

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO. _____
DIVISION _____

Filed Electronically

COUNCIL FOR BETTER EDUCATION, INC.,

JEFFERSON COUNTY BOARD OF EDUCATION, and

DAYTON INDEPENDENT BOARD OF EDUCATION,

PLAINTIFFS

v.

JASON E. GLASS in his official capacity as
COMMISSIONER OF THE KENTUCKY DEPARTMENT OF
EDUCATION, the KENTUCKY BOARD OF EDUCATION, and
LU YOUNG in her official capacity as CHAIR OF THE
KENTUCKY BOARD OF EDUCATION

SERVE: Attorney General of the Commonwealth of Kentucky
Office of the Attorney General
The Capitol
700 Capitol Avenue
Frankfort, Kentucky 40601

DEFENDANTS

**VERIFIED COMPLAINT FOR A DECLARATION
OF RIGHTS AND FOR INJUNCTIVE RELIEF**

Plaintiffs, Council for Better Education, Inc., Jefferson County Board of Education, and Dayton Independent Board of Education, by and through counsel, bring this action for declaratory and injunctive relief against the Defendants, Jason E. Glass, Commissioner of the Kentucky Department of Education, in his official capacity, the Kentucky Board of Education, and Lu Young, in her official capacity as Chair of the Kentucky Board of Education.

INTRODUCTION

1. The 1891 Kentucky Constitution enshrines Kentucky's commitment to the fundamental right of public education. The Kentucky Supreme Court has emphatically and repeatedly held that the Constitution's education and public funds provisions forbid the Commonwealth from diverting funding intended for the common schools to educational pursuits that are not under the management and control of a board of education elected under Kentucky law. Rather, the fundamental duty of the General Assembly is to maintain an "adequate, uniform and unitary" public school system under the control of the state that is available to all children in Kentucky. *Rose v. Council for Better Education, Inc.*, 790 S.W.2d 186, 192 (Ky. 1989).

2. The General Assembly enacted House Bill 9 (HB 9), which funds charter schools and siphons resources from local school districts.

3. HB 9's new funding scheme in combination with previously enacted charter school legislation, now codified in KRS 160.1590 through 160,1599, violates the Constitution in several ways.

a. *Rose* holds that the constitutional provisions governing "[e]ducation," Ky. Const. §§ 183-88, and specifically the "efficient" common school system requirement in Section 183, mandate a state-administered, "substantially uniform" school system across the entire state. HB 9 ignores this mandate in establishing and funding a separate, non-uniform system of schools that is not under the management and control of local elected boards of education.

b. Section 184 of the Kentucky Constitution expressly dictates that "[n]o sum shall be raised or collected for education other than in common schools" unless it is submitted to and approved by a majority of voters at an election. HB 9 fails to

qualify for this limited exception because it was never submitted to or approved by a voter referendum, and it raises funds for schools that are not under the management and control of local elected boards of education.

c. Even if HB 9 had obtained Section 184's required voter approval, HB 9 violates Sections 3, 171, and 186 of the Kentucky Constitution. Section 3 prohibits the payment of funds "to any man or set of men except in consideration of public services." Section 171 of the Constitution provides that taxes must be "levied and collected for public purposes only." And Section 186 of the Constitution provides that "[a]ll funds accruing to the school fund shall be used for the maintenance of the public schools of the Commonwealth, and for no other purpose, and the General Assembly shall by general law prescribe the manner of the distribution of the public school fund among the school fund among the school districts and its use for public school purposes." The charter program's funding provisions violate Sections 3, 171 and 186 of the Constitution.

d. HB 9 unlawfully diverts local tax revenue levied by local boards of education to unaccountable charter schools in violation of Sections 180 and 181 of the Kentucky Constitution. Section 180 requires that every ordinance or resolution levying a tax "shall specify distinctly the purpose for which said tax is levied and no tax levied for and collected for one purpose shall ever be devoted to another purpose." Ky. Const. § 180. Section 181 provides that the "General Assembly shall not impose taxes for the purposes of any county, city, town or other municipal corporation..." HB 9 requires that charter schools be created and funded with local revenues, even if it is against the will of locally elected boards of education and

those revenues were levied and collected for a different purpose. HB 9 violates Sections 180 and 181 of the Kentucky Constitution.

e. HB 9 mandates that certain specified school districts authorize and approve urban academies. Section 59 of the Kentucky Constitution provides: “The General Assembly shall not pass local or special acts concerning any of the following subjects, or for any of the following purposes, namely: . . . Twenty-fifth: To provide for the management of common schools.” The mandate that certain specified school districts authorize and enter into charter contracts is unconstitutional special or local legislation that violates Section 59 of the Kentucky Constitution.

f. Finally, HB 9 unconstitutionally delegates legislative authority over the essential governmental function of providing education to unaccountable private entities without imposing the safeguards the Supreme Court requires under Sections 2 and 29 of the Constitution. The Supreme Court has repeatedly held that when the General Assembly delegates its power to even a *public* entity, it must do so with sufficient standards or safeguards against the arbitrary or abusive exercise of that power. HB 9 delegates broad discretion over state-supported educational services to entities while providing no meaningful oversight or limits on a charter school’s discretion in designing curriculum, operations, or finances.

4. Plaintiffs have been and will continue to be injured by the unconstitutional expenditure of public revenues to charter schools under HB 9. The Kentucky Constitution demands that public money go to public schools, and not to unaccountable schools operated outside the management and control of the schools district’s elected board of education. The manner in which HB 9 was passed usurped voters right to vote on charter school funding under

Section 184 of the Kentucky Constitution. Plaintiffs further object to the provision of education with public funds in their districts by unaccountable charter schools, which have autonomy over curriculum, financing, and operations. Children who attend public schools will be injured by the funding of charter schools and by its diversion of resources from the public schools.

5. Plaintiffs respectfully request that this Court enter an order declaring HB 9's diversion of public revenues to charter schools unconstitutional, and enjoining Commissioner Glass, and the Kentucky Department of Education from enforcing or implementing HB 9.

NATURE OF ACTION

6. This Verified Complaint for a Declaration of Rights and for Injunctive Relief is governed by the Kentucky Declaratory Judgment Act, KRS 418.040, CR 57, and CR 65.

7. KRS 418.040 provides this Court with authority to "make a binding declaration of rights, whether or not consequential relief is or could be asked" when a controversy exists. An actual and justiciable controversy regarding violations of the Kentucky Constitution exists in this action.

8. CR 57 permits this Court to issue a declaratory judgment.

9. CR 65 permits this Court to issue a temporary injunction and, in a final judgment, a permanent injunction, which may restrict or mandatorily direct the doing of an act.

10. Plaintiffs request an expedited review pursuant to KRS 418.050 and CR 57. HB 9 is in effect and requires local schools to act as authorizers of charter schools and to fund charter schools. The Kentucky Board of Education has developed and adopted administrative regulations that require local school districts to act as authorizers of charter schools and to fund those schools once established. This diversion of funds from local school districts causes the Plaintiffs immediate harm. Absent immediate relief, funds intended for the common schools will be diverted

to charter schools in violation of the Kentucky Constitution. This justiciable controversy presents an immediate concern that the Court should promptly resolve.

11. Plaintiffs ask this Court to declare that HB 9's establishment and funding of charter schools is null, void, unconstitutional, and of no effect.

12. This is also an action to enjoin the Defendants, the Kentucky Department of Education, and all their agents, attorneys and any other persons in active concert or participation with them, from implementing and enforcing HB 9's diversion of public revenues to charter schools.

THE PARTIES

13. Plaintiff, Council for Better Education, Inc., is a nonprofit corporation that represents Kentucky's 171 public school districts. The Council's goal is "to ensure full implementation of Kentucky's constitutional commitment to its students and common schools." HB 9 violates this commitment.

14. Plaintiff, Jefferson County Board of Education ("JCBOE"), operates 165 public schools in Jefferson County, Kentucky. JCBOE, like other school districts, will be harmed by the diversion of public revenues under HB 9 and will be required to fund and authorize a charter school over which it has no meaningful oversight or control.

15. Plaintiff, Dayton Independent Board of Education ("DIBOE"), operates two public schools in Campbell County, Kentucky. DIBOE like other school districts, will be harmed by the diversion of public revenues under HB 9 and will be required to fund and authorize a charter school over which it has no meaningful oversight or control.

16. Defendant, Jason E. Glass, is the duly appointed Commissioner of the Department of Education, and is vested with such powers as are afforded him by the Kentucky Revised

Statutes. This includes KRS Chapter 160.1590-1599, which requires the Department of Education to authorize and oversee charter schools.

17. Defendant, the Kentucky Board of Education (KBE), develops and adopts policies and administrative regulations, including the regulations governing charter schools, for Kentucky's 171 public school districts, and receives applications for charter schools.

18. Defendant, Lu Young, in her official capacity as chair of KBE, is vested with such powers as are afforded her by the Kentucky Revised Statutes. This includes KRS Chapter 160.1590-1599, which requires the KBE to authorize and oversee charter schools.

JURISDICTION AND VENUE

19. An actual, justiciable controversy exists, and this Court has subject matter jurisdiction over this action pursuant to KRS 418.040, KRS 23A.010, CR 57 and CR 65.

20. Venue is appropriate in this Court pursuant to KRS 452.430 because this action is brought against the Commissioner of Education in his official capacity and pursuant to KRS 452.005 because this challenges the constitutionality of a Kentucky statute and CBE's registered address is in Franklin County.

21. Plaintiffs certify that a copy of this Complaint has been served upon the Attorney General.

22. Pursuant to KRS 418.040, *et seq.*, this Court may properly exercise *in personam* jurisdiction over the Defendants.

FACTUAL BACKGROUND

The Charter School Program

23. Although the framework for charter schools was established in 2017 with the passage of House Bill 520, the General Assembly did not provide any funding for charter schools.

That changed with the passage of HB 9.

24. On April 13, 2022, the Kentucky Senate and Kentucky House of Representatives, narrowly passed HB 9, “AN ACT relating to educational opportunities and making an appropriation therefor,” and overrode the veto of the Governor by votes of 22-15 and 52-46, respectively. A true and correct copy of the enrolled act is attached as Exhibit A.

25. HB 9 amends the existing charter school statutes, KRS 160.1590 – 160.1599, which authorized charter schools beginning in 2017, and creates a mechanism to fund charter schools by diverting funding from local school districts to charter schools.

26. Beginning in academic year 2022-2023, any “authorizer” may authorize an unlimited number of charter schools, KRS 160.1591(3).

27. But HB 9 *requires* the establishment of two charter schools – one in Jefferson County and one in Northern Kentucky – to study the impact of charter schools. KRS 160.15911. By July 1, 2023, JCBOE, and by July 1, 2024, a collective of local school boards from counties containing four or more local school districts, must solicit, review, and approve at least one application for a charter school that serves as an urban academy.

28. To comply with this requirement, JCBOE is being required to publish charter school application guidance, to submit a notice of intent to act as an authorizer, and to conduct a charter school technical assistance session. Charter school applications must be submitted, reviewed, and approved well before the July 1, 2023 deadline for establishing a charter school that serves as an urban academy.

29. The stated purpose of HB 9 is to establish charter schools providing additional options that will reduce socioeconomic, racial, and ethnic achievement gaps, KRS 160.1591(1)(c), but HB 9 does not require that charter schools provide any specific programs or opportunities

aimed at reducing achievement gaps.

30. Instead, HB 9 permits authorizers to create separate charter schools, managed and controlled by an independent board of directors that can contract with private education service providers for educational design, implementation, or comprehensive management.

31. Authorizers are defined as local school boards of local school districts, which can approve charter applications within their districts; a collaborative of local school boards to set up a regional charter school located in their area; the mayor of a consolidated local government who may authorize charter schools in his or her county and who has submitted a written notice of intent to serve as an authorizer; and the chief executive officer of an urban-county government who may authorize charter schools located in his or her county and who has submitted a written notice of intent to serve as an authorizer. KRS 160.1590(15).

32. Authorizers must establish annual timelines to solicit, invite, accept, and evaluate applications. KRS 160.1594(1)(c). Authorizers then review and must approve charter applications that meet the requirements of KRS 160.1590 to KRS 160.1599. If an authorizer fails to approve or deny an application within 60 days, the application is deemed to be approved. KRS 160.1594(6).

33. Applications to establish a charter school may be submitted by teachers, parents, school administrators, community residents, public organizations, nonprofit organizations, or any combination of those. KRS 160.1593(1).

34. Charter schools have autonomy over decisions, including, but not limited to, matters concerning finance, personnel, scheduling, curriculum, and instruction and are governed by an independent board of directors elected or selected pursuant to a charter school's application. The board of directors is responsible for the operation of the public charter school, including the

budget, contracts, curriculum, and personnel and has final authority over policy and operational decisions of the charter school.

35. Charter schools are not governed by local boards of education with members accountable and elected by voters.

36. Once an application is granted, charter schools enter into charter contracts with their authorizers covering among other things, the rights and duties of each party and the allocation of funds. KRS 160.1596. Authorizers may not impose conditions inconsistent with KRS 160.1590 to 160.1599 in the charter contract. Nor may authorizers impose unreasonable conditions on charter schools, including enrollment caps or operational requirements that place “undue constraints” on the charter school or that contradict the provisions of KRS 160.1590 to 160.1599 and KRS 161.141.

37. Charter contracts may only be revoked if a violation threatens the health or safety of students. KRS 160.1598(7).

38. Although charter schools are nominally “part of the state’s system of public education,” they are “exempt from statutes and regulations applicable to the state board, local school districts, or schools,” “except that they must comply with the health, safety, civil rights, and disability rights requirements applicable to public schools.” KRS 160.1592(1).

39. As an authorizer, a local school district’s role is limited to non-renewing a charter school’s contract where a charter school has materially breached the charter contract or failed to comply with the few statutes and regulations to which charter schools are subject. But in the case of a charter school authorized by a mayor of a consolidated local government or a chief executive officer of an urban-county government, local school districts and their elected boards of education have no role or oversight whatsoever, other than funneling a portion of its funding to the charter

school subject to penalties if it does not do so in a timely fashion.

40. In local school districts with total school enrollment of less than 7,500, the application to authorize a charter school must include a memorandum of understanding with the district of location endorsing the application. But 16 of the 171 schools districts in Kentucky had enrollments of greater than 7,500 in the 2020-2021 school year: Jefferson, Fayette, Boone, Warren, Hardin, Kenton, Bullitt, Oldham, Daviess, Madison, Scott, Laurel, Christian, Pulaski, Jessamine, and Pike. <https://education.ky.gov/districts/enrol/Pages/COVID-19.aspx>. In the 16 largest school districts, local school districts are not required to enter into any memorandum of understanding with respect to a charter school application. In addition, in counties with independent school districts with enrollments exceeding 7,500, applicants are exempt from the requirement of obtaining a memorandum of understanding from their local school district if an urban academy is authorized.

41. If a local school district does not approve a charter application, the applicant may appeal to the KBE, which must approve the charter if the minimum application requirements have been met.

42. Charter schools receive Support Education Excellence in Kentucky (SEEK) funding from the local school districts in which they are located. Districts are required to transfer amounts proportional to the charter school's enrollment or average daily attendance in comparison with the overall district qualifying numbers for funds related to students' attendance and enrollment and allocated to the district of location; any add-on or funding factors provided in the state budget; and any add-on or funding factors provided for by the Kentucky Department of Education. KRS 160.1596(6)(a). Up to 3% of the funds transferred to a charter school may be retained by an authorizer as an authorizer fee. KRS 160.1596(10)(a). In the case of a local school

district acting as an authorizer, this purported fee is made up of the school district's own funding which it would have retained absent a charter school.

43. The funds are transferred throughout the school year according to a schedule determined by KBE. If a district fails to transfer funds, for every 5 days that a transfer is late, the district is fined not less than 5% of the funds to be transferred and the fines are directed to the charter school affected by the delay. KRS 160.1596(11).

44. The General Assembly has tied base per-pupil funding for public schools to attendance levels under its SEEK formula. When a student leaves a public school in a local district to attend a charter school, the school district's pro rata portion of SEEK funds will be diverted to the charter school. Yet the public schools have fixed costs that cannot be cut. Having one fewer student to educate does not mean that a particular school or district can make a dollar-for-dollar cut to its budget. There is no difference, for example, between the electricity needed to heat, cool, or light an existing school building for 450, as opposed to 500, students.

45. In addition, there is no prescribed method to distribute local tax receipts that accounts for pupils that are more costly to educate than others, such as children on free or reduced lunches, children with disabilities, or English learners. Funding to provide services for these children that remain in the public schools will be reduced.

46. Unable to reduce fixed costs, local school districts will be forced to reduce other expenses, such as teaching staff, academic resources, or after-school programs. Each student the General Assembly urges to leave to attend a charter school will leave behind a system with fewer resources to educate the remaining students.

47. The General Assembly is responsible for establishing and funding common schools to provide an adequate, uniform, and efficient system of education.

48. Public schools must provide an efficient education that meets the standards set forth in *Rose*, as well as extensive requirements under state education statutes and administrative regulations. Under HB 9, charter schools are “exempt from statutes and regulations applicable to the state board, local school districts, or schools,” except for health, safety, civil rights, and disability rights requirements. Charter schools operate autonomously with regard to their curriculum, finances, methods of instruction, and operations.

49. HB 9 provides few, if any, standards to guide charter schools in performing their delegated tasks.

50. Charter schools face no meaningful review by the Kentucky Department of Education or local school districts. An authorizer’s ability to revoke or non-renew a charter school’s contract is extremely limited and applications for charter schools must be approved if they meet the minimal standards set forth in KRS 160.1590 to 160.1599.

51. The Kentucky Department of Education, local boards of education, and the General Assembly are subject to constitutional, statutory and regulatory limits on how they provide for education in contrast to the autonomy and independence enjoyed by charter schools.

CLAIMS

Count I

Declaratory Judgment

Violations of Section 183 and 186 of the Kentucky Constitution

52. The allegations in Paragraphs 1 through 51 are realleged and incorporated by reference.

53. Section 183 requires the General Assembly to “provide an efficient system of common schools throughout the state.”

54. Section 186 requires that “[a]ll funds accruing to the school fund shall be used for

the maintenance of the public schools of the Commonwealth, and for no other purpose, and the General Assembly shall by general law prescribe the manner of the distribution of the public school fund among the school districts and its use for public school purposes. . . .”

55. The Supreme Court has said that Section 183 requires education in the Commonwealth to be “adequate, uniform and unitary,” and that “the state must control and administer the system.” *Rose*, 790 S.W.2d at 192, 211. The Constitution imposes on the General Assembly a non-delegable duty to maintain an adequately funded, substantially uniform system of public schools throughout the entire state.

56. HB 9 exempts charter schools from the vast majority of statutes and regulations governing local school districts. By implementing and funding the charter school program, the Defendants have violated Sections 183 and 186.

57. According to *Rose*, the common schools must be managed with no waste, no duplication, and no mismanagement. Given that authorizers can authorize an unlimited number of charter schools, the potential for duplication and waste is abundant.

58. In addition, the establishment of charter schools lends itself to a non-uniform system of education with insufficient oversight by the General Assembly. HB 9 shifts the responsibility of educating Kentucky’s children to outside entities who are not managed or controlled by the state or by local elected boards of education. The General Assembly has abdicated its duty under *Rose* to establish and oversee the education of Kentucky’s children.

59. Charter schools will essentially operate as a parallel system of schools that are not a part of, or integrated with, the statewide system of public schools. HB 9 violates the requirement of substantial uniformity and the requirement that the system of common schools not be fundamentally duplicative and wasteful.

60. HB 9 violates Sections 183 and 186 of the Kentucky Constitution.

61. By establishing and funding charter schools, Defendants have violated these provisions.

Count II
Declaratory Judgment
Violation of Section 184 of the Kentucky Constitution

62. The allegations in Paragraphs 1 through 61 are realleged and incorporated by reference.

63. Section 184 of the Kentucky Constitution commands that “[n]o sum shall be raised or collected for education other than in common schools until the question of taxation is submitted to the legal voters” Ky. Const. § 184.

64. The Supreme Court has said that any “fair reading” of Section 184 “compels the conclusion that money spent on education is to be spent exclusively in the public school system,” unless the referendum requirement is met. *Fannin*, 655 S.W.2d at 482.

65. The Court has further concluded that Section 184’s restrictions apply both to revenue already raised for public schools and to potential future revenue. *Miller v. Covington Dev. Auth.*, 539 S.W.2d 1 (Ky. 1976).

66. HB 9 does not contain any requirement that its funding provisions be submitted to the legal voters of the Commonwealth before it became law.

67. The charter program’s funding provisions violate Section 184 of the Kentucky Constitution.

68. As such, by implementing and funding the charter school program, Defendants are violating Section 184.

Count III
Declaratory Judgment
Violation of Section 3, 171, and 186 of the Kentucky Constitution

69. The allegations in Paragraphs 1 through 68 are realleged and incorporated by reference.

70. Section 3 of the Constitution prohibits the payment of funds “to any man or set of men except in consideration of public services.”

71. Section 171 of the Constitution provides that taxes must be “levied and collected for public purposes only.”

72. Section 186 of the Constitution provides that “[a]ll funds accruing to the school fund shall be used for the maintenance of the public schools of the Commonwealth, and for no other purpose, and the General Assembly shall by general law prescribe the manner of the distribution of the public school fund among the school fund among the school districts and its use for public school purposes.”

73. The charter program’s funding provisions violate Sections 3, 171 and 186 of the Constitution.

74. By establishing and funding the charter school program, Defendants are violating these provisions.

Count IV
Declaratory Judgment
Violation of Section 180 and 181 of the Kentucky Constitution

75. The allegations in Paragraphs 1 through 74 are realleged and incorporated by reference.

76. “Every act enacted by the General Assembly, and every ordinance and resolution passed by any county, city, town or municipal board or local legislative body, levying a tax, shall

specify distinctly the purpose for which said tax is levied and no tax levied for and collected for one purpose shall ever be devoted to another purpose.” Ky. Const. § 180.

77. Section 181 provides that the “General Assembly shall not impose taxes for the purposes of any county, city, town or other municipal corporation....”

78. Local school districts levy taxes to fund specific programs and operations of the schools that are under the control of their elected boards of education. Yet KRS 160.1596(6)(b)(2) requires that “[a]ll taxes and payments in lieu of taxes transferred to the district of location or levied and collected by the district of location” be transferred to charter schools on a proportional per pupil basis. This transfer of funds is not contemplated by a local school district’s tax levy.

79. Nor can a local school district be required to raise taxes to educate students attending charter schools that are managed and controlled by separate autonomous boards of education that are not elected by or accountable to the voters who are being taxed.

80. Yet HB 9 is designed to require that charter schools be created and funded with local revenues, even if it is *against* the will of local authorities.

81. HB 9 violates Sections 180 and 181 of the Kentucky Constitution.

82. By diverting local tax revenue to fund charter schools, Defendants are violating Sections 180 and 181 of the Kentucky Constitution.

Count V
Declaratory Judgment
Violation of Section 59 of the Kentucky Constitution

83. The allegations in Paragraphs 1 through 82 are realleged and incorporated by reference.

84. Section 59 of the Kentucky Constitution specifically prohibits special legislation on the subject of education: “The General Assembly shall not pass local or special acts concerning

any of the following subjects, or for any of the following purposes, namely . . . Twenty-fifth: To provide for the management of common schools.”

85. HB 9 creates a “pilot project” requiring two specific geographic areas or locales to authorize a public charter school. HB 9 requires that a county school district located in a county with a consolidated local government (Jefferson County) and a county containing four or more local school districts (Kenton and Campbell Counties) authorize an urban academy.

86. HB 9’s mandate to establish charter schools for only two specific geographic areas violates Section 59 of the Kentucky Constitution.

87. By implementing HB 9, Defendants have violated or will violate this provision.

Count VI
Declaratory Judgment
Violation of Sections 2 and 29 of the Kentucky Constitution

88. The allegations in Paragraphs 1 through 87 are realleged and incorporated by reference.

89. Section 2 of the Kentucky Constitution states that “[a]bsolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority.” And Section 29 provides that “[t]he legislative power shall be vested in a House of Representatives and a Senate, which, together, shall be styled the ‘General Assembly of the Commonwealth of Kentucky.’”

90. Under these provisions, the legislature can delegate its authority only if the law contains “sufficient standards controlling the exercise of [delegated] discretion.” *Holsclaw v. Stephens*, 507 S.W.2d 462, 471 (Ky. 1973).

91. HB 9 unconstitutionally delegates legislative authority over the essential governmental function of providing education to unaccountable private entities without imposing

the safeguards the Supreme Court requires under Sections 2 and 29 of the Constitution. The Supreme Court has repeatedly held that when the General Assembly delegates its power to even a *public* entity, it must do so with sufficient standards or safeguards against the arbitrary or abusive exercise of that power. HB 9 delegates broad discretion over state-supported educational services to entities while providing no meaningful oversight or limits on a charter school's discretion in designing curriculum, operations, or finances.

92. HB 9 violates Sections 2 and 29 of the Kentucky Constitution.

93. By implementing the charter school program, Defendants have violated or will violate these provisions.

Count VII Injunctive Relief

94. The allegations in Paragraphs 1 through 93 are realleged and incorporated by reference.

95. Plaintiffs are entitled to relief in the form of injunctive relief, both temporary and permanent, restraining and enjoining the Defendants and their agents, attorneys, and any other person in active concert or participation with him, from enforcing or implementing HB 9.

96. CR 65.01 authorizes an injunction to "restrict or mandatorily direct the doing of an act." Plaintiffs ask this court to permanently enjoin the Defendants from implementing or enforcing HB 9 in a manner that violates the aforementioned constitutional provisions, consistent with Plaintiffs' prayer for relief below.

97. CR 65.04 provides:

A temporary injunction may be granted during the pendency of an action on motion if it is clearly shown by verified complaint, affidavit, or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss, or damage pending a final

judgment in the action, or the acts of the adverse party will tend to render such final judgment ineffectual.

98. As set forth above, HB 9 violates numerous provisions of the Kentucky Constitution.

99. The Plaintiffs have suffered and will continue to suffer immediate and irreparable injury, loss, or damage pending a final judgment in this action. The challenged legislation has taken effect without going through the referendum required by Section 184. The Department of Education has promulgated regulations to implement HB 9, which requires local school districts to act as authorizers and diverts funds from local school districts. Recovering the unconstitutionally diverted funds after they are distributed will be impractical, if not impossible. Unless the Court issues an injunction, unconstitutional and illegal acts of the Defendants will render any final judgment in this action ineffectual. Therefore, the Plaintiffs have no adequate remedy at law other than the issuance of the requested injunction.

100. HB 9 violates numerous provisions of the Kentucky Constitution. There is a high likelihood the Plaintiffs will prevail in a trial on the merits of their claims in this action.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, by their counsel, demand as follows:

- I. For an expedited review of this action pursuant to KRS 418.050 and CR 57.
- II. That this Court issue a declaration and order that HB 9, which funds charter schools, violates Section 2, 3, 29, 59, 171, 180, 181, 183, 184 and 186 of the Kentucky Constitution.
- III. That the Court issue a temporary injunction, and a permanent injunction, restraining and enjoining the Defendants, their agents, attorneys, representatives, and any other persons in active concert with them, from implementing or enforcing HB 9 in a

manner that violates the aforementioned constitutional provisions.

IV. For any and all further relief to which Plaintiffs may appear to be entitled, including reasonable costs and attorneys' fees.

Respectfully submitted,

/s/ Byron E. Leet

Byron E. Leet

Mitzi D. Wyrick

Sean G. Williamson

Wyatt, Tarrant & Combs, LLP

400 West Market Street, Suite 2000

Louisville, KY 40202

P: (502) 589-5235

bleet@wyattfirm.com

mitziwyrick@wyattfirm.com

swilliamson@wyattfirm.com

*Counsel for Council for Better Education,
Inc., Jefferson County Board of Education,
and Dayton Independent Board of Education*

UNOFFICIAL COPY

22 RS HB 9/VO

1 AN ACT relating to educational opportunities and making an appropriation
2 therefor.

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

4 ➔Section 1. KRS 160.1590 is amended to read as follows:

5 As used in KRS 160.1590 to 160.1599:

6 (1) ~~["Achievement academy" has the same meaning as "public charter school";~~

7 ~~(2)]~~"Achievement gap" means the difference between performance goals and actual
8 performance on state standardized examinations and other academic performance
9 measures for subgroups of students, especially groups defined by socioeconomic
10 status, race, and ethnicity;

11 ~~(2)~~~~(3)~~ "Applicant" means an eligible person or persons, organization, or entity that
12 seeks approval from a charter school authorizer to establish a public charter school;

13 ~~(3)~~~~(4)~~ "Charter application" means a proposal from an applicant to an authorizer to
14 enter into a charter contract whereby the proposed school obtains public charter
15 school status;

16 ~~(4)~~~~(5)~~ "Charter contract" or "contract" means a fixed-term, renewable contract
17 between a charter school and an authorizer that identifies the roles, powers,
18 responsibilities, and performance expectations for each party to the contract
19 pursuant to KRS 160.1596;

20 ~~(5)~~~~(6)~~ "Charter school board of directors" means the independent board of a public
21 charter school that is party to the charter contract with the authorizer and whose
22 members have been elected or selected pursuant to the school's application;

23 ~~(6)~~~~(7)~~ "Conversion public charter school" means a public charter school that existed
24 as a noncharter public school prior to becoming a public charter school;

25 **(7) "District of location" means the public school district in which a public charter**
26 **school is physically located;**

27 (8) "Education service provider" means an education management organization, school

UNOFFICIAL COPY

1 design provider, or any other partner entity with which a public charter school
 2 contracts for educational design, implementation, or comprehensive management;

3 (9) "Local school board" or "local board" means a school board exercising
 4 management and control of a local school district;

5 (10) "Local school district" means a county or independent school district as identified in
 6 KRS 160.010 and 160.020;

7 (11) "Parent" means a parent, guardian, or other person or entity having legal custody of
 8 a child;

9 (12) "Proportionate per pupil basis" means multiplying an amount of funds by a
 10 fraction, with the numerator being the average daily attendance of the public
 11 charter school, and the denominator being the average daily attendance of the
 12 school district of location;

13 (13) "Proportionate per pupil transported basis" means multiplying an amount of
 14 funds by a fraction, with the numerator being the aggregate daily attendance of
 15 students transported by a public charter school, and the denominator being the
 16 aggregate daily attendance of students transported by the school district of
 17 location;

18 (14)~~(12)~~ "Public charter school" means a public school that:

19 (a) Is a public body corporate and politic, exercising public power, including the
 20 power in name to contract and be contracted with, sue and be sued, and adopt
 21 bylaws not inconsistent with this section;

22 (b) Has autonomy over decisions, including but not limited to matters concerning
 23 finance, personnel, scheduling, curriculum, and instruction;

24 (c) Is governed by an independent board of directors;

25 (d) Is established and operating under the terms of a charter contract between the
 26 public charter school's board of directors and its authorizer;

27 (e) Is a public school to which parents choose to send their children;

UNOFFICIAL COPY

- 1 (f) Is a public school that admits students on the basis of a random and open
 2 lottery if more students apply for admission than can be accommodated;
- 3 (g) Offers a comprehensive instructional program to enrolled students~~[within a~~
 4 ~~public school district]~~;
- 5 (h) Operates in pursuit of a specific set of educational objectives as defined in its
 6 charter contract; and
- 7 (i) Operates under the oversight of its authorizer in accordance with its charter
 8 contract;
- 9 ~~(15)~~~~(13)~~ "Public charter school authorizer" or "authorizer" means an entity or body that
 10 reviews, approves, or denies charter applications, enters into charter contracts with
 11 applicants, oversees public charter schools, and renews, does not renew, or revokes
 12 charter contracts. Authorizers shall include:
- 13 (a) A local school board of a local school district, which shall only have
 14 authority to approve charter applications within the boundaries of its
 15 district~~[in which a public charter school is located]~~;
- 16 (b) A collaborative among local school boards that forms to set up a regional
 17 public charter school to be located within the area managed and controlled by
 18 those local school boards;
- 19 (c) The mayor of a consolidated local government, who shall be considered an
 20 authorizer governing board for the purposes of KRS 160.1590 to 160.1599
 21 and who may only authorize public charter schools to be physically located
 22 within the county in which the city is located and who has submitted a written
 23 notice to the state board that he or she intends to serve as an authorizer; and
- 24 (d) The chief executive officer of an urban-county government, who shall be
 25 considered an authorizer governing board for the purposes of KRS
 26 160.1590 to 160.1599 and who may only authorize public charter schools to
 27 be physically located within the county in which the city is located and who

UNOFFICIAL COPY

1 has submitted a written notice to the state board that he or she intends to serve
2 as an authorizer;

3 ~~(16)~~~~(14)~~ "Qualified teacher" means a person certified by the Education Professional
4 Standards Board pursuant to KRS 161.028, 161.030, 161.046, or 161.048;

5 ~~[(15) "Regional achievement academy" means a public charter school that has been
6 established to serve students across multiple school districts;]~~

7 ~~(16) "Regional achievement zone" means one (1) county containing four (4) or more
8 local school districts or two (2) or more contiguous counties, each containing four
9 (4) or more local school districts;~~

10 ~~(17) "Start up public charter school" means a public charter school that did not exist as a
11 noncharter public school prior to becoming a public charter school;]~~

12 ~~(17)~~~~(18)~~ "State board" means the Kentucky Board of Education;

13 ~~(18)~~~~(19)~~ "Student" means any child who is eligible for attendance in a public school in
14 Kentucky;~~[and]~~

15 ~~(19)~~~~(20)~~ "Urban academy" means a public charter school that includes an
16 enrollment preference for students who live in close proximity to the school as
17 defined in the charter contract; and

18 ~~(20)~~ "Virtual public charter school" means a public charter school that offers educational
19 services primarily or completely through an online program.

20 ➔Section 2. KRS 160.1591 is amended to read as follows:

21 (1) The General Assembly hereby finds and declares that:

22 (a) Reducing achievement gaps in Kentucky is necessary for the state to realize its
23 workforce and economic development potential;

24 (b) Past and current measures have been insufficient for making progress toward
25 reducing the state's achievement gaps;

26 (c) Additional public school options are necessary to help reduce socioeconomic,
27 racial, and ethnic achievement gaps; and

UNOFFICIAL COPY

1 (d) The demand exists for high-quality public charter schools in the
2 Commonwealth.

3 (2) The General Assembly hereby establishes a public charter school project to benefit
4 parents, teachers, and community members by creating new, innovative, and more
5 flexible ways of educating all children within the public school system and by
6 advancing a renewed commitment to the mission, goals, and diversity of public
7 education. The purposes of the public charter school initiative are to:

- 8 (a) Improve student learning outcomes by creating additional high-performing
9 schools with high standards for student performance;
- 10 (b) Encourage the use of different, high-quality models of teaching, governing,
11 scheduling, or other aspects of schooling that meet a variety of student needs;
- 12 (c) Close achievement gaps for low-performing groups of public school students;
- 13 (d) Allow schools freedom and flexibility in exchange for exceptional levels of
14 results-driven accountability;
- 15 (e) Increase high-quality educational opportunities within the public education
16 system for all students, especially those at risk of academic failure; and
- 17 (f) Provide students, parents, community members, and local entities with
18 expanded opportunities for involvement in the public education system.

19 (3) Beginning in academic year 2022-2023~~[2017-2018]~~, any authorizer may authorize
20 an unlimited number of public charter schools~~[within the boundary of the local~~
21 ~~school district]~~.

22 (4) A public charter school shall not be a virtual public charter school.

23 (5) ~~[(a) A public charter school authorized by a local school board or collaborative~~
24 ~~may enroll students who reside within the boundaries of the district or districts~~
25 ~~represented by the local school board or collaborative.]~~

26 (a)~~(b)~~ Enrollment preference for a conversion public charter school shall be
27 given to students who attended the school the previous school year. If the

UNOFFICIAL COPY

RS HB 9/VO

1 number of students enrolled does not exceed the capacity of the school,
2 secondary preference shall be given to students who reside within the district
3 boundary in which the public charter school is located.

4 ~~(b)~~~~(c)~~ Enrollment preference for public charter schools shall be given to
5 students enrolled in the public charter school the previous year and to siblings
6 of students already enrolled in the school. ~~The~~~~An~~ enrollment preference for
7 returning students shall exclude those students from entering into a lottery, as
8 identified in paragraph (f) of this subsection.

9 (c) Enrollment preference for public charter schools identified as an urban
10 academy in the charter contract shall be given to students who live in close
11 proximity to the school, as governed by the charter contract.

12 (d) Enrollment preference may be given to the children of the public charter
13 school's board of directors and full-time employees of the public charter
14 school provided they constitute no more than ten percent (10%) of the total
15 student population.

16 (e) A public charter school may allow an enrollment preference for students who
17 meet federal eligibility requirements for free or reduced-price meals and
18 students who attend persistently low-achieving noncharter public schools.

19 (f) If capacity is insufficient to enroll all students who wish to attend any specific
20 grade level or program at a public charter school, the school shall select
21 students through a randomized and transparent lottery. The lottery process
22 may allow for siblings in a lottery or different lotteries to be admitted
23 together.

24 ~~((6) (a) A public charter school established within the boundaries of a regional~~
25 ~~achievement zone shall be a regional achievement academy.~~

26 ~~(b) 1. A regional achievement academy may be authorized by a single local~~
27 ~~school board within the regional achievement zone or by a collaborative~~

UNOFFICIAL COPY

22 RS HB 9/VO

1 ~~of local school boards within the regional achievement zone.~~

2 ~~2.—A regional achievement academy authorized by a single local school~~
3 ~~board shall be located within the boundaries of the authorizing local~~
4 ~~school district.~~

5 ~~3.—A regional achievement academy authorized by a collaborative of local~~
6 ~~school boards shall be located within the regional achievement zone.~~

7 ~~(c)—A regional achievement academy may only enroll students who reside within~~
8 ~~the boundaries of its regional achievement zone.~~

9 ~~(d)—Enrollment preference in a regional achievement academy may be given to~~
10 ~~students who reside within the boundaries of the local school district where~~
11 ~~the regional achievement academy is located.]~~

12 ~~(6)~~~~(7)~~ Consistent with the requirements of KRS 160.1590 to 160.1599 and 161.141,
13 the state board shall promulgate administrative regulations to guide student
14 application, lottery, and enrollment in public charter schools.

15 ➔Section 3. KRS 160.1592 is amended to read as follows:

16 (1) A public charter school shall be part of the state's system of public education but
17 shall be exempt from all statutes and administrative regulations applicable to the
18 state board, a local school district, or a school, except the public charter school shall
19 adhere to the same health, safety, civil rights, and disability rights requirements as
20 are applied to all public schools and to all requirements otherwise identified in KRS
21 160.1590 to 160.1599 and 161.141.

22 (2) A public charter school may elect to comply with any one (1) or more provisions of
23 any state statute or administrative regulation.

24 (3) A public charter school shall:
25 (a) Be governed by a board of directors;
26 (b) Be established and operate in pursuit of a specific set of educational objectives
27 as defined in the charter contract between the school's board of directors and

UNOFFICIAL COPY

22 RS HB 9/VO

- 1 its authorizer;
- 2 (c) Ensure students meet compulsory attendance requirements under KRS
- 3 158.030 and 158.100 and record student enrollment and attendance in a
- 4 manner necessary for participation in the fund to support education
- 5 excellence in Kentucky;
- 6 (d) Hire only qualified teachers to provide student instruction;
- 7 (e) Ensure high school course offerings meet or exceed the minimum required
- 8 under KRS 156.160 for high school graduation;
- 9 (f) Design its education programs to meet or exceed the student performance
- 10 standards adopted by the Kentucky Board of Education;
- 11 (g) Ensure students' participation in required state assessment of student
- 12 performance, as required under KRS 158.6453;
- 13 (h) Adhere to all generally accepted accounting principles and adhere to the same
- 14 financial audits, audit procedures, and audit requirements as are applied to
- 15 other public schools under KRS 156.265;
- 16 (i) Utilize the same system for reporting student information data and financial
- 17 data as is utilized by other school districts across the state;
- 18 (j) Require criminal background checks for staff and volunteers, including
- 19 members of its governing board, as required of all public school employees
- 20 and volunteers within the public schools specified in KRS 160.380 and
- 21 161.148;
- 22 (k) Comply with open records and open meeting requirements under KRS
- 23 Chapter 61;
- 24 (l) Comply with purchasing requirements and limitations under KRS Chapter
- 25 45A and KRS 156.074 and 156.480, or provide to the public charter school
- 26 board of directors a detailed monthly report of school purchases over ten
- 27 thousand dollars (\$10,000), including but not limited to curriculum, furniture,

Presiding Judge: HON. PHILLIP J. SHEPHERD (648260)

COM : 000030 of 000102

UNOFFICIAL COPY

22 RS HB 9/VO

- 1 and technology;
- 2 (m) Provide instructional time that is at least equivalent to the student instructional
- 3 year specified in KRS 158.070;
- 4 (n) Provide data to the Kentucky Department of Education and the authorizer as
- 5 required by the Kentucky Department of Education or authorizer to generate a
- 6 school report card under KRS 158.6453;
- 7 (o) Operate under the oversight of its authorizer in accordance with its charter
- 8 contract and application;
- 9 (p) As a public body corporate, have all the powers necessary for carrying out the
- 10 terms of its charter contract, including the power to:
 - 11 1. Receive and disburse funds for school purposes;
 - 12 2. Secure appropriate insurance and enter into contracts and leases;
 - 13 3. Contract with an education service provider, provided the board of
 - 14 directors of the public charter school retains oversight and authority over
 - 15 the school;
 - 16 4. Incur debt in reasonable anticipation of the receipt of public or private
 - 17 funds;
 - 18 5. Pledge, assign, or encumber its assets to be used as collateral for loans
 - 19 or extensions of credit;
 - 20 6. Solicit and accept any gifts or grants for school purposes, subject to
 - 21 applicable laws and the terms of its charter;
 - 22 7. Acquire real property for use as its facility or facilities, from public or
 - 23 private sources; and
 - 24 8. Employ or contract with other entities for the provision of teaching,
 - 25 professional, and support staff, as needed; ~~and~~
- 26 (q) Conduct an admissions lottery if capacity is insufficient to enroll all students
- 27 who wish to attend the school and ensure that every student has a fair

UNOFFICIAL COPY

22 RS HB 9/VO

1 opportunity to be considered in the lottery and that the lottery is competently
 2 conducted, equitable, randomized, transparent, impartial, and in accordance
 3 with targeted student population and service community as identified in KRS
 4 160.1593(3) so that students are accepted in a public charter school without
 5 regard to ethnicity, national origin, religion, sex, income level, disabling
 6 condition, proficiency in the English language, or academic or athletic ability;

7 and
 8 (r) Establish a food program for students that, at a minimum, provides free and
 9 reduced-price meals to students identified as qualifying for such meals
 10 under federal guidelines for the National School Lunch Program.

11 (4) For purposes of this subsection, a member of the board of directors of a public
 12 charter school shall be considered an officer under KRS 61.040 and shall be
 13 removed from office under the statute's provisions.

14 (5) A local school district shall provide or publicize to parents and the general public
 15 information about public charter schools authorized by the local school district as an
 16 enrollment option within the district to the same extent and through the same means
 17 that the school district provides and publicizes information about noncharter public
 18 schools in the district.

19 (6) A local school district shall not assign or require any student enrolled in the local
 20 school district to attend a public charter school.

21 (7) (a) For purposes of ensuring compliance with this section and the charter under
 22 which it operates, a public charter school shall be administered by a public
 23 charter school board of directors accountable to the authorizer in a manner
 24 agreed to in the charter contract, as negotiated between the public charter
 25 school applicant and the authorizer.

26 (b) The board of directors of a public charter school shall consist of a minimum
 27 of two (2) parents of students attending any public charter school operating

UNOFFICIAL COPY

22 RS HB 9/VO

- 1 under the direction of the board of directors.
- 2 (c) A member of the board of directors of a public charter school shall:
 - 3 1. Not be an employee of that school or of an education service provider
 - 4 that provides services to the school; and
 - 5 2. File full disclosure reports and identify any potential conflicts of interest,
 - 6 relationships with management organizations, and relationships with
 - 7 family members who are applying to or are employed by the public
 - 8 charter school or have other business dealings with the school, the
 - 9 management organization of the school, or any other public charter
 - 10 school and shall make these documents available online through the
 - 11 authorizer.
- 12 (8) Collectively, members of the board of directors shall possess expertise in
- 13 leadership, curriculum and instruction, law, and finance.
- 14 (9) (a) A board of directors may hold one (1) or more charter contracts.
- 15 (b) Each public charter school under contract with a board of directors shall be
- 16 separate and distinct from any other public charter school under contract with
- 17 the board of directors.
- 18 (10) The board of directors shall be responsible for the operation of its public charter
- 19 school, including but not limited to preparation of a budget, contracting for services,
- 20 school curriculum, and personnel matters.
- 21 (11) The board of directors shall:
 - 22 (a) Ensure that all meetings of the board are publicized in advance according to
 - 23 the rules governing the authorizer and are open to the public at times
 - 24 convenient to parents; and
 - 25 (b) Require any education service provider contracted with the board to provide a
 - 26 monthly detailed budget to the board.
- 27 (12) (a) A public charter school may negotiate and contract with its authorizer or any

Presiding Judge: HON. PHILLIP J. SHEPHERD (648260)

COM : 000033 of 000102

UNOFFICIAL COPY

22 RS HB 9/VO

1 third party for the use, operation, and maintenance of a building and grounds,
 2 liability insurance, and the provision of any service, activity, or undertaking
 3 that the public charter school is required to perform in order to carry out the
 4 educational program described in its charter. Any services for which a public
 5 charter school contracts with a school district shall be provided by the district
 6 at cost and shall be negotiated as a separate agreement after final charter
 7 contract negotiations. The public charter school shall have standing to sue and
 8 be sued in its own name for the enforcement of any contract under color of
 9 authority granted by KRS 160.1590 to 160.1599. A public charter school may
 10 own, rent, or lease its space.

11 (b) Any entity contracted to provide educational services or goods to a public
 12 charter school in an amount exceeding ten thousand dollars (\$10,000) shall be
 13 subject to the Open Records Act under KRS Chapter 61 for all records
 14 associated with the public charter school contract.

15 (13) A public charter school shall be exempt from administrative regulations governing
 16 public schools for purposes of zoning and local land use regulation. The Finance
 17 and Administration Cabinet shall annually publish a list of vacant and unused
 18 buildings and vacant and unused portions of buildings that are owned by the state
 19 and that may be suitable for the operation of a public charter school and shall
 20 provide the list to applicants for public charter schools and to existing public charter
 21 schools upon request.

22 (14) A public charter school shall be nonsectarian in its programs, admissions policies,
 23 employment practices, partnerships, and all other operations and shall not have
 24 entrance requirements or charge tuition or fees, except that a public charter school
 25 may require the payment of fees on the same basis and to the same extent as other
 26 public schools.

27 (15) A public charter school shall not discriminate against any student, employee, or any

UNOFFICIAL COPY

1 other person on the basis of ethnicity, religion, national origin, sex, disability,
2 special needs, athletic ability, academic ability, or any other ground that would be
3 unlawful if done by a public school.

4 (16) A public charter school shall serve one (1) or more of grades kindergarten through
5 twelve (12) and shall limit admission to students within the grade levels served.

6 (17) A public charter school shall provide programs and services to a student with a
7 disability in accordance with the student's individualized education program and all
8 federal and state laws, rules, and regulations. A public charter school shall deliver
9 the services directly or contract with another provider to deliver the services. A
10 public charter school shall establish an admissions and release committee at the
11 school and the committee shall:

12 (a) Develop an individualized education program for each student with a
13 disability; or

14 (b) Review, revise, or utilize a student's individualized education program
15 completed by the admissions and release committee of the student's former
16 school. If needed, the committee shall work collaboratively with staff from the
17 student's former school to review and revise a student's existing individualized
18 education program.

19 (18) (a) A public charter school shall be eligible to participate in state-sponsored or
20 district-sponsored interscholastic athletics, academic programs, competitions,
21 awards, scholarships, and recognition programs for students, educators,
22 administrators, and schools to the same extent as noncharter public schools.
23 Participants shall comply with eligibility requirements of students enrolled in
24 noncharter public schools.

25 (b) A public charter school has no obligation to provide extracurricular activities
26 or access to facilities for students enrolled in the public charter school.

27 (c) If a public charter school sponsors interscholastic athletic activities, students

UNOFFICIAL COPY

22 RS HB 9/VO

1 enrolled in the public charter school shall be considered eligible to participate
2 in interscholastic competitions by the Kentucky Board of Education or the
3 agency designated by the state board to manage interscholastic athletics, if
4 other eligibility requirements are met. A student enrolled in a public charter
5 school that sponsors an interscholastic athletic activity shall be ineligible to
6 participate in that activity at any other school.

7 (d) If a public charter school does not offer any interscholastic athletic activity
8 sanctioned by the Kentucky Board of Education or the agency designated by
9 the state board to manage interscholastic athletics, a student enrolled in the
10 public charter school shall be eligible to participate at the school the student
11 would attend based on the student's residence.

12 (e) If a public charter school offers any interscholastic athletic activity sanctioned
13 by the Kentucky Board of Education or the agency designated by the state
14 board to manage interscholastic athletics, a student enrolled in the public
15 charter school shall be ineligible to participate in any interscholastic athletic
16 activity at any other school.

17 (19) Nothing in this section shall be construed to prevent the establishment of a single-
18 sex public charter school consistent with federal regulations or a public charter
19 school designed to provide expanded learning opportunities for students at risk of
20 academic failure or for students with special needs.

21 (20) The authorizer of a public charter school shall semiannually consider for approval a
22 public charter school's proposed amendments to a charter contract. The authorizer
23 may consider requests for amendments more frequently upon mutual agreement
24 between the authorizer and the public charter school. The denial of an amendment
25 request is appealable pursuant to KRS 160.1595.

26 (21) If a student who was previously enrolled in a public charter school enrolls in
27 another public school located within the state, the new school shall accept any

UNOFFICIAL COPY

1 credits earned and grades received by the student in courses or instructional
2 programs while enrolled in the public charter school in a uniform and consistent
3 manner and according to the same criteria that are used to accept credits from other
4 public schools.

5 (22) A teacher employed by a local board of education under a continuing service
6 contract and offered employment with a public charter school shall be granted a two
7 (2) year leave of absence to teach in a public charter school. The leave of absence
8 shall commence on the first day of service to the public charter school. During the
9 first or second year of the leave of absence, the teacher may notify the local board of
10 education that the teacher intends to return to a teaching position in the local school
11 district. The teacher shall be allowed to return to a teaching position in the local
12 school district at the appropriate salary for the teacher's years of experience and
13 educational level. After two (2) years on leave, the relationship between the teacher
14 and the local board of education shall be determined by the local board and the local
15 board shall notify the teacher of the decision.

16 ➔Section 4. KRS 160.1593 is amended to read as follows:

17 (1) An application to establish a public charter school may be submitted to a public
18 charter school authorizer by teachers, parents, school administrators, community
19 residents, public organizations, nonprofit organizations, or a combination thereof.

20 (2) An applicant shall submit an application for approval of a public charter school to
21 an authorizer and **shall also submit a written notification of the application**
22 **simultaneously to the state board as a record of the filing.** Charter authorizers shall
23 accept and document the date and time of receipt of all charter applications.

24 (3) The information provided in the application shall be consistent with this section and
25 shall include:

26 (a) A mission statement and a vision statement for the public charter school,
27 including the targeted student population and the community the school hopes

UNOFFICIAL COPY

22 RS HB 9/VO

1 to serve, and shall outline how the public charter school will establish
 2 resident and nonresident enrollment policies which shall be subject to the
 3 same limitations as a school district;

4 (b) A description of the school's proposed academic program that is aligned with
 5 state standards, and that implements one (1) or more of the purposes described
 6 in KRS 160.1591, and the instructional methods that will support the
 7 implementation and success of the program;

8 (c) 1. The student achievement goals for the public charter school's
 9 educational program and the chosen methods of evaluating whether
 10 students have attained the skills and knowledge specified for those
 11 goals; and

12 2. An explanation of how the school's proposed educational program is
 13 likely to improve the achievement of traditionally underperforming
 14 students, serve the needs of students with individualized education
 15 programs, or provide students with career readiness education
 16 opportunities~~[in the local school district];~~

17 (d) The school's plan for using external, internal, and state-required assessments
 18 to measure student progress on the performance framework as identified in
 19 KRS 160.1596, and how the school will use data to drive instruction and
 20 continued school improvement;

21 (e) The proposed governance structure of the school, including a list of members
 22 of the initial board of directors, a draft of bylaws that include the description
 23 of the qualifications, terms, and methods of appointment or election of
 24 directors, and the organizational structure of the school that clearly presents
 25 lines of authority and reporting between the board of directors, school
 26 administrators, staff, any related bodies such as advisory bodies or parent and
 27 teacher councils, and any external organizations that will play a role in

UNOFFICIAL COPY

- 1 managing the school;
- 2 (f) 1. Plans and timelines for student recruitment and enrollment, including
- 3 policies and procedures for conducting transparent and random
- 4 admission lotteries that are open to the public, and that are consistent
- 5 with KRS 160.1591 and 160.1592; ~~and~~
- 6 2. An application shall demonstrate a plan to recruit at least one hundred
- 7 (100) students, unless the application is focused on serving special needs
- 8 or at-risk students or students seeking career readiness education; and
- 9 3. If the application is for a public charter school located in a district
- 10 with total student enrollment of seven thousand five hundred (7,500)
- 11 or less, then the application shall include a memorandum of
- 12 understanding with the district of location endorsing the application.
- 13 However, if the application is for an urban academy located within a
- 14 county where the total enrollment of all independent school districts is
- 15 greater than seven thousand five hundred (7,500), then this
- 16 subparagraph shall not apply;
- 17 (g) A proposed five (5) year budget, including the start-up year and projections
- 18 for four (4) additional years with clearly stated assumptions;
- 19 (h) Draft fiscal and internal control policies for the public charter school;
- 20 (i) Requirements and procedures for programmatic audits and assessments at
- 21 least once annually, with audits and assessments being comparable in scope to
- 22 those required of noncharter public schools;
- 23 (j) A draft handbook that outlines the personnel policies of the public charter
- 24 school, including the criteria to be used in the hiring of qualified teachers,
- 25 school administrators, and other school employees, a description of staff
- 26 responsibilities, and the school's plan to evaluate personnel on an annual
- 27 basis;

UNOFFICIAL COPY

- 1 (k) A draft of the policies and procedures by which students may be disciplined,
2 including students with disabilities, which shall be consistent with the
3 requirements of due process and with state and federal laws and regulations
4 governing the placement of students with disabilities;
- 5 (l) A description of the facilities to be used by the public charter school,
6 including the location of the school, if known, and how the facility supports
7 the implementation of the school's academic program. If the facilities to be
8 used by the proposed school are not known at the time the application is
9 submitted, the applicant shall notify the authorizer within ten (10) business
10 days of acquiring facilities for the school. The school shall obtain certification
11 of occupancy for the facilities at least thirty (30) days prior to the first student
12 instructional day;
- 13 (m) The proposed ages and grade levels to be served by the public charter school,
14 including the planned, minimum, and maximum enrollment per grade per
15 year;
- 16 (n) The school calendar and school day schedule, which shall total at least the
17 equivalent to the student instructional year specified in KRS 158.070;
- 18 (o) Types and amounts of insurance coverage to be obtained by the public charter
19 school, which shall include adequate insurance for liability, property loss, and
20 the personal injury of students comparable to other schools within the local
21 school district operated by the local school board;
- 22 (p) A description of the health and food services to be provided to students
23 attending the school;
- 24 (q) Procedures to be followed in the case of the closure or dissolution of the
25 public charter school, including provisions for the transfer of students and
26 student records to the district of location ~~local school district in which the~~
27 ~~public charter school is located~~ or to another charter school located within the

UNOFFICIAL COPY

- 1 local school district and an assurance and agreement to payment of net assets
2 or equity, after payment of debts as specified in KRS 160.1598;
- 3 (r) A code of ethics for the school setting forth the standards of conduct expected
4 of its board of directors, officers, and employees;
- 5 (s) Plans for recruiting and developing staff;
- 6 (t) A staffing chart for the school's first year and a staffing chart for the term of
7 the charter;
- 8 (u) A plan for parental and community involvement in the school, including the
9 role of parents in the administration and governance of the school;
- 10 (v) The public charter school's plan for identifying and successfully serving
11 students with disabilities, students who are English language learners,
12 bilingual students, and students who are academically behind and gifted,
13 including but not limited to the school's plan for compliance with all
14 applicable federal and state laws and regulations;
- 15 (w) A description of cocurricular and extracurricular programs and how they will
16 be funded and delivered;
- 17 (x) The process by which the school will resolve any disputes with the authorizer;
18 and
- 19 (y) A detailed start-up plan, including financing, tasks, timelines, and individuals
20 responsible for carrying out the plan.
- 21 (4) If the public charter school applicant intends to contract with an education service
22 provider for educational program implementation or comprehensive management,
23 the application shall additionally require the applicant to:
- 24 (a) Provide evidence of success in serving student populations similar to the
25 targeted population, including demonstrated academic achievement as well as
26 successful management of nonacademic school functions, if applicable;
- 27 (b) Provide student performance data and financial audit reports for all current

UNOFFICIAL COPY

- 1 and past public charter schools;
- 2 (c) Provide documentation of and explanation for any actions taken against any of
- 3 its public charter schools for academic, financial, or ethical concerns;
- 4 (d) Provide evidence of current capacity for growth;
- 5 (e) Provide a term sheet setting forth:
- 6 1. The proposed duration of the service contract;
- 7 2. The annual proposed fees to be paid to the education service provider;
- 8 3. The roles and responsibilities of the board of directors, the school staff,
- 9 and the education service provider;
- 10 4. The scope of services and resources to be provided by the education
- 11 service provider;
- 12 5. Performance evaluation measures and timelines;
- 13 6. Compensation structure, including clear identification of all fees to be
- 14 paid to the education service provider;
- 15 7. Methods of contract oversight and enforcement;
- 16 8. Investment disclosure; and
- 17 9. Conditions for renewal and termination of the contract; and
- 18 (f) Disclose and explain any existing or potential conflicts of interest between the
- 19 board of directors and the proposed education service provider or any
- 20 affiliated business entities.
- 21 ➔Section 5. KRS 160.1594 is amended to read as follows:
- 22 (1) A public charter school authorizer shall:
- 23 (a) Fulfill the expectations and intent of this section and KRS 160.1590 to
- 24 160.1599 and 161.141;
- 25 (b) Demonstrate public accountability and transparency in all matters concerning
- 26 its charter-authorizing practices, decisions, and expenditures;
- 27 (c) **Establish an annual timeline consistent with statutory guidelines with**

UNOFFICIAL COPY

- 1 deadlines to solicit, invite, accept, and evaluate applications from applicants;
- 2 (d) Approve new and renewal charter applications that meet the requirements of
- 3 this section and KRS 160.1593;
- 4 (e) Decline to approve charter applications that:
- 5 1. Fail to meet the requirements of this section and KRS 160.1593; or
- 6 2. Are for a school that would be wholly or partly under the control or
- 7 direction of any religious denomination;
- 8 (f) Negotiate and execute in good faith a charter contract with each public charter
- 9 school it authorizes;
- 10 (g) Monitor the performance and compliance of public charter schools according
- 11 to the terms of the charter contract;
- 12 (h) Determine whether each charter contract it authorizes merits renewal or
- 13 revocation; and
- 14 (i) Establish and maintain policies and practices consistent with the principles
- 15 and professional standards for authorizers of public charter schools, including
- 16 standards relating to:
- 17 1. Organizational capacity and infrastructure;
- 18 2. Soliciting and evaluating applications;
- 19 3. Performance contracting;
- 20 4. Ongoing public charter school oversight and evaluation; and
- 21 5. Charter approval, renewal, and revocation decision making.
- 22 (2) In reviewing applications, the public charter school authorizer is encouraged to give
- 23 preference to applications that demonstrate the intent, capacity, and capability to
- 24 provide comprehensive learning experiences to:
- 25 (a) Students identified by the applicants as at risk of academic failure; ~~and~~
- 26 (b) Students with special needs as identified in their individualized education
- 27 program as defined in KRS 158.281; and

UNOFFICIAL COPY

22 RS HB 9/VO

- 1 **(c) Students who seek career readiness education opportunities.**
- 2 (3) After a charter applicant submits a written application to establish a public charter
- 3 school, the authorizer shall:
- 4 (a) Complete a thorough review process;
- 5 (b) Conduct an in-person interview with the applicant group;
- 6 (c) Provide an opportunity in a public forum for local residents to provide input
- 7 and learn about the charter application;
- 8 (d) Provide a detailed analysis of the application to the applicant or applicants
- 9 **which shall include any identified deficiencies;**
- 10 (e) Allow an applicant a reasonable time to provide additional materials and
- 11 amendments to its application to address any identified deficiencies,
- 12 **including allowing an applicant to request a sixty (60) day extension to seek**
- 13 **technical assistance in curing deficiencies from the state board under**
- 14 **Section 6 of this Act;** and
- 15 (f) Approve or deny a charter application based on established objective criteria
- 16 or request additional information.
- 17 (4) In deciding to approve a charter application, the authorizer shall:
- 18 (a) Grant charters only to applicants that possess competence in all elements of
- 19 the application requirements identified in this section and KRS 160.1593;
- 20 (b) Base decisions on documented evidence collected through the application
- 21 review process; and
- 22 (c) Follow charter-granting policies and practices that are transparent, based on
- 23 merit, and avoid conflicts of interest.
- 24 (5) **Unless an extension is requested under subsection (3) of this section,** no later than
- 25 sixty (60) days following the filing of the charter application, the authorizer shall
- 26 approve or deny the charter application. The authorizer shall adopt by resolution all
- 27 charter approval or denial decisions in an open meeting of the authorizer's board of

UNOFFICIAL COPY

22 RS HB 9/VO

1 directors.

2 (6) Any failure to act on a charter application within sixty (60) days of the established
3 application submission deadline shall be deemed an approval~~[a denial]~~ by the
4 authorizer.

5 (7) An application shall be approved if the public charter school authorizer finds that:

6 (a) The public charter school described in the application meets the requirements
7 established by this section and KRS 160.1590 and 160.1592;

8 (b) The applicant demonstrates the ability to operate the school in an
9 educationally and fiscally sound manner; and

10 (c) Approving the application is likely to improve student learning and
11 achievement and further the purposes established by KRS 160.1591.

12 (8) An authorizer shall provide a written explanation within five (5) days of adopting a
13 resolution, for the public record, stating its reasons for approval or denial of a
14 charter application, including a thorough explanation of how the charter application
15 either meets or fails to meet established objective criteria for making charter
16 application decisions, and the authorizing process which the authorizer used to
17 review, evaluate, and make its final decision.

18 (9) An authorizer's charter application approval shall be submitted to the Kentucky
19 Department of Education as written notice~~[for final approval by the commissioner~~
20 ~~of education]~~.

21 (10) When an authorizer that is a local school board or a collaborative of local school
22 boards receives a charter school application, any member of the board or boards
23 who has not received charter authorization training within twelve (12) months
24 immediately preceding the date the application was received shall receive six (6)
25 hours of in-service training prior to evaluating the charter application. Except for
26 training provided prior to July 15, 2020, the training shall be in addition to the
27 annual in-service training required under KRS 160.180, and each board shall select

UNOFFICIAL COPY

22 RS HB 9/VO

1 the trainer to deliver the training to its members. Charter authorizer training shall
2 not be required of any local school board member until a charter application is
3 submitted to the board or boards.

4 ➔Section 6. KRS 160.1595 is amended to read as follows:

5 (1) Any applicant or board of directors of a public charter school may request
6 technical assistance from the Kentucky Department of Education to address
7 deficiencies identified by an authorizer. The department shall respond within
8 thirty (30) days of the request.

9 (2) (a) The state board, upon receipt of a notice of appeal~~[or upon its own motion]~~,
10 shall review decisions of any other authorizer concerning the approval or
11 denial of a public charter school application, the nonrenewal or revocation of
12 a public charter school's contract, the denial of a public charter school's
13 request to consider a charter amendment, or the unilateral imposition of
14 conditions in the charter contract, in accordance with the provisions of this
15 section.

16 ~~(b) (2)~~ A charter applicant or approved public charter school who wishes to
17 appeal a decision of an authorizer concerning a charter application, a charter
18 amendment, or the nonrenewal or revocation of a charter, or the unilateral
19 imposition of conditions, shall provide the state board and the authorizer with
20 a notice of appeal within thirty (30) days after the authorizer's decision. The
21 appellant~~[person bringing the appeal]~~ shall limit the grounds of the appeal to
22 the grounds for the denial of or the nonrenewal or revocation of a charter, or
23 the unilateral imposition of conditions, whichever is being appealed, specified
24 by the authorizer. The notice shall include a brief statement of the reasons the
25 public charter school applicant or public charter school contends the
26 authorizer's denial of or nonrenewal or revocation of a charter, or imposition
27 of conditions was in error.

UNOFFICIAL COPY

RS HB 9/VO

1 ~~(c)(3)~~ If the notice of appeal~~, or the motion to review by the state board,~~
 2 relates to an authorizer's decision to deny, refuse to renew, or revoke a charter
 3 or to an authorizer's unilateral imposition of conditions that are unacceptable
 4 to the charter applicant or public charter school, the appeal and review process
 5 shall be as follows:

6 ~~1.(a)~~ Within forty-five (45) days after receipt of the notice of appeal ~~or~~
 7 ~~the making of a motion to review by the state board~~ and after
 8 reasonable public notice, the state board, at a public hearing which may
 9 be held in the school district in which the proposed public charter school
 10 has applied for a charter or where the public charter school exists, shall
 11 review the decision of the authorizer and make its findings~~;~~

12 **2. The state board shall determine:**

13 **a. If the final decision of the authorizer was contrary to the best**
 14 **interest of the students or community; and**

15 **b. If the application failed to satisfy the requirements of**
 16 **subsections (3) and (4) of Section 4 of this Act;**

17 **3.** If the state board finds that the authorizer's decision was contrary to the
 18 best interest of the students or community **and the application satisfies**
 19 **the statutory requirements**, the state board shall ~~remand such decision~~
 20 ~~to the authorizer with written instructions for reconsideration thereof.~~
 21 ~~The instructions shall include specific recommendations concerning the~~
 22 ~~matters requiring reconsideration;~~

23 ~~(b) Within thirty (30) days following the remand of a decision to the~~
 24 ~~authorizer and after reasonable public notice, the authorizer, at a public~~
 25 ~~hearing, shall reconsider its decision and make a final decision;~~

26 ~~(c) If the authorizer's final decision is still to deny, refuse to renew, or~~
 27 ~~revoke a charter or to unilaterally impose conditions unacceptable to the~~

UNOFFICIAL COPY

RS HB 9/VO

1 charter applicant, a second notice of appeal may be filed with the State
 2 Board of Education within thirty (30) days following such final decision;
 3 ~~(d) Within thirty (30) days following receipt of the second notice of appeal~~
 4 ~~or the making of a motion for a second review by the State Board of~~
 5 ~~Education and after reasonable public notice, the state board, at a public~~
 6 ~~hearing shall determine if the final decision of the authorizer was~~
 7 ~~contrary to the best interest of the students or community. If such a~~
 8 ~~finding is made, the state board shall~~ remand such final decision to the
 9 authorizer with instructions to approve the charter application or
 10 amendment, or to renew or reinstate the charter, or to approve or
 11 disapprove conditions imposed. The decision of the state board shall be
 12 a final action subject to judicial review in the Circuit Court
 13 encompassing the school district in which the public charter school is
 14 located; and

15 ~~4.[(e)]~~ Charters granted to applicants by authorizers after a successful
 16 appeal to the state board, as outlined in subparagraph~~paragraph~~ ~~3.[(d)]~~
 17 of this paragraph~~subsection~~, shall be provided joint oversight by the
 18 authorizer and the state board for, at a minimum, the first five (5) years
 19 of the school's operation, and until the authorizer, state board, and public
 20 charter school agree that charter oversight may be provided solely by the
 21 authorizer. The state board shall be a formal participant in all
 22 authorizing decision making concerning the public charter school during
 23 that period, and shall be included in all communication between the
 24 public charter school and the authorizer.

25 ~~[(4) (a) Within ten (10) days of taking action to approve or deny a charter~~
 26 ~~application that has been remanded back to the authorizer for~~
 27 ~~reconsideration, the authorizer shall notify the state board of the action~~

Presiding Judge: HON. PHILLIP J. SHEPHERD (648260)

COM : 000048 of 000102

UNOFFICIAL COPY

RS HB 9/VO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

~~taken.~~

~~(b) The authorizer shall provide a report to the charter applicant, the state board, and the Education and Workforce Development Cabinet simultaneously and shall include a copy of the resolution adopted by the authorizer's board of directors identifying any action taken, the reason for the decision, and an assurance as to compliance with all of the procedural requirements and application elements found in this section and KRS 160.1591 and 160.1593.]~~

➔Section 7. KRS 160.1596 is amended to read as follows:

- (1) (a) For purposes of this section, a member of the board of directors of a public charter school shall be considered an officer under KRS 61.040 and shall, within sixty (60) days of final approval of an application, take an oath of office as required under KRS 62.010.
- (b) Within seventy-five (75) days of the final approval of an application, the board of directors and the authorizer shall enter into a binding charter contract that establishes the academic and operational performance expectations and measures by which the public charter school will be evaluated.
- (c) The executed charter contract shall become the final authorization for the public charter school. The charter contract shall include:
 - 1. The term of the contract;
 - 2. The agreements relating to each item required under KRS 160.1592(3) and 160.1593(3), as modified or supplemented during the approval process;
 - 3. The rights and duties of each party;
 - 4. The administrative relationship between the authorizer and the public charter school;
 - 5. The allocation of state, local, and federal funds, and the schedule to

UNOFFICIAL COPY

22 RS HB 9/VO

- 1 disburse funds to the public charter school by the authorizer;
- 2 6. The process the authorizer will use to provide ongoing oversight,
- 3 including a process to conduct annual site visits;
- 4 7. The specific commitments of the public charter school authorizer
- 5 relating to its obligations to oversee, monitor the progress of, and
- 6 supervise the public charter school;
- 7 8. The process and criteria the authorizer will use to annually monitor and
- 8 evaluate the overall academic, operating, and fiscal conditions of the
- 9 public charter school, including the process the authorizer will use to
- 10 oversee the correction of any deficiencies found in the annual review;
- 11 9. The process for revision or amendment to the terms of the charter
- 12 contract agreed to by the authorizer and the board of directors of the
- 13 public charter school;
- 14 10. The process agreed to by the authorizer and the board of directors of the
- 15 public charter school that identifies how disputes between the authorizer
- 16 and the board will be handled; and
- 17 11. Any other terms and conditions agreed to by the authorizer and the board
- 18 of directors, including pre-opening conditions. Reasonable conditions
- 19 shall not include enrollment caps or operational requirements that place
- 20 undue constraints on a public charter school or are contradictory to the
- 21 provisions of KRS 160.1590 to 160.1599 and 161.141. Such conditions,
- 22 even when incorporated in a charter contract, shall be considered
- 23 unilaterally imposed conditions.
- 24 (d) 1. The performance provisions within a charter contract shall be based on a
- 25 performance framework that sets forth the academic and operational
- 26 performance indicators, measures, and metrics to be used by the
- 27 authorizer to evaluate each public charter school. The performance

Presiding Judge: HON. PHILLIP J. SHEPHERD (648260)
COM : 000050 of 000102

UNOFFICIAL COPY

- 1 framework shall include at a minimum indicators, measures, and metrics
2 for:
- 3 a. Student academic proficiency;
 - 4 b. Student academic growth;
 - 5 c. Achievement gaps in both student proficiency and student growth
6 for student subgroups, including race, sex, socioeconomic status,
7 and areas of exceptionality;
 - 8 d. Student attendance;
 - 9 e. Student suspensions;
 - 10 f. Student withdrawals;
 - 11 g. Student exits;
 - 12 h. Recurrent enrollment from year to year;
 - 13 i. College or career readiness at the end of grade twelve (12);
 - 14 j. Financial performance and sustainability; and
 - 15 k. Board of directors' performance and stewardship, including
16 compliance with all applicable statutes, administrative regulations,
17 and terms of the charter contract.
- 18 2. The performance framework shall allow the inclusion of additional
19 rigorous, valid, and reliable indicators proposed by a public charter
20 school to augment external evaluations of its performance. The proposed
21 indicators shall be consistent with the purposes of KRS 160.1590 to
22 160.1599 and 161.141 and shall be negotiated with the authorizer.
- 23 3. The performance framework shall require the disaggregation of student
24 performance data by subgroups, including race, sex, socioeconomic
25 status, and areas of exceptionality.
- 26 4. The authorizer shall be responsible for collecting, analyzing, and
27 reporting to the state board all state-required assessment and

UNOFFICIAL COPY

RS HB 9/VO

- 1 achievement data for each public charter school it oversees.
- 2 (e) Annual student achievement performance targets shall be set, in accordance
- 3 with the state accountability system, by each public charter school in
- 4 conjunction with its authorizer, and those measures shall be designed to help
- 5 each school meet applicable federal, state, and authorizer goals.
- 6 (f) The charter contract shall be signed by the chair of the governing board of the
- 7 authorizer and the chair of the board of directors of the public charter school.
- 8 An approved charter application shall ~~not~~ serve as a charter contract for the
- 9 public charter school.
- 10 (g) No public charter school may commence operations without a charter contract
- 11 executed according to this section and approved in an open meeting of the
- 12 governing board of the authorizer.
- 13 (2) Within five (5) days after entering into a charter contract, a copy of the executed
- 14 contract shall be submitted by the authorizer to the commissioner of education.
- 15 (3) **For the purposes of local and state funding, a public charter school shall serve as**
- 16 **a school of the district of location.**
- 17 (4) **For the purposes of federal funding, a public charter school shall serve as a local**
- 18 **education agency.**
- 19 (5) **All students enrolled in a public charter school shall be included in the average**
- 20 **daily attendance calculation under KRS 157.360 and the aggregate and average**
- 21 **daily attendance of transported pupils calculation under KRS 157.370 of the**
- 22 **district of location in the same manner as any other public schools in the district**
- 23 **and shall be reported by the public charter schools to the school district and state**
- 24 **Department of Education for purposes of calculating the state and local share of**
- 25 **funding for each public charter school.**
- 26 (6) **Notwithstanding the formula for allocating district funds under KRS 160.345(8)**
- 27 **and any other statute governing a district's funding of schools, unless an**

UNOFFICIAL COPY

1 authorizing district agrees to provide a larger sum of funding in the charter
 2 contract, after local capital outlay funds that are restricted in use pursuant to
 3 KRS 157.420(4) and funds under KRS 157.440(1)(b) and 157.621 necessary to
 4 meet debt service obligations on bonds or other financing mechanisms for new
 5 construction and renovation projects for school facilities are excluded, and before
 6 any other funds are budgeted for district use, a district shall transfer to each of
 7 the public charter schools located within the district:

8 (a) The amount that is proportional to the public charter school's enrollment or
 9 average daily attendance in comparison with the overall district qualifying
 10 numbers for:

- 11 1. Funds that are related to students' attendance and enrollment and
 12 allocated to the district of location pursuant to KRS 157.360;
- 13 2. Any add-on or funding factors provided for in the state budget;
- 14 3. Any add-on or funding factors provided for by the Kentucky
 15 Department of Education; and
- 16 4. Funds pursuant to KRS 157.360(2)(a) and (b) and (13)(a).

17 For each funding source identified in this paragraph, the transfer amount
 18 shall be based on the public charter school's qualifying student enrollment
 19 or average daily attendance, depending on the method used in the funding
 20 source's calculation;

21 (b) On a proportionate per pupil basis:

- 22 1. Education funds allocated to the school district pursuant to KRS
 23 157.440(1)(a) and (2)(a), or pursuant to any applicable federal statute;
 24 and
- 25 2. All taxes and payments in lieu of taxes transferred to the district of
 26 location or levied and collected by the district of location; and

27 (c) On a proportionate per pupil transported basis, transportation funds

UNOFFICIAL COPY

1 calculated pursuant to KRS 157.360(2)(c) and 157.370 and distributed to
2 the district of location, unless the school district provides transportation to
3 students attending the public charter school under written terms agreed
4 upon by the district and the public charter school in either the charter
5 contract or, if the district is not the public charter school's authorizer, a
6 separate agreement.

7 (7) (a) If transportation funds are transferred under this section to a public charter
8 school, then the public charter school receiving those funds shall provide
9 transportation services to the enrolled students residing within the district of
10 location.

11 (b) If funds designated for providing additional services to specific students are
12 transferred under this section, then the public charter school receiving
13 those funds shall provide those services in the same manner as the district
14 of location.

15 (c) If transportation services are not provided by the public charter school and
16 no written agreement to provide transportation services with the district of
17 location exists, then no transportation funds shall be transferred and the
18 district of location shall not be responsible for providing transportation to
19 the public charter school's students.

20 (8) Notwithstanding the identification of funds to be transferred in this section, a
21 collaborative among local school boards authorizing a public charter school may
22 negotiate among the local boards and a charter applicant to identify the amount
23 of funds to be transferred to the public charter school. The agreement shall be
24 detailed in the charter contract.

25 (9) (a) For the calculation of amounts under subsections (6) and (7) of this section
26 during the first school year of operation of a public charter school in a
27 school district, beginning with the start of instruction:

UNOFFICIAL COPY

- 1 1. The public charter school's average daily attendance shall be
2 calculated based on a projection of the public charter school's
3 enrollment and the district's overall average daily attendance;
- 4 2. The public charter school's aggregate daily attendance of students
5 transported shall be calculated based on a projection of the public
6 charter school's enrollment and transportation plan and the district's
7 overall aggregate daily attendance of students transported; and
- 8 3. The amounts attributable to each individual student's attendance at
9 the public charter school shall be calculated based on a projection of
10 the public charter school's enrollment and demographics and the
11 district's overall enrollment and demographics.
- 12 (b) The calculations shall be adjusted in January of the first school year of
13 operation to reflect the first semester's actual data. Subsequent years of
14 operation shall be calculated using actual data from the prior school year.
- 15 (10) (a) Funds identified for transfer under this section shall be transferred by a
16 district of location to each of the public charter schools located within the
17 district. However, up to three percent (3%) of the funds identified under this
18 section for transfer to a public charter school may be retained by an
19 authorizer as an authorizer fee.
- 20 (b) If the authorizer of a public charter school does not include the local board
21 of education of the district of location, then the district of location shall
22 transfer the authorizer fee to the public charter school's authorizer.
- 23 (c) If the Kentucky Board of Education requires the authorization of a public
24 charter school on appeal from an authorizer, the board shall receive twenty-
25 five percent (25%) of the authorizing fee for the duration of joint oversight
26 required by Section 6 of this Act.
- 27 (11) Funds identified for transfer by a district of location to a public charter school

UNOFFICIAL COPY

22 RS HB 9/VO

1 under this section shall be transferred throughout the school year according to a
2 schedule determined by the state board. The scheduled dates shall be within thirty
3 (30) days of the dates of state disbursement of funds to school districts. Failure to
4 transfer required funds shall, for every five (5) days late, result in a fine to the
5 violator of not less than five percent (5%) of the total funds per funding period to
6 be transferred. Fines imposed shall be transferred to the public charter school
7 affected by the delay.

8 (12) A public charter school shall be eligible for federal and state competitive grants
9 and shall not be excluded from an opportunity to apply or participate so long as
10 the public charter school meets the criteria established for the respective grants.
11 Each public charter school that receives grant aid shall comply with all
12 requirements to receive such aid.

13 (13) A public charter school shall receive a proportionate per pupil share of any state
14 moneys not otherwise identified in this section that is received by the school
15 district of location. The public charter school shall also receive, according to
16 federal law, moneys generated under federal categorical aid programs for
17 students that are eligible for the aid and attending the public charter school.
18 Each public charter school that receives such aid shall comply with all
19 requirements to receive such aid.

20 (14) The commissioner of education shall apply for all federal funding that supports
21 charter school initiatives for which a state must be the applicant and shall
22 cooperate with any public charter school in its efforts to seek federal funding.

23 (15) If a public charter school closes for any reason, the assets of the school shall be
24 distributed first to satisfy outstanding payroll obligations for employees of the
25 school, then to the creditors of the school, then to the district of location or
26 authorizing districts if authorized by a collaborative of local boards of education.
27 If the assets are insufficient to satisfy outstanding obligations, the authorizer

UNOFFICIAL COPY

22 RS HB 9/VO

1 shall petition to Circuit Court of the county in which the public charter school is
2 located to prioritize the distribution of assets.

3 (16) The state board shall promulgate administrative regulations to:

4 (a) Establish the process to be used to evaluate the performance of a charter
5 school authorizer, based upon the requirements of KRS 160.1590 to 160.1599
6 and 161.141, and the actions to be taken in response to failures in
7 performance; and

8 (b) Govern the calculation and distribution of funds due to public charter
9 schools from school districts, the schedule of distribution of funds, and the
10 imposition of fines for late distribution of funds.

11 ~~[(4) The commissioner of education shall apply for financial assistance through the~~
12 ~~federal government for the planning, program design, and initial implementation of~~
13 ~~public charter schools in the state within sixty (60) days after June 29, 2017, or at~~
14 ~~the first available grant application period. Federal grants include but are not limited~~
15 ~~to the Charter Schools Program administered by the United States Department of~~
16 ~~Education.]~~

17 (17) ~~[(5)]~~ By August 31, 2023~~[2019]~~, and annually thereafter, each public charter school
18 authorizer shall submit to the commissioner of education, the secretary of the
19 Education and Workforce Development Cabinet, and the Interim Joint Committee
20 on Education a report to include:

21 (a) The names of each public charter school operating under contract with the
22 authorizer during the previous academic year that:

- 23 1. Closed during or after the academic year; or
- 24 2. Had the contract nonrenewed or revoked;

25 (b) The names of each public charter school operating under contract with the
26 authorizer during the previous academic year that have not yet begun to
27 operate;

UNOFFICIAL COPY

22 RS HB 9/VO

- 1 (c) The number of applications received, the number reviewed, and the number
 2 approved;
- 3 (d) A summary of the academic and financial performance of each public charter
 4 school operated under contract with the authorizer during the previous
 5 academic year; and
- 6 (e) The authorizing duties and functions performed by the authorizer during the
 7 previous academic year.

8 ➔Section 8. KRS 160.1597 is amended to read as follows:

- 9 (1) Upon the approval of a charter contract by a public charter school authorizer, the
 10 applicant shall be permitted to operate a public charter school for a term of five (5)
 11 years.
- 12 (2) The board of directors of the public charter school shall negotiate and execute a
 13 charter contract with the governing body of the authorizer.
- 14 (3) A public charter school shall have all corporate powers necessary and desirable for
 15 carrying out a public charter school program in accordance with this section and the
 16 terms of the charter contract, including all of the powers of a local board of
 17 education and of a local school district, except as otherwise provided in KRS
 18 160.1590 to 160.1599.
- 19 (4) The powers granted to a public charter school under this section constitute the
 20 performance of essential public purposes and governmental purposes of this state. A
 21 public charter school shall be exempt to the same extent as other public schools
 22 from all taxation, fees, assessments, and~~or~~ special ad valorem levies on its
 23 earnings and its property. Instruments of conveyance to or from a public charter
 24 school and any bonds or notes issued by a public charter school, together with the
 25 income received, shall at all times be exempt from taxation.
- 26 (5) A public charter school shall not have the power to levy taxes or to acquire property
 27 by eminent domain, but shall have police powers to the same extent and under the

UNOFFICIAL COPY

22 RS HB 9/VO

1 same requirements as a local school district.

2 (6) The board of directors of the public charter school shall have final authority over
3 policy and operational decisions of the public charter school, although the decision-
4 making authority may be delegated to the administrators and staff of the school in
5 accordance with the provisions of the charter contract.

6 (7) Notwithstanding any other statute to the contrary, no civil liability shall attach to
7 any public charter school authorizer or to any of its members or employees,
8 individually or collectively, for any acts or omissions of the public charter school.
9 Neither the local school district nor the Commonwealth shall be liable for the debts
10 or financial obligations of a public charter school or any person or corporate entity
11 who operates a public charter school.

12 ➔Section 9. KRS 160.1598 is amended to read as follows:

13 (1) A charter contract may be renewed by the authorizer for a term of duration of five
14 (5) years, although the authorizer may vary the term to as few as three (3) years.
15 Any variation in the public charter school's term must be solely based on the
16 performance, demonstrated capacities, and particular circumstances of a public
17 charter school. Authorizers may grant renewal with specific conditions for
18 necessary improvements to a public charter school, but may not impose conditions
19 inconsistent with KRS 160.1590 to 160.1599.

20 (2) (a) No later than one (1) calendar year prior to the expiration date of a charter
21 contract, an authorizer shall issue a public charter school performance report
22 and charter renewal application guidance to the public charter school it
23 authorized. The performance report shall summarize the school's performance
24 record to date, based on the performance framework required under KRS
25 160.1596 and the charter contract, and shall provide notice of any weaknesses
26 or concerns related to the school that may jeopardize its position in seeking
27 renewal if not timely rectified and of any strengths or achievements that

UNOFFICIAL COPY

- 1 support its position in seeking renewal.
- 2 (b) The school shall have twenty (20) days to respond to the performance report
- 3 and submit any corrections or clarification for the report to the authorizer.
- 4 (c) Within ten (10) days of receiving a school's response, the authorizer shall
- 5 review the response and issue a final performance report to the school.
- 6 (3) (a) The renewal application guidance shall, at a minimum, provide an opportunity
- 7 for the public charter school to:
- 8 1. Present additional evidence beyond the data contained in the
- 9 performance report supporting its case for charter renewal;
- 10 2. Describe improvements undertaken or planned for the school; and
- 11 3. Detail the school's plan for the next charter term.
- 12 (b) The renewal application guidance shall include or refer explicitly to the
- 13 criteria that will guide the authorizer's renewal decisions, which shall be based
- 14 on the performance framework as identified in the charter contract.
- 15 (4) (a) No later than six (6) months prior to the expiration date of a charter contract,
- 16 the board of directors of a public charter school seeking charter contract
- 17 renewal shall submit a renewal application to the authorizer pursuant to the
- 18 renewal application guidance issued by the authorizer.
- 19 (b) The authorizer shall rule by resolution on the renewal application no later than
- 20 thirty (30) days after receipt of the application.
- 21 (5) In making charter application, renewal, or other appealable decisions, an authorizer
- 22 shall:
- 23 (a) Make its decision within established timeframes. Any failure of the authorizer
- 24 to act on a charter application, renewal, or other appealable decision shall be
- 25 deemed an approval~~[a denial]~~ of the requested action~~[and thereafter be~~
- 26 ~~subject to appeal]~~;
- 27 (b) Base its decision on evidence of the public charter school's performance over

UNOFFICIAL COPY

1 the term of the charter contract in accordance with the performance
2 framework required in the charter contract;

3 (c) Ensure that data used in making renewal decisions is available to the public
4 charter school and the public; and

5 (d) Provide a public report summarizing the evidence basis for each decision.

6 (6) A charter contract may not be renewed if the authorizer determines that the public
7 charter school has:

8 (a) Committed a material violation of any of the terms, conditions, standards, or
9 procedures required under KRS 160.1590 to 160.1599 and 161.141 or the
10 charter contract, and has persistently failed to correct the violation after fair
11 and specific notice from the authorizer;

12 (b) Failed to meet or make significant progress toward the performance
13 expectations identified in the charter contract;

14 (c) Failed to meet generally accepted standards of fiscal management, and has
15 failed to correct the violation after fair and specific notice from the authorizer;
16 or

17 (d) Substantially violated any material provision of law from which the public
18 charter school was not exempted and has failed to correct the violation after
19 fair and specific notice from the authorizer.

20 (7) An authorizer may take immediate action to revoke a charter contract if a violation
21 threatens the health and safety of the students of the public charter school.

22 (8) The State Board of Education shall promulgate administrative regulations
23 establishing a revocation and nonrenewal process for charter authorizers that:

24 (a) Provides the charter holder with a timely notification of the prospect of
25 revocation or nonrenewal and of the reasons for such possible closure;

26 (b) Allows a charter holder a reasonable time in which to prepare a response;

27 (c) Provides the charter holder with an opportunity to submit documentation and

UNOFFICIAL COPY

22 RS HB 9/VO

- 1 provide testimony challenging the rationale behind the closure and in support
- 2 of the continuation of the school at ~~a[an]~~ **public meeting** ~~[orderly proceeding]~~
- 3 held for that purpose;
- 4 (d) Allows the charter holder the right to representation by counsel and to call
- 5 witnesses on behalf of the charter holder;
- 6 (e) Permits the recording of such proceedings; and
- 7 (f) After a reasonable period of deliberation, requires a final determination be
- 8 made and conveyed in writing to the charter holder.
- 9 (9) If an authorizer revokes or does not renew a contract, the authorizer shall clearly
- 10 state, in a resolution of its governing board the reason for the revocation or
- 11 nonrenewal.
- 12 (10) Within ten (10) days of taking action to renew, not renew, or revoke a charter, the
- 13 authorizer shall report to the state board the action taken, and shall provide a report
- 14 to the public charter school at the same time the report is issued to the state board.
- 15 The report shall include a copy of the resolution adopted by the authorizer's
- 16 governing board describing the action taken and reasons for the decision and
- 17 assurance as to compliance with all of the procedural requirements and application
- 18 elements found in KRS 160.1593.
- 19 (11) An authorizer shall develop a public charter school closure protocol to ensure
- 20 timely notification to parents, orderly transition of students and student records to
- 21 new schools, and proper disposition of school funds, property, and assets. The
- 22 protocol shall specify tasks, timelines, and responsible parties, including delineating
- 23 the respective duties of the school and the authorizer. If a public charter school
- 24 closes for any reason, the authorizer shall oversee and work with the closing school
- 25 to ensure a smooth and orderly closure and transition for students and parents, as
- 26 guided by the closure protocol. If a public charter school is subject to closure,
- 27 following exhaustion of any appeal allowed under KRS 160.1595, an authorizer

Presiding Judge: HON. PHILLIP J. SHEPHERD (648260)
COM : 000062 of 000102

UNOFFICIAL COPY

22 RS HB 9/VO

1 may remove at will at any time any or all of the members of the board of directors
 2 of the public charter school in connection with ensuring a smooth and orderly
 3 closure. If the authorizer removes members of the board of directors such that the
 4 board of directors can no longer function, the authorizer shall be empowered to take
 5 any further necessary and proper acts connected with closure of the public charter
 6 school in the name and interest of the public charter school.

7 ➔Section 10. KRS 160.1599 is amended to read as follows:

8 (1) An existing public school not scheduled for closure may be converted into a public
 9 charter school and be identified to become~~[as]~~ a conversion public charter school if
 10 an applicant indicates to a valid authorizer the intent to convert an existing public
 11 school into a conversion public charter school.

12 (2) A conversion public charter school may only be established if:

13 (a) A school has been identified by the Kentucky Department of Education as
 14 performing in the lowest five percent (5%) of its level and sixty percent (60%)
 15 of the parents or guardians of students who attend the school have signed a
 16 petition requesting the conversion, which shall be completed and submitted to
 17 a valid authorizer no later than ninety (90) days after the date of the first
 18 signature;

19 (b) A school has been identified by the Kentucky Department of Education as not
 20 performing in the lowest five percent (5%) of its level and sixty percent (60%)
 21 of the parents or guardians of students who attend the school have signed a
 22 petition requesting the conversion, which is approved by a majority vote of the
 23 local school board. If approved the completed petition shall be submitted to a
 24 valid authorizer no later than ninety (90) days after the date of the first
 25 signature; or

26 (c) The local school board votes to convert an existing public school over which
 27 it has authority.

UNOFFICIAL COPY

22 RS HB 9/VO

1 (3) For each conversion option identified in subsection (2) of this section, the Kentucky
2 Board of Education shall promulgate administrative regulations to govern the
3 processes and procedures for the petition, the conversion, and the operation of a
4 conversion public charter school.

5 (4) A conversion public charter school shall be governed by a board of directors
6 constituted and empowered as provided in KRS 160.1592.

7 (5) A conversion public charter school shall continue to comply with all federal and
8 state requirements concerning the treatment of children with special needs and
9 accept all students who attended the school prior to its conversion who wish to
10 attend.

11 (6) A conversion public charter school shall hire its own employees.

12 (7) An employee who works in a conversion public charter school shall be an employee
13 of the public charter school.

14 (8) (a) For any collective bargaining agreement entered into on or after June 29,
15 2017, a governing board shall not be bound by its collective bargaining
16 agreement for employees of a conversion public charter school.

17 (b) Employees of a conversion public charter school may organize and
18 collectively bargain only as a unit separate from other school employees.

19 (9) A conversion public charter school shall continue to be housed in the same public
20 school facility and shall have the option of using the existing assets of the school.

21 ➔SECTION 11. A NEW SECTION OF KRS 160.1590 TO 160.1599 IS
22 CREATED TO READ AS FOLLOWS:

23 **(1) The Kentucky Public Charter School Pilot Project is hereby established to study**
24 **the impact of public charter schools within the common school system.**

25 **(2) Authorizers for the pilot project shall include:**

26 **(a) A school board of a county school district located in a county with a**
27 **consolidated local government, which shall have authorizing jurisdiction**

1 within the territory of the district's boundaries; and

2 (b) Notwithstanding Section 1 of this Act, the board of regents of Northern

3 Kentucky University, which shall have authorizing jurisdiction within any

4 county containing four (4) or more local school districts. The board of

5 regents shall only become a pilot project authorizer if the board adopts a

6 resolution confirming the status by January 1, 2023. The board of regents

7 shall send notice of the resolution to each local board within the

8 jurisdiction, the Kentucky Board of Education, and the Legislative

9 Research Commission. The board of regents may decline to be an

10 authorizer by July 1, 2023, in the same manner.

11 (3) By July 1, 2023, each pilot project authorizer shall solicit, review, and approve at

12 least one (1) charter application for a public charter school within the

13 authorizer's jurisdiction that serves as an urban academy. The charter contract

14 shall be for a five (5) year term, but otherwise subject to KRS 160.1590 to

15 160.1599. The pilot authorizers shall submit a copy of the approved charter

16 contracts to the Legislative Research Commission.

17 (4) (a) If on July 1, 2023, the Northern Kentucky University board of regents is not

18 a pilot project authorizer, then notwithstanding Section 1 of this Act, a

19 collective of metropolitan local school boards that is composed of two (2)

20 members from each local board of a district located in a county that

21 contains four (4) or more local school districts shall become a substitute

22 pilot project authorizer. Each local board shall select its members to serve

23 on the collective.

24 (b) The collective shall have authorizing authority within the collective

25 districts' boundaries. The collective shall adopt authorizer policies as if it

26 were a single local board and may allocate authorizer fees as necessary to

27 support authorizer functions. The collective may contract with other

UNOFFICIAL COPY

RS HB 9/VO

1 governmental or nonprofit organizations to assist with public charter school
2 oversight.

3 (c) By July 1, 2024, the collective shall solicit, review, and approve at least one
4 (1) charter application for a public charter school within the authorizer's
5 jurisdiction that serves as an urban academy. The charter contract shall be
6 for a five (5) year term, but otherwise subject to KRS 160.1590 to 160.1599.
7 The pilot authorizers shall submit a copy of the approved charter contracts
8 to the Legislative Research Commission.

9 (5) By July 1 of each year the charter contract is in effect, the pilot project
10 authorizers shall submit an annual report to the Interim Joint Committee on
11 Education and the Interim Joint Committee on Appropriations and Revenue
12 detailing the authorizer's oversight activities over the previous year. The report
13 shall have content and be in a format approved by the Education Assessment and
14 Accountability Review Subcommittee with the assistance of the Office of
15 Education Accountability.

16 (6) Starting in 2024 and until the initial charter contract ends, the Office of
17 Education Accountability shall annually review the performance of the public
18 charter schools authorized under this section and submit the report to the Interim
19 Joint Committee on Education and the Interim Joint Committee on
20 Appropriations and Revenue. The Education Assessment and Accountability
21 Review Subcommittee may provide guidance to the Office of Education
22 Accountability on the content and format of the report.

23 (7) Upon the end of the initial term of the charter contract, the pilot authorizers shall
24 review the reports under subsection (5) of this section and determine if the
25 contract shall be renewed in the same manner as any other charter contract
26 under the provisions of Section 9 of this Act. The decision shall be appealable
27 under Section 6 of this Act.

Presiding Judge: HON. PHILLIP J. SHEPHERD (648260)
COM : 000066 of 000102

UNOFFICIAL COPY

1 ➔Section 12. KRS 161.141 is amended to read as follows:

- 2 (1) As used in this section, **"education service provider,"** "public charter school,"
3 "local school board," and "local school district" have the same meanings as in KRS
4 160.1590.
- 5 (2) (a) Public charter school employees shall participate in the Teachers' Retirement
6 System or the County Employees Retirement System, as determined by their
7 eligibility for participation in the appropriate system and provided the public
8 charter school satisfies the criteria set by the Internal Revenue Service to
9 participate in a governmental retirement plan.
- 10 (b) Teachers and other certified personnel shall make any required employee
11 contributions to the Teachers' Retirement System under KRS 161.220 to
12 161.716.
- 13 (c) Classified employees shall make any required employee contributions to the
14 County Employees Retirement System under KRS 78.510 to 78.852.
- 15 **(d) A public charter school shall participate in the state-sponsored health**
16 **insurance program on the same basis as a local school district pursuant to**
17 **Section 13 of this Act.**
- 18 **(e) Any state appropriation for retirement, health, or life insurance benefits**
19 **made on behalf of a local public employee or a school district employee**
20 **shall also be made on behalf of a public charter school employee.**
- 21 **(f) A public charter school shall make any required employer contributions to**
22 **the Teachers' Retirement System under KRS 161.220 to 161.716 and the**
23 **County Employees Retirement System under KRS 78.510 to 78.852 in the**
24 **same manner as local school districts.**
- 25 **(g) For the purposes of calculating sick leave credit under KRS 161.220 to**
26 **161.716, teachers and other certified personnel of a public charter school**
27 **shall not accumulate more days of sick leave during their employment with**

1 *the public charter school than they would have otherwise accumulated as a*
 2 *certified employee of the school district of location.*

3 (3) (a) A public charter school employee shall not be required to be a member of any
 4 collective bargaining agreement.

5 (b) A public charter school employee who enters into any collective bargaining
 6 unit must do so as a separate unit from the local school district.

7 (4) A local school board shall not require any employee of the local school district to be
 8 employed in a public charter school or any student enrolled in the school district to
 9 attend a public charter school.

10 (5) A local school board shall not harass, threaten, discipline, discharge, retaliate, or in
 11 any manner discriminate against any district employee involved directly or
 12 indirectly with an application to establish a public charter school.

13 *(6) An employee of an education service provider shall not be considered a public*
 14 *charter school employee, but shall meet the same certification and background*
 15 *check requirements otherwise required of a public charter school employee.*

16 ➔Section 13. KRS 18A.225 is amended to read as follows:

17 (1) (a) The term "employee" for purposes of this section means:

- 18 1. Any person, including an elected public official, who is regularly
- 19 employed by any department, office, board, agency, or branch of state
- 20 government; or by a public postsecondary educational institution; or by
- 21 any city, urban-county, charter county, county, or consolidated local
- 22 government, whose legislative body has opted to participate in the state-
- 23 sponsored health insurance program pursuant to KRS 79.080; and who
- 24 is either a contributing member to any one (1) of the retirement systems
- 25 administered by the state, including but not limited to the Kentucky
- 26 Retirement Systems, County Employees Retirement System, Kentucky
- 27 Teachers' Retirement System, the Legislators' Retirement Plan, or the

UNOFFICIAL COPY

22 RS HB 9/VO

1 Judicial Retirement Plan; or is receiving a contractual contribution from
 2 the state toward a retirement plan; or, in the case of a public
 3 postsecondary education institution, is an individual participating in an
 4 optional retirement plan authorized by KRS 161.567; or is eligible to
 5 participate in a retirement plan established by an employer who ceases
 6 participating in the Kentucky Employees Retirement System pursuant to
 7 KRS 61.522 whose employees participated in the health insurance plans
 8 administered by the Personnel Cabinet prior to the employer's effective
 9 cessation date in the Kentucky Employees Retirement System;

10 2. Any certified or classified employee of a local board of education *or a*
 11 *public charter school as defined in Section 1 of this Act;*

12 3. Any elected member of a local board of education;

13 4. Any person who is a present or future recipient of a retirement
 14 allowance from the Kentucky Retirement Systems, County Employees
 15 Retirement System, Kentucky Teachers' Retirement System, the
 16 Legislators' Retirement Plan, the Judicial Retirement Plan, or the
 17 Kentucky Community and Technical College System's optional
 18 retirement plan authorized by KRS 161.567, except that a person who is
 19 receiving a retirement allowance and who is age sixty-five (65) or older
 20 shall not be included, with the exception of persons covered under KRS
 21 61.702(4)(c), unless he or she is actively employed pursuant to
 22 subparagraph 1. of this paragraph; and

23 5. Any eligible dependents and beneficiaries of participating employees
 24 and retirees who are entitled to participate in the state-sponsored health
 25 insurance program;

26 (b) The term "health benefit plan" for the purposes of this section means a health
 27 benefit plan as defined in KRS 304.17A-005;

UNOFFICIAL COPY

22 RS HB 9/VO

- 1 (c) The term "insurer" for the purposes of this section means an insurer as defined
- 2 in KRS 304.17A-005; and
- 3 (d) The term "managed care plan" for the purposes of this section means a
- 4 managed care plan as defined in KRS 304.17A-500.
- 5 (2) (a) The secretary of the Finance and Administration Cabinet, upon the
- 6 recommendation of the secretary of the Personnel Cabinet, shall procure, in
- 7 compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090,
- 8 from one (1) or more insurers authorized to do business in this state, a group
- 9 health benefit plan that may include but not be limited to health maintenance
- 10 organization (HMO), preferred provider organization (PPO), point of service
- 11 (POS), and exclusive provider organization (EPO) benefit plans encompassing
- 12 all or any class or classes of employees. With the exception of employers
- 13 governed by the provisions of KRS Chapters 16, 18A, and 151B, all
- 14 employers of any class of employees or former employees shall enter into a
- 15 contract with the Personnel Cabinet prior to including that group in the state
- 16 health insurance group. The contracts shall include but not be limited to
- 17 designating the entity responsible for filing any federal forms, adoption of
- 18 policies required for proper plan administration, acceptance of the contractual
- 19 provisions with health insurance carriers or third-party administrators, and
- 20 adoption of the payment and reimbursement methods necessary for efficient
- 21 administration of the health insurance program. Health insurance coverage
- 22 provided to state employees under this section shall, at a minimum, contain
- 23 the same benefits as provided under Kentucky Kare Standard as of January 1,
- 24 1994, and shall include a mail-order drug option as provided in subsection
- 25 (13) of this section. All employees and other persons for whom the health care
- 26 coverage is provided or made available shall annually be given an option to
- 27 elect health care coverage through a self-funded plan offered by the

Presiding Judge: HON. PHILLIP J. SHEPHERD (648260)
COM : 000070 of 000102

UNOFFICIAL COPY

22 RS HB 9/VO

1 Commonwealth or, if a self-funded plan is not available, from a list of
 2 coverage options determined by the competitive bid process under the
 3 provisions of KRS 45A.080, 45A.085, and 45A.090 and made available
 4 during annual open enrollment.

5 (b) The policy or policies shall be approved by the commissioner of insurance and
 6 may contain the provisions the commissioner of insurance approves, whether
 7 or not otherwise permitted by the insurance laws.

8 (c) Any carrier bidding to offer health care coverage to employees shall agree to
 9 provide coverage to all members of the state group, including active
 10 employees and retirees and their eligible covered dependents and
 11 beneficiaries, within the county or counties specified in its bid. Except as
 12 provided in subsection (20) of this section, any carrier bidding to offer health
 13 care coverage to employees shall also agree to rate all employees as a single
 14 entity, except for those retirees whose former employers insure their active
 15 employees outside the state-sponsored health insurance program.

16 (d) Any carrier bidding to offer health care coverage to employees shall agree to
 17 provide enrollment, claims, and utilization data to the Commonwealth in a
 18 format specified by the Personnel Cabinet with the understanding that the data
 19 shall be owned by the Commonwealth; to provide data in an electronic form
 20 and within a time frame specified by the Personnel Cabinet; and to be subject
 21 to penalties for noncompliance with data reporting requirements as specified
 22 by the Personnel Cabinet. The Personnel Cabinet shall take strict precautions
 23 to protect the confidentiality of each individual employee; however,
 24 confidentiality assertions shall not relieve a carrier from the requirement of
 25 providing stipulated data to the Commonwealth.

26 (e) The Personnel Cabinet shall develop the necessary techniques and capabilities
 27 for timely analysis of data received from carriers and, to the extent possible,

UNOFFICIAL COPY

22 RS HB 9/VO

1 provide in the request-for-proposal specifics relating to data requirements,
 2 electronic reporting, and penalties for noncompliance. The Commonwealth
 3 shall own the enrollment, claims, and utilization data provided by each carrier
 4 and shall develop methods to protect the confidentiality of the individual. The
 5 Personnel Cabinet shall include in the October annual report submitted
 6 pursuant to the provisions of KRS 18A.226 to the Governor, the General
 7 Assembly, and the Chief Justice of the Supreme Court, an analysis of the
 8 financial stability of the program, which shall include but not be limited to
 9 loss ratios, methods of risk adjustment, measurements of carrier quality of
 10 service, prescription coverage and cost management, and statutorily required
 11 mandates. If state self-insurance was available as a carrier option, the report
 12 also shall provide a detailed financial analysis of the self-insurance fund
 13 including but not limited to loss ratios, reserves, and reinsurance agreements.

14 (f) If any agency participating in the state-sponsored employee health insurance
 15 program for its active employees terminates participation and there is a state
 16 appropriation for the employer's contribution for active employees' health
 17 insurance coverage, then neither the agency nor the employees shall receive
 18 the state-funded contribution after termination from the state-sponsored
 19 employee health insurance program.

20 (g) Any funds in flexible spending accounts that remain after all reimbursements
 21 have been processed shall be transferred to the credit of the state-sponsored
 22 health insurance plan's appropriation account.

23 (h) Each entity participating in the state-sponsored health insurance program shall
 24 provide an amount at least equal to the state contribution rate for the employer
 25 portion of the health insurance premium. For any participating entity that used
 26 the state payroll system, the employer contribution amount shall be equal to
 27 but not greater than the state contribution rate.

UNOFFICIAL COPY

- 1 (3) The premiums may be paid by the policyholder:
 - 2 (a) Wholly from funds contributed by the employee, by payroll deduction or
 - 3 otherwise;
 - 4 (b) Wholly from funds contributed by any department, board, agency, public
 - 5 postsecondary education institution, or branch of state, city, urban-county,
 - 6 charter county, county, or consolidated local government; or
 - 7 (c) Partly from each, except that any premium due for health care coverage or
 - 8 dental coverage, if any, in excess of the premium amount contributed by any
 - 9 department, board, agency, postsecondary education institution, or branch of
 - 10 state, city, urban-county, charter county, county, or consolidated local
 - 11 government for any other health care coverage shall be paid by the employee.
- 12 (4) If an employee moves his or her place of residence or employment out of the service
 - 13 area of an insurer offering a managed health care plan, under which he or she has
 - 14 elected coverage, into either the service area of another managed health care plan or
 - 15 into an area of the Commonwealth not within a managed health care plan service
 - 16 area, the employee shall be given an option, at the time of the move or transfer, to
 - 17 change his or her coverage to another health benefit plan.
- 18 (5) No payment of premium by any department, board, agency, public postsecondary
 - 19 educational institution, or branch of state, city, urban-county, charter county,
 - 20 county, or consolidated local government shall constitute compensation to an
 - 21 insured employee for the purposes of any statute fixing or limiting the
 - 22 compensation of such an employee. Any premium or other expense incurred by any
 - 23 department, board, agency, public postsecondary educational institution, or branch
 - 24 of state, city, urban-county, charter county, county, or consolidated local
 - 25 government shall be considered a proper cost of administration.
- 26 (6) The policy or policies may contain the provisions with respect to the class or classes
 - 27 of employees covered, amounts of insurance or coverage for designated classes or

Presiding Judge: HON. PHILLIP J. SHEPHERD (648260)

COM : 000073 of 000102

UNOFFICIAL COPY

1 groups of employees, policy options, terms of eligibility, and continuation of
2 insurance or coverage after retirement.

3 (7) Group rates under this section shall be made available to the disabled child of an
4 employee regardless of the child's age if the entire premium for the disabled child's
5 coverage is paid by the state employee. A child shall be considered disabled if he or
6 she has been determined to be eligible for federal Social Security disability benefits.

7 (8) The health care contract or contracts for employees shall be entered into for a period
8 of not less than one (1) year.

9 (9) The secretary shall appoint thirty-two (32) persons to an Advisory Committee of
10 State Health Insurance Subscribers to advise the secretary or the secretary's designee
11 regarding the state-sponsored health insurance program for employees. The
12 secretary shall appoint, from a list of names submitted by appointing authorities,
13 members representing school districts from each of the seven (7) Supreme Court
14 districts, members representing state government from each of the seven (7)
15 Supreme Court districts, two (2) members representing retirees under age sixty-five
16 (65), one (1) member representing local health departments, two (2) members
17 representing the Kentucky Teachers' Retirement System, and three (3) members at
18 large. The secretary shall also appoint two (2) members from a list of five (5) names
19 submitted by the Kentucky Education Association, two (2) members from a list of
20 five (5) names submitted by the largest state employee organization of nonschool
21 state employees, two (2) members from a list of five (5) names submitted by the
22 Kentucky Association of Counties, two (2) members from a list of five (5) names
23 submitted by the Kentucky League of Cities, and two (2) members from a list of
24 names consisting of five (5) names submitted by each state employee organization
25 that has two thousand (2,000) or more members on state payroll deduction. The
26 advisory committee shall be appointed in January of each year and shall meet
27 quarterly.

UNOFFICIAL COPY

1 (10) Notwithstanding any other provision of law to the contrary, the policy or policies
 2 provided to employees pursuant to this section shall not provide coverage for
 3 obtaining or performing an abortion, nor shall any state funds be used for the
 4 purpose of obtaining or performing an abortion on behalf of employees or their
 5 dependents.

6 (11) Interruption of an established treatment regime with maintenance drugs shall be
 7 grounds for an insured to appeal a formulary change through the established appeal
 8 procedures approved by the Department of Insurance, if the physician supervising
 9 the treatment certifies that the change is not in the best interests of the patient.

10 (12) Any employee who is eligible for and elects to participate in the state health
 11 insurance program as a retiree, or the spouse or beneficiary of a retiree, under any
 12 one (1) of the state-sponsored retirement systems shall not be eligible to receive the
 13 state health insurance contribution toward health care coverage as a result of any
 14 other employment for which there is a public employer contribution. This does not
 15 preclude a retiree and an active employee spouse from using both contributions to
 16 the extent needed for purchase of one (1) state sponsored health insurance policy for
 17 that plan year.

18 (13) (a) The policies of health insurance coverage procured under subsection (2) of
 19 this section shall include a mail-order drug option for maintenance drugs for
 20 state employees. Maintenance drugs may be dispensed by mail order in
 21 accordance with Kentucky law.

22 (b) A health insurer shall not discriminate against any retail pharmacy located
 23 within the geographic coverage area of the health benefit plan and that meets
 24 the terms and conditions for participation established by the insurer, including
 25 price, dispensing fee, and copay requirements of a mail-order option. The
 26 retail pharmacy shall not be required to dispense by mail.

27 (c) The mail-order option shall not permit the dispensing of a controlled

UNOFFICIAL COPY

22 RS HB 9/VO

- 1 substance classified in Schedule II.
- 2 (14) The policy or policies provided to state employees or their dependents pursuant to
- 3 this section shall provide coverage for obtaining a hearing aid and acquiring hearing
- 4 aid-related services for insured individuals under eighteen (18) years of age, subject
- 5 to a cap of one thousand four hundred dollars (\$1,400) every thirty-six (36) months
- 6 pursuant to KRS 304.17A-132.
- 7 (15) Any policy provided to state employees or their dependents pursuant to this section
- 8 shall provide coverage for the diagnosis and treatment of autism spectrum disorders
- 9 consistent with KRS 304.17A-142.
- 10 (16) Any policy provided to state employees or their dependents pursuant to this section
- 11 shall provide coverage for obtaining amino acid-based elemental formula pursuant
- 12 to KRS 304.17A-258.
- 13 (17) If a state employee's residence and place of employment are in the same county, and
- 14 if the hospital located within that county does not offer surgical services, intensive
- 15 care services, obstetrical services, level II neonatal services, diagnostic cardiac
- 16 catheterization services, and magnetic resonance imaging services, the employee
- 17 may select a plan available in a contiguous county that does provide those services,
- 18 and the state contribution for the plan shall be the amount available in the county
- 19 where the plan selected is located.
- 20 (18) If a state employee's residence and place of employment are each located in counties
- 21 in which the hospitals do not offer surgical services, intensive care services,
- 22 obstetrical services, level II neonatal services, diagnostic cardiac catheterization
- 23 services, and magnetic resonance imaging services, the employee may select a plan
- 24 available in a county contiguous to the county of residence that does provide those
- 25 services, and the state contribution for the plan shall be the amount available in the
- 26 county where the plan selected is located.
- 27 (19) The Personnel Cabinet is encouraged to study whether it is fair and reasonable and

UNOFFICIAL COPY

RS HB 9/VO

1 in the best interests of the state group to allow any carrier bidding to offer health
2 care coverage under this section to submit bids that may vary county by county or
3 by larger geographic areas.

4 (20) Notwithstanding any other provision of this section, the bid for proposals for health
5 insurance coverage for calendar year 2004 shall include a bid scenario that reflects
6 the statewide rating structure provided in calendar year 2003 and a bid scenario that
7 allows for a regional rating structure that allows carriers to submit bids that may
8 vary by region for a given product offering as described in this subsection:

9 (a) The regional rating bid scenario shall not include a request for bid on a
10 statewide option;

11 (b) The Personnel Cabinet shall divide the state into geographical regions which
12 shall be the same as the partnership regions designated by the Department for
13 Medicaid Services for purposes of the Kentucky Health Care Partnership
14 Program established pursuant to 907 KAR 1:705;

15 (c) The request for proposal shall require a carrier's bid to include every county
16 within the region or regions for which the bid is submitted and include but not
17 be restricted to a preferred provider organization (PPO) option;

18 (d) If the Personnel Cabinet accepts a carrier's bid, the cabinet shall award the
19 carrier all of the counties included in its bid within the region. If the Personnel
20 Cabinet deems the bids submitted in accordance with this subsection to be in
21 the best interests of state employees in a region, the cabinet may award the
22 contract for that region to no more than two (2) carriers; and

23 (e) Nothing in this subsection shall prohibit the Personnel Cabinet from including
24 other requirements or criteria in the request for proposal.

25 (21) Any fully insured health benefit plan or self-insured plan issued or renewed on or
26 after July 12, 2006, to public employees pursuant to this section which provides
27 coverage for services rendered by a physician or osteopath duly licensed under KRS

UNOFFICIAL COPY

22 RS HB 9/VO

1 Chapter 311 that are within the scope of practice of an optometrist duly licensed
 2 under the provisions of KRS Chapter 320 shall provide the same payment of
 3 coverage to optometrists as allowed for those services rendered by physicians or
 4 osteopaths.

- 5 (22) Any fully insured health benefit plan or self-insured plan issued or renewed on or
 6 after June 29, 2021, to public employees pursuant to this section shall comply with:
- 7 (a) KRS 304.12-237;
 - 8 (b) KRS 304.17A-270 and 304.17A-525;
 - 9 (c) KRS 304.17A-600 to 304.17A-633;
 - 10 (d) KRS 205.593;
 - 11 (e) KRS 304.17A-700 to 304.17A-730;
 - 12 (f) KRS 304.14-135;
 - 13 (g) KRS 304.17A-580 and 304.17A-641;
 - 14 (h) KRS 304.99-123;
 - 15 (i) KRS 304.17A-138; and
 - 16 (j) Administrative regulations promulgated pursuant to statutes listed in this
 17 subsection.

- 18 (23) Any fully insured health benefit plan or self-insured plan issued or renewed on or
 19 after January 1, 2022, to public employees pursuant to this section shall comply
 20 with KRS 304.17A-148.

21 ➔Section 14. KRS 161.220 is amended to read as follows:

22 As used in KRS 161.220 to 161.716 and 161.990:

- 23 (1) "Retirement system" means the arrangement provided for in KRS 161.220 to
 24 161.716 and 161.990 for payment of allowances to members;
- 25 (2) "Retirement allowance" means the amount annually payable during the course of his
 26 or her natural life to a member who has been retired by reason of service;
- 27 (3) "Disability allowance" means the amount annually payable to a member retired by

UNOFFICIAL COPY

1 reason of disability;

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

8 (a) Local boards of education and public charter schools if the public charter
9 school satisfies the criteria set by the Internal Revenue Service to participate
10 in a governmental retirement plan;

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

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

16 (d) Other public education agencies as created by the General Assembly and those
17 members of the administrative staff of the Teachers' Retirement System of the
18 State of Kentucky whom the board of trustees may designate by administrative
19 regulation;

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

23 (f) All full-time members of the staffs of the Kentucky Association of School
24 Administrators, Kentucky Education Association, Kentucky Vocational
25 Association, Kentucky High School Athletic Association, Kentucky Academic
26 Association, and the Kentucky School Boards Association who were members
27 of the Kentucky Teachers' Retirement System or were qualified for a position

UNOFFICIAL COPY

22 RS HB 9/VO

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

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

14 (h) The Office of Career and Technical Education;

15 (i) The Office of Vocational Rehabilitation;

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

17 (k) The Governor's Scholars Program;

18 (l) Any person who is retired for service from the retirement system and is
19 reemployed by an employer identified in this subsection in a position that the
20 board of trustees deems to be a member, except that any person who becomes
21 a member on or after January 1, 2022, and subsequently draws a monthly
22 lifetime retirement allowance, shall upon reemployment after retirement not
23 earn a second retirement account;

24 (m) Employees of the former Cabinet for Workforce Development who are
25 transferred to the Kentucky Community and Technical College System and
26 who occupy positions covered by the Kentucky Teachers' Retirement System
27 shall remain in the Teachers' Retirement System. New employees occupying

UNOFFICIAL COPY

22 RS HB 9/VO

1 these positions, as well as newly created positions qualifying for Teachers'
 2 Retirement System coverage that would have previously been included in the
 3 former Cabinet for Workforce Development, shall be members of the
 4 Teachers' Retirement System;

5 (n) Effective January 1, 1998, employees of state community colleges who are
 6 transferred to the Kentucky Community and Technical College System shall
 7 continue to participate in federal old age, survivors, disability, and hospital
 8 insurance, and a retirement plan other than the Kentucky Teachers' Retirement
 9 System offered by Kentucky Community and Technical College System. New
 10 employees occupying positions in the Kentucky Community and Technical
 11 College System as referenced in KRS 164.5807(5) that would not have
 12 previously been included in the former Cabinet for Workforce Development,
 13 shall participate in federal old age, survivors, disability, and hospital insurance
 14 and have a choice at the time of employment of participating in a retirement
 15 plan provided by the Kentucky Community and Technical College System,
 16 including participation in the Kentucky Teachers' Retirement System, on the
 17 same basis as faculty of the state universities as provided in KRS 161.540 and
 18 161.620;

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

26 (p) Employees of the Kentucky Department of Education only who are graduates
 27 of a four (4) year college or university, notwithstanding a substitution clause

UNOFFICIAL COPY

- 1 within a job classification, and who are serving in a professional job
2 classification as defined by the department;
- 3 (q) The Governor's School for Entrepreneurs Program;
- 4 (r) Employees of the Office of Adult Education within the Department of
5 Workforce Investment in the Education and Workforce Development Cabinet
6 who were employees of the Council on Postsecondary Education, Kentucky
7 Adult Education Program and who were members of the Kentucky Teachers'
8 Retirement System at the time the Program was transferred to the cabinet
9 pursuant to Executive Orders 2019-0026 and 2019-0027; and
- 10 (s) Employees of the Education Professional Standards Board who were members
11 of the Kentucky Teachers' Retirement System at the time the employees were
12 transferred to the Kentucky Department of Education pursuant to Executive
13 Order 2020-590;
- 14 (5) "Present teacher" means any teacher who was a teacher on or before July 1, 1940,
15 and became a member of the retirement system created by 1938 (1st Extra. Sess.)
16 Ky. Acts ch. 1, on the date of the inauguration of the system or within one (1) year
17 after that date, and any teacher who was a member of a local teacher retirement
18 system in the public elementary or secondary schools of the state on or before July
19 1, 1940, and continued to be a member of the system until he or she, with the
20 membership of the local retirement system, became a member of the state Teachers'
21 Retirement System or who becomes a member under the provisions of KRS
22 161.470(4);
- 23 (6) "New teacher" means any member not a present teacher;
- 24 (7) "Prior service" means the number of years during which the member was a teacher
25 in Kentucky prior to July 1, 1941, except that not more than thirty (30) years' prior
26 service shall be allowed or credited to any teacher;
- 27 (8) "Subsequent service" means the number of years during which the teacher is a

UNOFFICIAL COPY

RS HB 9/VO

1 member of the Teachers' Retirement System after July 1, 1941;

2 (9) "Final average salary" means the average of the five (5) highest annual salaries

3 which the member has received for service in a covered position and on which the

4 member has made contributions, or on which the public board, institution, or

5 agency has picked-up member contributions pursuant to KRS 161.540(2), or the

6 average of the five (5) years of highest salaries as defined in KRS 61.680(2)(a),

7 which shall include picked-up member contributions. Additionally, the board of

8 trustees may approve a final average salary based upon the average of the three (3)

9 highest salaries for individuals who become members prior to January 1, 2022, who

10 are at least fifty-five (55) years of age and have a minimum of twenty-seven (27)

11 years of Kentucky service credit. However, if any of the five (5) or three (3) highest

12 annual salaries used to calculate the final average salary was paid within the three

13 (3) years immediately prior to the date of the member's retirement for individuals

14 who become members prior to January 1, 2022, or within the five (5) years

15 immediately prior to the date of the member's retirement for individuals who

16 become members on or after January 1, 2022, the amount of salary to be included

17 for each of those three (3) years or five (5) years, as applicable, for the purpose of

18 calculating the final average salary shall be limited to the lesser of:

19 (a) The member's actual salary; or

20 (b) The member's annual salary that was used for retirement purposes during each

21 of the prior three (3) years or five (5) years, as applicable, plus a percentage

22 increase equal to the percentage increase received by all other members

23 employed by the public board, institution, or agency, or for members of school

24 districts, the highest percentage increase received by members on any one (1)

25 rank and step of the salary schedule of the school district. The increase shall

26 be computed on the salary that was used for retirement purposes. The board of

27 trustees may promulgate an administrative regulation in accordance with KRS

UNOFFICIAL COPY

22 RS HB 9/VO

1 Chapter 13A to establish a methodology for measuring the limitation so that
 2 the combined increases in salary for each of the last three (3) full years of
 3 salary prior to retirement shall not exceed the total permissible percentage
 4 increase received by other members of the employer for the same three (3)
 5 year period.

6 For individuals who became members of the retirement system prior to July 1,
 7 2021, this limitation shall not apply if the member receives an increase in salary in a
 8 percentage exceeding that received by the other members, and this increase was
 9 accompanied by a corresponding change in position or in length of employment.

10 The board of trustees may promulgate an administrative regulation in accordance
 11 with KRS Chapter 13A to provide definitions for a corresponding change in
 12 position or in length of employment. This limitation shall also not apply to the
 13 payment to a member for accrued annual leave if the individual becomes a member
 14 before July 1, 2008, or accrued sick leave which is authorized by statute and which
 15 shall, for individuals subject to KRS 161.155(10) who became nonuniversity
 16 members of the system prior to January 1, 2022, be included as part of a retiring
 17 member's annual compensation for the member's last year of active service;

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

UNOFFICIAL COPY

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

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

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

23 (13) "Regular interest" means:

24 (a) For an individual who becomes a member prior to July 1, 2008, interest at
 25 three percent (3%) per annum;;

26 (b) For an individual who becomes a member on or after July 1, 2008, but prior to
 27 January 1, 2022, interest at two and one-half percent (2.5%) per annum for

UNOFFICIAL COPY

22 RS HB 9/VO

1 purposes of crediting interest to the teacher savings account or any other
2 contributions made by the employee that are refundable to the employee upon
3 termination of employment; and

4 (c) For an individual who becomes a member on or after January 1, 2022, the
5 rolling five (5) year yield on a thirty (30) year United States Treasury bond as
6 of the end of May prior to the most recently completed fiscal year, except that:

7 1. Once the member has at least sixty (60) months of service in the system
8 it shall mean interest at two and one-half percent (2.5%) per annum for
9 purposes of crediting interest to employee contributions in the
10 foundational benefit component or any other contributions made by the
11 employee to the foundational benefit component that are refundable to
12 the employee upon termination of employment; and

13 2. The board shall have the authority to adjust the regular interest rate for
14 individuals who become members on or after January 1, 2022, in
15 accordance with KRS 161.633 and 161.634;

16 (14) "Accumulated contributions" means the contributions of a member to the teachers'
17 savings fund, including picked-up member contributions as described in KRS
18 161.540(2), plus accrued regular interest;

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

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

23 (17) "Fiscal year" means the twelve (12) month period from July 1 to June 30. The
24 retirement plan year is concurrent with this fiscal year. A contract for a member
25 employed by a local board of education may not exceed two hundred sixty-one
26 (261) days in the fiscal year;

27 (18) "Public schools" means the schools and other institutions mentioned in subsection

UNOFFICIAL COPY

1 (4) of this section;

2 (19) "Dependent" as used in KRS 161.520 and 161.525 means a person who was
3 receiving, at the time of death of the member, at least one-half (1/2) of the support
4 from the member for maintenance, including board, lodging, medical care, and
5 related costs;

6 (20) "Active contributing member" means a member currently making contributions to
7 the Teachers' Retirement System, who made contributions in the next preceding
8 fiscal year, for whom picked-up member contributions are currently being made, or
9 for whom these contributions were made in the next preceding fiscal year;

10 (21) "Full-time" means employment in a position that requires services on a continuing
11 basis equal to at least seven-tenths (7/10) of normal full-time service on a fiscal year
12 basis;

13 (22) "Full actuarial cost," when used to determine the payment that a member must pay
14 for service credit means the actuarial value of all costs associated with the
15 enhancement of a member's benefits or eligibility for benefit enhancements,
16 including health insurance supplement payments made by the retirement system.
17 The actuary for the retirement system shall determine the full actuarial value costs
18 and actuarial cost factor tables as provided in KRS 161.400;

19 (23) "Last annual compensation" means the annual compensation, as defined by
20 subsection (10) of this section and as limited by subsection (9) of this section,
21 earned by the member during the most recent period of contributing service, either
22 consecutive or nonconsecutive, that is sufficient to provide the member with one (1)
23 full year of service credit in the Kentucky Teachers' Retirement System, and which
24 compensation is used in calculating the member's initial retirement allowance,
25 excluding bonuses, retirement incentives, payments for accumulated sick leave,
26 annual, personal, and compensatory leave, and any other lump-sum payment. For an
27 individual who becomes a member on or after July 1, 2008, payments for annual or

UNOFFICIAL COPY

1 compensatory leave shall not be included in determining the member's last annual
2 compensation;

3 (24) "Participant" means a member, as defined by subsection (4) of this section, or an
4 annuitant, as defined by subsection (15) of this section;

5 (25) "Qualified domestic relations order" means any judgment, decree, or order,
6 including approval of a property settlement agreement, that:

7 (a) Is issued by a court or administrative agency; and

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

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

13 (27) "University member" means an individual who becomes a member through
14 employment with an employer specified in subsection (4)(b) and (n) of this section;

15 (28) "Nonuniversity member" means an individual who becomes a member through
16 employment with an employer specified under subsection (4) of this section, except
17 for those members employed by an employer specified in subsection (4)(b) and (n)
18 of this section;

19 (29) "Accumulated employer contribution" means the employer contribution deposited
20 to a member's account through the supplemental benefit component and regular
21 interest credited on such amounts as provided by KRS 161.635 for nonuniversity
22 members and KRS 161.636 for university members;

23 (30) "Accumulated account balance" means:

24 (a) For members who began participating in the system prior to January 1, 2022,
25 the member's accumulated contributions; or

26 (b) For members who began participating in the system on or after January 1,
27 2022, the combined sum of the member's accumulated contributions and the

UNOFFICIAL COPY

22 RS HB 9/VO

1 member's accumulated employer contributions;

2 (31) "Foundational benefit component" means the benefits provided by KRS 161.220 to
3 161.716 to individuals who become members on or after January 1, 2022, except for
4 the supplemental benefit component and retiree health benefits set forth in KRS
5 161.675; and

6 (32) "Supplemental benefit component" means:

7 (a) The benefit established pursuant to KRS 161.635 for individuals who become
8 nonuniversity members on or after January 1, 2022; or

9 (b) The benefit established pursuant to KRS 161.636 for individuals who become
10 university members on or after January 1, 2022.

11 ➔Section 15. KRS 78.510 is amended to read as follows:

12 As used in KRS 78.510 to 78.852, unless the context otherwise requires:

13 (1) "System" means the County Employees Retirement System;

14 (2) "Board" means the board of trustees of the system as provided in KRS 78.782;

15 (3) "County" means any county, or nonprofit organization created and governed by a
16 county, counties, or elected county officers, sheriff and his or her employees, county
17 clerk and his or her employees, circuit clerk and his or her deputies, former circuit
18 clerks or former circuit clerk deputies, or political subdivision or instrumentality,
19 including school boards, cities, charter county governments, urban-county
20 governments, consolidated local governments, or unified local governments
21 participating in the system by order appropriate to its governmental structure, as
22 provided in KRS 78.530, and if the board is willing to accept the agency,
23 organization, or corporation, the board being hereby granted the authority to
24 determine the eligibility of the agency to participate;

25 (4) "School board" means:

26 (a) Any board of education participating in the system by order appropriate to its
27 governmental structure, as provided in KRS 78.530, and if the board is willing

UNOFFICIAL COPY

22 RS HB 9/VO

1 to accept the agency or corporation, the board being hereby granted the
2 authority to determine the eligibility of the agency to participate; or

3 (b) A public charter school as defined in Section 1 of this Act if the public
4 charter school satisfies the criteria set by the Internal Revenue Service to
5 participate in a governmental retirement plan;

6 (5) "Examiner" means the medical examiners as provided in KRS 61.665;

7 (6) "Employee" means every regular full-time appointed or elective officer or employee
8 of a participating county and the coroner of a participating county, whether or not he
9 or she qualifies as a regular full-time officer. The term shall not include persons
10 engaged as independent contractors, seasonal, emergency, temporary, and part-time
11 workers. In case of any doubt, the board shall determine if a person is an employee
12 within the meaning of KRS 78.510 to 78.852;

13 (7) "Employer" means a county, as defined in subsection (3) of this section, the elected
14 officials of a county, or any authority of the county having the power to appoint or
15 elect an employee to office or employment in the county;

16 (8) "Member" means any employee who is included in the membership of the system or
17 any former employee whose membership has not ceased under KRS 78.535;

18 (9) "Service" means the total of current service and prior service as defined in this
19 section;

20 (10) "Current service" means the number of years and months of employment as an
21 employee, on and after July 1, 1958, for which creditable compensation is paid and
22 employee contributions deducted, except as otherwise provided;

23 (11) "Prior service" means the number of years and completed months, expressed as a
24 fraction of a year, of employment as an employee, prior to July 1, 1958, for which
25 creditable compensation was paid. An employee shall be credited with one (1)
26 month of prior service only in those months he received compensation for at least
27 one hundred (100) hours of work. Twelve (12) months of current service in the

UNOFFICIAL COPY

22 RS HB 9/VO

1 system shall be required to validate prior service;

2 (12) "Accumulated contributions" means the sum of all amounts deducted from the
 3 compensation of a member and credited to his individual account in the members'
 4 account, including employee contributions picked up after August 1, 1982, pursuant
 5 to KRS 78.610(4), together with interest credited, on the amounts, and any other
 6 amounts the member shall have contributed thereto, including interest credited
 7 thereon. "Accumulated contributions" shall not include employee contributions that
 8 are deposited into accounts established pursuant to 26 U.S.C. sec. 401(h) within the
 9 fund established in KRS 78.520, as prescribed by KRS 78.5536(3)(b);

10 (13) "Creditable compensation":

11 (a) Except as limited by paragraph (c) of this subsection, means all salary, wages,
 12 and fees, including payments for compensatory time, paid to the employee as
 13 a result of services performed for the employer or for time during which the
 14 member is on paid leave, which are includable on the member's federal form
 15 W-2 wage and tax statement under the heading "wages, tips, other
 16 compensation", including employee contributions picked up after August 1,
 17 1982, pursuant to KRS 78.610(4). The creditable compensation of fee officers
 18 who receive salary, fees, maintenance, or other perquisites as a result of their
 19 official duties is the gross amount received decreased by the cost of salary
 20 paid deputies and clerks and the cost of office supplies and other official
 21 expenses;

22 (b) Includes:

- 23 1. Lump-sum bonuses, severance pay, or employer-provided payments for
- 24 purchase of service credit, which shall be averaged over the employee's
- 25 service with the system in which it is recorded if it is equal to or greater
- 26 than one thousand dollars (\$1,000);
- 27 2. Cases where compensation includes maintenance and other perquisites,

UNOFFICIAL COPY

22 RS HB 9/VO

- 1 but the board shall fix the value of that part of the compensation not paid
- 2 in money;
- 3 3. Lump-sum payments for creditable compensation paid as a result of an
- 4 order of a court of competent jurisdiction, the Personnel Board, or the
- 5 Commission on Human Rights, or for any creditable compensation paid
- 6 in anticipation of settlement of an action before a court of competent
- 7 jurisdiction, the Personnel Board, or the Commission on Human Rights,
- 8 including notices of violations of state or federal wage and hour statutes
- 9 or violations of state or federal discrimination statutes, which shall be
- 10 credited to the fiscal year during which the wages were earned or should
- 11 have been paid by the employer. This subparagraph shall also include
- 12 lump-sum payments for reinstated wages pursuant to KRS 61.569,
- 13 which shall be credited to the period during which the wages were
- 14 earned or should have been paid by the employer;
- 15 4. Amounts which are not includable in the member's gross income by
- 16 virtue of the member having taken a voluntary salary reduction provided
- 17 for under applicable provisions of the Internal Revenue Code; and
- 18 5. Elective amounts for qualified transportation fringes paid or made
- 19 available on or after January 1, 2001, for calendar years on or after
- 20 January 1, 2001, that are not includable in the gross income of the
- 21 employee by reason of 26 U.S.C. sec. 132(f)(4); and
- 22 (c) Excludes:
- 23 1. Living allowances, expense reimbursements, lump-sum payments for
- 24 accrued vacation leave, sick leave except as provided in KRS 78.616(5),
- 25 and other items determined by the board;
- 26 2. For employees who begin participating on or after September 1, 2008,
- 27 lump-sum payments for compensatory time;

Presiding Judge: HON. PHILLIP J. SHEPHERD (648260)
COM : 000092 of 000102

UNOFFICIAL COPY

22 RS HB 9/VO

- 1 3. Training incentive payments for city officers paid as set out in KRS
- 2 64.5277 to 64.5279;
- 3 4. For employees who begin participating on or after August 1, 2016,
- 4 nominal fees paid for services as a volunteer; and
- 5 5. Any salary or wages paid to an employee for services as a Kentucky
- 6 State Police school resource officer as defined by KRS 158.441;

7 (14) "Final compensation" means:

8 (a) For a member who begins participating before September 1, 2008, who is

9 employed in a nonhazardous position, the creditable compensation of the

10 member during the five (5) fiscal years he or she was paid at the highest

11 average monthly rate divided by the number of months of service credit during

12 that five (5) year period multiplied by twelve (12). The five (5) years may be

13 fractional and need not be consecutive. If the number of months of service

14 credit during the five (5) year period is less than forty-eight (48), one (1) or

15 more additional fiscal years shall be used;

16 (b) For a member who is employed in a nonhazardous position, whose effective

17 retirement date is between August 1, 2001, and January 1, 2009, and whose

18 total service credit is at least twenty-seven (27) years and whose age and years

19 of service total at least seventy-five (75), final compensation means the

20 creditable compensation of the member during the three (3) fiscal years the

21 member was paid at the highest average monthly rate divided by the number

22 of months of service credit during that three (3) year period multiplied by

23 twelve (12). The three (3) years may be fractional and need not be

24 consecutive. If the number of months of service credit during the three (3)

25 year period is less than twenty-four (24), one (1) or more additional fiscal

26 years shall be used;

27 (c) For a member who begins participating before September 1, 2008, who is

UNOFFICIAL COPY

22 RS HB 9/VO

1 employed in a hazardous position, as provided in KRS 61.592, the creditable
 2 compensation of the member during the three (3) fiscal years he or she was
 3 paid at the highest average monthly rate divided by the number of months of
 4 service credit during that three (3) year period multiplied by twelve (12). The
 5 three (3) years may be fractional and need not be consecutive. If the number of
 6 months of service credit during the three (3) year period is less than twenty-
 7 four (24), one (1) or more additional fiscal years, which may contain less than
 8 twelve (12) months of service credit, shall be used;

9 (d) For a member who begins participating on or after September 1, 2008, but
 10 prior to January 1, 2014, who is employed in a nonhazardous position, the
 11 creditable compensation of the member during the five (5) complete fiscal
 12 years immediately preceding retirement divided by five (5). Each fiscal year
 13 used to determine final compensation must contain twelve (12) months of
 14 service credit. If the member does not have five (5) complete fiscal years that
 15 each contain twelve (12) months of service credit, then one (1) or more
 16 additional fiscal years, which may contain less than twelve (12) months of
 17 service credit, shall be added until the number of months in the final
 18 compensation calculation is at least sixty (60) months; or

19 (e) For a member who begins participating on or after September 1, 2008, but
 20 prior to January 1, 2014, who is employed in a hazardous position as provided
 21 in KRS 61.592, the creditable compensation of the member during the three
 22 (3) complete fiscal years he or she was paid at the highest average monthly
 23 rate divided by three (3). Each fiscal year used to determine final
 24 compensation must contain twelve (12) months of service credit. If the
 25 member does not have three (3) complete fiscal years that each contain twelve
 26 (12) months of service credit, then one (1) or more additional fiscal years,
 27 which may contain less than twelve (12) months of service credit, shall be

UNOFFICIAL COPY

1 added until the number of months in the final compensation calculation is at
2 least thirty-six (36) months;

3 (15) "Final rate of pay" means the actual rate upon which earnings of an employee were
4 calculated during the twelve (12) month period immediately preceding the
5 member's effective retirement date, and shall include employee contributions picked
6 up after August 1, 1982, pursuant to KRS 78.610(4). The rate shall be certified to
7 the system by the employer and the following equivalents shall be used to convert
8 the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour
9 workdays, one thousand nine hundred fifty (1,950) hours for seven and one-half
10 (7.5) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve
11 (12) months, one (1) year;

12 (16) "Retirement allowance" means the retirement payments to which a member is
13 entitled;

14 (17) "Actuarial equivalent" means a benefit of equal value when computed upon the
15 basis of the actuarial tables adopted by the board. In cases of disability retirement,
16 the options authorized by KRS 61.635 shall be computed by adding ten (10) years
17 to the age of the member, unless the member has chosen the Social Security
18 adjustment option as provided for in KRS 61.635(8), in which case the member's
19 actual age shall be used. For members who begin participating in the system prior to
20 January 1, 2014, no disability retirement option shall be less than the same option
21 computed under early retirement;

22 (18) "Normal retirement date", unless otherwise provided in KRS 78.510 to 78.852,
23 means:

24 (a) For a member with service in a nonhazardous position, the sixty-fifth birthday
25 of a member;

26 (b) For a member with service in a hazardous position who begins participating
27 before September 1, 2008, the first day of the month following a member's

UNOFFICIAL COPY

22 RS HB 9/VO

1 fifty-fifth birthday; or

2 (c) For a member with service in a hazardous position who begins participating
3 on or after September 1, 2008, the first day of the month following a member's
4 sixtieth birthday;

5 (19) "Fiscal year" of the system means the twelve (12) months from July 1 through the
6 following June 30, which shall also be the plan year. The "fiscal year" shall be the
7 limitation year used to determine contribution and benefits limits as set out in 26
8 U.S.C. sec. 415;

9 (20) "Agency reporting official" means the person designated by the participating
10 employer who shall be responsible for forwarding all employer and employee
11 contributions and a record of the contributions to the system and for performing
12 other administrative duties pursuant to the provisions of KRS 78.510 to 78.852;

13 (21) "Regular full-time positions," as used in subsection (6) of this section, shall mean
14 all positions that average one hundred (100) or more hours per month, determined
15 by using the number of hours actually worked in a calendar or fiscal year, or eighty
16 (80) or more hours per month in the case of noncertified employees of school
17 boards, determined by using the number of hours actually worked in a calendar or
18 school year, unless otherwise specified, except:

19 (a) Seasonal positions, which although temporary in duration, are positions which
20 coincide in duration with a particular season or seasons of the year and that
21 may recur regularly from year to year, in which case the period of time shall
22 not exceed nine (9) months, except for employees of school boards, in which
23 case the period of time shall not exceed six (6) months;

24 (b) Emergency positions that are positions that do not exceed thirty (30) working
25 days and are nonrenewable;

26 (c) Temporary positions that are positions of employment with a participating
27 agency for a period of time not to exceed twelve (12) months and not

UNOFFICIAL COPY

22 RS HB 9/VO

- 1 renewable;
- 2 (d) Probationary positions which are positions of employment with a participating
- 3 employer that do not exceed twelve (12) months and that are used uniformly
- 4 by the participating agency on new employees who would otherwise be
- 5 eligible for participation in the system. Probationary positions shall not be
- 6 renewable by the participating employer for the same employee, unless the
- 7 employee has not been employed with the participating employer for a period
- 8 of at least twelve (12) months; or
- 9 (e) Part-time positions that are positions that may be permanent in duration, but
- 10 that require less than a calendar or fiscal year average of one hundred (100)
- 11 hours of work per month, determined by using the number of months actually
- 12 worked within a calendar or fiscal year, in the performance of duty, except in
- 13 case of noncertified employees of school boards, the school term average shall
- 14 be eighty (80) hours of work per month, determined by using the number of
- 15 months actually worked in a calendar or school year, in the performance of
- 16 duty;
- 17 (22) "Alternate participation plan" means a method of participation in the system as
- 18 provided for by KRS 78.530(3);
- 19 (23) "Retired member" means any former member receiving a retirement allowance or
- 20 any former member who has on file at the retirement office the necessary
- 21 documents for retirement benefits and is no longer contributing to the system;
- 22 (24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly,
- 23 monthly, or yearly rate of pay converted to an annual rate as defined in final rate of
- 24 pay. The rate shall be certified by the employer;
- 25 (25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the
- 26 member in accordance with KRS 61.542 or 61.705 to receive any available benefits
- 27 in the event of the member's death. As used in KRS 78.5536, beneficiary shall not

UNOFFICIAL COPY

- 1 mean an estate, trust, or trustee;
- 2 (26) "Recipient" means the retired member, the person or persons designated as
3 beneficiary by the member and drawing a retirement allowance as a result of the
4 member's death, or a dependent child drawing a retirement allowance. An alternate
5 payee of a qualified domestic relations order shall not be considered a recipient,
6 except for purposes of KRS 61.623;
- 7 (27) "Person" means a natural person;
- 8 (28) "School term or year" means the twelve (12) months from July 1 through the
9 following June 30;
- 10 (29) "Retirement office" means the Kentucky Public Pensions Authority office building
11 in Frankfort, unless otherwise designated by the Kentucky Public Pensions
12 Authority;
- 13 (30) "Vested" for purposes of determining eligibility for purchasing service credit under
14 KRS 61.552 means the employee has at least forty-eight (48) months of service if
15 age sixty-five (65) or older or at least sixty (60) months of service if under the age
16 of sixty-five (65). For purposes of this subsection, "service" means service in the
17 systems administered by the Kentucky Retirement Systems and County Employees
18 Retirement System;
- 19 (31) "Participating" means an employee is currently earning service credit in the system
20 as provided in KRS 78.615;
- 21 (32) "Month" means a calendar month;
- 22 (33) "Membership date" means the date upon which the member began participating in
23 the system as provided in KRS 78.615;
- 24 (34) "Participant" means a member, as defined by subsection (8) of this section, or a
25 retired member, as defined by subsection (23) of this section;
- 26 (35) "Qualified domestic relations order" means any judgment, decree, or order,
27 including approval of a property settlement agreement, that:

UNOFFICIAL COPY

- 1 (a) Is issued by a court or administrative agency; and
- 2 (b) Relates to the provision of child support, alimony payments, or marital
- 3 property rights to an alternate payee;
- 4 (36) "Alternate payee" means a spouse, former spouse, child, or other dependent of a
- 5 participant, who is designated to be paid retirement benefits in a qualified domestic
- 6 relations order;
- 7 (37) "Accumulated employer credit" means the employer pay credit deposited to the
- 8 member's account and interest credited on such amounts as provided by KRS
- 9 78.5512 and 78.5516;
- 10 (38) "Accumulated account balance" means:
- 11 (a) For members who began participating in the system prior to January 1, 2014,
- 12 the member's accumulated contributions; or
- 13 (b) For members who began participating in the system on or after January 1,
- 14 2014, in the hybrid cash balance plan as provided by KRS 78.5512 and
- 15 78.5516, the combined sum of the member's accumulated contributions and
- 16 the member's accumulated employer credit;
- 17 (39) "Volunteer" means an individual who:
- 18 (a) Freely and without pressure or coercion performs hours of service for an
- 19 employer participating in one (1) of the systems administered by Kentucky
- 20 Retirement Systems or the County Employees Retirement System without
- 21 receipt of compensation for services rendered, except for reimbursement of
- 22 actual expenses, payment of a nominal fee to offset the costs of performing
- 23 the voluntary services, or both; and
- 24 (b) If a retired member, does not become an employee, leased employee, or
- 25 independent contractor of the employer for which he or she is performing
- 26 volunteer services for a period of at least twelve (12) months following the
- 27 retired member's most recent retirement date;

UNOFFICIAL COPY

- 1 (40) "Nominal fee" means compensation earned for services as a volunteer that does not
2 exceed five hundred dollars (\$500) per month. Compensation earned for services as
3 a volunteer from more than one (1) participating employer during a month shall be
4 aggregated to determine whether the compensation exceeds the five hundred dollars
5 (\$500) per month maximum provided by this subsection;
- 6 (41) "Nonhazardous position" means a position that does not meet the requirements of
7 KRS 78.5520 or has not been approved by the board as a hazardous position;
- 8 (42) "Hazardous position" means a position that meets the requirements of KRS 78.5520
9 and has been approved by the board as hazardous;
- 10 (43) "Level-percentage-of-payroll amortization method" means a method of determining
11 the annual amortization payment on the unfunded actuarial accrued liability as
12 expressed as a percentage of payroll over a set period of years. Under this method,
13 the percentage of payroll shall be projected to remain constant for all years
14 remaining in the set period and the unfunded actuarially accrued liability shall be
15 projected to be fully amortized at the conclusion of the set period;
- 16 (44) "Increment" means twelve (12) months of service credit which are purchased. The
17 twelve (12) months need not be consecutive. The final increment may be less than
18 twelve (12) months;
- 19 (45) "Last day of paid employment" means the last date employer and employee
20 contributions are required to be reported in accordance with KRS 16.543, 61.543, or
21 78.615 to the retirement office in order for the employee to receive current service
22 credit for the month. Last day of paid employment does not mean a date the
23 employee receives payment for accrued leave, whether by lump sum or otherwise, if
24 that date occurs twenty-four (24) or more months after previous contributions;
- 25 (46) "Objective medical evidence" means reports of examinations or treatments; medical
26 signs which are anatomical, physiological, or psychological abnormalities that can
27 be observed; psychiatric signs which are medically demonstrable phenomena

UNOFFICIAL COPY

1 indicating specific abnormalities of behavior, affect, thought, memory, orientation,
 2 or contact with reality; or laboratory findings which are anatomical, physiological,
 3 or psychological phenomena that can be shown by medically acceptable laboratory
 4 diagnostic techniques, including but not limited to chemical tests,
 5 electrocardiograms, electroencephalograms, X-rays, and psychological tests;

6 (47) "Hazardous disability" as used in KRS 78.510 to 78.852 means a disability which
 7 results in an employee's total incapacity to continue as an employee in a hazardous
 8 position, but the employee is not necessarily deemed to be totally and permanently
 9 disabled to engage in other occupations for remuneration or profit;

10 (48) "Act in line of duty" means, for purposes of members serving in a hazardous
 11 position, an act occurring which was required in the performance of the principal
 12 duties of the hazardous position as defined by the job description;

13 (49) "Dependent child" means a child in the womb and a natural or legally adopted child
 14 of the member who has neither attained age eighteen (18) nor married or who is an
 15 unmarried full-time student who has not attained age twenty-two (22). Solely in the
 16 case of a member who dies as a direct result of an act in line of duty as defined in
 17 this section or who dies as a result of a duty-related injury as defined in KRS
 18 61.621, "dependent child" also means a naturally or legally adopted disabled child
 19 of the member, regardless of the child's age, if the child has been determined to be
 20 eligible for federal Social Security disability benefits or is being claimed as a
 21 qualifying child for tax purposes due to the child's total and permanent disability;

22 (50) "Normal retirement age" means the age at which the member meets the
 23 requirements for his or her normal retirement date as provided by subsection (18) of
 24 this section;

25 (51) "Disability retirement date" means the first day of the month following the last day
 26 of paid employment;

27 (52) "Monthly average pay" means:

UNOFFICIAL COPY

22 RS HB 9/VO

1 (a) In the case of a member who dies as a direct result of an act in line of duty as
 2 defined in KRS 16.505 or who dies as a result of a duty-related injury as
 3 defined in KRS 61.621, the higher of the member's monthly final rate of pay
 4 or the average monthly creditable compensation earned by the deceased
 5 member during his or her last twelve (12) months of employment; or

6 (b) In the case where a member becomes totally and permanently disabled as a
 7 direct result of an act in line of duty as defined in KRS 16.505 or becomes
 8 disabled as a result of a duty-related injury as defined in KRS 61.621 and is
 9 eligible for the benefits provided by KRS 61.621(5)(a), the higher of the
 10 member's monthly final rate of pay or the average monthly creditable
 11 compensation earned by the disabled member during his or her last twelve
 12 (12) months of employment prior to the date the act in line of duty or duty-
 13 related injury occurred;

14 (53) "Authority" means the Kentucky Public Pensions Authority as provided by KRS
 15 61.505; and

16 (54) "Executive director" means the executive director of the Kentucky Public Pensions
 17 Authority.

18 ➔Section 16. If any provision of this Act or its application to any person or
 19 circumstance is held invalid by a court of competent jurisdiction, the invalidity does not
 20 affect other provisions or applications of this section that can be given effect without the
 21 invalid provision or application, and to this end the provisions of this Act are severable.

Presiding Judge: HON. PHILLIP J. SHEPHERD (648260)

COM : 000102 of 000102