

**56.823 Reports on leases, exercise of options to purchase, completion of lease-purchase agreements, and lease modifications to Capital Projects and Bond Oversight Committee.**

- (1) The Finance and Administration Cabinet shall report information on leases and lease modifications awarded pursuant to KRS 43.050, 48.111, and 56.800 to 56.823 to the Capital Projects and Bond Oversight Committee as required by this section.
- (2) Any lease awarded pursuant to KRS 56.803, including all lease renewals except automatic renewals permitted under KRS 56.806(1), for which the annual rental cost will exceed one hundred thousand dollars (\$100,000) shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution. The report shall include:
  - (a) The name of the agency that will occupy the premises;
  - (b) The name of the lessor;
  - (c) The terms of the lease;
  - (d) The reason for the lease;
  - (e) A copy of the writing required by KRS 56.803(17);
  - (f) A statement as to whether the Finance and Administration Cabinet complied with the requirements established in KRS 43.050, 48.111, and 56.800 to 56.823. If the cabinet has not complied with any requirement, the cabinet shall explain why;
  - (g) An explanation of why the Finance and Administration Cabinet chose this lessor over his competition; and
  - (h) A cost comparison between the cost per square foot of the leased space and the average cost per square foot of comparable space the state leases in the same county. If there are factors which make the comparison misleading, the cabinet shall inform the committee of these factors.
- (3) Any lease that incorporates a lease-purchase pursuant to KRS 56.806(5) shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution.
  - (a) If a lease is awarded pursuant to KRS 56.803, the report shall include the:
    1. Fair market value of the property as of the time the lessor and the Commonwealth entered into the lease;
    2. Name and qualifications of each of the two (2) real estate appraisers who determined the fair market value;
    3. Appraisal technique each appraiser employed; and
    4. Information required by subsection (2) of this section.
  - (b)
    1. Except as provided in subparagraph 2. of this paragraph, if a lease is awarded pursuant to KRS 56.805(2), the report shall include the:
      - a. Fair market value of the property at the time the lessor and the Commonwealth entered into the lease;
      - b. Name and qualifications of each of the two (2) real estate

- appraisers who determined the fair market value;
  - c. Appraisal technique each appraiser employed;
  - d. Information required by paragraphs (a), (b), (c), (d), (f), (g), and (h) of subsection (2) of this section; and
  - e. Procedure the department followed to obtain the lease.
2. If the federal government is the lessor, the report shall include the substance of the lease-purchase.
- (4) Any lease awarded pursuant to KRS 56.805(2), including all lease renewals except automatic renewals permitted under KRS 56.806(1), for which the annual rental cost will exceed one hundred thousand dollars (\$100,000) shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution. The report shall state the information required by paragraphs (a), (b), (c), (d), (f), (g), and (h) of subsection (2) of this section and the procedure the department followed to obtain the lease. The report shall also include a copy of the writing required by KRS 56.805(2).
- (5) Any lease awarded as the result of an emergency described at KRS 56.805(3) shall be reported to the Capital Projects and Bond Oversight Committee within thirty (30) days after execution. The report shall include a copy of the certificate or the certificate and the Governor's authorization, as appropriate, kept on file pursuant to KRS 56.805(4) and shall further state:
- (a) The information required by paragraphs (a), (b), (f), (g), and (h) of subsection (2) of this section;
  - (b) The terms of lease before and after the emergency; and
  - (c) The procedure the department followed after the emergency to obtain a lease.
- (6) Any built-to-suit lease awarded pursuant to KRS 56.8169 shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution. The report shall state the information required by paragraphs (a), (b), (c), (d), (f), (g), and (h) of subsection (2) of this section. The report shall also include:
- (a) The written finding and Governor's approval required by KRS 56.8161;
  - (b) The selection committee's ranking of firms required by KRS 56.8169(15)(a);
  - (c) The written reason for requesting best-and-final offers, if best-and-final offers are requested, made pursuant to KRS 56.8169(16)(b);
  - (d) The selection committee's selection of the best best-and-final offer, if best-and-final offers are requested, made pursuant to KRS 56.8169(16)(d);
  - (e) The certificates signed pursuant to KRS 56.8171(2); and
  - (f) The report prepared by the employee of the Auditor of Public Accounts pursuant to KRS 56.8171(3).
- (7) If the Finance and Administration Cabinet decides to exercise an option to purchase pursuant to KRS 56.806(4), the cabinet shall report to the Capital Projects and Bond Oversight Committee after the decision is reached but before the purchase occurs. The report shall include the:

- (a) Fair market value of the property;
  - (b) Option price;
  - (c) Name and qualifications of each of the two (2) real estate appraisers who set the fair market value;
  - (d) Appraisal technique each appraiser employed; and
  - (e) Rent paid by the Commonwealth prior to the exercise of the option.
- (8) (a) When, pursuant to KRS 56.806(5)(a), the Finance and Administration Cabinet attempts to complete a lease-purchase through lease payments totally amortizing the fair market value of the leased property as of the time the lessor and the Commonwealth entered into the lease, the cabinet shall report to the Capital Projects and Bond Oversight Committee no more than ninety (90) days before the final lease payment. The report shall include the:
- 1. Fair market value of the property at the time the lessor and the Commonwealth entered into the lease;
  - 2. Name and qualifications of each of the two (2) real estate appraisers who set the fair market value;
  - 3. Appraisal technique each appraiser employed; and
  - 4. Rent paid by the Commonwealth toward the purchase.
- (b) When, pursuant to KRS 56.806(5)(b), the Finance and Administration Cabinet attempts to complete a lease-purchase, the cabinet shall report to the Capital Projects and Bond Oversight Committee no more than ninety (90) days before the final lease payment. The report shall include the terms of the lease purchase.
- (9) When, pursuant to KRS 56.806(5), the Finance and Administration Cabinet decides to attempt to complete a lease-purchase prior to the total amortization, through lease payments, of the fair market value of the leased property as of the time the lessor and the Commonwealth entered into the lease, the cabinet shall report to the Capital Projects and Bond Oversight Committee after the decision is reached but before the purchase occurs. The report shall state the information required by paragraph (a) or (b) of subsection (8) of this section as appropriate. The report shall also include the sum of money that must be paid in addition to rent paid, in order to complete the purchase.
- (10) If the Finance and Administration Cabinet, pursuant to KRS 56.806(5), includes in a lease the lease-purchase of the leased property and thereafter becomes aware that a purchase will not be achieved, within thirty (30) days after the cabinet becomes aware, it shall notify the Capital Projects and Bond Oversight Committee of the circumstances preventing the purchase.
- (11) (a) Except in the case of an emergency as provided in paragraph (b) of this subsection, any modification to an existing lease, made pursuant to KRS 56.813, that is less than fifty thousand dollars (\$50,000) shall be reported to the Capital Projects and Bond Oversight Committee within thirty (30) days after execution, and any modification to an existing lease, made pursuant to KRS 56.813, that is fifty thousand dollars (\$50,000) or more shall be reported

to the Capital Projects and Bond Oversight Committee before execution. In either case, the report shall consist of:

1. The terms of the lease before and after modification;
  2. The reason for the modification;
  3. The name of the lessor;
  4. Any comments received from the public pursuant to KRS 56.813(4); and
  5. A statement as to whether the Finance and Administration Cabinet complied with the requirements in KRS 56.813. If the cabinet has not complied with any requirement, the cabinet shall explain why.
- (b) Any modification to an existing lease which is required because of an emergency as described at KRS 56.805(3) shall be reported to the Capital Projects and Bond Oversight Committee within thirty (30) days after execution. The report shall include a copy of the certificate or the certificate and the Governor's authorization, as appropriate, kept on file pursuant to KRS 56.805(4) and shall further state:
1. The terms of the lease before and after modification;
  2. The name of the lessor;
  3. Any comments received from the public pursuant to KRS 56.813(4); and
  4. A statement that the Finance and Administration Cabinet complied with the requirements in KRS 56.805(3) and (4) and in KRS 56.813. If the cabinet has not complied with any requirement, the cabinet shall explain why.

**Effective:** June 25, 2009

**History:** Amended 2009 Ky. Acts ch. 78, sec. 48, effective June 25, 2009. -- Amended 1998 Ky. Acts ch. 539, sec. 4, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 44, sec. 3, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 54, sec. 13, effective July 14, 1992; and ch. 339, sec. 3, effective July 14, 1992. -- Created 1990 Ky. Acts ch. 512, sec. 13, effective July 13, 1990.