manage interscholastic athletics, shall be encouraged to schedule athletic competitions outside the regularly scheduled school day.

(b) Beginning with the 2009-2010 school year, any member of a school-sponsored interscholastic athletic team who competes in a regional tournament or state tournament sanctioned by the Kentucky Board of Education, or the organization or agency designated by the board to manage interscholastic athletics, and occurring on a regularly scheduled school day may be counted present at school on the date or dates of the competition, as determined by local board policy, for a maximum of two (2) days per student per year. The student shall be expected to complete any assignments missed on the date or dates of the competition.

(c) The school attendance record of any student for whom paragraph (b) of this subsection applies shall indicate that the student was in attendance on the date or dates of competition.

(8) Students applying for excused absence for attendance at the Kentucky State Fair shall be granted one (1) day of excused absence.

(9) Schools shall provide continuing education for those students who are determined to need additional time to achieve the outcomes defined in KRS 158.6451, and schools shall not be limited to the minimum school term in providing this education. Continuing education time may include extended days, extended weeks, or extended years. A local board of education may adopt a policy requiring its students to participate in continuing education. The local policy shall set out the conditions under which attendance will be required and any exceptions which are provided. The Kentucky Board of Education shall promulgate administrative regulations establishing criteria for the allotment of grants to local school districts and shall include criteria by which the commissioner of education may approve a district's request for a waiver to use an alternative service delivery option, including providing services during the school day on a limited basis. These grants shall be allotted to school districts to provide instructional programs for pupils who are

identified as needing additional time to achieve the outcomes defined in KRS 158.6451. A school district that has a school operating a model early reading program under KRS 158.792 may use a portion of its grant money as part of the matching funds to provide individualized or small group reading instruction to qualified students outside of the regular classroom during the school day.

(10) Notwithstanding any other statute, each school term shall include no less than the equivalent of the minimum number of instructional days required by this section.

(11) Notwithstanding the provisions of KRS 158.060(3) and the provisions of subsection (1) of this section, a school district shall arrange bus schedules so that all buses arrive in sufficient time to provide breakfast prior to the instructional day. In the event of an unforeseen bus delay, the administrator of a school that participates in the Federal School Breakfast Program may authorize up to fifteen (15) minutes of the six (6) hour instructional day if necessary to provide the opportunity for children to eat breakfast not to exceed eight (8) times during the school year within a school building.

(12) Notwithstanding any other statute to the contrary, the following provisions shall apply to a school district that misses school days due to emergencies, including weather-related emergencies:

(a) A certified school employee shall be considered to have fulfilled the minimum one hundred eighty-five (185) day contract with a school district under KRS 157.350 and shall be given credit for the purpose of calculating service credit for retirement under KRS 161.500 for certified school personnel if:

1. State and local requirements under this section are met regarding the equivalent of the number and length of instructional days, professional development days, holidays, and days for planning activities without the presence of pupils; and
2. The provisions of the district's school calendar to make up school days missed due to any emergency, as approved by the Kentucky Department of Education, including but not limited to a provision for additional instructional time per day, are met.

(b) Additional time worked by a classified school employee shall be considered as equivalent time to be applied toward the employee's contract and calculation of service credit for classified employees under KRS 78.615 if:

1. The employee works for a school district with a school calendar approved by the Kentucky Department of Education that contains a provision that additional

instructional time per day shall be used to make up full days missed due to an emergency;

2. The employee's contract requires a minimum six (6) hour work day; and
3. The employee's job responsibilities and work day are extended when the instructional time is extended for the purposes of making up time.

(c) Classified employees who are regularly scheduled to work less than six (6) hours per day and who do not have additional work responsibilities as a result of lengthened instructional days shall be excluded from the provisions of this subsection. These employees may be assigned additional work responsibilities to make up service credit under KRS 78.615 that would be lost due to lengthened instructional days.

161.155 Definitions for section — Salary, benefits, and leave for employee or teacher when victim of assault — Sick leave for employee or teacher — Sick leave bank — Sick leave donation program — Payment for unused sick leave upon retirement or death.

(1) As used in this section:

(a) "Teacher" shall mean any person for whom certification is required as a basis of employment in the common schools of the state;

(b) "Employee" shall mean any person, other than a teacher, employed in the public schools, whether on a full or part-time basis;

(c) "Immediate family" shall mean the teacher's or employee's spouse, children including stepchildren and foster children, grandchildren, daughters-in-law and sons-in law, brothers and sisters, parents and spouse's parents, and grandparents and spouse's grandparents, without reference to the location or residence of said relative, and any other blood relative who resides in the teacher's or employee's home;

(d) "Sick leave bank" shall mean an aggregation of sick leave days contributed by teachers or employees for use by teachers or employees who have exhausted all sick leave and other available paid leave days; and

(e) "Assault" shall mean an act that intentionally causes injury so significant that the victim is determined to be, by certification of a physician or surgeon duly qualified under KRS Chapter 342, incapable of performing the duties of his or her job.

(2) Each district board of education shall allow to each teacher and full-time employee in its common school system not less than ten (10) days of sick leave during each school year, without deduction of salary. Sick leave shall be granted to a teacher or employee if he or she presents a personal affidavit or a certificate of a physician stating that the teacher or employee was ill, that the teacher or employee was absent for the purpose of attending to a member of his or her immediate family who was ill, or for the purpose of mourning a member of his or her immediate family. The ten (10) days of sick leave granted in this subsection may be taken by a teacher or employee on any ten (10) days of the school year and shall be granted in addition to accumulated sick leave days that have been credited to the teacher or employee under the provisions of subsection (4) of this section.

(3) A school district shall coordinate among the income and benefits from workers' compensation, temporary disability retirement, and district payroll and benefits so that there is no loss of income or benefits to a teacher or employee for work time lost because of an assault while performing the teacher's or employee's assigned duties for a period of up to one (1) year after the assault. In the event a teacher or employee suffers an assault while performing his or her assigned duties that results in injuries that qualify the teacher or employee for workers' compensation benefits, the district shall provide leave to the teacher or employee for up to one (1) year after the assault with no loss of income or benefits under the following conditions:

(a) The district shall pay the salary of the teacher or employee between the time of the assault and the time the teacher's or employee's workers' compensation income benefits take effect, or the time the teacher or employee is certified to return to work by a physician or surgeon duly qualified under KRS Chapter 342, whichever is sooner;

(b) The district shall pay, for up to one (1) year from the time of the assault, the difference between the salary of the teacher or employee and any workers' compensation income benefits received by the teacher or employee resulting from the assault. Payments by the district shall include payments for intermittent work time missed as a result of the assault during the one (1) year period. If the teacher's or employee's workers' compensation income benefits cease during the one (1) year period after the assault, the district shall also cease to make payments under this paragraph;

(c) The Commonwealth, through the Kentucky Department of Education, shall make the employer's health insurance

contribution during the period that the district makes payments under paragraphs (a) and (b) of this subsection;

(d) The Commonwealth, through the Kentucky Department of Education, shall make the employer's contribution to the retirement system in which the teacher or employee is a member during the period that the district makes payments under paragraphs (a) and (b) of this subsection; and

(e) Payments to a teacher or employee under paragraphs (a) and (b) of this subsection shall be coordinated with workers' compensation benefits under KRS Chapter 342, disability retirement benefits for teachers under KRS 161.661 to 161.663, and disability retirement benefits for employees under KRS 61.600 to 61.621 and 78.545 so that the teacher or employee receives income equivalent to his or her full contracted salary, but in no event shall the combined payments exceed one hundred percent (100%) of the teacher's or employee's full contracted salary.

(4) Days of sick leave not taken by an employee or a teacher during any school year shall accumulate without limitation and be credited to that employee or teacher. Accumulated sick leave may be taken in any school year. Any district board of education may, in its discretion, allow employees or teachers in its common school system sick leave in excess of the number of days prescribed in this section and may allow school district employees and teachers to use up to three (3) days' sick leave per school year for emergency leave pursuant to KRS 161.152(3). Any accumulated sick leave days credited to an employee or a teacher shall remain so credited in the event he or she transfers his or her place of employment from one (1) school district to another within the state or to the Kentucky Department of Education or transfers from the Department of Education to a school district.

(5) Accumulated days of sick leave shall be granted to a teacher or employee if, prior to the opening day of the school year, an affidavit or a certificate of a physician is presented to the district board of education, stating that the teacher or employee is unable to commence his or her duties on the opening day of the school year, but will be able to assume his or her duties within a period of time that the board determines to be reasonable.

(6) Any school teacher or employee may repurchase previously used sick leave days with the concurrence of the local school board by paying to the district an amount equal to the total of all costs associated with the used sick leave.

(7) A district board of education may adopt a plan for a sick leave bank. The plan may include limitations upon the number of days a teacher or employee may annually contribute to the bank and limitations upon the number of days a teacher or employee may annually draw from the bank. Only those teachers or employees who contribute to the bank may draw upon the bank. Days contributed will be deducted from the days available to the contributing teacher or employee. The sick leave bank shall be administered in accordance with a policy adopted by the board of education.

(8) (a) A district board of education shall establish a sick leave donation program to permit teachers or employees to voluntarily contribute sick leave to teachers or employees in the same school district who are in need of an extended absence from school. A teacher or employee who has accrued more than fifteen (15) days' sick leave may request the board of education to transfer a designated amount of sick leave to another teacher or employee who is authorized to receive the sick leave donated. A teacher or employee may not request an amount of sick leave be donated that reduces his or her sick leave balance to less than fifteen (15) days.

(b) A teacher or employee may receive donations of sick leave if:

1. a. The teacher or employee or a member of his or her immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the teacher or employee to be absent for at least ten (10) days; or
   b.The teacher or employee suffers from a catastrophic loss to his or her personal or real property, due to either a natural disaster or fire, that either has caused or will likely cause the employee to be absent for at least ten (10) consecutive working days;
2. The teacher's or employee's need for the absence and use of leave are certified by a licensed physician for leave requested under subparagraph 1.a. of this subsection;
3. The teacher or employee has exhausted his or her accumulated sick leave, personal leave, and any other leave granted by the school district; and
4. The teacher or employee has complied with the school district's policies governing the use of sick leave.

(c) While a teacher or employee is on sick leave provided by this section, he or she shall be considered a school district employee, and his or her salary, wages, and other employee benefits shall not be affected.

(d) Any sick leave that remains unused, is not needed by a teacher or employee, and will not be needed in the future shall be returned to the teacher or employee donating the sick leave.

(e) The board of education shall adopt policies and procedures necessary to implement the sick leave donation program.

(9) A teacher or employee may use up to thirty (30) days of sick leave following the birth or adoption of a child or children. Additional days may be used when the need is verified by a physician's statement.

(10) (a) After July 1, 1982, a district board of education may compensate, at the time of retirement or upon the death of a member in active contributing status at the time of death who was eligible to retire by reason of service, an employee or a teacher, or the estate of an employee or teacher, for each unused sick leave day. The rate of compensation for each unused sick leave day shall be based on a percentage of the daily salary rate calculated from the employee's or teacher's last annual salary, not to exceed thirty percent (30%). Payment for unused sick leave days shall be incorporated into the annual salary of the final year of service for inclusion in the calculation of the employee's or teacher's retirement allowance only at the time of his or her initial retirement; provided that the member makes the regular retirement contribution for members on the sick leave payment. The accumulation of these days includes unused sick leave days held by the employee or teacher at the time of implementation of the program.

(b) For a teacher or employee who begins employment with a local school district on or after July 1, 2008, the maximum amount of unused sick leave days a district board of education may recognize in calculating the payment of compensation to the teacher or employee under this subsection shall not exceed three hundred (300) days.

(11) Any statute to the contrary notwithstanding, employees and teachers who transferred from the Department of Education to a school district, from a school district to the Department of Education, or from one (1) school district to another school district after July 15, 1981, shall receive credit for any unused sick leave to which the employee or teacher was entitled on the date of transfer. This credit shall be for the purposes set forth in subsection (10) of this section.

(12) The death benefit provided in subsection (10) of this section may be cited as the Baughn Benefit.

161.168 Certified employee granted leave of absence for active military service -- Medical insurance -- Contribution to retirement system to be retroactive -- Credit given -- Exclusions.
Notwithstanding any other statute to the contrary, a certified employee of a local board of education who is a member of a state National Guard or a Reserve component ordered to active military duty by the President of the United States shall be granted a leave of absence for this purpose and shall be considered to be rendering service to the state.

(1) A local board of education that has granted military leave to a certified employee and has a commitment from the employee to return to work upon the conclusion of military leave may provide the employer's contribution toward the purchase of the state's medical insurance program during the period of military leave as long as the employee or spouse pays the additional cost of dependent coverage.

(2) Upon the employee's return to work, the Commonwealth of Kentucky shall pay the member contribution and any accrued interest that is required to be paid under KRS 161.507(4)(b) in order for the member to receive retirement service credit for the period of active military duty. Under no circumstances shall a member be entitled to service credit under this paragraph that is in violation of the provisions of KRS 161.500. The provisions of this subsection shall be retroactive to January 1, 2003, for employees who have been deployed to active combat service.

(3) For each year of military service or each year of combined military and school service within a school year, the certified employee shall receive a year of service credit for purposes of the district's single salary schedule defined in KRS 157.320.

(4) No provisions of this section shall be construed to provide disability benefits under KRS 161.611 or 161.663, survivorship benefits under KRS 161.520, life insurance benefits under KRS 161.555 or any other benefit available from the Kentucky Teachers' Retirement System as a result of active military service, or conditions or injuries resulting from active military service, except for the accrual of service credit which shall be acknowledged by the retirement system subject to the relevant conditions set forth in KRS 161.507.

161.770 Leaves of absence.

(1) Upon written request of a teacher or superintendent, a board of education may grant a leave of absence for a period of not more than two (2) consecutive school years for educational or professional purposes, and shall grant such leave where illness, maternity, adoption of a child or children, or other disability is the reason for the request. Upon

subsequent request, such leave may be renewed by the board. A board of education may pay a sum of money equivalent to all or any portion of salary to a teacher or superintendent who has been granted leave for educational or professional purposes if the person taking said leave agrees in writing to return to employment with the board for no less than two (2) years.

(2) Without request, a board of education may grant leave of absence and renewals thereof to any teacher or superintendent because of physical or mental disability, but such teacher or superintendent shall have the right to a hearing and appeal on such unrequested leave of absence or its renewal in accordance with the provisions for hearing and appeal in KRS 161.790.

(3) Upon the return to service of a teacher or superintendent at the expiration of a leave of absence, he shall resume the contract status which he held prior to such leave.

(4) Payments to any teacher or superintendent under this section by a local district are intended and presumed to be for and in consideration of services rendered and for the benefit of the common schools and such payments do not affect the eligibility of any school district to share in the distribution of funds from the public school funds as established in KRS Chapter 157.

403.190 Disposition of property.

(1) In a proceeding for dissolution of the marriage or for legal separation, or in a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall assign each spouse's property to him. It also shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors including:

(a) Contribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker;

(b) Value of the property set apart to each spouse;

(c) Duration of the marriage; and

(d) Economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children.

(2) For the purpose of this chapter, "marital property" means all property acquired by either spouse subsequent to the marriage except:

(a) Property acquired by gift, bequest, devise, or descent during the

marriage and the income derived therefrom unless there are significant activities of either spouse which contributed to the increase in value of said property and the income earned therefrom;

(b) Property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent;

(c) Property acquired by a spouse after a decree of legal separation;

(d) Property excluded by valid agreement of the parties; and

(e) The increase in value of property acquired before the marriage to the extent that such increase did not result from the efforts of the parties during marriage.

(3) All property acquired by either spouse after the marriage and before a decree of legal separation is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (2) of this section.

(4) If the retirement benefits of one spouse are excepted from classification as marital property, or not considered as an economic circumstance during the division of marital property, then the retirement benefits of the other spouse shall also be excepted, or not considered, as the case may be. However, the level of exception provided to the spouse with the greater retirement benefit shall not exceed the level of exception provided to the other spouse. Retirement benefits, for the purposes of this subsection shall include retirement or disability allowances, accumulated contributions, or any other benefit of a retirement system or plan regulated by the Employees Retirement Income Security Act of 1974, or of a public retirement system administered by an agency of a state or local government, including deferred compensation plans created pursuant to KRS 18A.230 to 18A.275 or defined contribution or money purchase plans qualified under Section 401(a) of the Internal Revenue Code of 1954, as amended.

427.150 Property totally or partially exempt.

(1) To the extent reasonably necessary for the support of an individual and his dependents in addition to property totally exempt under subsection (2) of this section, that individual shall be entitled to exemption of money or property received and rights to receive money

or property for alimony, support, or separate maintenance.

(2) An individual shall be entitled to exemption of the following property:

(a) An award under a crime victim's reparation law;

(b) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(c) A payment, not to exceed seven thousand five hundred dollars ($7,500), on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent;

(d) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(e) Assets held, payments made and amounts payable under pensions exempt pursuant to KRS 61.690, 161.700, 427.120 and 427.125; or

(f) The right or interest of a person in an individual retirement account or annuity, deferred compensation account, tax sheltered annuity, simplified employee pension, pension, profit-sharing, stock bonus, or other retirement plan described in the Internal Revenue Code of 1986, or Section 408 or 408A of the Internal Revenue Code, as amended which qualifies for the deferral of income tax until the date benefits are distributed. This exemption shall also apply to the operation of the Federal Bankruptcy Code, for the purpose of applying the provisions of 11 U.S.C. sec. 522(b)(3) in a federal bankruptcy proceeding and only to the extent otherwise allowed by applicable federal law. This exemption shall not apply to any amounts contributed to an individual retirement account or annuity, deferred compensation account, a pension, profit-sharing, stock bonus, or other qualified retirement plan or annuity if the contribution occurs within one hundred twenty (120) days:

1. Before the debtor files for bankruptcy if this exemption is being applied in a federal bankruptcy proceeding; or
2. Before the earlier of the entry of the judgment or other ruling against the debtor or the issuance of the levy, attachment, garnishment, or other execution or order against which this exemption is being applied, if this exemption is being applied in other than a federal bankruptcy proceeding. This exemption shall not apply to the right or interest

of a person in an individual retirement account or annuity, deferred compensation account, pension, profit-sharing, stock bonus, or other retirement plan to the extent that that right or interest is subject to any of the following:

a. An order of a court for payment of maintenance;

b. An order of a court for payment of child support.

APPENDIX 4

COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION

GUIDE TO THE EXECUTIVE BRANCH CODE OF ETHICS

For All Executive Branch Public Servants,
Including Merit and Non-Merit Employees

September 2012
8th edition

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This Guide provides general information only. The statements contained in it do not have the force and effect of law. Amendments to the ethics law, regulations, and advisory opinions may modify or supersede any or all statements in this Guide.

For more information, employees should contact the Executive Branch Ethics Commission or refer to the current edition of the **Kentucky Revised Statutes, Chapter 11A,** and **Kentucky Administrative Regulations, Title 9** (provided online at http://ethics.ky.gov).

Anyone wishing for further guidance may request an advisory opinion by submitting a written request at least two weeks before the next scheduled Commission meeting or may contact the Commission's staff by phone at any time.

You may reproduce this Guide in whole or in part for use by your agency.

TABLE OF CONTENTS

INTRODUCTION 1

EXECUTIVE BRANCH AGENCIES 2

EXECUTIVE BRANCH ETHICS COMMISSION 2

GENERAL STANDARDS OF CONDUCT 3

- **PROHIBITED CONDUCT: USING INFLUENCE & ABUSING OFFICIAL POSITION** 3
  - Endorsements 4
  - Preferential Treatment of Family Members 5
  - Abuse of State Time and Resources 6
- **CONFLICTS OF INTEREST** 7
- **PROHIBITED CONDUCT: DISCLOSING INFORMATION & SELF-DEALING** 9
  - Stock Ownership 9
  - Representation of the Commonwealth 10
  - Contracts or Agreements with the Commonwealth 11
  - Honoraria 12
- **GIFTS AND GRATUITIES** 13
- **SOLICITATION & ENDORSEMENT** 15
- **OUTSIDE EMPLOYMENT** 16
- **POST-EMPLOYMENT RESTRICTIONS** 18

FINANCIAL DISCLOSURE 20

ADVISORY OPINIONS 21

INVESTIGATIONS 22

PENALTIES 23

EXECUTIVE AGENCY LOBBYING 24

INTRODUCTION

This Guide contains references to and explains the ethics laws contained in Kentucky Revised Statutes (KRS) Chapter 11A, referred to as the Ethics Code. All state officers and employees in the executive branch of state government are subject to the Ethics Code. The Ethics Code refers to these employees as "Public Servants."

WHO IS A PUBLIC SERVANT?

YOU ARE! EVERY EMPLOYEE OF EVERY EXECUTIVE BRANCH AGENCY IS A PUBLIC SERVANT COVERED BY THE ETHICS CODE. YOU ARE RESPONSIBLE FOR KNOWING AND COMPLYING WITH THESE LAWS.

Some of the provisions of the Ethics Code *only* apply to officers.

WHO IS AN OFFICER?

An officer is defined as major management personnel, including cabinet secretaries and commissioners, deputy secretaries and deputy commissioners, executive directors, general counsels, division directors, anyone holding a personal services contract to perform the duties of any of these officers, and constitutional officers.

The members of the following Boards are also considered officers:

The Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems Board of Trustees, Kentucky Teachers' Retirement System Board of Trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Kentucky Occupational Safety and Health Review Commission, the Kentucky Board of Education and the Council on Postsecondary Education.

Source: KRS 11A.010(7) and (9).

The citizens of the Commonwealth have a right to expect honesty from public servants and have confidence in their government. The Ethics Code sets minimum standards of ethical behavior for public servants. However, as public servants, our goal should be to provide the public with the highest ethical standards of public service. Each one of us must each exercise good judgment and common sense, as well as behave ethically.

This publication does not replace the actual law, nor does it explain all of the ethical requirements of the Ethics Code or the statutes to which you are subject. Additionally, the laws contained in KRS Chapter 11A may not provide guidance for all situations that you may encounter. If you have questions concerning a matter that is unclear or is not addressed in this Guide, you may contact the staff of the Executive Branch Ethics Commission at (502) 564-7954 for guidance, or review the Commission's website at: http://ethics.ky.gov/.

EXECUTIVE BRANCH AGENCIES

Executive branch agencies are those state agencies which are headed directly or indirectly by the Governor or another statewide elected official to carry out the laws of the Commonwealth. Executive branch agencies include state offices, cabinets, departments, boards, commissions, public corporations and authorities. Thus, employees of such agencies are considered executive branch employees and must follow the Ethics Code.

Employees of an agency that is directed by statute to adopt a code of ethics, and has adopted an ethics code, are exempt from the Executive Branch Code of Ethics.

Each executive branch agency may implement its own, more restrictive guidelines to be followed by its employees in addition to the Ethics Code. Therefore, in addition to reviewing this guide, please be sure to review the state employee handbook as well as your agency's own policies.

Source: KRS 11A.010(7), KRS 11A.015, and Advisory Opinion 95-4.

EXECUTIVE BRANCH ETHICS COMMISSION

The Executive Branch Ethics Commission is composed of five members appointed by the Governor to serve staggered terms of four years. The Commission is responsible for providing guidance, issuing advisory opinions, and investigating potential violations of KRS Chapter 11A.

The Commission meets bimonthly to discuss advisory opinions and other matters. Meetings are open to the public. Please contact the Commission office or view our website, www.ethics.ky.gov, for specific meeting dates. Investigatory matters are discussed in executive sessions which by law are not open to the public.

The Commission seeks to fulfill its mission through:

- Administering a program of training and education on the Ethics Code;
- Providing guidance to executive branch employees concerning their ethical conduct;
- Enforcing the provisions of the Ethics Code;
- Interpreting the Ethics Code through the issuance of advisory opinions;
- Registering executive agency lobbyists; and
- Recommending legislation to the General Assembly.

The office of the Commission reviews and houses records for public inspection, including:

- Statements of Financial Disclosure;
- Executive Agency Lobbyist Registration Statements;
- Gift disclosure statements; and
- Records relating to administrative proceedings.

You are encouraged to seek guidance from the Commission staff if you have questions concerning ethical matters which are not answered in this Guide. The Commission staff will provide you with guidance or refer your request to the Commission for an advisory opinion.

Source: KRS 11A.060 and KRS 11A.110.

GENERAL STANDARDS OF CONDUCT

It is the public policy of the Commonwealth that a public servant work for the benefit of the people of the Commonwealth. The Executive Branch Code of Ethics recognizes that public office is a public trust where government is based upon the consent of its citizens. Those citizens are entitled to have complete confidence in the integrity of their government. Thus, the following provisions provide general statements of required behavior of executive branch employees.

- Employees must be independent and impartial;
- Decisions and policies must not be made outside the established processes of government;
- Employees should not use public office to obtain private benefits;
- Employees' actions should promote public confidence in the integrity of government;
- Employees should not engage or be involved in any activity which has the potential to become a conflict of interest with their state employment.

Source: KRS 11A.005.

PROHIBITED CONDUCT: USING INFLUENCE & ABUSING OFFICIAL POSITION

YOU, AS A PUBLIC SERVANT, SHALL NOT . . .

- ∅ Use or attempt to use your influence in any matter which involves a substantial conflict between your personal or private interest and your duties in the public interest;
- ∅ Use or attempt to use any means to influence a public agency in derogation of the state at large;
- ∅ Use your official position or office to obtain financial gain for yourself or any members of your family; OR

∅ Use or attempt to use your official position to secure or create privileges, exemptions, advantages, or treatment for yourself or others in derogation of the public interest at large.

Source: KRS 11A.020(1)(a)-(d).

Executive Order 2008-454 provides examples in which a public servant could be considered in violation of the final provision:

- Seeking other employment or contracting services for yourself by the use of your office or position;
- Misusing state time, equipment, personnel, facilities or other state resources for private business purposes;
- Use of state time, equipment, personnel, facilities or other state resources for political campaign purposes; and
- Soliciting, selling to, or otherwise engaging in a financial transaction with a subordinate or a person you supervise, or with a person or business that does business with or is regulated by the agency you work for if the economic benefit to you is greater than $50 in one calendar year.

ENDORSEMENTS

State agencies and employees, acting as representatives of their respective agencies, should take great care not to appear that they are endorsing or promoting a specific product or company. State agencies should not actively endorse or promote a company when no corresponding public benefit to the citizens of the Commonwealth, or to the state's economic development, will occur.

Public and private partnerships may be allowed when the purpose of partnering is to promote a state program that will benefit the entire Commonwealth or will promote economic development or tourism in the state. Such partnering should be open to any company interested in partnering.

Examples

The Attorney General may provide a statement reflecting his views in an educational book on consumer scams related to the mission of the Office of the Attorney General, provided the statement does not appear to be promoting the sale of the book.

The Kentucky State Police may not allow Ford Motor Company to use the state police insignia on a sport utility vehicle ("SUV") display model for use in promoting the use of SUVs by law enforcement agencies.

Materials distributed by private companies which are merely brochures advertising a state program and do not identify the private company, other than to state "printed by" and the company's name, are permitted.

Source: KRS 11A.020(1)(d);
Advisory Opinions: 00-18, 00-24, and 02-21.

PREFERENTIAL TREATMENT OF FAMILY MEMBERS

A family member of a public servant is not prohibited from employment in the same state agency as the public servant. However, a public servant may not advocate or influence in any way the employment, appointment, promotion, transfer, or advancement of a member of the public servant's family to an executive branch position of employment that the public servant directly supervises or manages. Any public servant who uses their position to ensure that a family member receives a job, a promotion, a pay raise, or any form of preferential treatment could be in violation of the Ethics Code.

"Family" includes: spouse, children, parents, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. *See KRS 11A.010(4).*

Specifically, employees may not interview, recommend, or approve family members for positions within their employing agencies. They should not directly supervise a family member, evaluate a family member's job performance, or participate in an action relating to the discipline of a member of the public servant's family. A public servant who participates in such conduct has an obvious and perceived conflict of interest and should abstain from any such activities.

Examples

The Attorney General may not hire his son for summer employment in the Office of the Attorney General.

You are a newly elected property valuation administrator ("PVA") in your county. You may not hire your spouse or any other family member to work for you in the PVA office.

Your brother-in-law seeks employment with the Transportation Cabinet. As chief of staff for the Office of the Governor, you should not recommend to Transportation cabinet officials that he be employed.

You are a manager of a state park and should not supervise or evaluate other park employees who are your family members.

Source:
KRS 11A.020(1)(a), (c), and (d), and KRS 11A.030;
Advisory Opinions: 04-34 and 07-19;
Administrative Proceedings: 08-013, 08-014, 08-015, 08-016, 08-017, 08-018, 08-019, 08-020, 08-021, 08-022, and 08-023.

ABUSE OF STATE TIME AND RESOURCES

Public servants are prohibited from misusing state time as well as resources they are provided through their employment, such as vehicles, office space, office equipment, cell phones, and email addresses. Oftentimes, this abuse happens in a minor capacity, but other times employees are found to have grossly overuse their state provided resources and work time to conduct personal and private business for profit. Public confidence in the Executive Branch is destroyed when these abuses come to light. All public servants must be mindful not to abuse state resources in their everyday activities.

Public servants who actively participate in such conduct are using their official positions for potential private gain and should discontinue such activities.

Examples

An officer traveling to an approved out-of-state conference should not book a more expensive flight in order to travel to an additional location to combine business with pleasure.

An inspector should not falsify reports and timesheets to reflect that he has performed inspections that he has not actually performed.

An attorney should not use her state-issued email address, cell phone, office space, and sick leave to run a private law business on state time, even if she is getting her state work completed on time.

Source: KRS 11A.020(c) and (d);
Administrative Proceedings: 03-103, 09-001, 9-002, 9-003, 10-004, 11-002, 11-005, 11-008, 12-004, and 12-005

CONFLICTS OF INTEREST

YOU, AS A PUBLIC SERVANT, MUST . . .

- ✓ Avoid all conduct which might in any way lead members of the general public to conclude that you are using your official position to further your professional or private interest when appearing before a state agency; AND
- ✓ Disclose in writing to your superior the fact that you have abstained from action on an official decision in which you have or may have a personal or private interest.

Your superior shall then cause the decision on these matters to be made by an impartial third party.

*Source: KRS 11A.020(2)-(4)***.**

WHEN SHOULD YOU ABSTAIN FROM A DECISION?

If you think you should abstain from action on an official decision, ask yourself these questions:

- ✓ Has your personal or private interest created a substantial threat to your independence of judgment?
- ✓ Will your participation have an effect on public confidence in the integrity of the executive branch?
- ✓ Is your participation likely to have any significant effect on the disposition of the matter?
- ✓ Will the official decision affect you in a manner differently from the public?

If you answered yes to any of these questions, you should abstain.

- ✓ Is there a need for your particular contribution, such as special knowledge of the subject matter, for the executive branch to function effectively?

If you answered yes to this question, you may be able to avoid abstaining.

Source: KRS 11A.030.

WHEN IN DOUBT . . . ASK *BEFORE* YOU ACT!

When you don't know whether you should abstain from an official action, make an inquiry to the staff of the Executive Branch Ethics Commission. We can provide guidance verbally over the phone or in writing. We can also guide you to already established advisory opinions or assist you in the process of getting a formal advisory opinion from the Commission. *It is better to be safe than sorry.*

Examples

As an employee, you develop a software program on your own time similar to that which is used by the agency for which you work. You intend to market this software to outside attorneys who are involved with your agency in litigation. Because you would be using your official position for financial gain, you may not market your software to the same private attorneys with whom you have contact through your state employment.

In your state employment, you become aware of confidential bond information which you could use to help your personal investments. You may not use the information obtained for your own personal advantage.

You are employed as an auditor for the state agency responsible for auditing county governments. As such, you are involved in the annual audit of various counties, including the one in which you live. You have been asked to serve on an "ethics board" for the county in which you live. You will be paid a certain amount per diem for your services. You may not serve on a board and receive compensation from the county which is regulated by the agency for which you work.

Field representatives for the Office of the Governor should not send employment recommendations to state agencies based strictly on the applicant's political involvement with no direct knowledge of the applicant's qualifications or capabilities.

Your spouse owns a business that is inspected and/or regulated by the division for which you work. You must NOT inspect your spouse's business or any business in competition with your spouse. In addition, you should not work in the same division as persons inspecting your spouse's business.

Source: KRS 11A.020, KRS 11A.040(1), and KRS 11A.030;
Advisory Opinions 93-12, 93-18, 93-26, 93-37, 94-15, 03-8, 12-02, 12-03.

PROHIBITED CONDUCT:
DISCLOSING INFORMATION & SELF-DEALING

AS A PUBLIC SERVANT, YOU SHALL NOT KNOWINGLY . . .

- ∅ Disclose or use confidential information acquired in the course of your official duties, when such would further your own economic interests.
- ∅ Receive, directly or indirectly, any interest or profit arising from the use or loan of public funds in your hands or to be raised through any state agency.
- ∅ Act as a representative or agent for the Commonwealth or any agency in the transaction of any business or regulatory action with yourself, or any business in which you or a member of your family has any interest greater than 5% of the total value thereof.
- ∅ Hold, bid on, negotiate or enjoy, in whole or in part, any contract, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which you are employed.
- ∅ Accept compensation, other than that provided by law for public servants, for performance of your official duties without the prior approval of the Commission.

Source: KRS 11A.040(1)-(5);
Administrative Proceeding: 08-008.

STOCK OWNERSHIP

An employee, his spouse and his dependent children should not own an interest with a value of five percent or more of an entity that does business with the state agency for which the employee works, unless the stock or other interest is purchased exclusively through participation in a publicly traded mutual fund where the purchasing and selling decisions are completely out of the control of the employee or spouse

Additionally, an employee, his spouse and his dependent children should not own an interest with a value of five percent or more of an entity that is regulated by the state agency for which the employee works, unless:

1) The stock or other interest is purchased exclusively through participation in a publicly traded mutual fund where the purchasing and selling decisions are completely out of the control of the employee or spouse; or

2) In his state employment, neither the employee nor anyone under his supervision is directly involved in any matters concerning the company or other entity of which he owns an interest.

Examples

The spouse of the director of the division responsible for telecommunications owns an interest of more than five percent in a communications company that does business with the division for which the director works. The director's spouse may retain an interest in the company up to a value of five percent, but must divest any interest he or she has in the company which is over five percent.

An employee of the department responsible for state computer systems owns $20,000, but less than five percent, of stock in a computer company that sells products to the employee's department. As a part of his official duty, the employee is not directly involved in any matters concerning the company of which he owns an interest. He is not required to divest himself of any of his stock.

Source: KRS 11A.040(4);
Advisory Opinion 00-20.

REPRESENTATION OF THE COMMONWEALTH

An employee must not knowingly act as a representative of the state in the transaction of any business or regulatory matters with any business of which the employee or a member of his family owns more than five percent.

Examples

An agriculture inspector owns an egg business that he leases to a non-family member. As part of his state employment, the inspector inspects businesses that purchase eggs from his leased egg business. The inspector, a representative of the state, is prohibited from inspecting businesses that purchase eggs from his leased egg business.

Your husband owns a business that is inspected and regulated by the division for which you work. You must not inspect your spouse's business or any business that is in competition with your spouse's business. In addition, you should not work in the same division as inspectors of your spouse's business.

Source: KRS 11A.040(3), KRS 11A.010(4);
Advisory Opinions 93-26, 94-15.

CONTRACTS OR AGREEMENTS WITH THE COMMONWEALTH

An employee, spouse, or business of which an employee or spouse owns at least five percent, must not knowingly have any agreement or contract with the state agency for which the employee works. This includes contracts that are awarded through a competitive bid process and also grants that are awarded by state agencies.

This provision does not apply to agreements made pursuant to eminent domain, those involving funds disbursed through entitlement funds, sales of craft items to a state park by interim state employees designated as craft persons, or purchases from a state agency that are available on the same terms to the general public or that are made at public auction.

In addition, all contracts and agreements between an employee and a state agency must comply with the Model Procurement Code in KRS Chapter 45A.

Examples

You own a computer products company and wish to sell your products to the state agency for which you work. You are prohibited from selling any products to your state agency.

Your spouse owns and operates a catering business and wishes to cater a Christmas party for a state agency for which you do not work. Your spouse is not prohibited from providing the catering services, provided he or she is in compliance with the Model Procurement Code.

You are employed by the Department of Corrections as a dentist. You may not provide services for a private professional service corporation that will fulfill a service the professional service corporation provides for your agency.

A potential candidate for Governor, or any company of which he owns or controls a five percent interest, if elected, may not contract with or enjoy a part of a contract with an executive branch agency.

Source: KRS 11A.040(4);
Advisory Opinion 93-15, 96-38, 05-42, and 06-26;
Administrative Proceeding 10-001.

HONORARIA

Without the approval of the Commission, an employee must not knowingly accept compensation, other than state salary, for performance of his official duty. An employee is permitted to accept compensation for providing a service which is not a part of the official duty directed by his supervisor. Such service must be performed on the employee's own time and without the use of state resources.

Examples

The branch manager for the traffic safety division is asked to give a speech on hybrid tea roses to a garden club at night. The manager may accept the $50 honorarium given by the garden club because the speech is not a part of the employee's official duty and is given on the employee's own time.

The secretary of a cabinet is asked to give a commencement address at a state university. Part of the secretary's official duties involves speaking at commencement ceremonies. Thus, without the approval of the Commission, the secretary may not accept the honorarium.

You are required to perform jury duty service for a month. You may accept the compensation for jury duty service in addition to your state salary since jury duty is not part of your official employment duty.

A Cabinet Secretary should not accept honoraria for the performance of his official duty, even if such honoraria will be donated to the Commonwealth.

Source: KRS 11A.040(5);
Advisory Opinions 93-31, 94-14, 96-33, and 04-41.

GIFTS AND GRATUITIES

An executive branch employee, spouse or dependent child shall not knowingly accept gifts or gratuities totaling a value greater than $25 in a single calendar year from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the state agency for which the employee works, or from any group or association which has as its primary purpose the representation of such persons or businesses. Acceptance of such gifts may appear to be a conflict of interest and may damage public confidence. Moreover, their acceptance violates the Ethics Code!

Gifts **ARE**:

- ∅ Payments
- ∅ Loans
- ∅ Subscriptions
- ∅ Advances
- ∅ Travel Expenses
- ∅ Deposits of money
- ∅ Meals
- ∅ Services
- ∅ Anything of value, unless consideration of equal or greater value is received

Gifts **ARE NOT:**

- ✓ From family members in their capacity as family members;
- ✓ From campaign contributors, so long as the donation complies with the Campaign Finance laws;
- ✓ Door prizes available to the public;
- ✓ Tickets for admission to sporting events **if** you pay face value for such tickets or admission; or
- ✓ A gift or gratuity received by an employee working directly on an economic incentive package or seeking to bring tourism to the state which was not solicited by the employee and was accepted in performance of the employee's official duty. Such gifts must be registered with the Commission and, if of a tangible value of more than $25, must be turned over to the appropriate agency.

What if I receive a gift that I should not accept according to the rules? You should, when practicable:

- ➢ Return the gift to the gift-giver, or
- ➢ Pay the gift-giver the market value of the gift.

When these options are not practicable, you should:

- Donate the gift to charity, or
- Destroy the gift.

Disposal should be documented in writing to your appointing authority and shall be included in your personnel file.

The Commission may authorize other exceptions where an appearance of impropriety will not be created. Such requests for exceptions must be submitted to the Commission in writing two weeks before its next scheduled meeting to be considered.

Additionally, all gifts from a single source received by an elected official or officer as defined in KRS 11A.010(7) which exceed $200 in value must be disclosed on the employee's Statement of Financial Disclosure filed annually with the Commission.

Examples

A cabinet secretary could not accept reimbursement for the costs of attending a program sponsored by a national association that represented entities regulated by the cabinet because the reimbursement for travel expenses in excess of $25 in a calendar year may not be accepted from a business regulated by the Cabinet or from any group or association which has as its primary purpose the representation of those businesses.

An employee inspects a business for safety violations. He may not accept a $30 gift certificate from the business.

The father of an employee of the Transportation Cabinet works for a consulting firm that seeks to do business with the state. The employee may accept a gift from his father as long as his father is not acting for the consulting firm in the giving of the gift.

A Christmas gift valued at $50 is sent from a potential vendor to the "state office". The gift should be returned to the potential vendor, if possible. Otherwise, the gift should be donated to charity and the gift's disposition should be documented.

A cabinet secretary receives a painting with a $300 value from an old college friend who has no business or regulatory relationship with the state. The secretary may accept the painting, but must report the gift on his Statement of Financial Disclosure filed with the Commission.

As part of his official duty to promote economic development, an employee is involved with the expansion of a major automobile manufacturer within the state. Officials of that company provide the employee with a gift which has a $50 value. The employee may accept the gift, but it must be registered with the Commission and turned over to the proper agency.

Source: KRS 11A.045;
Advisory Opinion 94-19, 00-61, 04-42, 05-38, 08-5, and 12-04;
Administrative Proceedings: 10-006, 11-009, 11-010, and 12-002

SOLICITATION & ENDORSEMENT

An executive branch employee (or agency) should not solicit money, goods, or services, or accept donations, from persons or businesses that do business with or are regulated by the agency for which the employee works, unless the solicitation is to raise funds for a charitable, nonprofit organization. In addition, an employee should not accept donations from a person or business if that person or business is seeking to do business with the agency for which the employee works, unless the donation is to raise funds for a charitable, nonprofit organization. The appearance of a conflict of interest prohibits an employee or agency from soliciting or accepting such donations.

However, an executive branch agency is not prohibited from soliciting corporate donations for state-sponsored programs, provided the entities solicited have no business or regulatory relationship with the agency and provided the entities are not lobbying or seeking to influence matters of the agency. An agency can enter into an agreement with a not-for-profit private entity in a program that would benefit the entire Commonwealth, or would promote economic development or tourism in the state. An agency may not, however, "endorse" a private company by publicly and actively promoting one private company over another, regardless of any benefit it might have to the state.

Examples

A local supermarket offers a donation of ground meat for a chili lunch to benefit the Kentucky Employees Charitable Campaign. Occasionally, someone who works for the agency for which you work makes purchases on behalf of that agency at the supermarket. You may accept the donation of meat from the supermarket because it is for a charitable nonprofit organization.

An employee of an agency that regulates utility companies, but who works within a separate division from the division that has direct regulatory control over the utility companies, wants to solicit donations from utility companies for a worthwhile environmental educational project. The employee is prohibited from soliciting donations from the utility companies.

An employee works for the agency which regulates some aspects of the work of architects on building projects his agency must review for approval. The employee is involved, privately, in a local Habitat for Humanity project on which a local architect has offered his services. The local Habitat for Humanity organization may solicit and accept the services of the architect.

Your agency is involved in planning its 40th anniversary celebration. You may not solicit vendors of your agency to contribute to such an event.

The national professional association for employees of your agency plans to host its annual meeting in Kentucky. As such, employees of your agency will be involved in the planning and conducting of the conference. Vendors of your agency wish to donate funds to sponsor a golf tournament. Employees of your agency should not solicit sponsors for the golf tournament who are vendors or are seeking to do business with your agency. However, the national professional association may seek such sponsors provided such solicitation does not involve employees of your agency.

Source: KRS 11A.055;
Advisory Opinions 93-45, 00-15, 02-20, 09-02, 09-30, and 10-02.

OUTSIDE EMPLOYMENT

An employee is prohibited from accepting outside employment from any person or business that does business with or is regulated by the state agency for which the employee works unless the outside employment is approved by the employee's appointing authority. To obtain approval for such outside employment, an employee must submit a statement to his appointing authority affirming that in his state employment he is not involved in any decisions concerning the outside employer for whom he wishes to work. The appointing authority may not approve the outside employment if the employee is involved in any matters concerning the outside employer for whom he wishes to work.

The Ethics Code does not prohibit an employee from accepting outside employment with a state college or university as long as such employment does not interfere with or is not in conflict with the employee's state employment duties.

It is important to note that agencies may establish more stringent outside employment policies than prescribed by the Ethics Code, and in fact many agencies have such policies in place. Before undertaking any sort of outside work for which you will receive compensation, the Commission strongly encourages you to consult with your own agency regarding the matter.

Examples

You work as a youth social worker for the state. In addition, you would like to obtain outside employment with a nursing home that is regulated by the agency for which you work. You are not involved in any decisions concerning nursing homes in your state employment. You may accept outside employment with the nursing home if you submit a request and obtain the approval of your appointing authority.

You work as a nurse for a state-administered hospital. In addition, you sell beauty products for a company which is not regulated by, nor does business with, the state agency for which you work. You may continue your outside employment because there is no business or regulatory relationship between the state agency for which you work and the beauty product company. No approval is needed from your appointing authority *unless* it is required by an in-house policy.

You work as a state inspector of pharmacies. You wish to obtain weekend employment at a local pharmacy which you inspect. You are involved in your state employment in decisions concerning the outside employer for whom you wish to work. Thus, you are prohibited from such outside employment.

You are a beekeeper for the state. You may teach a class on beekeeping on the side if teaching classes on beekeeping is not part of your regular job duties and you avoid any conflicts of interest.

Source: KRS 11A.040(10), KRS 11A.120, 9 KAR 1:050;
Advisory Opinions: 09-03, 09-24, 10-04, and 12-03;
Administrative Proceedings: 07-113.

POST-EMPLOYMENT RESTRICTIONS

The following restrictions on post-employment apply regardless of whether you are terminated from your position or voluntarily leave.

FOR ALL PUBLIC SERVANTS

∅ You may not act as a lobbyist, or lobbyist's principal, or represent a person or business before a state agency for **one year** from the date of termination of employment or expiration of office, in matters in which you were directly involved in the last **3 years** of your tenure.

The term "lobbyist" includes an executive agency lobbyist registered with the Commission as well as a legislative agent registered with the Kentucky Legislative Ethics Commission. *KRS 11A.010(12).*

∅ A former employee also is prohibited for **one year** following termination of employment from representing a person or business before a state agency in a matter in which the former employee was directly involved during the last three years of his state tenure.

"Representing" includes attending an agency proceeding, writing a letter, or communicating with an employee of an agency on behalf of someone else. *KRS 11A.010(17).*

"Directly involved" modifies the word "matter" and means to work on personally or to supervise someone who works on personally. *KRS 11A.010(18).*

Executive Order 2008-454: Prohibits you from negotiating for future employment with a person or business that does business with or is regulated by the agency for which you work if you are directly involved in matter relating to the prospective employer. You must abstain from direct involvement in matters relating to such a person or entity, and you shall notify your superior about such abstention in writing.

FOR OFFICERS ONLY

After leaving state government, an officer must wait **6 months** before contracting or negotiating a contract with the agency he left.

∅ A former officer is prohibited, for **6 months**, from knowingly, by himself or through a business of which he owns at least five percent, contracting or having an agreement with the state agency for which he formerly worked, or from benefitting from such a contract or agreement held by a third party. This restriction does not apply to former officers of the Department of Public Advocacy whose continual representation of clients is necessary in order to prevent an adverse effect on the client.

- ∅ An officer must wait **6 months** following termination of employment to accept employment, compensation or other economic benefit from a person or business contracting with, doing business with, or regulated by the state in matters in which he was directly involved during the last **3 years** of his tenure.

  - ✓ HOWEVER, if you seek employment with an entity regulated by the agency for which you worked, or doing business with it, but you will be returning to your former employment or profession, then you may accept the position immediately, provided that:

    1. You do not work on any matter involving the agency for which you worked for a period of 6 months, and
    2. You may not act as a lobbyist or represent your new employer before your former state agency for a period of one year.

Source: KRS 11A.040(6), (7), (8), and (9).

Examples

The Code of Ethics does not prohibit a former employee from accepting employment with a state college or university immediately following termination of his state employment.

A former employee was responsible for reviewing permit applications from various companies. He was not considered an officer. The former employee wishes to obtain employment with a company for which he had reviewed permit applications during his recent employment. His new employment will involve representing the company in new permit applications before the employee's former agency. The employee may accept employment with the company, but for one year following his termination, must refrain from representing the company before his former agency in specific permit matters in which he was directly involved.

A commissioner of a regulatory department is considering seeking employment, upon resignation, with an entity that is regulated by the agency that he heads. The commissioner will be returning to his former profession. The commissioner may accept employment with the outside entity that his agency regulates, but for six months must refrain from working on any matter involving the agency that he formerly headed. In addition, for one year, the commissioner may not act as a lobbyist or represent his employer before his former state agency.

You are relieved from your job as a division director because of differences with your supervisors. Even though your termination was involuntary, you are still subject to the post-employment restrictions.

Source: Advisory Opinions 92-8, 94-54, 94-69, and 09-06;
Administrative Proceedings: 08-012, 10-002, and 11-007.

FINANCIAL DISCLOSURE

Elected officials, officers, and candidates for executive branch offices are required annually to file annual Statements of Financial Disclosure ("SFD"). The disclosure statements are public records and are open to public inspection. The Commission is required to audit the statements.

The Commission will notify you if you are required to file a disclosure statement. The Statement of Financial Disclosure may be found on the Commission's website: http://ethics.ky.gov/.

Additionally, if you are not an officer or elected official, but wish to voluntarily file a statement of financial disclosure, you may do so. Please contact the Commission for a statement of financial disclosure form.

Every officer is required to file an SFD by April 15th of each year or within thirty (30) days of leaving employment with state government, whether voluntarily or involuntarily. Any officer failing to file a timely SFD could have their pay withheld until the SFD is filed with the Commission.

Any officer who fails to file an SFD or files fraudulent or insufficient information could be subject to fines and penalties consistent with a violation of the Ethics Code, including a $5000 civil fine and a public reprimand.

You must file a statement of financial disclosure that includes:

1. Name, residential and business addresses;
2. Title of position/office which requires you to file;
3. Any other occupations of you or your spouse;
4. Positions held by you or your spouse in any other business;
5. Disclose any businesses in which you, your spouse or your dependent child have an interest of $10,000 at fair market value or 5% ownership interest;
6. Name and address of any source of income in excess of $1000 for any one source to you, your spouse or dependent child;
7. Sources of retainers received by you or your spouse relating to matters of the agency for which you work;
8. Any representation for compensation by you or your spouse for any person or business before the state agency for which you work;

9. All positions of a fiduciary nature held by your or your spouse in a business;

10. Street address or location of any real property in which you, your spouse or your dependent child own an interest of $10,000 or more;

11. Sources of gifts of money or property with a retail value of more than $200 from any one source to you, your spouse or your child, except those from a member of your family; and

12. Identity of creditors owed more than $10,000, except debts arising from the purchase of consumer goods.

Source: KRS 11A.050 and 9 KAR 1:010;
Administrative Proceedings: 08-024, 08-027, 08-028, and 09-004.

ADVISORY OPINIONS

The Executive Branch Ethics Commission is authorized to interpret the provisions of KRS Chapter 11A and issue advisory opinions. If you are unclear as to the requirements of the Code of Ethics or have questions which are not answered by the Code, you may seek an advisory opinion from the Executive Branch Ethics Commission. The Commission must receive a written request for an advisory opinion at least two weeks prior to a scheduled meeting for the request to appear on the agenda for the meeting. Please include all information relative to the situation about which you inquire. The Commission staff may contact you for additional information prior to the issuance of an advisory opinion.

A draft opinion will be reviewed by the Commission at a public meeting which you may attend. The Commission will make a determination in response to your request. Upon approval of the draft, you will be sent a copy of the final advisory opinion. An advisory opinion may protect you in the event that a complaint is filed against you. Advisory opinions are the highest level of guidance available from the Commission regarding the requirements of the Executive Branch Code of Ethics.

Source: KRS 11A.110(1)

INVESTIGATIONS

The Executive Branch Ethics Commission must investigate an alleged violation of KRS Chapter 11A upon receiving a complaint signed under penalty of perjury. The Commission may also investigate an alleged violation upon its own motion. The Commission considers information received by the Commission staff in person, by telephone, by letter or through the media. If the information indicates that a public servant may have violated the Ethics Code, the Commission will determine whether to initiate a preliminary investigation upon its own motion.

Within ten days of the initiation of the preliminary investigation, the Commission must forward to the alleged violator a copy of the complaint (if applicable) and a general statement of the law violated. Thus, the Commission will notify you by certified letter if you are under investigation.

Unless an alleged violator publicly discloses the existence of the preliminary investigation, the Commission is required to keep confidential the details of the preliminary investigation until the Commission determines probable cause of a violation and initiates an administrative proceeding to determine whether there has been a violation. However, the Commission may inform a referring state agency of the status of, or any action taken on, an investigative matter referred to the Commission by the agency. It may also for investigative purposes share evidence, at its discretion, with the Auditor of Public Accounts and the Personnel Board.

If, during the preliminary investigation, the Commission determines that evidence is not sufficient to show probable cause of a violation, the employee is confidentially informed that the investigation is terminated and such notification remains confidential. This confidentiality is designed to protect the reputation of an employee who is falsely accused of a violation or against whom there is insufficient evidence to warrant further action.

The Commission may find probable cause of a violation during a preliminary investigation, but, due to mitigating circumstances (such as lack of financial gain to the employee, lack of loss to the state, and lack of impact on public confidence) may confidentially reprimand the alleged violator rather than initiate an administrative proceeding. A confidential reprimand is sent to the public servant by certified mail.

All administrative hearings of the Commission are public unless the Commission votes to go into executive session in accordance with the open meetings law. During the administrative hearing, the alleged violator has due process rights to be represented by counsel, call witnesses, introduce exhibits, and cross examine witnesses. A final determination whether a violation occurred is made by the Commission. A respondent may appeal a final Commission order to the Franklin Circuit Court for judicial review. A respondent must file such an appeal within thirty (30) days of being served with the Commission's order.

Source: KRS 11A.080, KRS 11A.100, and KRS Chapter 13B.

PENALTIES

The Executive Branch Ethics Commission, upon clear and convincing proof of a violation of the Ethics Code, may:

- Issue a cease and desist order;
- Require you to file a report, statement, or other information;
- Issue a written, public reprimand which will be forwarded to your appointing authority;
- Recommend to your appointing authority that you be removed from office or your position; and
- Order you to pay a civil penalty of not more than **$5,000** for **each** violation.

In addition:

- ✓ If the violation has substantially influenced the action taken by any state agency in any particular matter, such shall be grounds for voiding, rescinding, or canceling the action on such terms as the interest of the state and innocent third persons require.
- ✓ The commission **shall** refer to the Attorney General all evidence of violations of KRS 11A.040 for prosecution – violations are Class D felonies punishable by one to five years in jail and additional fines.
- ✓ An employee who fails to file with the Commission his statement of financial disclosure by the due date will have his salary withheld until the statement is filed.

Source: KRS 11A.100 and KRS 11A.990

EXECUTIVE AGENCY LOBBYING

Persons and entities engaged to make contacts with executive agency officials or staff in an attempt to influence a decision concerning the expenditure of state funds are executive agency lobbyists and are required to register with the Executive Branch Ethics Commission

An executive agency lobbyist must report to the Commission annually any expenditure made to or on behalf of an executive branch employee. In addition, the executive agency lobbyist is required to report any financial transaction he has with, or for the benefit of, an executive branch employee. A copy of the required expenditure or financial transaction statement must be sent to the official or employee by the lobbyist at least ten days prior to the date it is filed with the Commission.

Executive agency lobbyists are issued a registration card upon registration. You may request to see the registration card of a person who is attempting to influence a decision to be made concerning state funds.

For more information on executive agency lobbying, you may request an executive agency lobbying handbook from the Executive Branch Ethics Commission.

Source: *KRS 11A.201-246*

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11A.001 Short title for chapter.

This chapter may be cited as the "Executive Branch Code of Ethics."

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 287, sec. 1, effective July 14, 1992.

11A.005 Statement of public policy.

(1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:

(a) A public servant be independent and impartial;

(b) Government policy and decisions be made through the established processes of government;

(c) A public servant not use public office to obtain private benefits; and

(d) The public has confidence in the integrity of its government and public servants.

(2) The principles of ethical behavior for public servants shall recognize that:

(a) Those who hold positions of public trust, and members of their families, also have certain business and financial interests;

(b) Those in government service are often involved in policy decisions that pose a potential conflict with some personal financial interest; and

(c) Standards of ethical conduct for the executive branch of state government are needed to determine those conflicts of interest which are substantial and material or which, by the nature of the conflict of interest, tend to bring public servants into disrepute.

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 287, sec. 2, effective July 14, 1992.

11A.010 Definitions for chapter.

As used in this chapter, unless the context otherwise requires:

(1) "Business" means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit;

(2) "Commission" means the Executive Branch Ethics Commission;

(3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;

(4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister;

(5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received; "gift" does not include gifts from family members, campaign contributions, or door prizes available to the public;

(6) "Income" means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of compensation or any combination thereof;

(7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, executive directors, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Kentucky Teachers' Retirement System board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Kentucky Occupational Safety and Health Review Commission, the Kentucky Board of Education, the Council on Postsecondary Education, and any person who holds a personal service contract to perform on a full-time basis for a period of time not less than six (6) months a function of any position listed in this subsection;

(8) "Official duty" means any responsibility imposed on a public servant by virtue of his position in the state service;

(9) "Public servant" means:

(a) The Governor;

(b) The Lieutenant Governor;

(c) The Secretary of State;

(d) The Attorney General;

(e) The Treasurer;

(f) The Commissioner of Agriculture;

(g) The Auditor of Public Accounts; and

(h) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;

(10) "Agency" means every state office, cabinet, department, board, commission, public corporation, or authority in the executive branch of state government. A public servant is employed by the agency by which his appointing authority is employed, unless his agency is attached to the appointing authority's agency for administrative purposes only, or unless the agency's characteristics are of a separate independent nature distinct from the appointing authority and it is considered an agency on its own, such as an independent department;

(11) "Lobbyist" means any person employed as a legislative agent as defined in KRS 6.611(22) or any person employed as an executive agency lobbyist as defined in KRS 11A.201(8);

(12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes, opposes, or acts;

(13) "Candidate" means those persons who have officially filed candidacy papers or who have been nominated by their political party pursuant to KRS 118.105, 118.115, 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to (g) of this section;

(14) "Does business with" or "doing business with" means contracting, entering into an agreement, leasing, or otherwise exchanging services or goods with a state agency in return for payment by the state, including accepting a grant, but not including accepting a state entitlement fund disbursement;

(15) "Public agency" means any governmental entity;

(16) "Appointing authority" means the agency head or any person whom he has authorized by law to act on behalf of the agency with respect to employee appointments;

(17) "Represent" means to attend an agency proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else;

(18) "Directly involved" means to work on personally or to supervise someone who works on personally; and

(19) "Sporting event" means any professional or amateur sport, athletic game, contest, event, or race involving machines, persons, or animals, for which admission tickets are offered for sale and that is viewed by the public.

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 75, sec. 1, effective April 11, 2012; and ch. 81, sec. 77, effective July 12, 2012. -- Amended 2005 Ky. Acts ch. 123, sec. 7, effective June 20, 2005. -- Amended 2003 Ky. Acts ch. 29, sec. 3, effective June 24, 2003. --

Amended 2000 Ky. Acts ch. 417, sec. 3, effective December 1, 2000; ch. 475, sec. 1, effective July 14, 2000; and ch. 542, sec. 5, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 429, sec. 1, effective July 15, 1998; ch. 431, sec. 2, effective July 15, 1998; and ch. 602, sec. 1, effective July 15, 1998. -- Amended 1997 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 149, effective May 30, 1997. -- Amended 1996 Ky. Acts ch. 362, sec. 6, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 406, sec. 7, effective July 15, 1994. -- Amended 1993 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 71, effective September 16, 1993. -- Created 1992 Ky. Acts ch. 287, sec. 3, effective July 14, 1992.

Legislative Research Commission Note (7/12/2012). This statute was amended by 2012 Ky. Acts chs. 75 and 81, which do not appear to be in conflict and have been codified together.

Legislative Research Commission Note (6/20/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

Legislative Research Commission Note (12/1/2000). The contingency on the effectiveness of this statute set by 2000 Ky. Acts ch. 417, sec. 18, was met, the voters of the Commonwealth having ratified at the general election on November 7, 2000, a constitutional amendment (see 2000 Ky. Acts ch. 399) abolishing the Railroad Commission.

11A.015 Agency exempt from chapter if law or administrative regulation creates its code of ethics.

An agency that is directed by statute to adopt a code of ethics shall be exempt from KRS Chapter 11A upon the effective date of an Act of the General Assembly creating the agency's code of ethics or upon the effective date of an administrative regulation that creates the agency's code of ethics.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 475, sec. 5, effective July 14, 2000.

11A.020 Public servant prohibited from certain conduct -- Exception -- Disclosure of personal or private interest.

(1) No public servant, by himself or through others, shall knowingly:

(a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;

(b) Use or attempt to use any means to influence a public agency in derogation of the state at large;

(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

(2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

(3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

(4) The prohibitions imposed by subsection (1)(c) of this section shall not apply to Professional Golfers' Association class A members who teach golf lessons and receive a fee or lesson charge at golf courses owned and operated by the Kentucky Department of Parks. Instruction provided by an employee of the Commonwealth shall only be given while the employee is on his or her own personal time. The commissioner of the Department of Parks shall promulgate administrative regulations to establish guidelines for the process by which Professional Golfers' Association class A members are approved to teach golf lessons at Kentucky Department of Parks-owned golf courses. The exception granted by this subsection is in recognition of the benefits that will accrue to the Kentucky Department of Parks due to increased participation at state-owned golf courses.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 381, sec. 1, effective July 15, 1998. -- Created 1992 Ky. Acts ch. 287, sec. 4, effective July 14, 1992.

11A.030 Considerations in determination to abstain from action on official decision -- Advisory opinion.

In determining whether to abstain from action on an official decision because of a possible conflict of interest, a public servant should consider the following guidelines:

(1) Whether a substantial threat to his independence of judgment has been created by his personal or private interest;

(2) The effect of his participation on public confidence in the integrity of the executive branch;

(3) Whether his participation is likely to have any significant effect on the disposition of the matter;

(4) The need for his particular contribution, such as special knowledge of the subject matter, to the effective functioning of the executive branch; or

(5) Whether the official decision will affect him in a manner differently from the public or will affect him as a member of a business, profession, occupation, or group to no greater extent generally than other members of such business, profession, occupation, or group. A public servant may request an advisory opinion from the Executive Branch Ethics Commission in accordance with the commission's rules of procedure.

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 287, sec. 5, effective July 14, 1992.

11A.040 Acts prohibited for public servant or officer -- Exception.

(1) A public servant, in order to further his own economic interests, or those of any other person, shall not knowingly disclose or use confidential information acquired in the course of his official duties.

(2) A public servant shall not knowingly receive, directly or indirectly, any interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.

(3) A public servant shall not knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business or regulatory action with himself, or with any business in which he or a member of his family has any interest greater than five percent (5%) of the total value thereof.

(4) A public servant shall not knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:

   (a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or

   (b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or

   (c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises; or

   (d) Purchases from a state agency that are available on the same terms to the general public or that are made at public auction; or

   (e) Sales of craft items to a state park by interim state employees designated as craftspersons under KRS 148.257.

(5) A public servant shall not knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

(6) A former officer or public servant listed in KRS 11A.010(9)(a) to (g) shall not, within six (6) months of termination of his employment, knowingly by himself or through any business in which he owns or controls an interest of at least five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he was employed. This provision shall not apply to a contract, purchase, or good faith negotiation made under KRS Chapter 416 relating to eminent domain or to agreements that may directly or indirectly involve public funds disbursed through entitlement programs. This provision shall not apply to purchases from a state agency that are available on the same terms to the general

public or that are made at public auction. This provision shall not apply to former officers of the Department of Public Advocacy whose continued representation of clients is necessary in order to prevent an adverse effect on the client.

(7) A present or former officer or public servant listed in KRS 11A.010(9)(a) to (g) shall not, within six (6) months following termination of his office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with, or is regulated by, the state in matters in which he was directly involved during the last thirty-six (36) months of his tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he was involved prior to taking office or beginning his term of employment, or for which he received, prior to his state employment, a professional degree or license, provided that, for a period of six (6) months, he personally refrains from working on any matter in which he was directly involved during the last thirty-six (36) months of his tenure in state government. This subsection shall not prohibit the performance of ministerial functions, including but not limited to filing tax returns, filing applications for permits or licenses, or filing incorporation papers, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.

(8) A former public servant shall not act as a lobbyist or lobbyist's principal in matters in which he was directly involved during the last thirty-six (36) months of his tenure for a period of one (1) year after the latter of:

(a) The date of leaving office or termination of employment; or

(b) The date the term of office expires to which the public servant was elected.

(9) A former public servant shall not represent a person or business before a state agency in a matter in which the former public servant was directly involved during the last thirty-six (36) months of his tenure, for a period of one (1) year after the latter of:

(a) The date of leaving office or termination of employment; or

(b) The date the term of office expires to which the public servant was elected.

(10) Without the approval of his appointing authority, a public servant shall not accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds.

(a) The appointing authority shall review administrative regulations established under KRS Chapter 11A when deciding whether to approve outside employment for a public servant.

(b) The appointing authority shall not approve outside employment for a public servant if the public servant is involved in decision-making or recommendations concerning the person or business from which the public servant seeks outside employment or compensation.

(c) The appointing authority, if applicable, shall file quarterly with the Executive

Branch Ethics Commission a list of all employees who have been approved for outside employment along with the name of the outside employer of each.

(11) The prohibitions imposed by subsection (5) or (10) of this section shall not apply to Professional Golfers' Association class A members who teach golf lessons and receive a fee or lesson charge at golf courses owned and operated by the Kentucky Department of Parks. Instruction provided by an employee of the Commonwealth shall only be given while the employee is on his or her own personal time. The commissioner of the Department of Parks shall promulgate administrative regulations to establish guidelines for the process by which Professional Golfers' Association class A members are approved to teach golf lessons at Kentucky Department of Parks-owned golf courses. The exception granted by this subsection is in recognition of the benefits that will accrue to the Kentucky Department of Parks due to increased participation at state-owned golf courses.

Effective: July 12, 2006

History: Amended 2006 Ky. Acts ch. 68, sec. 1, effective July 12, 2006. -- Amended 2000 Ky. Acts ch. 417, sec. 4, effective December 1, 2000; and ch. 475, sec. 2, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 381, sec. 2, effective July 15, 1998; ch. 429, sec. 2, effective July 15, 1998; ch. 430, sec. 1, effective July 15, 1998; and ch. 602, sec. 2, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 367, sec. 1, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 434, sec. 3, effective July 15, 1994. – Created 1992 Ky. Acts ch. 287, sec. 6, effective July 14, 1992.

Legislative Research Commission Note (12/1/2000). The contingency on the effectiveness of this statute set by 2000 Ky. Acts ch. 417, sec. 18, was met, the voters of the Commonwealth having ratified at the general election on November 7, 2000, a constitutional amendment (see 2000 Ky. Acts ch. 399) abolishing the Railroad Commission.

Legislative Research Commission Note (7/15/98). A reference to "KRS 11A.010(9)(a) to (i)" in the former subsection (6) of this statute (now subsection (7)) has been changed in codification to "KRS 11A.010(9)(a) to (h)" under KRS 7.136(1)(c) and (h). 1998 Ky. Acts ch. 429, sec. 1, eliminated the former paragraph (g) of KRS 11A.010(9) and renumbered the remaining subsections accordingly. Other actions within Acts Chapter 429 used the "(a) to (h)" range in new language and modified existing language to use the "(a) to (h)" range. It seems clear from context, and this has been confirmed by the drafter of the bill, that this change was intended here as well but was inadvertently overlooked.

11A.045 Acceptance of gifts by public servants permitted under certain circumstances.

(1) No public servant, his spouse, or dependent child knowingly shall accept any gifts or gratuities, including travel expenses, meals, alcoholic beverages, and honoraria, totaling a value greater than twenty-five dollars ($25) in a single calendar year from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the agency in which the public servant is employed or which he supervises, or from any group or association which has as its primary purpose the representation of those persons or businesses. Nothing contained in this subsection shall prohibit the commission from authorizing exceptions to this subsection where such exemption would not create an appearance of impropriety.

(2) Nothing in KRS Chapter 11A shall prohibit or restrict the allocation of or acceptance by a public servant of a ticket for admission to a sporting event if the ticket or admission is paid for by the public servant at face value or is paid for at face value by the individual to whom the ticket is allocated.

(3) Nothing in KRS 11A.001 to 11A.110 shall prohibit or restrict the acceptance by a public servant of the Cabinet for Economic Development or by any other public servant working directly with the cabinet on an economic incentive package of anything of economic value as a gift or gratuity, if the gift or gratuity:

(a) Was not solicited by the public servant;

(b) Was accepted by the public servant in the performance of his or her official duties and in compliance with guidelines to be established by the Kentucky Economic Development Partnership which shall include requirements that all gifts or gratuities of a reportable value under KRS 11A.050(3)(k) be registered with the Kentucky Economic Development Partnership and with the Executive Branch Ethics Commission and that all tangible property with a value in excess of twenty-five dollars ($25), other than food and beverages consumed on the premises, shall be turned over to the Cabinet for Economic Development within thirty (30) days of receipt. In filing reports of gifts or gratuities with the Executive Branch Ethics Commission, the Cabinet for Economic Development may delete information identifying the donors if the cabinet believes identification of the donors would damage economic development; and

(c) Was not accepted under circumstances which would create a violation of KRS Chapter 521.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 475, sec. 3, effective July 14, 2000; and ch. 542, sec. 6, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 431, sec. 1, effective July 15, 1998. -- Created 1994 Ky. Acts ch. 450, sec. 36, effective July 15, 1994.

Legislative Research Commission Note (7/14/2000). This section was amended by 2000 Ky. Acts chs. 475 and 542, which do not appear to be in conflict and have been codified together.

11A.050 Financial disclosure by officers, candidates, and public servants.

(1) Each officer, each public servant listed in KRS 11A.010(9)(a) to (g), and each candidate shall file a statement of financial disclosure with the commission, as follows:

(a) Each officer and each public servant listed in KRS 11A.010(9)(a) to (g) who occupies his position during any portion of a calendar year shall file the statement for that portion of the calendar year he occupied the position on or before April 15 of the following year, whether or not he remains an officer or public servant as listed in KRS 11A.010(9)(a) to (g).

(b) Each officer and public servant listed in KRS 11A.010(9)(a) to (g) who does not remain an officer or public servant listed in KRS 11A.010(9)(a) to (g) for the entire calendar year shall file the statement for the portion of the calendar year that the person served as an officer or public servant listed in KRS 11A.010(9)(a) to (g). The statement shall be filed with the commission within thirty (30) days after the date the person no longer serves as an officer or public servant listed in KRS 11A.010(9)(a) to (g).

(c) A candidate shall file the statement reflecting the previous calendar year with the commission no later than February 15.

(2) The statement of financial disclosure shall be filed on a form prescribed by the commission. The commission shall provide copies of the form upon request without charge.

(3) The statement shall include the following information for the preceding calendar year:

(a) Name and entire residential and business address of filer;

(b) Title of position or office whereby filing is required;

(c) Any other occupations of filer and spouse;

(d) Positions held by the filer or his spouse in any business, and the name and address of the business;

(e) Names and addresses of all businesses in which the filer, his spouse, or dependent children has or had an interest of ten thousand dollars ($10,000) at fair market value or five percent (5%) ownership interest or more;

(f) The name and address of any source of gross income exceeding one thousand dollars ($1,000) from any one (1) source to the filer, his spouse, or dependent child, as well as information concerning the nature of the business, and the form of the income;

(g) Sources of retainers received by the filer or his spouse relating to matters of the state agency for which the filer works or supervises or of any other entity of state government for which the filer would serve in a decision-making capacity, including each source's name and address;

(h) Any representation or intervention for compensation by the filer or his spouse for any person or business before a state agency for which the filer works or supervises or before any entity of state government for which the filer would

serve in a decision-making capacity, including the name and address of the person or business;

(i) All positions of a fiduciary nature held by the filer or his spouse in a business, including the name and address of the business;

(j) Information, including a street address or location, regarding any real property in which there is an interest of ten thousand dollars ($10,000) or more held by the filer, his spouse, or dependent children;

(k) Sources, including each source's name and address, of gifts of money or property with a retail value of more than two hundred dollars ($200) from any one (1) source to the filer, his spouse, or dependent children, except those from a member of the filer's family; and

(l) Identity, including an address, of creditors owed more than ten thousand dollars ($10,000), except debts arising from the purchase of consumer goods.

Paragraphs (a) to (l) of this subsection shall not require disclosure of specific dollar amounts or of privileged information.

Effective: December 1, 2000

History: Amended 2000 Ky. Acts ch. 417, sec. 5, effective December 1, 2000; and ch. 475, sec. 4, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 429, sec. 3, effective July 15, 1998. -- Amended 1993 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 72, effective September 16, 1993. -- Created 1992 Ky. Acts ch. 287, sec. 7, effective July 14, 1992.

Legislative Research Commission Note (12/1/2000). The contingency on the effectiveness of this statute set by 2000 Ky. Acts ch. 417, sec. 18, was met, the voters of the Commonwealth having ratified at the general election on November 7, 2000, a constitutional amendment (see 2000 Ky. Acts ch. 399) abolishing the Railroad Commission.

Legislative Research Commission Note (7/15/98). A reference to "KRS 11A.010(9)(a) to (i)" in subsection (1) of this statute has been changed in codification to "KRS 11A.010(9)(a) to (h)" under KRS 7.136(1)(e) and (h). 1998 Ky. Acts ch. 429, sec. 1, eliminated the former paragraph (g) of KRS 11A.010(9) and renumbered the remaining subsections accordingly. Other actions within Acts Chapter 429, including in the section that amended this statute, used the "(a) to (h)" range in new language and modified existing language to use the "(a) to (h)" range. It seems clear from context, and this has been confirmed by the drafter of the bill, that this change was intended here as well but was inadvertently overlooked.

11A.055 Raising of funds for certain activities permitted.

(1) Any provision of KRS Chapter 11A to the contrary notwithstanding, a state agency or a public servant may raise funds, either individually or as a department or agency, for a charitable nonprofit organization granted a tax exemption by the Internal Revenue Service under Section 501c of the Internal Revenue Code without violating the provisions of this chapter. Raising of funds shall include but not be limited to holding events for the benefit of the charitable organization, contacting potential donors, providing prizes, and engaging in other forms of fundraising and providing the funds thus raised to the charitable organization.

(2) Any provision of KRS Chapter 11A to the contrary notwithstanding, a state agency or a public servant may raise funds, either individually or as a department or agency, for crime prevention, drug and alcohol abuse prevention, and traffic safety programs without violating the provisions of this chapter. Raising of funds shall include but not be limited to holding events for the benefit of a program specified in this section, contacting potential donors, providing prizes, and engaging in other forms of fundraising and providing the funds thus raised to the program.

Effective: April 9, 2002

History: Created 2002 Ky. Acts ch. 290, sec. 2, effective April 9, 2002.

11A.060 Executive Branch Ethics Commission -- Membership -- Officers -- Compensation -- Removal -- Meetings.

(1) The Executive Branch Ethics Commission is hereby established.

(2) The commission shall be composed of five (5) members appointed by the Governor.

(3) Members of the commission shall serve staggered terms of four (4) years. Of the initial members appointed as provided in this section, one (1) member shall serve a term of one (1) year, one (1) member shall serve a term of two (2) years, one (1) member shall serve a term of three (3) years, and two (2) members shall be appointed for terms of four (4) years. Thereafter, all appointments shall be for four (4) years.

(4) The commission shall elect from its membership a chairman and vice chairman. In the absence of the chairman or in the event of a vacancy in that position, the vice chairman shall serve as chairman.

(5) A member of the commission shall receive one hundred dollars ($100) per day for attending meetings and shall be reimbursed for actual and necessary expenses incurred in the performance of duties.

(6) All members shall be registered voters of the state.

(7) Members of the commission shall be removed by the Governor for cause only, including substantial neglect of duty and inability to discharge the powers and duties of office.

(8) A quorum shall consist of three (3) or more members. An affirmative vote of three (3) or more members shall be necessary for commission action.

(9) The commission shall meet at the call of the chairman or a majority of its members.

(10) The commission shall be attached to the Finance and Administration Cabinet for administrative purposes only.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 12, sec. 17, effective June 25, 2009. -- Amended 1998 Ky. Acts ch. 602, sec. 3, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 208, sec. 1, effective July 15, 1994. -- Created 1992 Ky. Acts ch. 287, sec. 8, effective July 14, 1992.

11A.070 Executive director and employees of commission -- Use of services and facilities of state agencies.

The commission may employ an executive director and any other employees, agents, and consultants it considers necessary, and may prescribe their duties, fix their compensation, and provide for reimbursement of their expenses within the amount available therefor by appropriation. The commission may also engage outside professional counsel it considers necessary. The commission and its staff may also make use of the services and facilities of the office of the Attorney General or of any other state agency.

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 287, sec. 9, effective July 14, 1992.

11A.080 Investigation of complaints -- Procedures -- Resolution.

(1) (a) Upon a complaint signed under penalty of perjury by any person, or upon its own motion, the commission shall conduct a preliminary investigation of any alleged violation of this chapter.

(b) The preliminary investigation shall begin not later than ten (10) days after the next commission meeting following the receipt of the sworn complaint, or, if the investigation is initiated by the commission's own motion, not later than ten (10) days after the date of the adoption of the motion.

(c) Within ten (10) days of the commencement of the preliminary investigation, the commission shall forward a copy of the complaint, if one has been filed, or a statement of possible violations being investigated, and a general statement of the applicable law to the person alleged to have committed a violation.

(2) All commission proceedings and records relating to a preliminary investigation shall be confidential until a final determination is made by the commission, except:

(a) The commission may turn over to the Attorney General, the United States Attorney, or the Commonwealth's attorney of the jurisdiction in which the offense allegedly occurred, evidence which may be used in criminal proceedings or, at its discretion, may at any time turn over to the Personnel Board or the Auditor of Public Accounts, or both, evidence which may be used by either or both of those agencies for investigative purposes;

(b) If the alleged violator publicly discloses the existence of a preliminary investigation, the commission may publicly confirm the existence of the inquiry and, in its discretion, make public any documents which were issued to either party;

(c) If the matter being investigated was referred to the commission from another state agency, the commission may inform the referring state agency of the status of any preliminary investigation and of any action taken on the matter.

(3) If the commission determines in the preliminary investigation that the facts are not sufficient to constitute a violation of this chapter, the commission shall immediately terminate the investigation and notify in writing the complainant, if any, and the person alleged to have committed a violation. The commission may confidentially inform the alleged violator of potential violations and provide information to ensure future compliance with the law. If the alleged violator publicly discloses the existence of such action by the commission, the commission may confirm the existence of the resolution and, in its discretion, make public any documents which were issued to the alleged violator.

(4) If the commission, during the course of the preliminary investigation, finds probable cause to believe that a violation of this chapter has occurred, the commission may, upon majority vote:

(a) Due to mitigating circumstances such as lack of significant economic advantage or gain by the alleged violator, lack of significant economic loss to the state, or lack of significant impact on public confidence in government, in writing, confidentially reprimand the alleged violator for potential violations

of the law and provide a copy of the reprimand to the alleged violator's appointing authority, if any. If the alleged violator publicly discloses the existence of such an action, the commission may confirm the existence of the action and, in its discretion, make public any documents which were issued to the alleged violator; or

(b) Initiate an administrative proceeding to determine whether there has been a violation.

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 34, sec. 1, effective July 12, 2012. -- Amended 2000 Ky. Acts ch. 475, sec. 6, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 603, sec. 1, effective July 15, 1998. -- Amended 1993 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 73, effective September 16, 1993. -- Created 1992 Ky. Acts ch. 287, sec. 10, effective July 14, 1992.

11A.090 Subpoena power.

For the purpose of carrying out a preliminary investigation, the commission may issue subpoenas to compel the attendance and testimony of witnesses or the production of documents, books, papers, or other records. Subpoenas may be issued by the chairman or the majority of the members of the commission and shall be served in the same manner as subpoenas for witnesses in civil cases. All provisions of law relative to subpoenas issued in such cases, including compensation of witnesses, shall apply to subpoenas issued by the commission. Upon petition by the commission, any Circuit Court within the jurisdiction of which any inquiry is being carried on may, in case of refusal to obey a subpoena or order of the commission, issue an order requiring compliance. Any failure to obey the order of the court may be punished by the court as contempt thereof.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 318, sec. 14, effective July 15, 1996. -- Created 1992 Ky. Acts ch. 287, sec. 11, effective July 14, 1992.

11A.100 Procedures for administrative hearings -- Action by commission.

(1) The provisions of KRS Chapter 13B shall apply to all commission administrative hearings.

(2) All administrative hearings of the commission carried out pursuant to the provisions of this section shall be public, unless the members vote to go into executive session in accordance with KRS 61.810.

(3) The commission, upon a finding pursuant to an administrative hearing that there has been clear and convincing proof of a violation of this chapter, may:

(a) Issue an order requiring the violator to cease and desist the violation; and

(b) Issue an order requiring the violator to file any report, statement, or other information as required by this chapter; and

(c) In writing, publicly reprimand the violator for potential violations of the law and provide a copy of the reprimand to the alleged violator's appointing authority, if any; and

(d) In writing, recommend to the violator's appointing authority that the violator be removed or suspended from office or employment, and include a recommendation for length of suspension, to be approved by the appointing authority, if any; and

(e) Issue an order requiring the violator to pay a civil penalty of not more than five thousand dollars ($5,000) for each violation of this chapter.

(4) In addition to any other remedies provided by law, any violation of this chapter which has substantially influenced the action taken by any state agency in any particular matter shall be grounds for voiding, rescinding, or canceling the action on such terms as the interests of the state and innocent third persons require.

(5) The commission shall refer to the Attorney General evidence of violations of KRS 11A.040 for prosecution. The Attorney General shall have responsibility for all prosecutions under the law and may request from the commission all evidence collected in its investigation. The commission may represent itself through the general counsel in all subsequent proceedings.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 475, sec. 7, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 603, sec. 2, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 318, sec. 15, effective July 15, 1996. -- Created 1992 Ky. Acts ch. 287, sec. 12, effective July 15, 1996.

11A.110 Additional duties of commission.

The commission shall perform the following additional duties:

(1) On its own initiative or upon a signed request in writing, issue and publish advisory opinions on the requirements of this chapter for those who wish to use the opinion to guide their own conduct. If requested in writing by the person seeking the advisory opinion, the commission shall not release that person's name;

(2) Provide a continuing program of education, assistance, and information to public servants, including, but not limited to, publishing and making available to the persons subject to this chapter and the public explanatory information concerning this chapter, the duties imposed by it, and the means of enforcement;

(3) Promulgate administrative regulations in accordance with KRS Chapter 13A to implement this chapter;

(4) Prescribe forms for statements required by this chapter and furnish the forms to persons required to file the statements. The forms shall be adopted as administrative regulations or adopted by reference in an administrative regulation;

(5) Prepare and publish a manual of guidelines setting forth uniform methods of reporting for use by persons required to file under this chapter;

(6) Accept and file any information voluntarily supplied that exceeds the requirements of this chapter;

(7) Preserve the disclosure statements filed with it for four (4) years from the date of receipt;

(8) Make statements and reports filed with the commission available for public inspection and copying pursuant to KRS 61.870 to KRS 61.884 (Kentucky Open Records Law);

(9) Compile and maintain a current index of all statements filed with the commission to facilitate public access to the reports and statements;

(10) Prepare and publish reports as it may deem appropriate;

(11) Audit statements and reports filed with the commission;

(12) Make recommendations for legislation relating to governmental ethics and other matters included in this chapter as the commission deems desirable; and

(13) Prepare a biennial written report, no later than December 1 of each odd-numbered year, to the Legislative Research Commission, the Governor, and the public on the activities of the commission in the preceding two (2) fiscal years. The report shall contain the names and duties of each individual employed by the commission and a summary of commission determinations and advisory opinions. The commission shall prevent disclosure of the identity of a person involved in decisions or advisory opinions. The report may contain other information on matters within the commission's jurisdiction and recommendations for legislation as the commission deems desirable.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 429, sec. 4, effective July 15, 1998. -- Created 1992 Ky. Acts ch. 287, sec. 13, effective July 14, 1992.

11A.120 Employment of public servant by state institution of higher education.

Nothing in KRS 11A.001 to 11A.110 shall prohibit or restrict a public servant from accepting outside employment in a state institution of higher education as long as that outside employment does not interfere or conflict with the public servant's state employment duties. Nothing in this section shall prohibit or restrict a present or former public servant from accepting employment with a state institution of higher education immediately following termination of his office or employment in another state agency.

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 287, sec. 14, effective July 14, 1992.

APPENDIX 5

Your Duty Under the Law

The Kentucky Open Records and Open Meetings Acts

Office of the Attorney General
Jack Conway, Attorney General

September 2012

Your Duty Under the Law explains the procedural and substantive provisions of the Open Meetings Act, KRS 61.800 to 61.850, and the Open Records Act, KRS 61.870 to 61.884, and contains basic information about the Acts. Pursuant to KRS 15.257(1), the Office of the Attorney General distributes this written information to assist the public officials of Kentucky in complying with the Open Meetings and Open Records Acts.

The Office of the Attorney General welcomes suggestions for improvements to this work, as well as ideas for future publications. Comments may be sent to the Attorney General's Office, 700 Capital Avenue, Frankfort, Kentucky 40601, or to our website, http://ag.ky.gov.

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TABLE OF CONTENTS

The Open Records Act **4**

What are public records? 4

What are the general requirements of the open records act? 5

What is the procedure for inspecting a public record? 6

What records are exempt from public inspection? 8

What is the role of the Attorney General? 10

The Open Meetings Act **13**

What is a public meeting? 13

What are the general requirements of the open meetings act? 14

What subjects may be discussed in a closed session? 16

What is the role of the Attorney General? 18

Sample Forms **20**

Sample open records response 20

Sample open meetings response 21

Sample Open Records Rules and Regulations **22**

Open meetings and open records publications and decisions and related publications on-line **23**

The Open Records and Open Meetings Acts:

Your duty under the law

Kentucky's laws on open records and open meetings affect every public official and every public agency. It is important that you be prepared to deal with the numerous legal questions that arise under those laws. This brochure provides an analysis of the Open Records and Open Meetings Acts and is designed to assist you in answering these questions. It contains a description of the general requirements of the laws, the procedures you must follow in implementing them, the exceptions you may invoke in appropriate circumstances, and the role of the Attorney General in interpretation and enforcement. Please note that the italicized and bulleted text reflects the courts' and the Attorney General's interpretation of the Acts. Because the Attorney General's Office acts as an impartial tribunal in open records and open meetings appeals, we cannot advise public agencies and public officials how to deal with specific situations. The following information should, however, prove useful to you in complying with Kentucky's laws on open records and open meetings.

The Open Records Act

In 1976, the General Assembly enacted the Open Records Act, KRS 61.870 to KRS 61.884, which establishes a right of access to public records. The General Assembly recognized that the free and open examination of public records is in the public interest. The General Assembly has also recognized that there is an essential relationship between proper records retention and management and records access. All public records, whether they are stored in a computer or on paper, must be open for inspection unless the records are exempted by one or more of the fourteen exemptions found in the Act. All public agencies are required to make nonexempt public records available to any requester, and to provide suitable facilities for exercise of the right of inspection. A public agency may not consider the requester's identity or purpose in seeking access to public records.

What are public records?

The Open Records Act applies to public records maintained by state and local government agencies. The agencies covered by the Act include:

- state and local government officers, departments, and legislative bodies;
- county and city governing bodies, school district boards, special district boards, and municipal corporations;

- state or local government agencies created by statute or other executive and legislative acts;
- bodies created by state or local authority in any branch of government;
- bodies that receive at least 25% of their funds from state or local authority, within any fiscal year, excluding funds derived from a state or local authority in compensation for goods or services that are provided by a contract obtained by a public procurement process;
- an entity where the majority of its governing body is appointed by a public agency;
- agencies created and controlled by public agencies; and
- interagency bodies of two or more public agencies.

Subject to fourteen exemptions, records that are prepared, owned, used, possessed, or retained by a public agency are public records and must be made available upon request.

- *The term "public records" includes all such records even if they are not subject to inspection under an exemption and therefore not "open records."*
- *The term "public record" includes emails, databases, and other records electronically generated and/or stored.*
- *The term "public record" includes public agency records that are not maintained on the agency's premises.*

What are the general requirements of the Open Records Act?

Suitable facilities. Each public agency must make suitable facilities available for persons who wish to exercise the right to inspect nonexempt public records.

Time for inspection. Each public agency must permit inspection of nonexempt public records during the regular office hours of the agency. Agencies must, upon request, mail copies to a person whose residence or principal place of business is outside the county in which the records are located. The person must first precisely describe the public records, and the records must be readily available within the public agency. The agency may require advance payment of copying fees and the cost of mailing.

Official custodian. Each public agency must appoint an official custodian of the agency's records. The official custodian is the chief administrative officer or any other officer or employee of the agency who is responsible for the maintenance, care, and keeping of the agency's records, regardless of whether the records are in his actual personal custody and control.

Rules and regulations. Each public agency must adopt rules and regulations which conform to the Open Records Act. The rules and regulations must be

displayed by the agency in a prominent location which is accessible to the public. The rules and regulations must include:

- the principal office of the public agency and its regular office hours;
- the title and address of the official custodian of record;
- the fees charged for copies;
- the procedures to be followed in requesting public records.

The uniform rules and regulations drafted by the Finance and Administration Cabinet, which are found at 200 KAR 1:020, may be adapted for each agency's use. (See, Sample open records rules and regulations at page 22.)

Compiling information/creating documents/specially tailoring format. A public agency is not required to compile information or to create a document that does not already exist in response to an open records request. If a public agency is asked to produce a record in a format other than the format it already maintains the record in, or to tailor the format to meet a request, the agency may, but is not required to, provide the requested format. The agency may then recover staff costs as well as any actual costs it incurs.

- *A requester must be permitted to conduct on-site inspection of records if he or she expresses a desire to do so, even if the public agency prefers to honor his or her request by delivery of copies through the mail.*
- *Public agencies must permit on-site inspection during regular office hours and no other restriction on hours of access can be imposed.*
- *Public agencies may require a requester to conduct an on-site inspection, before receiving copies, if the requester resides or has his or her principal place of business in the county where the records are located and/or if he or she fails to precisely describe the records.*
- *The absence of the public agency's official records custodian does not extend the agency's response time; the agency should designate an acting custodian to insure a timely response.*
- *Masking exempt information contained in an otherwise nonexempt public record is not equivalent to records creation; the agency must discharge this statutory duty and bear associated costs.*
- *A request for information ("How much are the city's employees paid?") need not be honored; a request for existing public records containing the information sought ("Please produce copies of the city's payroll records.") must be honored unless the requested records are exempt.*

What is the procedure for inspecting a public record?

Request to inspect records. The request should be made to the official custodian of the public agency's records. The custodian may require that the request be in writing, signed by the requester, with his name printed legibly on

it, describing the records to be inspected. The request may be hand-delivered, mailed, or sent via facsimile to the agency.

Response to request. The public agency must respond to the request in writing and within three days, excluding Saturdays, Sundays, and legal holidays. If the request is denied, the response must include a statement of the specific exception which authorizes the agency to withhold the record, and a brief explanation of how the exception applies to the record withheld. The response must be issued by the official custodian or under his authority.

Application to wrong agency. If the public agency which receives the request does not have custody or control of the record requested, the agency must notify the requester and furnish the name and location of the official custodian of the appropriate agency's public records.

Record not available. If the record requested is in active use, in storage, or not otherwise available, the public agency must notify the requester in writing and indicate a place, time, and date for inspection not to exceed three days from receipt of the request. If the record cannot be produced within three days, the agency must notify the requester in writing and provide a detailed explanation of the cause for the delay. The agency must also state the earliest date on which the record will be available.

Overly burdensome request. The public agency may refuse to permit inspection, or mail copies, if the request places an unreasonable burden on the agency in producing records or if the custodian believes that repeated requests are intended to disrupt the agency's essential functions. Refusal for either of these reasons must be supported by clear and convincing evidence.

Copies of records. A requester has the right to obtain copies of all nonexempt public records upon payment of a reasonable fee, including postage where appropriate. The agency may require prepayment for copies of records. Nonexempt public records must be made available for copying in either standard electronic or standard paper format, depending on the requester's wishes, if the agency maintains the records in both formats. If the agency maintains the records in paper format only, it must make the records available in paper format. Agencies are not required to convert paper format records to electronic format.

The agency may prescribe a reasonable fee for making copies of nonexempt public records. The fee must not exceed the agency's actual costs of copying the record, including the cost of the medium on which it is copied and the cost of mechanically reproducing it, but not including staff costs. In general, ten cents per copy has been deemed a reasonable fee for records in paper format. The Open Records Act authorizes public agencies to impose a higher copying fee for requests made for a commercial purpose. "Commercial purpose" is defined as any use by which the user expects a profit but excludes newspaper or

periodical publications, radio or television broadcasts, or use by attorneys representing parties in litigation.

Online access. A public agency may provide online access to public records in electronic format. The agency may require that the requester enter into a contract, license, or other agreement with the agency, and may charge fees. The fees cannot exceed the cost of physical connection to the system and the reasonable cost of computer time access charges.

- *Public agencies may use a preprinted request form but cannot require use of the form or demand more information on the form than the statute allows (requester's name printed legibly, signature, description of records).*
- *Public agencies are not required to honor emailed open records request but should develop a standard response notifying the requester to submit his or her request by U.S. Mail, fax, or in person and immediately issue the standard response.*
- *A public agency's three day response time begins to run the day after the request is received.*
- *Denials based on an unreasonable burden to the agency or a belief that requests are intended to disrupt its essential functions must be supported by clear and convincing evidence; for example, the number of records requested, the estimated amount of time and expense to the agency to fulfill the request, the duplicative nature of the requests.*
- *An agency may impose copying fees greater than ten cents per page only if a specific statute authorizes the agency to do so or the agency can prove that its actual copying costs, not including staff costs, are greater than ten cents per page.*
- *No fee can be imposed for inspecting public records.*

What records are exempt from public inspection?

The Open Records Act permits a public agency to withhold certain records from a requester unless the requester obtains a court order directing their release. The exemptions are located at KRS 61.878(1) and include:

(a) records containing information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy;

(b) records confidentially disclosed to an agency and compiled and maintained for scientific research;

(c) records confidentially disclosed to an agency or required by the agency to be disclosed to it which are generally recognized as confidential or proprietary and which if disclosed would permit an unfair commercial advantage to

competitors, including records which are compiled and maintained in conjunction with an application for or the administration of a loan or grant; the application for or the administration of assessments, incentives, inducements, or tax credits; or the regulation of a commercial enterprise;

(d) records that relate to the prospective location of a business or industry which has not previously disclosed that it is interested in locating, relocating, or expanding in Kentucky;

(e) records developed by an agency in conjunction with the regulation or supervision of financial institutions which reveal the agency's internal examining or audit criteria;

(f) real estate appraisals, engineering or feasibility estimates, and evaluations made by or for a public agency, in the course of acquiring property, until all of the property has been acquired;

(g) test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the exam is given or if it is to be given again;

(h) records of law enforcement agencies or agencies involved in administrative adjudication if disclosure of the records would harm the agency by premature release (such records may be inspected after enforcement action is completed or a decision is made to take no action, unless they were compiled and maintained by a county or Commonwealth's attorney or unless another exception applies);

(i) and (j) preliminary documents including drafts, notes, correspondence with private individuals, recommendations, and memoranda in which opinions are expressed or policies formulated;

(k) and (l) public records that are prohibited from disclosure by state or federal law;

(m) records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act, as defined in the exemption, and limited to eight precisely described categories of records; and

(n) records having historic, literary, artistic, or commemorative value that are accepted by the archivist of a public university, museum, or government depository from a donor or depositor other than a public agency if nondisclosure is requested in writing by the donor or depositor.

- *The exemptions are "a shield and not a shackle" and an agency may elect to release records that are otherwise exempt except for records made confidential by federal or state law; an agency should also exercise caution before releasing records protected by the privacy exemption.*
- *A public agency employee is entitled to inspect any record that "relates" to him or her, even if the record is otherwise exempt, unless the requested record is part of an ongoing criminal or administrative investigation by the agency, the requested record is an examination, or the requested record is a record made confidential by federal or state law.*
- *Public agencies are encouraged to share otherwise exempt public records with other public agencies if the sharing of the records serves a "legitimate governmental need."*
- *A public agency cannot withhold a public record which contains both exempt and nonexempt information, but must mask the exempt portion of the record and release the nonexempt portion of the record.*
- *Although Commonwealth's and county attorneys' litigation records are permanently exempt from public inspection, Commonwealth's and county attorneys are not relieved of their duty to respond to an open records request for those records, and cannot deny access to other nonexempt records of their offices (for example, contracts, payroll records, time sheets, travel vouchers).*

What is the role of the Attorney General?

If a public agency denies a request for public records, the requester may file an appeal with the Attorney General for review of the agency's actions. The appeal consists of a letter describing the circumstances of the denial, a copy of the written request, and a copy of the agency's written denial, if the agency issued a denial. Unless the requester is an inmate confined in a jail or correctional facility, and he or she is aggrieved by a denial issued by the Corrections Cabinet, the requester may bypass the Attorney General's Office and file an appeal in circuit court.

The Attorney General may request additional documentation from the agency, and may also request a copy of the disputed records. The Attorney General will not, however, disclose the records.

The Attorney General will review the appeal and issue a decision stating whether the agency violated the Open Records Act. The burden of proof rests with the agency to sustain its action. On the day he issues his decision, the

Attorney General will mail a copy to the agency and a copy to the person who requested the disputed records. The decision will be issued in twenty days, excluding Saturdays, Sundays, and legal holidays. In unusual circumstances, this deadline may be extended an additional thirty days, excluding Saturdays, Sundays, and legal holidays.

Both the requester and the agency may appeal the Attorney General's decision to the circuit court of the county where the agency has its principal place of business or where the record is maintained. The Attorney General should be notified of any circuit court action, but should not be named as a party in the action.

If an appeal is not filed within thirty days, the Attorney General's decision has the force and effect of law, and can be enforced in circuit court. If the requester prevails against an agency in circuit court, he may be awarded costs, including reasonable attorney fees, if the court finds that the records were willfully withheld. The court may also award the requester up to $25 for each day that he was denied the right to inspect the records. The Open Records Act contains criminal penalties for public officials who willfully conceal or destroy records with the intent to violate the act. Officials who fail to produce records after entry of final judgment directing that records be produced may be found guilty of contempt.

- *The Attorney General will not consider an appeal that does not include a copy of the written request and the written denial, if the agency issued a denial.*
- *Upon receipt of an open records appeal, the Attorney General will issue notification of the appeal, and a copy of the appeal, to the public agency against which the appeal was filed, and the agency may respond in writing to the Attorney General; the agency must send a copy of its response to the individual who filed the appeal.*
- *Because the Open Records Act provides for judicial review of the issues raised in an appeal, the Attorney General will not reconsider an open records decision.*
- *The Attorney General will not consider an appeal if the requested documents are released to the requester after his or her appeal is filed but before an open records decision is rendered.*
- *The Attorney General will consider an appeal based on the allegation that the public agency "subverted the intent of the Act short of denial of inspection;" this includes appeals based on the imposition of excessive copying fees.*
- *Since 1992, open records decisions have been designated ORDs rather than OAGs because they are legally binding on the parties if not appealed.*
- *The designation "Not to be Published" that appears in ORDs issued from 1992 to 1999 does not mean that the ORD cannot be cited as*

precedent or made public; such ORDs carry the same weight as ORDs designated "To be Published."

- *Because the public agency has the burden of proof to support its actions, the courts have directed that the agency "provide particular and detailed information in response to a request for documents," and not just a "brief explanation;" the agency should also take the opportunity to try to meet its burden of proof in preparing its supplemental response to the notification of appeal.*
- *The Attorney General's role in open records appeals is to issue a decision stating whether the public agency violated the Open Records Act; the Attorney General cannot enforce his decision by imposing penalties.*
- *A public agency that is dissatisfied with an ORD must appeal the decision within thirty days; if the public agency fails to appeal the decision, the decision has the force and effect of law, the agency is legally bound by the decision, and the circuit court must enforce it.*

The Open Meetings Act

In 1974, the General Assembly enacted the Open Meetings Act, KRS 61.800 to KRS 61.850, which establishes a right of access to public meetings. The General Assembly recognized that the formation of public policy is public business and should not be conducted in secret. The Act requires that all meetings of a quorum of the members of a public agency where public business is discussed or action is taken must be public meetings. Public meetings must be open to the public at all times unless the subject of the meeting falls within one or more of the thirteen exceptions found in the statute. Members of the public may attend any public meeting and cannot be required to identify themselves in order to attend.

What is a public meeting?

The Open Meetings Act applies to all meetings held by state and local government agencies. The agencies covered by the act include:

- state and local government boards, commissions, and authorities;
- state and local legislative boards, commissions, and committees;
- county and city governing bodies, councils, school district boards, special district boards, and municipal corporations;
- state and local government agencies, including policy making boards of educational institutions, that are created by state or local statute or other legislative act;
- bodies created by state or local statute or legislative act in the legislative or executive branch of government;
- an entity where the majority of its governing body is appointed by a public agency;
- agencies, including committees, advisory committees, and ad hoc committees, which are established, created, and controlled by a public agency; and
- interagency bodies of two or more public agencies.

Subject to thirteen exceptions, all gatherings of a quorum of the members of a public agency at which public business is discussed or action is taken are public meetings and must be open to the public, regardless of where they are held, and whether they are regular or special or informational or casual gatherings held in anticipation of a regular or special meeting. An agency's meetings may be conducted by videoteleconference, which is defined as a meeting occurring in two or more locations where individuals can see and hear each other by means of video and audio equipment, subject to specific legal requirements.

- *The courts have stated that the Open Meetings Act must be "interpreted most favorably to the public" since "failure to comply with the strict letter of the law in conducting meetings violates the public good."*
- *The Open Meetings Act applies to meetings of a quorum of the members of a public agency at which public business is discussed* ***or*** *action is taken; a discussion of public business by a quorum of the agency's members triggers the requirements of the Act even if no action is taken.*
- *The definition of "public agency" under the Open Meetings Act is narrower than the definition of "public agency" under the Open Records Act and does not include "state and local government officers" and bodies which receive "at least 25% of their funds from state or local authority funds;" this means, for example, that the mayor of a city is a public agency for open records purposes but not for open meetings purposes.*
- *A committee of a public agency, even if its function is purely advisory, is a public agency for open meetings purposes and a quorum of its members is calculated on the basis of the committee's membership and not the membership of the public agency that created it (the city commission, consisting of five members, creates a budget committee, consisting of three members – a quorum of the commission exists if three members are present and a quorum of the committee exists if two members are present); the committee must comply with all requirements of the Act.*
- *A work session and a retreat are public meetings under the Open Meetings Act, but a quorum of the members of a public agency may attend a conference sponsored by another entity without triggering the requirements of the Act as long as the members do not discuss the public business of the agency they serve while at the conference.*
- *"Public business" is not defined by statute but has been defined by the courts as "the discussion of the various alternatives to a given issue about which the [agency] has the option to take action."*
- *A quorum of the members of a public agency can attend a social gathering, sporting event, church service, etc. without triggering the requirements of the Open Meetings Act but cannot discuss the public business of the agency they serve while at these gatherings.*
- *Public agencies cannot conduct their meetings by telephone; an absent member may listen to the meeting by speakerphone but cannot be counted toward the quorum and cannot vote or otherwise participate.*

What are the general requirements of the Open Meetings Act?

Time and place of meetings. All meetings must be held at specified times and places which are convenient to the public. Public agencies should provide for a schedule of regular meetings by ordinance, order, resolution, bylaws, or by other means. This schedule of regular meetings must be made available to the public.

Minutes of meetings. Public agencies must keep minutes of action taken at every meeting which set forth an accurate record of votes and actions taken.

These minutes must be open for inspection by the public no later than the conclusion of the agency's next public meeting.

Public attendance at meetings. To the extent possible, meeting room conditions should allow for effective public observation of the meetings. No person attending the meeting can be required to identify himself in order to attend a meeting. The agency cannot place conditions on attendance of the public at a meeting other than the conditions required to maintain order. Since the General Assembly has not established procedural rules for the conduct of meetings and citizen participation, each agency must adopt its own rules of procedure, but those rules cannot conflict with the Open Meetings Act.

News media coverage. Public agencies must permit news media coverage, including recording and broadcasting.

Requirements for holding special meetings. All meetings which are not regular scheduled meetings are special meetings, and are subject to the following requirements:

Who may call a special meeting. The presiding officer or a majority of the members of the public agency may call a special meeting.

Notice requirements and content. The public agency must provide written notice of the special meeting consisting of the date, time, and place of the special meeting and the agenda. Discussion and actions at the meeting must be limited to the items on the agenda.

As soon as possible, written notice must be personally delivered, transmitted by facsimile, or mailed to every member of the agency and each media organization which files a written request to receive notice of special meetings. Notice should be received at least twenty-four hours before the special meeting.

Written notice of special meetings may be transmitted by electronic mail to public agency members and media organizations that have filed a written request with the public agency indicating a preference to receive email notification. The written request must include the electronic mail address of the agency member or media organization.

As soon as possible, written notice must also be posted in a conspicuous place in the building where the special meeting will take place and in a conspicuous place in the building where the agency has its headquarters. Notice should be posted at least twenty-four hours before the special meeting.

In the case of an emergency which prevents the public agency from complying with these requirements, the agency must make a reasonable effort to notify the members of the agency, media organizations which have filed a

written request to be notified, and the public, of the emergency meeting. At the beginning of the emergency meeting, the person chairing the meeting must describe for the record the emergency which prevented compliance with the notice provisions, and these comments should appear in the minutes. Discussions and actions at the emergency meeting must be limited to the emergency for which the meeting was called.

- *The courts have stated that the Open Meetings Act does not require agencies to conduct business "only in the most convenient locations at the most convenient times"; the Act is "designed to prevent governmental bodies from conducting [their] business at such inconvenient times or locations as to effectively render public knowledge or participation impossible, not to require agencies to seek out the most convenient time or location."*
- *Agencies are not required to take minutes in closed sessions.*
- *If the public agency directs that a tape recording of its meeting be made, and the tape is created with agency equipment at agency expense, the tape of the meeting is a public record upon creation and must be made available for inspection within three business days of an open records request.*
- *The right of the public to attend a public meeting under the Open Meetings Act does not include the right to participate in the meeting and address the members of the agency; it is a statutory right "to observe with their eyes and ears what transpires at those meetings."*
- *A member of the public, as well as the media, must be permitted to record a meeting.*
- *The notice of a special meeting must include the agenda, containing specific agenda topics ("new business," "old business," "open to floor," etc. are not acceptable), in addition to the date, time, and place of the meeting. Because an agenda is not statutorily required for* ***regular*** *meetings, discussions at a regular meeting are not restricted to agenda topics if an agenda is prepared.*
- *Although the public agency can post notice of the special meeting on the agency website, web notice of the meeting does not satisfy the statutory requirement and must be in addition to, rather than in lieu of, delivery of the notice by U.S. Mail, facsimile, in person, or by email, where requested, and physical posting of the notice in a conspicuous place.*
- *The public agency is not obligated to provide notice to "interested" individuals who have requested notice of special meetings, only to the parties identified in the statute.*
- *The Attorney General has rarely found that conditions were sufficiently grave to justify a public agency's decision to call an emergency meeting.*

What subjects may be discussed in a closed session?

The Open Meetings Act permits a public agency to discuss certain subjects in a closed or executive meeting if notice is given in the regular meeting of the general nature of the business to be discussed, the reason for the closed session,

and the specific exception authorizing the closed session. A closed session may be held only after a motion is made and carried in open session, and no final action may be taken in closed session. The exceptions to the Open Meetings Act are found at KRS 61.810(1) and include:

(a) deliberations of the Kentucky Parole Board;
(b) deliberations on the future acquisition or sale of real property by a public agency when publicity would be likely to affect the value of the property;
(c) discussions of proposed or pending litigation involving a public agency;
(d) grand or petit jury sessions;
(e) collective bargaining negotiations between public employers and their employees;
(f) discussions or hearings that might lead to the appointment, dismissal, or discipline of an individual employee, member, or student. However, general personnel matters may not be discussed in private;
(g) discussions between a public agency and a representative of a business entity and discussions concerning a specific proposal, if open discussions would jeopardize the siting, retention, expansion, or upgrading of the business;
(h) state and local cabinet meetings and executive cabinet meetings;
(i) committees of the General Assembly other than standing committees;
(j) deliberations of judicial or quasi-judicial bodies involving individual adjudications or appointments. This does not include meetings of planning commissions, zoning commissions, or boards of adjustment; and
(k) and (l) meetings which federal or state law or the Constitution require to be conducted privately; and
(m) portions of meetings devoted to a discussion of a specific public record exempted from disclosure under KRS 61.878(1)(m).

The Open Meetings Act prohibits any series of less than quorum meetings, where the members attending one or more of the meetings collectively constitute at least a quorum of the members of the agency, if the meetings are held to avoid the requirements of the Act. This prohibition does not restrict discussions between individual members if the purpose of the discussion is to educate the members on specific issues.

- *The courts have stated that public agencies must give "specific and complete notification in the open meeting of any and all topics which are to be discussed during the closed meeting;" the Attorney General has stated that "notification must include both a statement of the exception*

authorizing the closed session and a description of the business to be discussed couched in sufficiently specific terms to enable the public to assess the propriety of the agency's actions."

- *The courts have stated that the exception for proposed or pending litigation applies to "matters inherent to litigation, such as preparation, strategy, or tactics, but not just when an attorney is present."*
- *Before going into closed session to discuss a personnel issue under KRS 61.810(1)(f), an agency must state whether the discussion will relate to either the appointment of, the dismissal of, or the discipline of an individual employee, member, or student, but the agency is not required to identify the individual by name.*
- *The prohibition on a series of less than quorum meetings conducted for the purpose of avoiding the requirements of the Open Meetings Act was added in 1992, prompting the courts to declare that the Act "prohibits a quorum from discussing public business in private or meeting in numbers less than a quorum for the express purpose of avoiding the open meetings requirement of the Act."*
- *The Act does not prohibit all discussions between public officials outside of a public meeting (for example, at a social event, at church, or during a casual encounter), but does prohibit a quorum of the members of the agency from privately discussing the agency's business or privately meeting in groups consisting of less than a quorum to discuss the agency's business in order to defeat the requirements of the Act. This includes telephone discussions.*

What is the role of the Attorney General?

If a person believes that a public agency has violated the Open Meetings Act, he may file a written complaint with the presiding officer of the agency. The complaint must state the circumstances of the violation and what the agency should do to correct it.

Within three business days of receipt of the complaint, the public agency must decide whether to correct the violation and notify the complaining party of its decision in writing. If the agency believes that no violation has occurred and rejects the proposed remedy, it must issue a written response which cites the statute authorizing its actions and briefly explain how the statute applies.

The complaining party may appeal to the Attorney General for review of the agency's action within sixty days of receipt of the agency's response. The appeal must include a copy of the written complaint and a copy of the agency's response, if the agency issued a denial. The Attorney General will review the appeal and issue a decision stating whether the agency violated the Open Meetings Act within ten business days. Both the complaining party and the agency will receive a copy of the decision. Both may appeal the Attorney General's decision to the circuit court of the county where the public agency has its principal place of business or where the violation occurred. If an appeal is not

filed within thirty days, the Attorney General's decision has the force and effect of law and can be enforced in circuit court.

If the complaining party prevails against an agency in circuit court, he may be awarded costs, including attorney fees, if the court finds that the violation was willful. The court may also award the complaining party up to $100 for each violation.

- *A complainant must appeal a public agency's denial of, or failure to respond to, his or her open meetings complaint within sixty days, and if he or she does not do so the appeal is time-barred; there is no similar statutory limitation on bringing an open records appeal.*
- *Upon receipt of an open meetings appeal, the Attorney General will issue notification of the appeal, and a copy of the appeal, to the public agency against which the appeal was filed, and the agency may respond in writing to the Attorney General; the agency must send a copy of its response to the individual who filed the appeal.*
- *The Attorney General will not consider an appeal that does not include a copy of the written complaint and a copy of the written denial, if the agency issued a denial.*
- *Because the Open Meetings Act provides for judicial review of the issues raised in an appeal, the Attorney General will not reconsider an open meetings decision.*
- *Since 1992, open meetings decisions have been designated OMDs rather than OAGs because they are legally binding on the parties if not appealed.*
- *The designation "Not to be Published" that appears in OMDs issued from 1992 to 1999 does not mean that the OMD cannot be cited as precedent or made public; such OMDs carry the same weight as OMDs designated "To be Published."*
- *The Attorney General's role in an open meetings appeal is to issue a decision stating whether the public agency violated the Open Meetings Act; the Attorney General cannot comment on, or direct the implementation of, proposed remedial measures. Nor can he enforce his decision by imposing penalties.*
- *A public agency that is dissatisfied with an OMD must appeal the decision within thirty days; if the agency fails to appeal the decision, the decision has the force and effect of law, the agency is legally bound by it, and the circuit court must enforce it.*

Sample Forms

Sample open records response

Jane Q. Citizen
100 Maple Avenue
Anytown, Kentucky

Dear Ms. Citizen:

This will acknowledge receipt of your request for public records. You requested access to and copies of:

1. All contracts that the city has with Home Wrecker Service;

2. All invoices that the city has received from Home Wrecker Service;

3. All complaints received by the city that relate to Home Wrecker Service's performance of duties under its contract with the city.

Contracts and invoices are available for inspection in my office Monday through Friday from 8:00 a.m. to 4:30 p.m. You may wish to contact me in advance to schedule an appointment and facilitate prompt access to these records.

Alternatively, we will send you copies of these records by mail at a cost of 10¢ per page. The cost to you, including postage, which is payable in advance, will be $2.46 (15 pp. at 10¢ per page, plus 96¢ postage). Please contact me if you would prefer to receive copies by mail.

One complaint has been filed against Home Wrecker Service. The city is currently investigating that complaint and considering an enforcement action. Release of the complaint at this time might harm the city by revealing the identity of the complainant, who has requested anonymity. Therefore, pursuant to KRS 61.878(1)(h), we must deny that portion of your request.

Sincerely,

John Q. Public
City Clerk

Sample open meetings response

John Q. Citizen
Commonwealth Avenue
Anytown, Kentucky

Dear Mr. Citizen:

In your recent letter to the city you stated that the city council, at its meeting held on September 6, 2005, went into an executive or closed session to discuss general personnel matters.

While the city recognizes that it cannot discuss general personnel matters in a closed or executive session, the city is permitted, pursuant to KRS 61.810(1)(f), to go into a closed session to discuss matters that might lead to the appointment of an individual employee.

The office of director of the streets and parks department is currently vacant and two persons have applied for the position. The matters discussed by the council during the closed session on June 30, 1994, involved the council's evaluations of the two applicants for that office and such matters may be discussed at a closed session.

Sincerely,

Jane Q. Public
Mayor

Sample open records rules and regulations

NOTICE

ADMINISTRATIVE REGULATIONS GOVERNING

INSPECTION OF THE PUBLIC RECORDS OF THE

_____

(Name of State Administrative Agency)

_____

(Office, Bureau, Division, etc.)

Pursuant to KRS 61.870 to 61.884, the public is notified that, as provided herein, the public records of the above named Agency of the Commonwealth of Kentucky are open for inspection by any person on written application to _____ (name), _____ (title), official custodian of the public records of the _____ (state administrative agency) whose address is _____ or to _____ (name), _____ (title), official custodian of the public records of the _____, (office, bureau, division, etc.) whose address is _____, from ____ a.m. to ____ p.m., Monday through Friday, each week, except holidays. Application forms for the inspection of the public records of this agency will be furnished on request to any person by an employee in this office. Assistance in completing the application form will be provided by an employee on request.

Applicants for the inspection of public records shall be advised of the availability of the records requested for inspection, and shall be notified in writing not later than three (3) working days after receipt of an application for inspection of any reason the records requested are not available for public inspection.

Copies of written material in the public records of this agency shall be furnished to any person requesting them on payment of a fee of ten (10) cents a page; copies of nonwritten records (photographs, maps, material stored in computer files or libraries, etc.) shall be furnished on request, on payment of a charge equal to the actual cost of producing copies of such records by the most economic process not likely to damage or alter the record.

This the _____ day of _____, 19___.

_____

(Agency Head or Designated Representative)

Open meetings and open records publications and decisions on-line and related publications:

An annotated *Open Records and Open Meetings Outline*, containing a summary of the Open Records and Open Meetings Acts and how the Acts have been interpreted by the courts and the Attorney General, may be accessed on our website at http://ag.ky.gov/civil/orom/ and is also available upon request. This outline provides information regarding the application of the Acts to particular situations.

Open Meetings Decisions and Open Records Decisions (OMDs and ORDs) issued by the Attorney General from 1993 to the present may also be accessed on our website at http://ag.ky.gov/civil/orom/. If you know the OMD or ORD number you wish to review, you may "Find all decisions for a particular year" (for example, 04-ORD-216 may be accessed by selecting the year 2004 and scrolling through the decisions for that year until 04-ORD-216 is located). If you wish to review OMDs or ORDs relating to a specific subject, you may "Search for an ORD or OMD" by word search or query (for example, "work sessions," "accident reports," "timely access," or "adequate notice"). You may also access a particular ORD or OMD by typing the ORD or OMD citation in the search query box.

These additional resources will further enhance the public official's understanding of his or her duties under the Open Meetings and Open Records Acts as well as related records management duties:

1. "Kentucky Open Meetings Open Records Laws: Statutes and Q&A"
   http://www.lrc.ky.gov/Lrcpubs/OpenMtgsRecords.pdf

2. Local Records Retention Schedules
   http://www.kdla.ky.gov/recmanagement/localschedule.htm

3. State Records Retention Schedules
   http://www.kdla.ky.gov/recmanagement/stateschedule.htm

4. "Managing Government Records: An Introduction to Kentucky's Public Records Management Law"
   http://www.kdla.ky.gov/resources/managinggovrecords.htm

5. Full text of the Open Meetings and Records Acts
   http://www.lrc.ky.gov/KRS/061-00/CHAPTER.HTM

APPENDIX 6

13B.005 Short title for KRS 13B.005 to 13B.170.

KRS 13B.005 to 13B.170 shall be named the Albert Jones Act of 1994.

Effective: July 15, 1994

History: Created 1994 Ky. Acts ch. 382, sec. 21, effective July 15, 1994.

13B.010 Definitions for chapter.

As used in this chapter, unless the context requires otherwise:

(1) "Administrative agency" or "agency" means each state board, bureau, cabinet, commission, department, authority, officer, or other entity in the executive branch of state government authorized by law to conduct administrative hearings.

(2) "Administrative hearing" or "hearing" means any type of formal adjudicatory proceeding conducted by an agency as required or permitted by statute or regulation to adjudicate the legal rights, duties, privileges, or immunities of a named person.

(3) "Party" means:

(a) The named person whose legal rights, duties, privileges, or immunities are being adjudicated in the administrative hearing;

(b) Any other person who is duly granted intervention in an administrative hearing; and

(c) Any agency named as a party to the adjudicatory proceeding or entitled or permitted by the law being enforced to participate fully in the administrative hearing.

(4) "Agency head" means the individual or collegial body in an agency that is responsible for entry of a final order.

(5) "Recommended order" means the whole or part of a preliminary hearing report to an agency head for the disposition of an administrative hearing.

(6) "Final order" means the whole or part of the final disposition of an administrative hearing, whenever made effective by an agency head, whether affirmative, negative, injunctive, declaratory, agreed, or imperative in form.

(7) "Hearing officer" means the individual, duly qualified and employed pursuant to this chapter, assigned by an agency head as presiding officer for an administrative hearing or the presiding member of the agency head.

(8) "Division" means the Division of Administrative Hearings in the Office of the Attorney General created pursuant to KRS 15.111.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 318, sec. 1, effective July 15, 1996. -- Created 1994 Ky. Acts ch. 382, sec. 1, effective July 15, 1996.

13B.020 Application of chapter -- Exemptions.

(1) The provisions of this chapter shall apply to all administrative hearings conducted by an agency, with the exception of those specifically exempted under this section. The provisions of this chapter shall supersede any other provisions of the Kentucky Revised Statutes and administrative regulations, unless exempted under this section, to the extent these other provisions are duplicative or in conflict. This chapter creates only procedural rights and shall not be construed to confer upon any person a right to hearing not expressly provided by law.

(2) The provisions of this chapter shall not apply to:

(a) Investigations, hearings to determine probable cause, or any other type of information gathering or fact finding activities;

(b) Public hearings required in KRS Chapter 13A for the promulgation of administrative regulations;

(c) Any other public hearing conducted by an administrative agency which is nonadjudicatory in nature and the primary purpose of which is to seek public input on public policy making;

(d) Military adjudicatory proceedings conducted in accordance with KRS Chapter 35;

(e) Administrative hearings conducted by the legislative and judicial branches of state government;

(f) Administrative hearings conducted by any city, county, urban-county, charter county, or special district contained in KRS Chapters 65 to 109, or any other unit of local government operating strictly in a local jurisdictional capacity;

(g) Informal hearings which are part of a multilevel hearing process that affords an administrative hearing at some point in the hearing process if the procedures for informal hearings are approved and promulgated in accordance with subsections (4) and (5) of this section;

(h) Limited exemptions granted for specific hearing provisions and denoted by reference in the text of the applicable statutes or administrative regulations;

(i) Administrative hearings exempted pursuant to subsection (3) of this section;

(j) Administrative hearings exempted, in whole or in part, pursuant to subsections (4) and (5) of this section; and

(k) Any administrative hearing which was commenced but not completed prior to July 15, 1996.

(3) The following administrative hearings are exempt from application of this chapter in compliance with 1994 Ky. Acts ch. 382, sec. 19:

(a) Finance and Administration Cabinet

1. Higher Education Assistance Authority

a. Wage garnishment hearings conducted under authority of 20 U.S.C. sec. 1095a and 34 C.F.R. sec. 682.410

b. Offset hearings conducted under authority of 31 U.S.C. sec. 3720A

and sec. 3716, and 34 C.F.R. sec. 30.33

2. Department of Revenue

a. Any licensing and bond revocation hearings conducted under the authority of KRS 138.210 to 138.448 and 234.310 to 234.440

b. Any license revocation hearings under KRS 131.630 and 138.130 to 138.205

(b) Cabinet for Health and Family Services

1. Office of Health Policy

a. Certificate-of-need hearings and licensure conducted under authority of KRS Chapter 216B

b. Licensure revocation hearings conducted under authority of KRS Chapter 216B

2. Department for Community Based Services

a. Supervised placement revocation hearings conducted under authority of KRS Chapter 630

3. Department for Income Support

a. Disability determination hearings conducted under authority of 20 C.F.R. sec. 404

(c) Justice and Public Safety Cabinet

1. Department of Kentucky State Police

a. Kentucky State Police Trial Board disciplinary hearings conducted under authority of KRS Chapter 16

2. Department of Corrections

a. Parole Board hearings conducted under authority of KRS Chapter 439

b. Prison adjustment committee hearings conducted under authority of KRS Chapter 197

c. Prison grievance committee hearings conducted under authority of KRS Chapters 196 and 197

3. Department of Juvenile Justice

a. Supervised placement revocation hearings conducted under KRS Chapter 635

(d) Energy and Environment Cabinet

1. Department for Natural Resources

a. Surface mining hearings conducted under authority of KRS Chapter 350

2. Department for Environmental Protection

a. Wild River hearings conducted under authority of KRS Chapter 146

b. Water resources hearings conducted under authority of KRS

Chapter 151

c. Water plant operator and water well driller hearings conducted under authority of KRS Chapter 223

d. Environmental protection hearings conducted under authority of KRS Chapter 224

e. Petroleum Storage Tank Environmental Assurance Fund hearings under authority of KRS Chapter 224

3. Public Service Commission

a. Utility hearings conducted under authority of KRS Chapters 74, 278, and 279

(e) Labor Cabinet

1. Department of Workers' Claims

a. Workers' compensation hearings conducted under authority of KRS Chapter 342

2. Kentucky Occupational Safety and Health Review Commission

a. Occupational safety and health hearings conducted under authority of KRS Chapter 338

(f) Public Protection Cabinet

1. Board of Claims

a. Liability hearings conducted under authority of KRS Chapter 44

(g) Education and Workforce Development Cabinet

1. Unemployment Insurance hearings conducted under authority of KRS Chapter 341

(h) Secretary of State

1. Registry of Election Finance

a. Campaign finance hearings conducted under authority of KRS Chapter 121

(i) State universities and colleges

1. Student suspension and expulsion hearings conducted under authority of KRS Chapter 164

2. University presidents and faculty removal hearings conducted under authority of KRS Chapter 164

3. Campus residency hearings conducted under authority of KRS Chapter 164

4. Family Education Rights to Privacy Act hearings conducted under authority of 20 U.S.C. sec. 1232 and 34 C.F.R. sec. 99

5. Federal Health Care Quality Improvement Act of 1986 hearings conducted under authority of 42 U.S.C. sec. 11101 to 11115 and KRS Chapter 311.

(4) Any administrative hearing, or portion thereof, may be certified as exempt by the

Attorney General based on the following criteria:

(a) The provisions of this chapter conflict with any provision of federal law or regulation with which the agency must comply, or with any federal law or regulation with which the agency must comply to permit the agency or persons within the Commonwealth to receive federal tax benefits or federal funds or other benefits;

(b) Conformity with the requirement of this chapter from which exemption is sought would be so unreasonable or so impractical as to deny due process because of undue delay in the conduct of administrative hearings; or

(c) The hearing procedures represent informal proceedings which are the preliminary stages or the review stages of a multilevel hearing process, if the provisions of this chapter or the provisions of a substantially equivalent hearing procedure exempted under subsection (3) of this section are applied at some level within the multilevel process.

(5) The Attorney General shall not exempt an agency from any requirement of this chapter until the agency establishes alternative procedures by administrative regulation which, insofar as practical, shall be consistent with the intent and purpose of this chapter. When regulations for alternative procedures are submitted to the Administrative Regulation Review Subcommittee, they shall be accompanied by the request for exemption and the approval of exemption from the Attorney General. The decision of the Attorney General, whether affirmative or negative, shall be subject to judicial review in the Franklin Circuit Court within thirty (30) days of the date of issuance. The court shall not overturn a decision of the Attorney General unless the decision was arbitrary or capricious or contrary to law.

(6) Except to the extent precluded by another provision of law, a person may waive any procedural right conferred upon that person by this chapter.

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 158, sec. 3, effective July 12, 2012. -- Amended 2010 Ky. Acts ch. 24, sec. 12, effective July 15, 2010. -- Amended 2009 Ky. Acts ch. 11, sec. 6, effective June 25, 2009. -- Amended 2007 Ky. Acts ch. 85, sec. 13, effective June 26, 2007. -- Amended 2006 Ky. Acts ch. 181, sec. 2, effective July 12, 2006; ch. 211, sec. 8, effective July 12, 2006; and ch. 251, sec. 1, effective July 12, 2006. -- Amended 2005 Ky. Acts ch. 99, sec. 13, effective June 20, 2005; and ch. 123, sec. 8, effective June 20, 2005. -- Amended 2000 Ky. Acts ch. 14, sec. 2, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 426, sec. 63, effective July 15, 1998; and ch. 538, sec. 12, effective April 13, 1998. -- Amended 1996 Ky. Acts ch. 318, sec. 2, effective July 15, 1996. -- Created 1994 Ky. Acts ch. 382, sec. 2, effective July 15, 1996.

Legislative Research Commission Note (7/15/98). This section was amended by 1998 Ky. Acts chs. 426 and 538. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 538, which was a nonrevisory Act, prevails under KRS 7.136(3).

13B.030 Powers of agency head -- Hearing officers.

(1) An agency head may exercise all powers conferred on an agency relating to the conduct of administrative hearings, and he may delegate conferred powers to a hearing officer or a member of a collegial body that serves as an agency head, or he may delegate conferred powers to a hearing officer to conduct an administrative hearing before a hearing panel, reserving the authority to render a recommended order to that panel. An agency head may not, however, delegate the power to issue a final order unless specifically authorized by statute, or unless disqualified in accordance with KRS 13B.040(2).

(2) (a) In securing hearing officers as necessary to conduct administrative hearings under the jurisdiction of the agency, an agency may:

1. Employ hearing officers;
2. Contract with another agency for hearing officers; or
3. Contract with private attorneys through personal service contract.

(b) An agency may secure hearing officers pursuant to subsection (2)(a)3. of this section only if the Attorney General has first determined that the Attorney General's Office cannot provide the needed hearing officers to the agency. If the Attorney General determines that the Attorney General's Office can provide the needed hearing officers to the agency, the agency shall use the hearing officers provided by the Attorney General's Office. The expenses incurred by the Attorney General's Office in providing the hearing officers to the agency shall be paid to the Attorney General's Office by the agency in the following manner:

1. The amount to be paid by the agency to the Attorney General's Office shall be established by vouchers submitted by the Attorney General's Office to the agency which shall be promptly paid by the agency, at the beginning of, at the end of, or at any time during the provision of the hearing officers by the Attorney General's Office.
2. The expenses to be paid to the Attorney General's Office shall be calculated according to the amount of time spent by the salaried hearing officers of the Attorney General's Office in providing the services. The charge for time spent shall not exceed twenty-five percent (25%) more than the amount allowed for a sole practitioner under personal service contract. The Attorney General may require payment in advance of the provision of the requested services based on his calculation of the amount of time that will be spent by the salaried hearing officers of the Attorney General's Office in providing the services. The agency shall be reimbursed for any overpayment at the conclusion of the provision of services by the Attorney General's Office.

(3) A hearing officer shall possess and meet qualifications as the Personnel Cabinet and the employing agency, with the advice of the division, may find necessary to assure competency in the conduct of an administrative hearing. The qualifications in this subsection shall not, however, apply to a member of a board, commission, or other

collegial body who may serve as a hearing officer in his capacity as a member of the collegial body.

(4) All hearing officers, including members of collegial bodies who serve as hearing officers, shall receive training necessary to prepare them to conduct a competent administrative hearing. The training shall pertain to the conduct of administrative hearings generally and to the applications of the provisions of this chapter, specifically. The division shall establish by administrative regulation minimum standards concerning the length of training, course content, and instructor qualifications. Required training shall not exceed eighteen (18) classroom hours for initial training and six (6) classroom hours per year for continuing training. Actual training may be conducted by an agency or any other organization, if the training program offered has been approved by the division as meeting minimum standards.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 154, sec. 4, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 318, sec. 3, effective July 15, 1996. -- Created 1994 Ky. Acts ch. 382, sec. 3, effective July 15, 1996.

13B.040 Qualifications of hearing officer.

(1) A person who has served as an investigator or prosecutor in an administrative hearing or in its preadjudicative stage shall not serve as hearing officer or assist or advise a hearing officer in the same proceeding. This shall not be construed as preventing a person who has participated as a hearing officer in a determination of probable cause or other equivalent preliminary determination from serving as a hearing officer in the same proceeding.

(2) (a) A hearing officer, agency head, or member of an agency head who is serving as a hearing officer shall voluntarily disqualify himself and withdraw from any case in which he cannot afford a fair and impartial hearing or consideration. Any party may request the disqualification of a hearing officer, agency head, or member of the agency head by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded. A request for the disqualification of a hearing officer shall be answered by the agency head within sixty (60) days of its filing. The request for disqualification and the disposition of the request shall be a part of the official record of the proceeding. Requests for disqualification of a hearing officer shall be determined by the agency head. Requests for disqualification of a hearing officer who is a member of the agency head shall be determined by the majority of the remaining members of the agency head.

(b) Grounds for disqualification of a hearing officer shall include, but shall not be limited to, the following:

1. Serving as an investigator or prosecutor in the proceeding or the preadjudicative stages of the proceeding;
2. Participating in an ex parte communication which would prejudice the proceedings;
3. Having a pecuniary interest in the outcome of the proceeding; or
4. Having a personal bias toward any party to a proceeding which would cause a prejudgment on the outcome of the proceeding.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 279, sec. 1, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 318, sec. 4, effective July 15, 1996. -- Created 1994 Ky. Acts ch. 382, sec. 4, effective July 15, 1996.

13B.050 Notice of administrative hearing.

(1) In any administrative hearing, the agency shall conduct the hearing as soon as practicable and shall give notice of the hearing to the parties not less than twenty (20) days in advance of the date set for the hearing, unless otherwise required by federal law. An agency shall make reasonable effort to schedule a hearing on a date that is convenient to the parties involved.

(2) The notice required by subsection (1) of this section shall be served on the parties by certified mail, return receipt requested, sent to the last known address of the parties, or by personal service, with the exception of notices of Personnel Board hearings and all board orders which may be served by first-class mail. Service by certified mail shall be complete upon the date on which the agency receives the return receipt or the returned notice.

(3) The notice required by this section shall be in plain language and shall include:

(a) A statement of the date, time, place, and nature of the hearing;

(b) The name, official title, and mailing address of the hearing officer;

(c) The names, official titles, mailing addresses, and, if available, telephone numbers of all parties to the hearing, including the counsel or representative of the agency;

(d) A statement of the factual basis for the agency action along with a statement of issues involved, in sufficient detail to give the parties reasonable opportunity to prepare evidence and argument;

(e) A reference to the specific statutes and administrative regulations which relate to the issues involved and the procedure to be followed in the hearing;

(f) A statement advising the person of his right to legal counsel;

(g) A statement of the parties' right to examine, at least five (5) days prior to the hearing, a list of witnesses the parties expect to call at the hearing, any evidence to be used at the hearing and any exculpatory information in the agency's possession; and

(h) A statement advising that any party who fails to attend or participate as required at any stage of the administrative hearing process may be held in default under this chapter.

(4) If an agency decides not to conduct an administrative hearing in response to a petition, the agency shall notify the petitioner of its decision in writing, with a brief statement of the agency's reasons and any administrative review available to the petitioner.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 425, sec. 1, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 318, sec. 5, effective July 15, 1996. -- Created 1994 Ky. Acts ch. 382, sec. 5, effective July 15, 1996.

13B.060 Petition for intervention.

(1) The hearing officer shall grant a petition for intervention if:

(a) The petitioner has a statutory right to initiate the proceeding in which he wishes to intervene; or

(b) The petitioner has an interest which is or may be adversely affected by the outcome of the proceeding.

(2) The hearing officer may grant intervention after consideration of the following factors and a determination that intervention is in the interests of justice:

(a) The nature of the issues;

(b) The adequacy of representation of the petitioner's interest which is provided by the existing parties to the proceeding;

(c) The ability of the petitioner to present relevant evidence and argument; and

(d) The effect of intervention on the agency's ability to implement its statutory mandate.

(3) Unless otherwise required by federal law, a petition for intervention shall be filed and copies mailed to all parties named in the notice of the hearing, at least fourteen (14) days before the hearing. The parties to the hearing shall have seven (7) days within which to file any response they may have to the petition to intervene. If a petitioner qualifies for intervention under subsection (2) of this section, the hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(4) The hearing officer, at least three (3) days before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The hearing officer shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 318, sec. 6, effective July 15, 1996. -- Created 1994 Ky. Acts ch. 382, sec. 6, effective July 15, 1996.

13B.070 Prehearing conference -- Mediation and informal settlement procedures.

(1) A hearing officer may convene and conduct a prehearing conference upon reasonable notice to all parties to explore jurisdictional matters, mediation and settlement possibilities, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas and orders, and other matters that will promote the orderly and prompt conduct of the hearing.

(2) Upon conclusion of a prehearing conference, the hearing officer shall issue a prehearing order incorporating all matters determined at the prehearing conference. If a prehearing conference is not held, the hearing officer may issue a prehearing order, based on the pleadings, to regulate the conduct of the hearing.

(3) Except to the extent precluded by another provision of law, mediation or informal settlement of matters that may make unnecessary more elaborate proceedings under this chapter is encouraged. Agencies that employ informal settlement procedures shall establish by administrative regulation the specific procedures to be used. This subsection shall not be construed, however, as requiring any party to settle a matter pursuant to informal procedures when the right to an administrative hearing is conferred.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 261, sec. 1, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 318, sec. 7, effective July 15, 1996. -- Created 1994 Ky. Acts ch. 382, sec. 7, effective July 15, 1996.

13B.080 Conduct of hearing.

(1) A hearing officer shall preside over the conduct of an administrative hearing and shall regulate the course of the proceedings in a manner which will promote the orderly and prompt conduct of the hearing. When a prehearing order has been issued, the hearing officer shall regulate the hearing in conformity with the prehearing order.

(2) The hearing officer, at appropriate stages of the proceedings, shall give all parties full opportunity to file pleadings, motions, objections, and offers of settlement. The hearing officer, at appropriate stages of the proceedings, may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed recommended or final orders. The original of all filings shall be mailed to the agency, and copies of any filed item shall be served on all parties and the hearing officer by mail or any other means permitted by law or prescribed by agency administrative regulation. The agency shall when it is received stamp the time and date upon a document.

(3) The hearing officer may issue subpoenas and discovery orders when requested by a party or on his own volition. When a subpoena is disobeyed, any party may apply to the Circuit Court of the judicial circuit in which the administrative hearing is held for an order requiring obedience. Failure to comply with an order of the court shall be cause for punishment as a contempt of the court.

(4) To the extent necessary for the full disclosure of all relevant facts and issues, the hearing officer shall afford all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by limited grant of intervention or a prehearing order.

(5) Any party to an administrative hearing may participate in person or be represented by counsel. In informal proceedings, a party may be represented by other professionals if appropriate and if permitted by the agency by administrative regulation.

(6) If a party properly served under KRS 13B.050 fails to attend or participate in a prehearing conference, hearing, or other stage of the administrative hearing process, or fails to comply with the orders of a hearing officer, the hearing officer may adjourn the proceedings and issue a default order granting or denying relief as appropriate, or may conduct the proceedings without the participation of the defaulting party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. A default order shall be considered a recommended order and shall be processed as provided in KRS 13B.110.

(7) A hearing officer may conduct all or part of an administrative hearing, or a prehearing conference, by telephone, television, or other electronic means, if each party to the hearing has an opportunity to hear, and, if technically feasible, to see the entire proceeding as it occurs, and if each party agrees.

(8) An administrative hearing shall be open to the public unless specifically closed pursuant to a provision of law. If an administrative hearing is conducted by telephone, television, or other electronic means, and is not closed, public access

shall be satisfied by giving the public an opportunity, at reasonable times, to hear or inspect the agency's record.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 318, sec. 8, effective July 15, 1996. -- Created 1994 Ky. Acts ch. 382, sec. 8, effective July 15, 1996.

13B.090 Findings of fact -- Evidence -- Recording of hearing -- Burdens of proof.

(1) In an administrative hearing, findings of fact shall be based exclusively on the evidence on the record. The hearing officer shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this Commonwealth. Hearsay evidence may be admissible, if it is the type of evidence that reasonable and prudent persons would rely on in their daily affairs, but it shall not be sufficient in itself to support an agency's findings of facts unless it would be admissible over objections in civil actions.

(2) All testimony shall be made under oath or affirmation. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party. The hearing officer may make a recommended order in an administrative hearing submitted in written form if the hearing officer determines there are no genuine issues of material fact in dispute and judgment is appropriate as a matter of law.

(3) Any party shall have the right to inspect, at least five (5) days prior to the hearing, a list of all witnesses every other party expects to call at the hearing, and the available documentary or tangible evidence relating to an administrative hearing either in person or by counsel. Copies of documentary evidence may be obtained upon the payment of a fee, except documents protected from disclosure by state or federal law. Nothing in this section shall be construed as giving a party the right to examine or copy the personal notes, observations, or conclusions of the agency staff, unless exculpatory in nature, nor shall it be construed as allowing access to the work product of counsel for the agency. Conditions for examining and copying agency records, fees to be charged, and other matters pertaining to access to these records shall be governed by KRS 61.870 to 61.884. To the extent required by due process, the hearing officer may order the inspection of any records excluded from the application of KRS 61.870 to 61.884 under KRS 61.878 that relate to an act, transaction, or event that is a subject of the hearing, and may order their inclusion in the record under seal.

(4) Objections to evidentiary offers may be made by any party and shall be noted in the record.

(5) The hearing officer may take official notice of facts which are not in dispute, or of generally-recognized technical or scientific facts within the agency's specialized knowledge. The hearing officer shall notify all parties, either before or during the hearing, or in preliminary reports or otherwise, of any facts so noticed and their source. All parties shall be given an opportunity to contest facts officially noticed.

(6) The agency shall cause all testimony, motions, and objections in a hearing to be accurately and completely recorded. Any person, upon request, may receive a copy of the recording or a copy of the transcript, if the hearing has been transcribed, at the discretion of the agency, unless the hearing is closed by law. The agency may prepare a transcript of a hearing or a portion of a hearing upon request but the party making the request shall be responsible for the transcription costs. The form of all requests and fees charged shall be consistent with KRS 61.870 to 61.884.

(7) In all administrative hearings, unless otherwise provided by statute or federal law, the party proposing the agency take action or grant a benefit has the burden to show the propriety of the agency action or entitlement to the benefit sought. The agency has the burden to show the propriety of a penalty imposed or the removal of a benefit previously granted. The party asserting an affirmative defense has the burden to establish that defense. The party with the burden of proof on any issue has the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion in all administrative hearings is met by a preponderance of evidence in the record. Failure to meet the burden of proof is grounds for a recommended order from the hearing officer.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 318, sec. 9, effective July 15, 1996. -- Created 1994 Ky. Acts ch. 382, sec. 9, effective July 15, 1996.

13B.100 Prohibited communications.

(1) Unless required for the disposition of ex parte matters specifically authorized by statute, a hearing officer shall not communicate off the record with any party to the hearing or any other person who has a direct or indirect interest in the outcome of the hearing, concerning any substantive issue, while the proceeding is pending.

(2) The prohibition stated in subsection (1) shall not apply to:

(a) Communication with other agency staff, if the communication is not an ex parte communication received by staff; and

(b) Communication among members of a collegial body or panel which by law is serving as a hearing officer.

(3) If an ex parte communication occurs, the hearing officer shall note the occurrence for the record, and he shall place in the record a copy of the communication, if it was written, or a memorandum of the substance of the communication, if it was oral.

Effective: July 15, 1996

History: Created 1994 Ky. Acts ch. 382, sec. 10, effective July 15, 1996.

13B.110 Recommended order.

(1) Except when a shorter time period is provided by law, the hearing officer shall complete and submit to the agency head, no later than sixty (60) days after receiving a copy of the official record of the proceeding, a written recommended order which shall include his findings of fact, conclusion of law, and recommended disposition of the hearing, including recommended penalties, if any. The recommended order shall also include a statement advising parties fully of their exception and appeal rights.

(2) If an extension of time is needed by the hearing officer to complete and submit his recommended order to the agency head, the hearing officer shall show good cause to the agency head, in writing, and based upon substantial proof, that an extension of time is needed.

(3) If the agency head, after a showing of good cause, grants the hearing officer an extension of time:

(a) The extension shall not exceed thirty (30) days from the date the extension was granted;

(b) The statement granting the extension shall be included in the record of the hearing; and

(c) Notice of the extension shall be sent to all parties.

(4) A copy of the hearing officer's recommended order shall also be sent to each party in the hearing and each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the agency head. Transmittal of a recommended order may be sent by regular mail to the last known address of the party.

(5) The provisions of this section shall not apply in an administrative hearing where the hearing officer conducts the hearing in the presence of the agency head who renders a decision without the recommendation of the hearing officer.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 318, sec. 10, effective July 15, 1996. -- Created 1994 Ky. Acts ch. 382, sec. 11, effective July 15, 1996.

13B.120 Final order.

(1) In making the final order, the agency head shall consider the record including the recommended order and any exceptions duly filed to a recommended order.

(2) The agency head may accept the recommended order of the hearing officer and adopt it as the agency's final order, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.

(3) The final order in an administrative hearing shall be in writing and stated in the record. If the final order differs from the recommended order, it shall include separate statements of findings of fact and conclusions of law. The final order shall also include the effective date of the order and a statement advising parties fully of available appeal rights.

(4) Except as otherwise required by federal law, the agency head shall render a final order in an administrative hearing within ninety (90) days after:

(a) The receipt of the official record of the hearing in which there was no hearing officer submitting a recommended order under KRS 13B.110; or

(b) The hearing officer submits a recommended order to the agency head, unless the matter is remanded to the hearing officer for further proceedings.

(5) Unless waived by the party, a copy of the final order shall be transmitted to each party or to his attorney of record in the same manner as provided in KRS 13B.050.

(6) This section shall not apply to disposition pursuant to KRS 13B.070(3).

(7) If, pursuant to statute, an agency may review the final order of another agency, the review is deemed to be a continuous proceeding as if before a single agency. The final order of the first agency is treated as a recommended order and the second agency functions as though it were reviewing a recommended order in accordance with this section.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 318, sec. 11, effective July 15, 1996. -- Created 1994 Ky. Acts ch. 382, sec. 12, effective July 15, 1996.

13B.125 Emergency action -- Hearing -- Appeal.

(1) An agency may take emergency action affecting the legal rights, duties, privileges or immunities of named persons without a hearing only if duly authorized by statute to so act. If an agency takes emergency action, the agency shall conduct an emergency hearing in accordance with the provisions of this section.

(2) An agency head or an official of an agency duly authorized by law to summarily act in emergency situations may issue an emergency order to stop, prevent, or avoid an immediate danger to the public health, safety, or welfare. The emergency order shall contain findings of fact and conclusions of law upon which the agency bases the emergency order. The agency shall give notice of the emergency order to all affected parties as is practicable under the circumstances, and notice shall be served in the same manner as provided in KRS 13B.050(2). The emergency order is effective when received by the affected party or his representative.

(3) Any person required to comply with an emergency order issued under subsection (2) of this section may request an emergency hearing to determine the propriety of the order. The agency shall conduct an emergency hearing within ten (10) working days of the request for hearing. The agency shall give all affected parties reasonable notice of the hearing and to the extent practicable shall conduct the hearing in conformity with this chapter. The hearing on the emergency order may be conducted by a hearing officer qualified in accordance with KRS 13B.040. Within five (5) working days of completion of the hearing, the agency or hearing officer shall render a written decision affirming, modifying, or revoking the emergency order. The emergency order shall be affirmed if there is substantial evidence of a violation of law which constitutes an immediate danger to the public health, safety, or welfare.

(4) The decision rendered under subsection (3) of this section shall be a final order of the agency on the matter, and any party aggrieved by the decision may appeal to Circuit Court in the same manner as provided in KRS 13B.140.

Effective: July 15, 1996

History: Created 1996 Ky. Acts ch. 318, sec. 12, effective July 15, 1996.

13B.130 Official record of hearing.

In each administrative hearing, an agency shall keep an official record of the proceedings which shall consist of:

(1) All notices, pleadings, motions, and intermediate rulings;

(2) Any prehearing orders;

(3) Evidence received and considered;

(4) A statement of matters officially noticed;

(5) Proffers of proof and objections and rulings thereon;

(6) Proposed findings, requested orders, and exemptions;

(7) A copy of the recommended order, exceptions filed to the recommended order, and a copy of the final order;

(8) All requests by the hearing officer for an extension of time, and the response of the agency head;

(9) Ex parte communications placed upon the record by the hearing officer; and

(10) A recording or transcript of the proceedings.

Effective: July 15, 1996

History: Created 1994 Ky. Acts ch. 382, sec. 13, effective July 15, 1996.

13B.140 Judicial review of final order.

(1) All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

(2) A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

(3) Within twenty (20) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. The court may require or permit subsequent correction or additions to the official record. If the court requests a transcript of proceedings that have not been transcribed, the cost of the transcription shall be paid by the party initiating the appeal, unless otherwise agreed to by all parties.

(4) A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

(a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;

(b) A stay is permitted by the agency and granted upon request; or

(c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 318, sec. 13, effective July 15, 1996. -- Created 1994 Ky. Acts ch. 382, sec. 14, effective July 15, 1996.

13B.150 Conduct of judicial review.

(1) Review of a final order shall be conducted by the court without a jury and shall be confined to the record, unless there is fraud or misconduct involving a party engaged in administration of this chapter. The court, upon request, may hear oral argument and receive written briefs.

(2) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the final order or it may reverse the final order, in whole or in part, and remand the case for further proceedings if it finds the agency's final order is:

(a) In violation of constitutional or statutory provisions;

(b) In excess of the statutory authority of the agency;

(c) Without support of substantial evidence on the whole record;

(d) Arbitrary, capricious, or characterized by abuse of discretion;

(e) Based on an ex parte communication which substantially prejudiced the rights of any party and likely affected the outcome of the hearing;

(f) Prejudiced by a failure of the person conducting a proceeding to be disqualified pursuant to KRS 13B.040(2); or

(g) Deficient as otherwise provided by law.

Effective: July 15, 1996

History: Created 1994 Ky. Acts ch. 382, sec. 15, effective July 15, 1996.

13B.160 Judicial appeal.

Any aggrieved party may appeal any final judgment of the Circuit Court under this chapter to the Court of Appeals in accordance with the Kentucky Rules of Civil Procedure.

Effective: July 15, 1996

History: Created 1994 Ky. Acts ch. 382, sec. 16, effective July 15, 1996.

13B.170 Administrative regulations.

(1) An agency shall have authority to promulgate administrative regulations that are necessary to carry out the provisions of this chapter.

(2) Nothing in this chapter shall be construed to prohibit an agency from enacting administrative hearing procedures by administrative regulations which are supplemental to the provisions of this chapter.

Effective: July 15, 1996

History: Created 1994 Ky. Acts ch. 382, sec. 17, effective July 15, 1996.

KENTUCKY TEACHERS' RETIREMENT SYSTEM
CONFLICT OF INTEREST AND CONFIDENTIALITY POLICY

Adopted: March 16, 2009

INTRODUCTION

Adoption of Conflict of Interest and Confidentiality Policy:

Pursuant to the provisions of KRS 161.250, the Board of Trustees ("Board") of the Kentucky Teachers' Retirement System ("KTRS") is vested with the responsibility for the general administration and management of the retirement system. The Board may adopt procedures necessary to conduct the business of the retirement system as needed. The law shall control if any inconsistency exists between the law and this policy.

Statement of Conflict of Interest and Confidentiality Policy:

KTRS recognizes the need to maintain the public's confidence and trust in the integrity of KTRS and the Commonwealth of Kentucky. Individuals associated with KTRS must not engage in activities that have the potential to become a conflict of interest with their association with KTRS. Likewise, individuals associated with KTRS must not release information about KTRS or any of its members that would breach any duty to protect such information. KTRS recognizes the need to establish procedures to prevent such conflicts or breaches.

Purpose:

The purpose of this Conflict of Interest and Confidentiality Policy is to: a) establish what individuals are subject to conflict of interest provisions of KTRS; b) establish the specific standards of conduct with regard to conflict of interest; c) establish standards with regard to the confidentiality of information; and d) establish procedures for the obtaining of written conflict of interest statements and confidentiality agreements from certain individuals.

PROCEDURES REGARDING CONFLICTS OF INTEREST AND CONFIDENTIALITY

Section 1: Application of Policy

1. This policy shall apply to all individuals who have a statutory, contractual or working relationship with KTRS.
2. Individuals affected by this policy shall include, but are not limited to:
   A. Employees of KTRS;
   B. The Board;

C. Independent contractors of KTRS;
D. Vendors of KTRS;
E. Employees or Officers of the Commonwealth of Kentucky providing legal or expert advice at the request of KTRS; and
F. Any person acting in a fiduciary capacity for KTRS.

Section 2: Standards of Conduct Regarding Conflicts of Interest

1. Individuals have an obligation to diligently identify, disclose, avoid, and manage conflicts of interest.
2. Potential conflicts of interest exist when an individual or an individual's family may be directly or indirectly financially impacted, whether favorably or detrimentally, by a decision made by KTRS in which the individual participates.
3. Individuals and their family members should not enter into any contract with KTRS or any agency doing business with KTRS, for financial gain, apart from an employment contract, without full disclosure and satisfactory management of any potential conflict of interest in accordance with the Executive Branch Code of Ethics and this policy.
4. Individuals should not be involved in the decision to hire or in the supervision of any member of their "family" as defined by the Executive Branch Code of Ethics.
5. Individuals should not conduct business or participate in decisions with a company or agency in which the individual or family member is employed or is actively seeking employment.
6. Individuals should not accept campaign contributions, gifts, loans, gratuities, discounts, services, or other compensation under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the individual in the performance of their duties for KTRS.
7. Individuals must avoid all conduct which in any way might lead the public to believe that the individual is using his or her position with KTRS to further a professional, political, or private interest.
8. Individuals not covered by the conflict of interest provisions under KRS Chapter 11A must not violate any conflict of interest statute or principle by the performance of their duties with KTRS. These individuals must not engage directly or indirectly in any financial or other transaction with a trustee or employee of KTRS that would violate the standards of the Executive Branch Ethics provisions, as set forth in KRS Chapter 11A.

Section 3: Standards of Conduct Regarding Confidentiality

1. Individuals associated with KTRS may be granted access to confidential information in the course of an employment, Board or contractual relationship with KTRS.

2. This information may include, but is not limited to, investment trade data, individual member information, including but not limited to, Social Security numbers, names, addresses, phone numbers, birth dates, beneficiaries, health insurance information, member numbers, as well as documents, records, programs, files, scientific or technical information, or other information made available to individuals for purposes of completing their obligations to KTRS.
3. These individuals have a duty to keep confidential the information to which they are granted access as a result of their association with KTRS.
4. KTRS and these individuals shall also recognize that confidential member information is protected under KRS 161.585.

Section 4: Written Statements of Conflict of Interest and Confidentiality

1. On an annual basis, the Executive Secretary, Deputy Executive Secretaries, Chief Investment Officer, Director of Investment Strategies, Chief Financial Officer, the members of the Board, independent contractors, vendors of KTRS, and other persons identified in Section 2(2) shall file a written conflict of interest statement on the form(s) provided by KTRS and adopted by the Board of Trustees.
2. Upon proposal for contract, and continuing on an annual basis, any independent contractors and vendors of KTRS shall file a written confidentiality agreement on the form provided by KTRS and adopted by the Board of Trustees. This form may be amended to conform to specific needs of the individual vendor or contractor as deemed necessary.
3. Other employees of KTRS may also be requested to file a written conflict of interest statement as needed or requested by the Board.
4. An individual who abstains from involvement in an official decision because of a personal or private interest must disclose that fact in writing to his or her supervisor or contact person at KTRS.

ETHICS AND CONFIDENTIALITY

Individuals as set forth above shall conform to the Executive Branch Code of Ethics with regard to conflicts of interests as set forth in KRS Chapter 11A and this policy. Individuals as set forth above shall conform to the confidentiality requirements of KRS 161.585.

KENTUCKY TEACHERS' RETIREMENT SYSTEM
EXTERNAL SERVICE PROVIDER
CONFLICT OF INTEREST STATEMENT

I, _____, in my role as _____ _____ for the Kentucky Teachers' Retirement System ("KTRS"), recognize the need to maintain the public's confidence and trust in the integrity of KTRS and the Commonwealth of Kentucky.

I understand that I have the obligation to diligently identify, disclose, avoid, and manage conflicts of interest that may arise through my relationship with KTRS.

I will conduct my activities with KTRS so that I do not advance or protect my own interests or the private interests of others with whom I have a relationship, in a way that is detrimental to the interests of KTRS.

In every instance in which I am acting on behalf of KTRS, I will conduct my activities in a manner to best promote the interests of KTRS.

I agree not to attempt to influence KTRS in disregard of the public interest at large.

In all matters where an official decision must be made that may favorably or detrimentally impact my own financial interests or the financial interests of other individuals or organizations with whom I have a relationship, I will reveal that relationship and abstain from involvement in the official decision.

When a conflict of interest arises, or when a potential conflict of interest arises, I will disclose that conflict or potential conflict to my contact person at KTRS and seek resolution of that issue.

I agree not to violate any conflict of interest statute or principle by the performance of my duties with KTRS. I will not engage directly or indirectly in any financial or other transaction with a trustee or employee of KTRS that would violate the standards of the Executive Branch Ethics provisions, as set forth in KRS Chapter 11A.

Agreed this the _____ day of _____, 20__.

_____
Signature

_____
Name

_____
Title

_____
Company

KENTUCKY TEACHERS' RETIREMENT SYSTEM
BOARD OF TRUSTEES AND EMPLOYEES
CONFLICT OF INTEREST STATEMENT

I, _____, in my role as _____ _____ for the Kentucky Teachers' Retirement System ("KTRS"), recognize the need to maintain the public's confidence and trust in the integrity of KTRS and the Commonwealth of Kentucky.

I understand that I have the obligation to diligently identify, disclose, avoid, and manage conflicts of interest that may arise through my relationship with KTRS.

I will conduct my activities with KTRS so that I do not advance or protect my own interests or the private interests of others with whom I have a relationship, in a way that is detrimental to the interests of KTRS.

In every instance in which I am acting on behalf of KTRS, I will conduct my activities in a manner to best promote the interests of KTRS.

I agree not to attempt to influence KTRS in disregard of the public interest at large.

In all matters where an official decision must be made that may favorably or detrimentally impact my own financial interests or the financial interests of other individuals or organizations with whom I have a relationship, I will reveal that relationship and abstain from involvement in the official decision.

When a conflict of interest arises, or when a potential conflict of interest arises, I will disclose that conflict or potential conflict to the KTRS Executive Secretary, or his or her designee, and seek resolution of that issue.

I agree not to violate any conflict of interest statute or principle by the performance of my duties with KTRS. I will not engage directly or indirectly in any financial or other transaction with a trustee, employee of KTRS, or any other person or organization that would violate the standards of the Executive Branch Ethics provisions, as set forth in KRS Chapter 11A.

Agreed this the _____ day of _____, 20__.

_____
Signature

_____
Name

_____
Title

KENTUCKY TEACHERS' RETIREMENT SYSTEM
COMMUNICATION POLICY

Adopted: March 16, 2009

INTRODUCTION

Pursuant to the provisions of KRS 161.250, the Board of Trustees ("Board") of the Kentucky Teachers' Retirement Systems ("KTRS") is vested with the responsibility for the general administration and management of the retirement system. The Board may adopt procedures necessary to conduct the business of the Retirement System as needed. The law shall control if any inconsistency exists between the law and this policy.

Adoption of the Communication Policy

The Board recognizes that potential problems can be avoided by having a clear policy that addresses both internal and external communications. It is also important that the roles and responsibilities of the Board and staff are outlined to facilitate effective communication between and among the Trustees, staff, members, employers, and other interested parties.

Among Board Members

Because the System is an agency of the Commonwealth of Kentucky, Board members must act in accordance with Kentucky's Open Meetings Law, Kentucky Revised Statutes Chapter 61.800, et seq., when discussing System business. The law states that when a quorum of Board members meet and discuss System business that the meeting must be open to the public, held only after proper notice is given, and be recorded with proper minutes.

Discussion of System business between Board members by electronic mail also is subject to the requirements of being open to the public, held after proper notice, and evidenced by minutes.

Board members are to contact the Board Chair or the Executive Secretary if they wish to have specific issues discussed by the Board so that these items can be added to the Board meeting agendas.

Informal and purely social gatherings of Board members where System business is not discussed are not prohibited by the State open meetings law or this policy.

APPENDIX 8

KENTUCKY TEACHERS' RETIREMENT SYSTEM
Communication Policy

Between the Board Officers and other Board Members

Any Board member may contact the Chair, or in his or her absence, the Vice-Chair, regarding issues of interest or concern about the System.

Between the Executive Secretary and the Board

Information for regularly scheduled quarterly Board meetings will be sent to all Board members before the meetings through regular mail and email if so requested. The Executive Secretary has the responsibility to communicate with the Board between meetings if and when issues arise that require their immediate attention and consideration.

Between the Board and the Staff

Open communication exists between the Board and staff. If a Board member needs information or assistance, their primary contact is the Executive Secretary. Alternatively, they may contact any other member of the executive team directly (Deputy Executive Secretaries, Chief Investment Officer, Chief Financial Officer) if the Executive Secretary is not readily available. Board members may also contact the Executive Secretary's administrative assistant directly regarding meeting schedules, travel arrangements, reimbursements, mail, and other administrative matters. The Deputy Executive Secretary and General Counsel can give more specific advice on confidentiality of Board/General Counsel discussions or legal advice as needed.

Direct contacts with other staff regarding System business are not prohibited but can cause confusion so they are discouraged unless circumstances require them.

Between a Board Member and a Vendor or Third Party

If a Board member is contacted by anyone with a present or future interest in doing business with system, the Board member should refer the individual to the Executive Secretary. The Board member should thereafter make a written report of the contact to the Executive Secretary. The Executive Secretary will refer the matter to the appropriate system employees or expert advisors to evaluate the business inquiry or solicitation.

The system will document compliance with relevant guidelines and policies, analyze actual or potential conflicts of interest, consider advice of fiduciary advisers, and assess compliance with fiduciary requirements concerning proposed contractual relationships or investments. Thereafter, the Executive Secretary will report about the disposition of the matter to the Board, Committee of the Board, or affected Board member.

APPENDIX 8

KENTUCKY TEACHERS' RETIREMENT SYSTEM
Communication Policy

Between the System and the Media

The primary media contact for System is the Executive Secretary. The Deputy Executive Secretaries and Chief Investment Officer may also serve as either primary or back-up media contacts, depending on the topic of inquiry by the press.

Between the System and the Membership

Information to members regarding the plans or their particular benefits is best communicated by the System staff with knowledge and expertise. Board members are not expected nor encouraged to counsel members, retirees, or beneficiaries about their eligibility or benefits. Board members should encourage the member to speak directly to the Executive Secretary for referral to the appropriate staff member who has the best information available. This also allows the Retirement System to treat each member fairly and consistently, which is part of the Board's fiduciary duty.

Discussions of a particular member's situation outside of a Board meeting can lead to the disqualification of a Board member should that member make an application for a benefit which requires approval of the Board. Board members must make decisions based on evidence and testimony presented at the Board's hearing and not on other factors of which a Board member may be aware.

APPENDIX 9

102 KAR 1:300. Kentucky Teachers' Retirement System Trustees Education Program.

RELATES TO: KRS 161.250(3)(c)
STATUTORY AUTHORITY: KRS 161.250(3)(c) and KRS 161.310
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of Kentucky Teachers' Retirement Systems to promulgate all administrative regulations necessary or proper for the administration of the funds of the retirement system and for the transaction of business. KRS 161.250(3)(c) provides that the board shall establish a formal trustee education program for all trustees of the board, which shall be incorporated by reference in an administrative regulation. This administrative regulation establishes the "Kentucky Teachers' Retirement System Trustees Education Program."

Section 1. Incorporation by Reference. (1) The "Kentucky Teachers' Retirement System Trustees Education Program", adopted November 17, 2008, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. (35 Ky.R. 1946; eff. 4-3-09.)

KENTUCKY TEACHERS' RETIREMENT SYSTEM
TRUSTEES EDUCATION PROGRAM

Adopted November 17, 2008

Effective November 17, 2008

This will confirm that, in accordance with the provisions of KRS 161.250(3)(c), the Board of Trustees of Kentucky Teachers' Retirement System adopted the Kentucky Teachers' Retirement System Trustees Education Program at its meeting held on November 17, 2008.

Barbara G. Sterrett, Chair
Board of Trustees of Kentucky Teachers' Retirement System

Gary Harbin, Executive Secretary
Kentucky Teachers' Retirement System

Attest:

Mary Pat Dobbins
Recording Secretary

KENTUCKY TEACHERS' RETIREMENT SYSTEM
TRUSTEES EDUCATION PROGRAM

Chapter 1

Definitions

(1) "Approved activity" is a trustee education activity that has been approved for required credit hours of training by the Board or the Executive Secretary.

(2) "Trustee education activity" is any educational activity or program that provides instruction in one or more of the following areas:

(a) Retirement benefits and administration

(b) Medical and other post-employment benefits and administration

(c) Investment concepts, policies, strategies, practices, and the current composition and administration of retirement system investments

(d) Laws, administrative regulations, bylaws, policies, strategies, and matters pertaining to the retirement system and to fiduciaries

(e) Actuarial and financial concepts of retirement system

(f) Other matters relating to administration, benefits, financing, and investing that enhance the effectiveness of trustees in fulfilling their role and satisfying their duties under law.

(3) "Program" is the Kentucky Teachers' Retirement System Trustees Education Program incorporated by reference in 102 KAR 1:_____.

(4) "Technological transmission" is a trustee education activity delivery method other than live seminars and includes, but is not limited to, video tape, audio tape, live broadcast transmission, satellite simulcast, teleconference, video conference, CD-ROM, data conference, computer on-line services, or other appropriate technology.

(5) "Board" is the Board of Trustees of Kentucky Teachers' Retirement System.

(6) "Executive Secretary" is the Executive Secretary of Kentucky Teachers' Retirement System or designee.

(7) "Credit hour" is sixty (60) minutes of actual time spent on trustee education activities, which may be accrued in increments of not less than fifteen (15) minutes.

Chapter 2

New Trustee Orientation Program

(1) After a new trustee is sworn in as a member of the Board, the new trustee shall be required to complete a minimum of four (4) credit hours of trustee education activities. The Executive Secretary shall make available to the new trustee education activities and may approve other trustee education activities for fulfilling the requirements of this program.

(2) The New Trustee Orientation Program shall include training in each of the categories listed in Chapter 1, Section (2) of this program.

(3) The new trustee will generally complete the New Trustee Orientatión Program within two (2) months following the date that the new trustee is sworn in as a member of the Board. If a new trustee fails to complete the New Trustee Orientation Program within twelve (12) months following the date the new trustee is sworn in, then the retirement system shall withhold payment of all per diems and travel expenses due to the trustee until such time as the trustee completes the New Trustee Orientation Program.

(4) Each trustee attending an approved activity for the New Trustee Orientation Program shall certify the total number of hours earned on a form provided by the Executive Secretary.

(5) The Executive Secretary shall maintain a record of all trustee education activities attended by each trustee. Within twelve (12) months following the date that the new trustee is sworn in as a member of the Board, the Executive Secretary shall report in writing to each new trustee whether the new trustee has complied with the requirements of this program. The report shall include the number of credit hours earned and any remaining credit hours that need to be earned to fulfill the requirements of this program.

(6) The Executive Secretary shall report concerning this program each year at the September meeting of the Board.

Chapter 3

Annual Required Training

(1) Each calendar or fiscal year after completing the New Trustee Orientation Program, each trustee serving on the Board shall complete a minimum of eight (8) hours of trustee education activity.

(2) The Executive Secretary shall inform trustees of approved education activities for fulfilling the requirements of this program.

(3) Each trustee attending an approved activity shall certify the total number of credits earned on a form provided by the Executive Secretary.

(4) Certification of completion of approved activities must be received by the Executive Secretary not later than sixty (60) days following the last day of the fiscal year or the last day that the trustee served as a member of the Board. If a trustee fails to complete the annual required training, then the retirement system shall withhold payment of all per diems and travel expenses due to the trustee until such time as the trustee completes the annual required training.

(5) The Executive Secretary shall maintain a record of all trustee education activities attended by each trustee. No later than April 30 of each year, the Executive Secretary shall report in writing to each trustee the number of credit hours earned by the trustee during that fiscal year and how many credit hours the trustee needs to earn to fulfill the annual training requirements.

(6) The Executive Secretary shall report concerning this program each year at the September meeting of the Board.

Chapter 4

Qualifying Trustee Education Activity

(1) A trustee education activity not already otherwise approved qualifies for approval if the Board or the Executive Secretary determines that the activity conforms to the following standards:

(a) The activity is an organized program which provides instruction in any of the trustee education activities listed in Chapter 1 Section (2) of this program.

(b) The activity has significant intellectual or practical content, which is relevant to enhancing the effectiveness of trustees in fulfilling their role and satisfying their duties under law.

(c) The activity has as its primary objective to increase the participant's knowledge regarding any of the subjects listed in Chapter 1 Section (2) of this program.

(d) The activity itself must be taught and conducted by an individual or group qualified by practical or academic experience.

(e) Thorough, high-quality, readable, timely, useful and carefully prepared written materials must be made available to all participants at or before the time the activity is presented, unless the absence of such materials is recognized as reasonable.

(f) The activity may be presented live or by technological transmission, including but limited to: video tape, audio tape, live broadcast transmission, satellite simulcast, teleconference, video conference, CD-ROM, data conference, computer on-line services, or other appropriate technology.

(2) The Executive Secretary shall provide information to trustees on approved activities.

APPENDIX 10

200 KAR 2:006. Employees' reimbursement for travel.

RELATES TO: KRS 44.060, 45.101
STATUTORY AUTHORITY: KRS 44.060, 45.101
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45.101 authorizes the Finance and Administration Cabinet to promulgate an administrative regulation that establishes requirements and reimbursement rates for the travel expenses of state employees. KRS 44.060 requires the secretary to promulgate administrative regulations fixing the amount allowed for the expense of traveling in a motor vehicle in the discharge of official state duties. This administrative regulation establishes the eligibility requirements relating to rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury.

Section 1. Definitions. (1) "Agency" means a budget unit.
(2) "Agency head" means the elected or appointed head of a budget unit.
(3) "Approval" means approval granted in either written or electronic format.
(4) "Cabinet" means the Finance and Administration Cabinet.
(5) "Division" means the Division of Statewide Accounting Services, Office of the Controller, Finance and Administration Cabinet.
(6) "High rate area" means a city, state, or metropolitan area in which it has been recognized that higher meal costs and lodging rates have historically prevailed, and that has been designated by the Secretary of the Finance and Administration Cabinet as a high rate area and included in the cabinet's policies and procedures manual incorporated by reference in 200 KAR 5:021.
(7) "Incidental expense" means unexpected minor expenses arising from travel situations, or minor expenses authorized by an agency head to be reimbursed to an employee as a matter of efficiency or convenience.
(8) "Lodging receipt" means any preprinted invoice, from a hotel or motel or type of lodging, showing the date of service, the amount charged for the service, the location where the service was performed, and a description of the expenditure.
(9) "Others in the official service of the commonwealth" means individuals who:
(a) Are not state employees as defined in KRS Chapter 18A;
(b)1. Are traveling on official business for the commonwealth; or
2. Officially represent a state agency, at the direction or request of a state official authorized to give the direction or make the request; and
(c) Are not contractors who are entitled to reimbursement for travel and related expenses only as provided in their contracts with the commonwealth.
(10) "Receipt" means any preprinted invoice, from a hotel, motel, restaurant or other establishment, showing the date of service, the amount charged for the service, the location where the service was performed and a description of the expenditure.
(11) "Residence" means address of the employee designated in the official records of the Personnel Cabinet.
(12) "Secretary" means the Secretary of the Finance and Administration Cabinet.
(13) "Subsistence" means amounts expended by a state officer, agent, employee, or other person authorized to receive reimbursement out of the State Treasury for meals, such as tax and tips, while traveling on official state business, except for any meals which may be included in charges for lodging or in registration fees paid by or on behalf of a state officer or employee.
(14) "Subsistence or incidental receipt" means an itemized receipt for meals or incidental expenses showing the date of service, amount charged, and the name of the establishment.
(15) "Travel software" means the software used by the commonwealth to process travel authorizations and travel reimbursement documents.

Section 2. General. (1) Affected agencies. Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the executive branch of state government, except state-supported universities. It shall not apply to the legislative and judicial branches and their employees.
(2) Enforcement.
(a) Each agency head shall be responsible for ensuring that travel reimbursement conforms to the provisions of this administrative regulation and that all travel expense from that agency is as economical as is feasible.
(b) A person who travels on official state business shall:
1. Identify if reimbursement is being requested based on Section 7 or 8 of this administrative regulation;
2. Prior to trip, create a Travel Authorization (TE, TEI, TEO, or TEC), if required;
3. After travel, create a Travel Payment Voucher (TP or TPI) document for reimbursement of business related expenses;
4. Maintain records and receipts to support the claim; and
5. Take sufficient personal funds to defray the travel expense.
(c) The secretary or designee may:
1. Disallow or reduce the amount of a claim that violates the provisions of this administrative regulation; or
2. Require written justification for amounts claimed by an agency for its employee.
(d) The secretary or his designee may authorize reimbursement for an employee's actual and necessary expenses for authorized travel if the head of the agency, or designee, submits a written determination that establishes the reimbursement is:
1. Required to avoid an undue economic hardship on the employee; or
2. Economically advantageous for the commonwealth.
(3) Eligibility. Except as provided by state law or by this administrative regulation, reimbursement shall not be claimed for expenses of any person other than state officers, members of boards and commissions, employees, bona fide wards, or other persons in the official service of the commonwealth. Only necessary expenses of official travel authorized by an agency head or designee shall be reimbursed.
(4) Interpretation. All final interpretations of this administrative regulation shall be made by the secretary. These determinations shall be the final and conclusive interpretation adopted by the agency.

Section 3. Work Station. (1) The official work station of an employee assigned to an office shall be the street address where the office is located.
(2) The official work station of field employees shall be established by the agency head, based solely on the best interests of the commonwealth.
(3) If an employee is permanently reassigned or is stationed at a new location two (2) months, the new location shall become that employee's official work station.

Section 4. Authorizations. (1) For travel in Kentucky, or outside Kentucky, but within the United States or its possessions, or Canada, the person requesting reimbursement shall obtain authorization from the agency head or a designated representative as authorized by Secretary's Order S97-451.
(2) Travel to a bordering state that does not require airfare or an overnight stay shall be authorized in the same manner as travel in Kentucky.

(3) Travel expenses shall be reimbursed if travel was authorized in advance as provided by subsections (4), (5), and (6) of this section.

(4) If direct billing is to be utilized for state park and motor pool expenses, authorization shall be requested on a Travel Authorization (TE or TEI) document.

(5) For travel outside of Kentucky, authorization shall be requested on Travel Authorization (TEO) document.

(6) For travel outside the United States, its possessions or Canada the person requesting reimbursement shall have obtained authorization from:

(a) The agency head or a designated representative;

(b) The secretary or a designated representative; and

(c) The governor or a designated representative.

(7) A travel request for travel specified in subsections (4) and (5) of this section shall be received by the agency or cabinet at least five (5) working days before the start of travel.

Section 5. Transportation. (1) Economy shall be required.

(a) State officers, agents, employees, and others in the official service of the commonwealth shall use the most economical, standard transportation available and the most direct and usually-traveled routes. Expenses added by use of other transportation or routes shall be assumed by the individual.

(b) 1. Round-trip, excursion or other negotiated reduced-rate rail or plane fares shall be obtained if practical.

2.a. Tickets prepaid by the commonwealth shall be purchased through agency business travel accounts provided by a major charge card company or commercial travel agencies.

b. Tickets purchased through the Internet shall be paid by the traveler and reimbursed on a Travel Payment Voucher (TP or TPI).

3. Exceptions may be made with the approval of the agency head if other arrangements will be in the best interest of the commonwealth.

4. Agencies shall be billed monthly by the charge card company.

5. Related payments shall be processed on Vendor Payment Voucher (P1) document.

(2) State vehicles. State-owned vehicles with their credit cards shall be used for state business travel if available and feasible. Mileage payment shall not be claimed if state-owned vehicles are used.

(3) Privately-owned vehicles. Mileage claims for use of privately-owned vehicles shall be allowed if a state vehicle was not available or feasible.

(4) Buses, subways. For city travel, employees shall be encouraged to use buses and subways. Taxi fare shall be allowed if more economical transportation is not feasible.

(5) Airline travel. Commercial airline travel shall be the lowest negotiated coach or tourist class. Additional expense for first-class travel shall not be reimbursed by the state. Payment shall be made in accordance with subsection (1)(b) of this section.

(6) Special transportation.

(a) The cost of hiring cars or other special conveyances in lieu of ordinary transportation shall be allowed if written justification from the employee is submitted and approved by the agency head or his designated representative.

(b) Privately-owned aircraft may be used if it is determined to be to the advantage of the state, measured both by travel costs and travel time.

(c) An employee may submit a written request for approval from the State Controller for an increased reimbursement rate greater than that calculated in Section 7, if the employee drives a personal vehicle modified to:

1. Facilitate operation by altering controls for the brakes, accelerator, or steering wheel; or

2. Allow a driver to enter the vehicle by installing a wheelchair lift, hoist, or ramp.

Section 6. Accommodations. (1) Lodging shall be the most economical, as determined by considering location of the lodging.

(2) Facilities providing special government rates or commercial rates shall be used if feasible.

(3) State-owned facilities shall be used for meetings and lodging if available, practicable and economical.

(4) Location. Cost for lodging within forty (40) miles of the claimant's official work station or home shall be reimbursed if:

(a) In attendance at a conference; and

(b) The lodging is a necessary expense of official travel, in accordance with Section 2(2)(d) of this administrative regulation.

(5) Group lodging, by contract.

(a) State agencies and institutions may contract with hotels, motels and other establishments for four (4) or more employees to use a room or rooms on official business. Group rates shall be requested.

(b) The contract may also apply to meals and gratuities. The contract rates and the costs of rooms and meals per person shall not exceed limits set in Section 7 of this administrative regulation.

(c) The traveler shall not claim reimbursement or subsistence for room and meals paid direct to an establishment providing these services.

(d) Payment shall be made on a Vendor Payment Voucher (P1) document and shall not include personal charges of employees or others in the official service of the commonwealth.

(e) Payment shall be made to the hotel, motel, or other establishment.

(f) Contracted group meeting rooms and lodging and meal charges shall be exempt from Kentucky sales tax and the agency sales-use tax number assigned by the Department of Revenue shall be specified on the payment document.

(g) Tax exempt numbers shall not be used by individual employees to avoid point of sale payment of Kentucky sales tax connected with lodging costs. Sales tax payments shall be reimbursed on Travel Payment Voucher (TP or TPI) document.

(6) State parks. A state agency or institution using state park facilities may pay for rooms and meals by an Internal Travel Voucher (IIT) document to transfer funds, within the limits of this administrative regulation.

Section 7. Reimbursement Rates. (1) The following persons shall be exempted from the provisions of this section:

(a) Governor;

(b) Governor's staff;

(c) Lieutenant governor;

(d) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;

(e) Elected constitutional officers;

(f) Cabinet secretaries;

(g) State officers and employees authorized to travel outside the United States;

(h) Members of statutory boards and commissions; and

(i) Others in the official service of the commonwealth.

(2) Lodging.

(a) Except as provided in paragraph (b) of this subsection, a state officer or employee shall be reimbursed for the actual cost of lodging if the:

1. Lodging is determined to be the most economical; and

2. State officer or employee has provided the hotel, motel, or other establishment's receipt to be reimbursed for the travel expenses.

(b) Reimbursement for lodging shall not exceed the cost of a single room rate, except that if employees share lodging, each employee shall be reimbursed the lesser of single rate or one-half (1/2) the double rate.

(3) Subsistence and incidentals.

(a) Breakfast and lunch. A state officer or employee shall be eligible for reimbursement for subsistence for breakfast and lunch expenses while traveling in Kentucky, if authorized work requires an overnight stay and absence during the mealtime hours established by paragraph (d) or (e) of this subsection. An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals.

(b) Dinner expenses. A state officer, or employee shall be eligible for reimbursement for dinner expenses while traveling in Kentucky, if authorized work requires an absence:

1. At a destination more than forty (40) miles from the individual's work station and home; and

2. During the mealtime hours established by paragraph (d) or (e) of this subsection.

(c) A state officer or employee shall be eligible for reimbursement for meals while on authorized travel outside Kentucky, but within the United States, its possessions or Canada, at the reimbursement rates established in paragraphs (d) and (e) of this subsection. An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals.

(d) Reimbursement for non-high rate areas.

1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. - seven (7) dollars.

2. Lunch: authorized travel 11 a.m. through 2 p.m. - eight (8) dollars.

3. Dinner: authorized travel 5 p.m. through 9 p.m. - fifteen (15) dollars.

(e) Reimbursement for high rate areas.

1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. - eight (8) dollars.

2. Lunch: authorized travel 11 a.m. through 2 p.m. - nine (9) dollars.

3. Dinner: authorized travel 5 p.m. through 9 p.m. - nineteen (19) dollars.

(f) A state officer or employee authorized to travel outside the United States, its possessions, or Canada shall be reimbursed for their actual and necessary expenses for subsistence.

(g) A state officer or an employee may, with prior approval of the agency head or designee, be reimbursed for the actual cost charged for meals, if the individual is assigned to attend meetings and training sessions.

(h) Gratuities may be reimbursed if:

1. The total payment of the meal and gratuity do not exceed the limits established in paragraphs (d) or (e) of this subsection; and

2. The gratuity does not exceed twenty (20) percent of the cost of the meal.

(i) Lodging receipts, or other credible evidence, shall be attached to the Travel Payment Voucher (TP or TPI).

(4) Transportation expenses.

(a) Reimbursement for authorized use of a privately-owned vehicle shall be:

1. At the rate of thirty-eight (38) cents per mile until October 1, 2005;

2. Adjusted based on the American Automobile Association (AAA) Daily Fuel Gauge Report for Kentucky for regular grade gasoline. The rate shall be adjusted on January 1, April 1, July 1, and October 1 each calendar year based on the average retail price of regular grade gasoline for the week beginning on the second Sunday of the prior month as follows:

a. If the fuel cost is between one (1) cent and one dollar forty-nine and nine-tenths cents ($1.499), the employee shall be reimbursed thirty-six (36) cents per mile;

b. If the fuel cost is between one dollar fifty cents ($1.50) and one dollar sixty-nine and nine-tenths cents ($1.699), the employee shall be reimbursed thirty-seven (37) cents per mile;

c. If the fuel cost is between one dollar seventy cents ($1.70) and one dollar eighty-nine and nine-tenths cents ($1.899), the employee shall be reimbursed thirty-eight (38) cents per mile;

d. If the fuel cost is between one dollar ninety cents ($1.90) and two dollars nine and nine-tenths cents ($2.099), the employee shall be reimbursed thirty-nine (39) cents per mile;

e. If the fuel cost is between two dollars ten cents ($2.10) and two dollars twenty-nine and nine-tenths cents ($2.299), the employee shall be reimbursed forty (40) cents per mile; or

f. If the fuel cost is greater than two dollars twenty-nine and nine-tenths cents ($2.299), the amount the employee is reimbursed shall increase one (1) cent for every twenty (20) cent increase in the rate; and

3. Not exceed the cost of commercial coach round-trip airfare.

(b) Mileage for in-state travel shall be based on the "Kentucky Official Highway Map", mileage software or MapQuest website. Out-of-state mileage shall be based on the most recent edition of the "Rand McNally Road Atlas", mileage software or MapQuest Web site.

(c) Reimbursement for the actual cost of commercial transportation shall be made upon submission of receipts with the Travel Payment Voucher (TP or TPI).

(d) Reimbursement for use of privately-owned aircraft shall be made if, prior to use, written justification was submitted to and approved by the agency head, or a designated representative.

(e) A maximum of twenty (20) dollars per night for parking or camping charges for camping vehicles shall be reimbursed.

(f) 1. Actual parking, bridge and highway toll charges shall be reimbursed.

2. A toll receipt for authorized in-state travel by two (2) axle vehicles shall not be required.

(g) Reimbursement shall be made for reasonable incidental expenses for:

1. Baggage handling;

2. Delivery of baggage to or from a common carrier, lodging or storage; and

3. Overweight baggage charges, if the charges relate to official business.

(5)(a) Registration fees required for admittance to meetings shall be reimbursed.

(b) If a registration fee entitles the registrant to meals, claims for those meals shall be reduced accordingly.

(6)(a) Telephone and telegraph costs for necessary official business shall be reimbursed.

(b) Telephone calls to agency central offices shall be made through:

1. Agency 800 and 888 numbers, if available;

2. A state government telephone credit card; or

3. Lowest available service.

(7) Other incidental expenses may be allowed by the agency head or designee if they are determined to be necessary expenses of official travel.

Section 8. Actual and Necessary Expenses. (1) The following persons shall be eligible for actual and necessary expenses:

(a) Governor;

(b) Governor's staff;

(c) Lieutenant governor;

(d) Elected constitutional officers;

(e) Cabinet secretaries;

(f) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;

(g) State officers and employees authorized to travel outside the United States, its possessions or Canada;
(h) Members of statutory boards and commissions; and
(i) Others in the official service of the commonwealth.
(2)(a) Actual and necessary expenses of official business travel shall be reimbursed upon submission of receipts for items over ten (10) dollars. The secretary may reduce the amount of any actual expense to be reimbursed if the secretary determines that the expense is unreasonably excessive.
(b) Actual and necessary expenses for official business travel shall include:
1. Lodging;
2. Meals;
3. Commercial transportation;
4. Taxes related to actual and necessary expenses; and
5. Reasonable gratuities.
(c) A credit card receipt shall be accepted for a meal if the receipt prepared by the establishment clearly shows that it is a receipt for a meal.
(d) Reimbursement for official use of a privately-owned vehicle shall be:
1. At the rate of thirty-eight (38) cents per mile until October 1, 2005;
2. Adjusted based on the American Automobile Association (AAA) Daily Fuel Gauge Report for Kentucky for regular grade gasoline. The rate shall be adjusted on January 1, April 1, July 1, and October 1 each calendar year based on the average retail price of regular grade gasoline for the week beginning on the second Sunday of the prior month as follows:
a. If the fuel cost is between one (1) cent and one dollar forty-nine and nine-tenths cents ($1.499), the employee shall be reimbursed thirty-six (36) cents per mile;
b. If the fuel cost is between one dollar fifty cents ($1.50) and one dollar sixty-nine and nine-tenths cents ($1.699), the employee shall be reimbursed thirty-seven (37) cents per mile;
c. If the fuel cost is between one dollar seventy cents ($1.70) and one dollar eighty-nine and nine-tenths cents ($1.899), the employee shall be reimbursed thirty-eight (38) cents per mile;
d. If the fuel cost is between one dollar ninety cents ($1.90) and two dollars nine and nine-tenths cents ($2.099), the employee shall be reimbursed thirty-nine (39) cents per mile;
e. If the fuel cost is between two dollars ten cents ($2.10) and two dollars twenty-nine and nine-tenths cents ($2.299), the employee shall be reimbursed forty (40) cents per mile; or
f. If the fuel cost is greater than two dollars twenty-nine and nine-tenths cents ($2.299), the amount the employee is reimbursed shall increase one (1) cent for every twenty (20) cent increase in the rate; and
3. Not exceed the cost of commercial coach round-trip airfare.
(e)1. The governor and cabinet secretaries may be reimbursed for actual and necessary costs of entertaining official business guests, upon certification of these expenses to the secretary or designee.
2. The secretary or the secretary's designee may:
a. Question a claim for reimbursement; and
b. Reduce the amount to be reimbursed, if the secretary determines that it is unreasonably excessive.
(f) An employee of the Economic Development Cabinet or the Commerce Cabinet shall be reimbursed for actual and necessary costs of entertaining official business guests of the commonwealth if the costs were:
1. Related to the promotion of industry, travel, or economic development;
2. Substantiated by receipts; and
3. Certified by the head of the cabinet.

Section 9. Mileage. (1) Mileage commuting between home and work station shall not be paid.
(2)(a) If an employee's point of origin for travel is the employee's residence, mileage shall be paid for the shorter of mileage between:
1. Residence and travel destination; or
2. Work station and travel destination.
(b) If an employee's point of origin for travel is the employee's workstation, and after proceeding to a travel destination, the employee's final destination is the employee's residence, mileage shall be paid for the shorter of mileage between:
1. Residence and travel destination; or
2. Workstation and travel destination.
(3) Vicinity travel, and authorized travel within a claimant's work station shall be listed on separate lines on the Travel Payment Voucher (TP or TPI) document.

Section 10. Travel Documents. (1) Travel software shall have three (3) types of authorizations:
(a) TE or TEI for in-state travel;
(b) TEO for out-of-state travel; and
(c) TEC for out-of-country foreign travel.
(2) A traveler shall create a:
(a) Travel authorization (TE or TEI) document if a state park facility or a motor pool vehicle will be used or if a registration fee is to be paid in advance.
(b) Travel authorization (TEO) document for an out-of-state trip.
(c) Travel authorization (TEC) document for an out-of-country trip.
(3) A contract for group accommodations shall be made on the standard form used by the establishment providing the services.
(4) Authorization for reimbursement of others in the official service of the commonwealth shall be requested on:
(a) A Vendor Payment Voucher (P1) document; or
(b) A Travel Payment Voucher (TP or TPI) document.
(5) A Travel Payment Voucher (TP or TPI) document shall be used to claim reimbursement for travel expenses.
(6) The Travel Payment Voucher (TP or TPI) document shall be limited to the expenses made by one (1) person for the:
(a) Traveler; and
(b) If applicable, another person:
1. Who is a ward of the commonwealth; or
2. For whom the traveler is officially responsible.
(7) A Travel Payment Voucher (TP or TPI) document for expenses made for a person specified in subsection (6)(b) of this section shall include the person's:
(a) Name; and
(b) Status or official relationship to the claimant's agency.
(8)(a) A Travel Payment Voucher (TP or TPI) document shall be submitted:

1. For one (1) major trip; or
2. Every two (2) weeks for employees that are in travel status for an extended period.
(b) A Travel Payment Voucher (TP or TPI) document shall include:
1. Social Security number of the claimant; and
2. Purpose of each trip.
(c) A Travel Payment Voucher (TP or TPI) document shall be signed and dated, or entered electronically and approved by the:
1. Claimant; and
2. Agency head or authorized representative.
(d) If monthly expenses total less than ten (10) dollars, a Travel Payment Voucher (TP or TPI) may include expenses for six (6) months of a fiscal year.
(e) A Travel Payment Voucher (TP or TPI) document shall be:
1. Legibly printed in ink or typed; or
2. Processed electronically through travel software.
(f) A receipt shall provide the following information for each expense:
1. Amount;
2. Date;
3. Location; and
4. Type.
(g) Receipts shall be maintained at the agency if documents are processed electronically.
(h) If leave interrupts official travel, the dates of leave shall be stated on the Travel Payment Voucher (TP or TPI).
(i) Lodging receipts, or other credible evidence, shall be attached to the Travel Payment Voucher (TP or TPI).

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Travel Payment Voucher (TP or TPI) document (1999)";
(b) "Travel Authorization (TE or TEI) document for in-state travel (1999)";
(c) "Travel Authorization (TEO) for out-of-state travel (1999)";
(d) "Travel Authorization (TEC) document for out-of-country travel (1999)";
(e) "Vendor Payment Voucher (P1) (1999)";
(f) "Internal Travel Voucher (IIT) document (1999)";
(g) "Kentucky Official Highway Map (2004)";
(h) "Rand McNally Road Atlas (2001)"; and
(i) "Secretary's Order S97-451, November 1, 1996".
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Statewide Accounting Services, Office of the Controller, Finance and Administration Cabinet, Capitol Annex Building, Room 484, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (8 Ky.R. 997; eff. 5-5-1982; Am. 16 Ky.R. 2252; 2649; eff. 6-10-90; 19 Ky.R. 971; 1737; eff. 1-13-93; 22 Ky.R. 779; eff. 12-7-95; 24 Ky.R. 922; eff. 12-15-97; 26 Ky.R. 862; 1114; eff. 12-16-99; 27 Ky.R. 2220; 2704; eff. 4-9-2001; 31 Ky.R. 135; 730; 927; eff. 11-22-04; 32 Ky.R. 116; 472; 712; 932; 1385; eff. 3-3-06.)

APPENDIX 11

161.430 Investment of funds.

(1) The board of trustees shall be the trustee of the funds of the retirement system and shall have full power and responsibility for the purchase, sale, exchange, transfer, or other disposition of the investments and moneys of the retirement system. The board shall, by administrative regulation, establish investment policies and procedures to carry out their responsibilities. The board shall employ experienced competent investment counselors to advise it on all matters pertaining to investment, except the board may employ qualified investment personnel to advise it on investment matters not to exceed fifty percent (50%) of the book value of the system's assets. All individuals associated with the investment and management of retirement system assets, whether contracted investment advisors or staff employees, shall adhere to "The Code of Ethics" and "The Standards of Professional Conduct" promulgated by the Association for Investment Management and Research. Effective July 1, 1991, no investment counselor shall manage more than forty percent (40%) of the funds of the retirement system. The board may appoint an investment committee consisting of the executive secretary and two (2) trustees to act for the board in all matters of investment, subject to the approval of the board of trustees. The board of trustees, in keeping with their responsibilities as trustees and wherever consistent with their fiduciary responsibilities, shall give priority to the investment of funds in obligations calculated to improve the industrial development and enhance the economic welfare of the Commonwealth. Toward this end, the board shall develop procedures for informing the business community of the potential for in-state investments by the retirement fund, accepting and evaluating applications for the in-state investment of funds, and working with members of the business community in executing in-state investments which are consistent with the board's fiduciary responsibilities. The board shall include in the criteria it uses to evaluate in-state investments their potential for creating new employment opportunities and adding to the total job pool in Kentucky. The board may cooperate with the board of trustees of Kentucky Retirement Systems in developing its program and procedures, and shall report to the Legislative Research Commission annually on its progress in placing in-state investments. The first report shall be submitted by October 1, 1991, and subsequent reports shall be submitted by October 1 of each year thereafter. The report shall include the number of applications for in-state investment received, the nature of the investments proposed, the amount requested, the amount invested, and the percentage of applications which resulted in investments.

(2) The board members and investment counselor shall discharge their duties with respect to the assets of the system solely in the interests of the active contributing members and annuitants and:

(a) For the exclusive purpose of providing benefits to members and annuitants and defraying reasonable expenses of administering the system;

(b) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims;

(c) By diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(d) In accordance with the laws, administrative regulations, and other instruments governing the system.

(3) (a) In choosing and contracting for professional investment management services the board must do so prudently and in the interest of the members and annuitants. Any contract that the board makes with an investment counselor shall set forth policies and guidelines of the board with reference to standard rating services and specific criteria for determining the quality of investments. Expenses directly related to investment management services shall be financed from the guarantee fund in amounts approved by the board.

(b) An investment counselor appointed under this section shall acknowledge in writing his fiduciary responsibilities to the fund. To be eligible for appointment, an investment counselor must be:

1. Registered under the Federal Investment Advisors Act of 1940; or
2. A bank as defined by that Act; or
3. An insurance company qualified to perform investment services under the laws of more than one (1) state.

(4) No investment or disbursement of funds shall be made unless authorized by the board of trustees, except that the board, in order to ensure timely market transactions, shall establish investment guidelines, by administrative regulation, and may permit its staff and investment counselors employed pursuant to this section to execute purchases and sales of investment instruments within those guidelines without prior board approval.

(5) In discharging his or her administrative duties under this section, a trustee shall strive to administer the retirement system in an efficient and cost-effective manner for the taxpayers of the Commonwealth of Kentucky.

161.677 Kentucky Teachers' Retirement System insurance trust fund.

(1) (a) The Kentucky Teachers' Retirement System insurance trust fund is hereby created. All assets received in the trust fund shall be deemed trust funds to be held and applied solely as provided in this section. Assets of the trust fund shall not be used for any other purpose and shall not be used to pay the claims of creditors or any individual, person, or employer participating in the Kentucky Teachers' Retirement System.

(b) The trust fund is intended to be established as a trust exempt from taxation under 26 U.S.C. sec. 115.

(2) The trust fund is created for the purpose of providing a trust separate from the funds under KRS 161.420. Trust fund assets are dedicated for use for health benefits as provided in KRS 161.675, and as permitted under 26 U.S.C. secs. 105 and 106, for present and future eligible recipients of a retirement allowance from the Kentucky Teachers' Retirement System.

(3) The trust fund shall be administered by the board of trustees established by KRS 161.250, and the board shall serve as trustees of the fund. The board shall manage the assets of the fund in the same general manner in which it administers the retirement funds, except that the asset allocation may differ and separate accounting and financial reporting shall be maintained for the trust fund.

(4) In addition to the requirements of subsection (2) of this section, the employers participating in the trust fund are limited to the Commonwealth, political subdivisions of the Commonwealth, and entities whose income is exempt from taxation under 26 U.S.C. sec. 115. No other entity may participate in the trust fund.

(5) If the trust fund is terminated, the assets in the trust fund may revert, after the payment of all liabilities, to the participating employers as determined by the board of trustees.

(6) The board of trustees may promulgate administrative regulations and adopt procedures and a trust document to implement this section and take all action necessary and appropriate to provide that the income of the trust fund shall not diminish or expand the rights of any recipients, employees, or dependents to health benefits.

(7) The establishment of the Kentucky Teachers' Retirement System insurance trust fund shall not diminish or expand the rights of any recipients, employees, or dependents to health benefits.

(8) The trust fund established under this section, at the direction of the board of trustees, shall consist of amounts, excluding those amounts that have been deposited to an account established pursuant to 26 U.S.C. sec. 401(h), that have been accumulated for the purpose of providing benefits as provided in KRS 161.675, including:

(a) Contributions required under KRS 161.550;

(b) Contributions required under KRS 161.675(4)(b); and

(c) Interest income from the investments of the fund from contributions received by the fund and from income earned on those investments.

Effective: July 1, 2010

History: Created 2010 Ky. Acts ch. 159, sec. 1, effective July 1, 2010; and ch. 164, sec. 1, effective July 1, 2010.

Legislative Research Commission Note (7/1/2010). This section was created by 2010 Ky. Acts chs. 159 and 164, which do not appear to be in conflict and have been codified together.

102 KAR 1:175. Investment policies.

RELATES TO: KRS 161.430

STATUTORY AUTHORITY: KRS 161.310, 161.430(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Teachers' Retirement System Board of Trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.430(1) requires the board of trustees to promulgate administrative regulations to establish investment policies and procedures to carry out its responsibilities and provides that the board of trustees shall have full power and responsibility for the purchase, sale, exchange, transfer, or other disposition of the investments and money of the Teachers' Retirement System. This administrative regulation establishes investment policies and procedures to carry out these responsibilities.

Section 1. (1)(a) The board of trustees shall appoint an investment committee in accordance with the provisions of KRS 161.430(1). The trustees shall be named at the beginning of each fiscal year.

(b) The executive secretary shall act on behalf of the investment committee in administering the investment policies and procedures established in this administrative regulation.

(c) To ensure a timely market transaction, the executive secretary and the chief investment officer may make a purchase or sale of an investment instrument without prior board approval if the action conforms to the provisions established in this administrative regulation.

(2) The staff investment personnel employed by the board under KRS 161.430(1) may be delegated transaction responsibilities under the supervision of the chief investment officer and the executive secretary.

(3)(a) Contracts with contracted investment counselors employed under KRS 161.430(1) shall be on a fiscal year basis for twelve (12) month periods, except that contracts entered into on or after the start of a fiscal year shall not extend beyond the end of the fiscal year in which the contract is entered.

(b) The system may invest in either separately-managed accounts or commingled funds.

(c) The investment committee shall make recommendations to the board regarding employment of investment counselors and the renewal or nonrenewal of contracts.

(d)1.The system may utilize the services of a consultant to advise the investment committee, as well as to assist in evaluating the effectiveness of investment counselors.

2. A consultant may advise the investment committee with regard to asset class allocation and the combined effect of the various portfolios on the system's overall risk and expected long-term return.

(e) Investment counselors shall provide reports documenting their results at least quarterly and meet with the investment committee if requested.

(f) An annual report on the performance and service of each investment counselor shall be provided to the board with recommendations from the investment committee.

(4) The following procedures shall be followed with regard to all investment transactions, whether internally or externally managed:

(a) The board shall be provided a quarterly report reflecting a complete record of each investment transaction that occurred during that quarter;

(b) The investment committee shall be provided a complete record of each investment transaction or holding;

(c) The staff shall maintain a file of investment directives that indicates the committee's separate review of each specific long-term investment; and

(d) An "authorization for investment" shall be approved or denied by the executive secretary or the chief investment officer.

Section 2. Asset Allocation. (1) In order to preserve the assets of the system and produce the required rate of return while minimizing risk, assets shall be prudently diversified among various classes of investments.

(2) In determining asset allocation policy, the investment committee and the board shall be mindful of the system's liquidity and its capability of meeting both short and long-term obligations. The limitations established in this subsection shall apply to the asset classes in which funds are invested.

(a) There shall not be a limit on the amount of investments owned by the system if the investments are guaranteed by the United States government.

(b) The amount invested in corporate debt obligations shall not equal more than thirty-five (35) percent of the assets of the system.

(c) The amount invested in common stocks or preferred stocks shall not equal more than sixty-five (65) percent of the assets of the

system.

(d) The amount invested in a stock portfolio designed to replicate a general stock index shall not equal more than twenty-five (25) percent of the assets of the system.

(e) More than thirty (30) percent of the assets of the system shall not be invested in the stocks of companies domiciled outside of the United States. An amount of this type if invested shall be included in the sixty-five (65) percent limitation established under this subsection.

(f) The amount invested in real estate shall not equal more than ten (10) percent of the assets of the system. Real estate shall include real estate equity, real estate lease agreements, and shares in real estate investment trusts.

(g) The amount invested in alternative investments shall not equal more than ten (10) percent of the assets of the system. This category may include private equity, venture capital, timberland, and infrastructure investments.

(h)1. The amount invested in an additional category or categories of investments shall not equal more than fifteen (15) percent of the assets of the system.

2. The board shall approve or deny by resolution any additional category or categories of investments.

Section 3. Fixed Income Investments. The specific guidelines associated with a fixed income investment shall be established in this section.

(1) Unless the issuer is the United States government or a government sponsored enterprise (GSE), the amount invested in the securities of a single issuer shall not equal more than five (5) percent of the assets of the system.

(2)(a) A fixed income investment shall be rated at the time of purchase as investment grade by at least one (1) of the major rating services.

(b) A private placement debt investment shall be subject to the same credit qualifications as each fixed income investment.

(c) The fixed income investment portfolio as a whole shall maintain an average rating of investment grade by at least one (1) of the major rating services.

(3) Investments in mortgages or mortgage-backed securities shall consist of first mortgages on property located in the United States unless the mortgage is guaranteed by the United States government.

(4) A foreign debt purchase shall comply with all other fixed income restrictions in this section. Foreign debt shall not in aggregate equal more than ten (10) percent of the assets of the system.

Section 4. Equity and Real Estate Investments. The requirements established in this section shall apply to equity and real estate investments.

(1)(a) The system's position in a single stock shall not exceed two and one-half (2.5) percent of the system's assets.

(b) The system's position in a single stock shall not exceed five (5) percent of the outstanding stock for that company unless the investment is part of a venture capital program.

(2) A real estate purchase that is conducted on a triple net lease basis shall involve a company that at the initial agreement generates one (1) of the three (3) highest credit ratings by a national credit rating service.

(3)(a) A real estate investment shall be judged on its total return potential.

(b) The system shall not acquire undeveloped land unless development plans are imminent.

(c) This provision shall not preclude investment in timberland.

(4) The system shall not buy bullion, stamps, rare coins, or other collectibles, unless approved by the board as an additional category of investment. The board shall approve these assets as an additional category of investment only in exceptional circumstances if there is a potential investment in these assets that provides a high value opportunity and lowers the risk of the portfolio overall. (TRS-26; 1 Ky.R. 464; eff. 3-12-75; Am. 17 Ky.R. 3214; eff. 7-5-91; 24 Ky.R. 129; 559; eff. 9-4-97; 31 Ky.R. 1873; 32 Ky.R. 45; eff. 8-5-2005; 33 Ky.R. 3431; eff. 7-19-07; 37 Ky.R. 2039; 2375; eff. 5-6-2011.)

102 KAR 1:178. Investment policies for insurance trust fund.

RELATES TO: KRS 161.430
STATUTORY AUTHORITY: KRS 161.310(1), 161.430(1), 161.677
NECESSITY, FUNCTION AND CONFORMITY: KRS 161.310 requires the Teachers' Retirement System Board of Trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.430(1) requires the board of trustees to promulgate administrative regulations to establish investment policies and procedures to carry out its responsibilities and provides that the board of trustees shall have full power and responsibility for the purchase, sale, exchange, transfer, or other disposition of the investments and money of the Teachers' Retirement System. KRS 161.677(3) provides that the board of trustees shall manage the Kentucky Teachers' Retirement System insurance trust fund in the same general manner in which it administers retirement funds. The administrative regulation establishes investment policies and procedures to carry out these responsibilities for the Kentucky Teachers' Retirement System insurance trust fund.

Section 1. (1)(a) The board of trustees shall appoint an investment committee in accordance with the provisions of KRS 161.430(1). The trustees shall be named at the beginning of each fiscal year.

(b) The executive secretary shall act on behalf of the investment committee in administering the investment policies and procedures established in this administrative regulation.

(c) To ensure a timely market transaction, the executive secretary and the chief investment officer may make a purchase or sale of an investment instrument without prior board approval if the action conforms to the provisions established in this administrative regulation.

(2) The staff investment personnel employed by the board under KRS 161.430(1) may be delegated transaction responsibilities under the supervision of the chief investment officer and the executive secretary.

(3)(a) Contracts with contracted investment counselors employed under KRS 161.430(1) shall be on a fiscal year basis for twelve (12) month periods, except that contracts entered into on or after the start of the fiscal year shall not extend beyond the end of the fiscal year in which the contract is entered.

(b) The system may invest in either separately managed accounts or commingled funds.

(c) The investment committee shall make recommendations to the board regarding employment of investment counselors and the renewal or nonrenewal of contracts.

(d)1. The system may utilize the services of a consultant to advise the investment committee, as well as to assist in evaluating the effectiveness of investment counselors.

2. A consultant may advise the investment committee with regard to asset class allocation and the combined effect of the various portfolios on the system's overall risk and expected long-term return.

(e) Investment counselors shall provide reports documenting their results at least quarterly and meet with the investment committee if requested.

(f) An annual report on the performance and service of each investment counselor shall be provided to the board with recommendations from the investment committee.

(4) The following procedures shall be followed with regard to all investment transactions, whether internally or externally managed:

(a) The board shall be provided a quarterly report reflecting complete record of each investment transaction that occurred during that quarter;

(b) The investment committee shall be provided a complete record of each investment transaction or holding;

(c) The staff shall maintain a file of investment directives that indicates the committee's separate review of each specific long-term investment; and

(d) An "authorization for investment" shall be approved by the executive secretary or the chief investment officer.

Section 2. Asset Allocation. (1) In order to preserve the assets of the system and produce the required rate of return while minimizing risk, assets shall be prudently diversified among various classes of investments.

(2) In determining asset allocation policy, the investment committee and the board shall be mindful of the system's liquidity and its capability of meeting both short and long-term obligations. (37 Ky.R. 2303; eff. 6-3-11.)

APPENDIX 12

KENTUCKY TEACHERS' RETIREMENT SYSTEM
Insurance Committee

Charter of the Insurance Committee

Purpose
The Insurance Committee is a committee of the Board of Trustees of the Kentucky Teachers' Retirement System. The Insurance Committee is established to assist the Kentucky Teachers' Retirement System in providing other post employment benefits in the form of a broad program of group hospital and medical insurance for present and future eligible recipients of a retirement allowance.

Authority
The Insurance Committee has oversight and reporting authority concerning the following functions:

- Fiduciary stewardship of the medical insurance fund
- Contractual arrangements on either a self insured or fully insured basis
- Systems of risk management, cost containment, and operational efficiency
- Determination of eligibility conditions and levels of coverage
- Determination of plan design and cost sharing arrangements
- Determination of health insurance supplement payments provided
- Compliance with state and federal Medicare laws and regulations
- Insurance committee management and reporting
- Other matters specified in KRS 161.675

Composition
The Committee will be composed of a minimum of three (3) members of the Board of Trustees. The Chair of the Board will appoint the committee members and the committee chair.

Meetings
The Committee will meet at least one time each year, with authority to convene additional meetings, as circumstances require. All committee members are expected to attend each meeting. Subject to open meeting laws, the Committee may hold executive sessions. Meeting agendas will be prepared and provided in advance to members, along with appropriate briefing materials. Minutes of each meeting will be prepared.

Responsibilities
The Committee shall be responsible for reporting to the Board concerning:

1. The policy and framework for the fiduciary stewardship of the medical insurance fund as described in KRS 161.675.
2. Assessment of and final determinations of the health plan contracts on either a self-insured or fully insured basis.
3. The policy and framework for effective systems of risk management, cost containment, and operational efficiency.

Charter of the Insurance Committee

4. Assessment and determination of eligibility conditions and levels of coverage.
5. Assessment and determination of plan design and cost sharing arrangements.
6. Assessment and determination of health insurance supplement payments provided.
7. Compliance with state and federal Medicare laws and regulations.
8. Reporting to the Board on all activities, findings and recommendations of the Committee.

APPENDIX 13

KENTUCKY TEACHERS' RETIREMENT SYSTEM
Legislative Committee

Charter of the Legislative Committee

Purpose
The Legislative Committee is a committee of the Board of Trustees of the Kentucky Teachers' Retirement System. The Legislative Committee is established to assist the Board of Trustees in fulfilling its fiduciary oversight responsibilities for reviewing proposed legislation.

Authority
The Committee has authority to evaluate proposed legislation and make recommendations to the Board on matters within its scope of responsibility. The Board acknowledges its responsibility to perform its duties for the exclusive purposes of providing benefits to participants and their beneficiaries, and defraying reasonable expenses of administering the System. The Board further acknowledges that its duty to the System's participants and beneficiaries takes precedence over any other duty.

Composition
The Committee will be composed of a minimum of three (3) members of the Board of Trustees. The Chair of the Board will appoint the committee members and the committee chair.

Meetings
The Committee will meet at least one time each year, with authority to convene additional meetings, as circumstances require. All committee members are expected to attend each meeting. Subject to open meeting laws, the Committee may hold executive sessions. Meeting agendas will be prepared and provided in advance to members, along with appropriate briefing materials. Minutes of each meeting will be prepared.

Responsibilities
Proposed Legislation from Staff at KTRS: For proposed legislation developed by Staff of the Retirement System, the Committee will consider whether the proposal:

- gives the Board increased flexibility in its administration;
- provides remedies for inequitable, unfair or discriminatory benefits;
- corrects structural deficiencies in program design;
- adds protection to the trust; and
- includes Retirement System changes developed through a collaborative effort where the opinions of all relevant stakeholders are considered and the changes do not otherwise conflict with the Retirement System's objectives.

Proposed Legislation from Outside of KTRS: Staff will review all proposed legislation which impacts programs administered by KTRS and provide technical comments and fiscal information to the sponsor and the appropriate legislative committees and staff. Additionally, Staff will offer alternatives and provide an unbiased analysis, including the pros and cons of proposals, when

appropriate. In offering alternatives and unbiased analysis, Staff will consider such factors as whether the proposed legislation:

- threatens the security of the trust of the Retirement System;
- has an actuarial or fiscal impact on the Retirement System;
- deprives members and beneficiaries of vested benefits and does not provide an equivalent, compensating benefit;
- endangers the tax exempt status of the Retirement System and the tax deferred treatment of contributions and related earnings;
- includes investment mandates or restrictions on the Board's investment authority; and
- reduces or limits the Board's administrative authority;

Staff will report to the Committee or Board regarding proposed legislation.

APPENDIX 14

KENTUCKY TEACHERS' RETIREMENT SYSTEM
Personnel Committee

Charter of the Personnel Committee

Purpose

The Personnel Committee is a committee of the Board of Trustees of the Kentucky Teachers' Retirement System. The Committee is established to assist the Board of Trustees in fulfilling its statutory responsibility to employ the Executive Secretary of the Retirement System by means of a contract not to exceed a period of four (4) years and fix the compensation for this position without limitation of the provisions of KRS Chapters 18A, 45A, 56, and KRS 64.640.

Authority

The Executive Secretary will serve as the Chief Administrative Officer of the Board. The Executive Secretary is the most senior executive of KTRS and will manage the affairs of KTRS subject to the policies and oversight of the Board. The primary responsibility of the Executive Secretary is the efficient and effective management of the system's operations in accordance with the policy direction established by the Board.

To provide feedback and guidance to the Executive Secretary, the Board has established the following procedures for evaluating the performance of the Executive Secretary. The Executive Secretary prepares a self-evaluation memorandum that focuses on the system's accomplishments and any relevant performance issues. This memorandum is submitted to the Personnel Committee for review and discussion. The Executive Secretary's performance evaluation as determined by the Personnel Committee is finalized after discussion with the full Board. A written summary evaluation is prepared by the Chair of the Personnel Committee and provided to the Executive Secretary.

Composition

The Committee will be composed of a minimum of five (5) members of the Board of Trustees. The Chair of the Board will appoint the Committee members and the Committee chair.

Meetings

The Committee will meet as needed as determined by the Chair of the Committee. All Committee members are expected to attend each meeting. Subject to open meeting laws, the Committee may hold executive sessions and private meetings with the Executive Secretary. Meeting agendas will be prepared and provided in advance to members, along with appropriate briefing materials. Minutes of each meeting will be prepared.

APPENDIX 14

KENTUCKY TEACHERS' RETIREMENT SYSTEM
Personnel Committee

Charter of the Personnel Committee

Responsibilities

The Executive Secretary will be evaluated on the following matters:

1. Leadership: The Executive Secretary will provide leadership to KTRS in achieving its vision, mission, goals and objectives. In doing so, the Executive Secretary will solicit advice and counsel from the Board, the Board Chair, or individual Trustees as appropriate.

2. Governance and Policy: The Executive Secretary will provide the necessary support to the Board and its committees in establishing all policies of the Board. This will involve working with the Board and its committees to continually identify issues requiring Board policy, conducting the necessary analysis of such issues and providing clear and well-supported policy recommendations for the Board's consideration. Policy areas to be covered include, but are not limited to:

a) Governance and Board Operations
b) Investments
c) Benefit Administration
d) Operations
e) Financial, Actuarial and Accounting Practices
f) Human Resources; and
g) Communications

3. Board Operations: The Executive Secretary or his or her designee will:

a) Accept responsibilities, duties and authorities delegated by the Board;
b) Ensure coordination of Board meetings, agendas, schedules and presentations in consultation with the Board Chair;
c) Assign staff liaisons to each Board committee;
d) Ensure mailing and/or electronic posting of meeting notices to each KTRS member providing reasonable notice;
e) Coordinate the implementation of the Trustee Education Program;
f) Advise the Board on legislative proposals to be recommended, supported, or opposed by the Board; and
g) Conduct due diligence with respect to service providers.

4. Investments: The Executive Secretary or his or her designee will:

a) Recommend to the Investment Committee a written statement of investment philosophy for the investment program, and review that statement with the committee at least every 3 years;

b) Recommend to the Investment Committee a written statement of Investment Policy for the investment program and review that statement with the committee at least annually. The statement should address, at a minimum:
   (i) Asset allocation
   (ii) Investment manager selection and removal; and
   (iii) Performance monitoring

c) Recommend to the Investment Committee strategies to achieve the investment goals and objectives of KTRS;

d) Recommend to the Investment Committee the use of KTRS internal or external investment management for any asset class in which KTRS invests;

e) Within the policy parameters approved by the Board, develop investment manager structures for each asset category in which KTRS invests, including but not limited to the funds to be allocated to active and passive portfolios, and to internally and externally managed portfolios;

f) Conduct all necessary due diligence relating to the appointment of investment managers and consultants;

g) Negotiate and approve guidelines and contracts for each investment manager retained by KTRS;

h) Execute portfolio rebalancing in accordance with the policies of the Board; and

i) Advise the Board and the Investment Committee of any other investment matters and make recommendation for the Board or committee action when necessary.

5. Benefit Administration: The Executive Secretary or his or her designee will:

a) Ensure the accurate and timely delivery of benefits to participants in accordance with KTRS Law;

b) Ensure delivery of consistently high standards of service quality to all plan participants;

c) Establish written procedures for the administration of the KTRS plan;

d) Require members and employers to furnish information necessary to administer the KTRS plan;

e) Interpret provisions of the KTRS plans and applicable laws and rules and determine the rights of and payments to members/participants;

f) Ensure that members disputing any benefit-related decision of KTRS are accorded an internal review, provided an official decision in writing, and informed of their right to seek an administrative review in accordance with law;
g) Ensure administrative errors made by KTRS employees, or the Executive Secretary are corrected in accordance with law;
h) Ensure the recovery of any benefits paid to ineligible benefit recipients in accordance with law; and
i) Assist the Legislative Committee in periodic reviews of the design and benefit structure of the various KTRS plans and programs.

6. Operations: The Executive Secretary or his or her designee will:

a) Manage the day-to-day operations of KTRS in accordance with the policies of the Board, delegating to executive management, as appropriate;
b) Conduct strategic planning and review the strategic plan with the Board;
c) Recommend to the Board the annual operating budget, as well as any supplemental budgets that may be necessary;
d) Make all necessary operational expenditures, consistent with the operating budget and internal controls;
e) Execute contracts in accordance with the internal control policies of the Board;
f) Prepare a review of KTRS's compliance with Kentucky's records retention act and ensure proper storage and maintenance of records, files and documents of KTRS in accordance with the law;
g) Ensure the appropriate design, purchase, implementation and maintenance of all technologies required to efficiently manage data, information and records of KTRS;
h) Prepare a Disaster Recovery and Business Continuity Plan, and review and update it as necessary;
i) Recommend the location of the main office and ensure the proper maintenance, safety, and adequacy of all of KTRS's physical premises;
j) Prepare the Comprehensive Annual Financial Report;
k) Implement court decisions; and
l) Approve all Board and staff travel and expenses in accordance with law, regulation, and Board policy.

7. Financial, Actuarial and Accounting Practices: The Executive Secretary or his or her designee will:

a) Account for all deposits and payments of the Retirement System;

b) Ensure the implementation of appropriate internal controls and procedures to safeguard the assets of KTRS;
c) Ensure internal and external audits are preformed, as appropriate;
d) Serve as a staff person to the Audit Committee, together with the Internal Auditor.

8. Human Resources: The Executive Secretary or his or her designee will:
a) Establish appropriate human resource programs and procedures for management and staff in accordance with the law, regulation, and Board policy, including appropriate succession planning, education, training and development plans;
b) Select, hire, train, terminate, and discipline management and staff; and
c) Implement a compensation plan for staff that does not deviate materially from the geographic or professional market for the skills employed.

9. Communications: The Executive Secretary or his or her designee will deliver effective and timely communications with plan participants, employers, the legislature, and other constituents on matters relating to the operation and administration of KTRS.

10. Appointments: The Executive Secretary or his or her designee will:
a) Appoint and may remove all service providers;
b) Recommend to the Board, or designated Board committee, candidates for key service provider positions; and
c) The Executive Secretary will ensure all necessary due diligence is performed relating to the selection of service providers for KTRS.

11. Monitoring and Reporting: The Executive Secretary will:
a) Ensure that the Board is provided with all relevant, appropriate and timely information to enable it to properly carry out its monitoring and oversight responsibilities;
b) Monitor that the Board, management and external service providers operate in accordance with Board policies and applicable laws and regulations;
c) Monitor the funded status of the pension and insurance benefits programs;
e) Monitor the investment performance of the trust fund of KTRS;
f) Monitor the investment performance of all asset categories in which KTRS invests and of all internal and external investment managers retained by KTRS;
g) Monitor costs of KTRS administration and investment activities (e.g. management fees, trading, and execution costs);
h) Monitor services provided to participants;

Charter of the Personnel Committee

i) Monitor administrative errors and corrections made;
j) Monitor and evaluate the activities and performance of executive management and external service providers;
k) Monitor the accuracy and timeliness of all payments due to and issued by KTRS;
l) Monitor the implementation and maintenance of technologies to efficiently manage the data, information, and records of KTRS;
m) Monitor business and other risks faced by KTRS;
n) Monitor external trends and legislation that may have a significant impact on KTRS and report to the Board as appropriate; and
o) Review the suitability of the KTRS offices and report to the Board as necessary.

APPENDIX 15

KENTUCKY TEACHERS' RETIREMENT SYSTEM
Appeals Committee

Charter of the Appeals Committee

Purpose
The Appeals Committee is a committee of the Board of Trustees of the Kentucky Teachers' Retirement System. The Committee is established to assist the Board of Trustees in fulfilling its responsibilities to act on appeals as set forth in KRS 161.250(2) and KRS Chapter 13B.

Authority
The Committee has authority for matters within its scope of responsibility as set forth in KRS 161.250(2) and KRS Chapter 13B.

Composition
The Committee will be composed of a minimum of three (3) members of the Board of Trustees. The Chair of the Board will appoint the Committee members and the Committee chair.

Meetings
The Committee will convene as needed to act on appeals. All Committee members are expected to attend each meeting. Subject to open meeting laws, the Committee may hold executive sessions as authorized by law. Meeting agendas will be prepared and provided in advance to members, along with appropriate briefing materials and a copy of the record. Minutes of each meeting will be prepared.

Responsibilities
The Committee is delegated authority by the Board of Trustees to act on appeals as set forth in KRS 161.250(2) and KRS Chapter 13B.

Committee Staff
The Committee will be staffed by the Deputy Executive Secretary for Finance and Administration, or his or her designee. The Deputy Executive Secretary for Finance and Administration, or his or her designee, shall not have been involved in any substantive administrative decision concerning a pending appeal before the Committee.

APPENDIX 16

KENTUCKY TEACHERS' RETIREMENT SYSTEM
Governance and Audit Committee

Charter of the Governance and Audit Committee

Purpose

The Governance and Audit Committee is a committee of the Board of Trustees of the Kentucky Teachers' Retirement System. The Committee is established to assist the Board of Trustees in fulfilling its fiduciary oversight responsibilities for Retirement System's governance process, financial reporting process, system of risk management, system of internal control, internal and external audit process, and the process of monitoring compliance with laws and regulations**.**

Authority

The Committee has authority for matters within its scope of responsibility for the following functions:

- Governance Process
- Financial Reporting Process
- System of Risk Management
- System of Internal Controls
- Internal and External Audit
- Monitoring Compliance with Laws and Regulations
- Audit Committee Management and Reporting

Composition

The Committee will be composed of a minimum of three (3) members of the Board of Trustees. The Chair of the Board will appoint the Committee members and the Committee chair. The Chair of the Board should endeavor to appoint at least one member with an understanding of generally accepted accounting principles and financial statements; experience in the preparation or auditing of financial statements; experience with internal accounting controls; and an understanding of audit committee functions.

Meetings

The Committee will meet at least twice each year (December to review the external audit report, and July to review the internal audit plan), with authority to convene additional meetings, as circumstances require. All Committee members are expected to attend each meeting. The Committee will invite members of management, auditors, and/or others to attend meetings and provide pertinent information, as necessary. Subject to open meeting laws, the Committee may hold executive sessions and private meetings with auditors. Meeting agendas will be prepared and provided in advance to members, along with appropriate briefing materials. Minutes of each meeting will be prepared.

APPENDIX 16

KENTUCKY TEACHERS' RETIREMENT SYSTEM
Governance and Audit Committee

Charter of the Governance and Audit Committee

Responsibilities

The Committee will have responsibility for providing policy recommendations to the Board of Trustees for the following:

1. The assessment of governance process.
2. The integrity of financial information reporting.
3. The policy and framework for an effective system of risk management and the mechanisms for periodic assessment of the system of risk management.
4. The assessment of internal administrative and accounting controls by both the external and internal auditors.
5. The policy and framework for an effective system of internal controls and the mechanisms for periodic assessment of the system of internal controls.
6. Reviewing with management and the director of internal audit the objectives, plans, activities, staffing and organizational structure of the internal audit function.
7. Reviewing the effectiveness of the system of monitoring and compliance with applicable statutes, regulations and policies.
8. Reporting to the Board of Trustees on significant activities, findings and recommendations of the Committee.

APPENDIX 17

KENTUCKY TEACHERS' RETIREMENT SYSTEM
Policy on Annual Retirement Appropriations
Payable by the State

Introduction

Pursuant to the provisions of KRS 161.250, the Board of Trustees ("Board") of the Kentucky Teachers' Retirement Systems ("KTRS") is vested with the responsibility for the general administration and management of the retirement system. The Board may adopt procedures necessary to conduct the business of the retirement system as needed. The applicable provisions of the Kentucky Revised Statutes ("state law") shall control if any inconsistency exists between state law and this policy.

Background: State law provides that the retirement benefits promised to members of KTRS are "…an inviolable contract of the Commonwealth…." (KRS 161.714.) To satisfy this solemn commitment, the Commonwealth of Kentucky ("state") is required to pay annual retirement appropriations necessary to fund the benefit requirements of members of the retirement system. All employers participating in KTRS are responsible for paying the fixed employer contribution rate set forth in state law. However, the state—as plan guarantor—is solely responsible for paying the additional annual retirement appropriations necessary to keep the retirement system actuarially sound and able to satisfy the contract with members to provide promised benefits. (KRS 161.550(6).)

Since fiscal year 2008, the state has not paid the recommended annual retirement appropriations necessary to pre-fund the benefit requirements of members of the retirement system as determined by the actuary. Over this period of time, because of the failure to fund, the state's annual retirement appropriations have grown significantly from $60.5 million (Fiscal Year 2009) to $487 million (Fiscal Year 2016). The following schedule details the growth of the annual retirement appropriations payable by the state:

Fiscal Year	Cumulative Increase as a % of Payroll	Cumulative Increase of Annual Retirement Appropriations Payable by the State
2009	1.88	$ 60,499,800
2010	2.46	82,331,200
2011	3.59	121,457,000
2012	5.81	208,649,000
2013	7.27	260,980,000
2014	8.02	299,420,000
2015	10.42	386,400,000
2016	12.97	487,400,000
2017	13.80	520,372,000
2018	13.49	512,883,000

(Source: KTRS Report of the Actuary on the Annual Valuation Prepared as of June 30, 2015).

KENTUCKY TEACHERS' RETIREMENT SYSTEM
Policy on Annual Retirement Appropriations Payable by the State

The Board has always taken action as required by state law and recommended annual retirement appropriations payable by the state that would ensure that the state meets the contractual obligations to members. This policy confirms the Board's process for recommending annual retirement appropriations payable by the state and the primary actuarial assumptions and methodologies associated with calculating the annual retirement appropriations. Other related actuarial assumptions and methodologies not listed in this policy are reported in annual valuations, the most recent experience study, or resolutions adopted by the Board.

1. Annual Retirement Appropriations Payable by the State: In each biennial budget request, the Board will recommend annual retirement appropriations payable by the state to meet the benefit requirements of the members of the retirement system. The annual retirement appropriations payable by the state are the sum of the fixed employer contribution rate set by state law and the additional annual retirement appropriations necessary to fund the benefit requirements of members of the retirement system. (KRS 161.550.) The recommended additional annual retirement appropriations payable by the state are calculated by the Board's actuary based upon the results of an annual valuation preceding the beginning of each biennium. (KRS 161.400.)

2. Calculation of Annual Retirement Appropriations Payable by the State: The Board will recommend annual retirement appropriations payable by the state, which—if paid—will meet the benefit requirements of the members of the retirement system consistent with generally accepted actuarial principles. Based upon technical advice from the Board's actuary, the Board hereby adopts the following principles for calculating the recommended annual retirement appropriations payable by the state:

- Use the Entry Age Normal actuarial cost method;
- Use a five-year asset smoothing method;
- Use a thirty-year closed period to amortize legacy unfunded liability ("legacy unfunded liability" is that unfunded liability recognized as of the valuation prepared for June 30, 2014);
- Use a twenty-year closed period to amortize new sources of unfunded liability ("new sources of unfunded liability" is that unfunded liability consisting of all benefit changes, assumption and method changes, and experience gains and/or losses that have occurred since the previous valuation); and
- Reach a 100 percent minimum funded ratio within the thirty-year closed amortization period.

The Board also recognizes that, from time to time, the state may desire to contribute lump sum payments toward satisfaction of unfunded liability rather than amortization of the debt. Total unfunded liability is published in every annual valuation of the retirement

system and KTRS will work with the state to develop reasonable and appropriate plans for receipt of lump sum payments toward the satisfaction of unfunded liability.

This policy will be reviewed regularly and amended or revised as necessary.

APPENDIX 18

KENTUCKY TEACHERS' RETIREMENT SYSTEM
PROCUREMENT PROCEDURES

Adoption of Procurement Procedures:

Pursuant to the provisions of KRS 161.250, the Board of Trustees ("Board") of the Kentucky Teachers' Retirement System ("KTRS") is vested with the responsibility for the general administration and management of the retirement system. The Board may adopt procedures necessary to conduct the business of the retirement system as needed. The law shall control if any inconsistency exists between the law and these procurement procedures.

Law: KRS 161.330 provides that the Board is responsible for the approval and administration of expenses for the operation of the retirement system and the Board is authorized to purchase or lease suitable office quarters for the operation of the retirement system. Additionally, KRS 161.340(3) provides that the Board is responsible for contracting for actuarial, auditing, legal, medical, investment counseling, and other professional or technical services, and commodities, as are required to carry out the obligations of the Board.

Procurement Standard: The procurement procedures set forth herein do not limit the Board's authority and fiduciary duty established by law to procure the office space, goods, and services needed to support the operations and mission of KTRS. Procurements will be based upon "best value" giving due consideration to factors including, but not limited to, timing, execution, quality, service, and price.

Methods of Procurement: KTRS will generally procure goods and services through one of the methods below.

1. Goods and services: For each fiscal year, the Board approves an administrative budget for anticipated expenditures. Payments on contracts for goods and services are issued only on written authorization of the Executive Secretary or a Deputy Executive Secretary. Thereafter, staff issues a report comparing actual to budgeted expenditures to the Board.

- Procurement of goods and services costing less than $30,000 during a fiscal year will be based upon best value by staff comparing known vendors and service providers.

- Procurement of goods and services costing more than $30,000 during a fiscal year will be based upon best value by staff comparing known vendors and service providers. Staff will collect two or more (if available) bids, quotes, telephone quotes, or catalog pricing from known vendors and service providers. The evaluation of best value will be documented and kept in a file maintained by KTRS.

- KTRS may utilize a price contract established by the Commonwealth of Kentucky, the General Services Administration of the United States of America, or U.S.

Communities (a national government purchasing cooperative), so long as the holder sells to KTRS at or below the contract price and under the same terms and conditions.

- KTRS may enter into an agreement with any agency or subdivision of the Commonwealth of Kentucky. Such agreements shall be finalized by executing a Memorandum of Agreement.

- KTRS may publish a Request For Proposal ("RFP"), Request for Qualifications (“RFQ”), or other invitation to vendors or service providers to competitively offer goods or services to KTRS. The invitation may be published in newspapers, the KTRS website, trade journals, or by direct solicitation to known vendors or service providers. KTRS will make reasonable efforts to foster the highest possible level of competition among vendors or service providers seeking business with KTRS. The RFP or RFQ will describe the goods or services required, the type of information and data required of each offeror, the relative importance of particular qualifications, and the evaluation factors to be used. After determining the best value of proposals received, KTRS may negotiate a contract for goods or services with an offeror. If contract terms cannot be agreed upon with the highest ranking offeror, negotiations may be conducted with other offeror(s) in the order of their respective ranking. The evaluation of best value will be documented and kept in a file maintained by KTRS.

There are exceptions to using the methods of procurement above in instances that include, but are not limited to: goods and services available from only one uniquely qualified source; public utilities; cooperative purchases made between state agencies, political subdivisions, state universities, and agencies of other states or agencies of the federal government; advertisements and public media; and copyrighted computer software.

2. Emergency Procurements: The existence of an emergency condition may cause an immediate need for office space, goods, or services that cannot be procured through KTRS’s normal procedures. The determination that an emergency condition exists is to be made and purchases approved by the Executive Secretary or a Deputy Executive Secretary. Thereafter, at the next meeting of the Board of Trustees, the emergency condition and procurement actions incident to the emergency condition will be reported to the Board.