

AN ACT relating to charter schools and making an appropriation therefor.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

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

(a) Improve student learning by creating more high-performing schools with high standards for student performance;

(b) Encourage the use of different, high-quality models of teaching, governing, scheduling, or other aspects of schooling that meet a variety of student needs;

(c) Close achievement gaps between high-performing and low-performing groups of public school students;

(d) Allow schools freedom and flexibility in exchange for exceptional levels of results-driven accountability;

(e) Increase high-quality educational opportunities within the public education system for all students, especially those at risk of academic failure; and

(f) Provide students, parents, community members, and local entities with expanded opportunities for involvement in the public education system.

(2) Beginning in academic year 2017-2018 and continuing through academic year 2021-2022, the charter school pilot project shall allow a maximum number of two (2) charter schools to be authorized per academic year in a county with a consolidated local government and a maximum number of two (2) charter schools to be authorized per academic year in a county with an urban-county

government, as follows:

- (a) A local school board located in a county with a consolidated local government may authorize one (1) charter school per academic year to be located within the local school district attendance area; and
- (b) A local school board located in a county with an urban-county government may authorize one (1) charter school per academic year to be located within the local school district attendance area.
- (3) A charter school shall enroll only those students who reside within the attendance area of the local school district in which the charter school is located.
- (4) Charter schools established during the charter school pilot project may continue to operate beyond the 2021-2022 academic year if the charter is renewed in accordance with Section 7 of this Act.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 9 of this Act:

- (1) "Applicant" means teachers, parents, school administrators, community residents, public organizations, private organizations, or a combination thereof that seek approval from a charter school authorizer to establish a public charter school;
- (2) "Board of directors" means the governing body of a charter school;
- (3) "Charter application" means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;
- (4) "Charter contract" means a fixed-term, renewable contract between a charter school and an authorizer that identifies the roles, powers, responsibilities, and performance expectations for each party to the contract pursuant to Section 5 of this Act;

- (5) "Charter school" means a public school that:
- (a) Has autonomy over decisions, including but not limited to matters concerning finance, personnel, scheduling, curriculum, and instruction;
 - (b) Is governed by an independent governing board;
 - (c) Is established and operating under the terms of a charter contract between the charter school's board of directors and its authorizer;
 - (d) Is a public school to which parents choose to send their children;
 - (e) Is a public school that admits students on the basis of a lottery if more students apply for admission than can be accommodated;
 - (f) Offers a comprehensive instructional program within a public school district that offers kindergarten through grade twelve (12);
 - (g) Operates in pursuit of a specific set of educational objectives as defined in its charter contract; and
 - (h) Operates under the oversight of its authorizer in accordance with its charter contract;
- (6) "Charter school authorizer" or "authorizer" means a local board located in a county with a consolidated local government or an urban-county government;
- (7) "Education service provider" means a nonprofit education management organization, nonprofit charter management organization, nonprofit school design provider, or any other nonprofit partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;
- (8) "Local board" means the local board of education of a local school district;
- (9) "Local school district" means a county or independent school district;
- (10) "Qualified teacher" means:
- (a) A person certified by the Education Professional Standards Board pursuant to KRS 161.028, 161.030, 161.046, or 161.048; or

(b) A person who has a baccalaureate degree, exceptional work experience in the area in which he or she is hired to teach, and a passing score on the academic content assessment designated by the Education Professional Standards Board; and

(11) "State board" means the Kentucky Board of Education.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

(1) A charter school shall be part of the state's system of public education but shall be exempt from all statutes and administrative regulations applicable to the state board, a local school district, or a school, except as provided in this section, although a charter school may voluntarily elect to comply with any statutes or administrative regulations.

(2) A charter school or any education service provider contracted to manage the operations of a charter school shall:

(a) Adhere to the same health, safety, civil rights, and disability rights requirements as are applied to all public schools;

(b) Ensure students meet compulsory attendance requirements under KRS 158.030 and 158.100;

(c) Ensure high school course offerings meet or exceed the minimum required under KRS 156.160 for high school graduation;

(d) Design its education programs to meet or exceed the student performance standards adopted by the Kentucky Board of Education, including compliance with requirements under the statewide assessment system pursuant to KRS 158.6453;

(e) Ensure students' participation in required state assessment of student performance, as required of other public school students under KRS 158.6453;

- (f) Adhere to all generally accepted accounting principles and adhere to the same financial audits, audit procedures, and audit requirements as are applied to other public schools under KRS 156.265;
- (g) Require state and criminal background checks for staff and volunteers as required of all public school employees and volunteers within the public schools specified in KRS 160.380 and 161.148;
- (h) Comply with open records and open meeting requirements under KRS Chapter 61;
- (i) Comply with purchasing requirements and limitations under KRS Chapter 45 and KRS 156.074 and 156.480;
- (j) Provide instructional time that is at least equivalent to the student instructional year specified in KRS 158.070; and
- (k) Provide data to the Kentucky Department of Education and the authorizer as required by the Kentucky Department of Education or authorizer to generate a school report card under KRS 158.6453.
- (3) A charter school may organize as a nonprofit corporation under KRS Chapter 273, which shall not affect its status as a public school for any purposes under current statutes.
- (4) A local board shall not discriminate against a charter school in publicizing the district's educational options through advertising, direct mail, availability of mailing lists, or other informational activities.
- (5) For purposes of ensuring compliance with this section and the charter under which it operates, a charter school shall be administered by a charter school board of directors accountable to the authorizer in a manner agreed to in the charter contract, as negotiated between the charter school applicant and the authorizer.
- (6) The board of directors shall be responsible for the operation of its charter school,

including but not limited to preparation of a budget, contracting for services, school curriculum, and personnel matters.

(7) A charter school may negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the charter school is required to perform in order to carry out the educational program described in its charter. Any services for which a charter school contracts with a school district shall be provided by the district at cost. The charter school shall have standing to sue and be sued in its own name for the enforcement of any contract created pursuant to Sections 1 to 9 of this Act. A charter school may own, rent, or lease its space.

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

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

(10) A charter school shall not discriminate against any student, employee, or any other person on the basis of ethnicity, religion, national origin, gender, disability, special needs, athletic ability, academic ability, or any other ground that would be unlawful if done by a public school.

- (11) A charter school shall serve one (1) or more of grades kindergarten through twelve (12) and shall limit admission to students within the grade levels served.
- (12) (a) Notwithstanding KRS 158.140, a board of directors of a charter school offering instruction in the high school grades may grant diplomas to students who successfully complete or exceed the minimum high school graduation requirements established by the Kentucky Board of Education under KRS 156.160.
- (b) A board of directors of a charter school shall grant other certificates and honors as are specifically authorized by the school, and shall give suitable certificates, honors, and diplomas under the seal of the board of directors of the charter school.
- (c) A diploma and certificate granted by a board of directors of a charter school shall entitle the recipient to all privileges and immunities which by usage or statute are allowed for similar diplomas or certificates of corresponding grade granted by any other school.
- (13) A charter school shall provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules, and regulations. A charter school shall deliver the services directly or contract with another provider to deliver the services. A charter school shall establish an admissions and release committee at the school and the committee shall:
- (a) Develop an individualized education program for each student with a disability; or
- (b) Review, revise, or utilize a student's individualized education program completed by the admissions and release committee of the student's former school. If needed, the committee shall work collaboratively with staff from the student's former school to review and revise a student's existing

individualized education program.

(14) The local district in which the charter school is located shall provide transportation between the charter school and residence of a charter school student who resides within the attendance area of the local district in which the charter school is located. The local district shall retain all funding allocated for student transportation.

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

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

(c) If a charter school sponsors extracurricular activities, students enrolled in the charter school shall be considered eligible to participate in interscholastic competitions by the Kentucky Board of Education or the agency designated by the state board to manage interscholastic athletics, if other eligibility requirements are met. A student enrolled in a charter school that sponsors an extracurricular activity shall be ineligible to participate in that activity at any other school.

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

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

- (1) An application to establish a charter school may be submitted to a charter school authorizer by teachers, parents, school administrators, community residents, public organizations, private organizations, or a combination thereof.
- (2) An applicant shall submit an application for approval of a charter school to an authorizer on or before January 1 of a calendar year.
- (3) The information provided in the application shall be consistent with this section and shall include:

 - (a) A mission statement and a vision statement for the charter school, including the targeted student population and the community the school hopes to serve;
 - (b) A description of the school's proposed academic program that is aligned with state standards, and that implements one (1) or more of the purposes described in Section 1 of this Act, and the instructional methods that will support the implementation and success of the program;
 - (c) The student achievement goals for the charter school's educational program and the chosen methods of evaluating whether students have attained the skills and knowledge specified for those goals;
 - (d) The school's plan for using external, internal, and state-required assessments to measure student progress on the performance framework as identified in Section 5 of this Act, and how the school will use data to drive instruction and continued school improvement;
 - (e) The proposed governance structure of the school, including a list of members of the initial board of directors, a draft of bylaws that include the description of the qualifications, terms, and methods of appointment or election of directors, the organizational structure of the school, and the relationship between the school's administration and the board of directors;
 - (f) Plans and timelines for student recruitment and enrollment, including

- lottery policies and procedures for the school, which shall be consistent with Section 10 of this Act;
- (g) A proposed five (5) year budget, including the start-up year and projections for four (4) additional years with clearly stated assumptions;
- (h) Draft fiscal and internal control policies for the charter school;
- (i) Requirements and procedures for programmatic audits and assessments at least once annually, with audits and assessments being comparable in scope to those required of noncharter public schools;
- (j) A draft handbook that outlines the personnel policies of the charter school, including the criteria to be used in the hiring of qualified teachers, school administrators, and other school employees, a description of staff responsibilities, and the school's plan to evaluate personnel on an annual basis;
- (k) A draft of the policies and procedures by which students may be disciplined, including students with disabilities, which shall be consistent with the requirements of due process and with state and federal laws and regulations governing the placement of students with disabilities;
- (l) A description of the facilities to be used by the school, including the location of the school, if known, and how the facility supports the implementation of the school's academic program. If the facilities to be used by the proposed school are not known at the time the application is submitted, the applicant shall notify the authorizer within ten (10) business days of acquiring facilities for the school. The school shall obtain certification of occupancy for the facilities at least thirty (30) days prior to the first student instructional day;
- (m) The proposed ages and grade levels to be served by the school, including the planned, minimum, and maximum enrollment per grade per year;

- (n) The school calendar and school day schedule, which shall total at least the number of days, or their equivalent, required under KRS 158.070;
- (o) Types and amounts of insurance coverage to be obtained by the school, which shall include adequate insurance for liability, property loss, and the personal injury of students comparable to other schools within the local school district operated by the local board;
- (p) Evidence of community support for and interest in the school sufficient to allow the school to reach its anticipated enrollment;
- (q) A description of the health and food services to be provided to students attending the school;
- (r) Procedures to be followed in the case of the closure or dissolution of the charter school, including provisions for the transfer of students and student records to the local school district in which the charter school is located or to another charter school located within the local school district;
- (s) A code of ethics for the school setting forth the standards of conduct expected of its board of directors, officers, and employees;
- (t) Plans for recruiting and developing staff;
- (u) A staffing chart for the school's first year and a staffing chart for the term of the charter;
- (v) A plan for parental and community involvement in the school, including the role of parents in the administration and governance of the school;
- (w) The school's plan for identifying and successfully serving students with disabilities, students who are English language learners, bilingual students, and students who are academically behind and gifted, including but not limited to the school's plan for compliance with all applicable federal and state laws and regulations;
- (x) A description of cocurricular and extracurricular programs and how they

will be funded and delivered;

(v) The process by which the school will resolve any disputes with the authorizer;

(z) A detailed start-up plan, including financing, tasks, timelines, and individuals responsible for carrying out the plan; and

(aa) If the charter school issues a request for proposals as provided in subsection (4) of this section, the request for proposals and the proposal submitted by the winning applicant shall be included with the application.

(4) If the public charter school applicant intends to contract with an education service provider for substantial educational services or management services, a request for proposals shall be issued prior to submitting an application. The request for proposal shall require the education service provider to:

(a) Provide evidence of success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable;

(b) Provide a term sheet setting forth:

1. The proposed duration of the service contract;

2. The annual proposed fees to be paid to the education service provider;

3. The roles and responsibilities of the board of directors, the school staff, and the education service provider;

4. The scope of services and resources to be provided by the education service provider;

5. Performance evaluation measures and timelines;

6. Compensation structure, including clear identification of all fees to be paid to the education service provider;

7. Methods of contract oversight and enforcement;

8. Investment disclosure; and

9. Conditions for renewal and termination of the contract; and

- (c) Disclose and explain any existing or potential conflicts of interest between the board of directors and the proposed education service provider or any affiliated business entities.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

(1) A charter school authorizer shall:

- (a) Fulfill the expectations and intent of Sections 1 to 9, 10, 11, 12, 13, and 14 of this Act;
- (b) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;
- (c) Solicit, invite, and evaluate applications from applicants;
- (d) Approve new and renewal charter applications that meet the requirements of this section and Sections 4 and 7 of this Act;
- (e) Decline to approve charter applications that:
1. Fail to meet the requirements of this section and Section 4 of this Act or are otherwise inadequate;
 2. Are submitted by a private school seeking to convert to a charter school; or
 3. Are for a school that would be wholly or partly under the control or direction of any religious denomination or affiliation;
- (f) Negotiate and execute in good faith a charter contract with each charter school it authorizes;
- (g) Monitor the performance and compliance of charter schools according to the terms of the charter contract;
- (h) Determine whether each charter contract it authorizes merits renewal or revocation; and

- (i) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, as adopted by the National Association of Charter School Authorizers, including standards relating to:
1. Organizational capacity and infrastructure;
 2. Soliciting and evaluating applications;
 3. Performance contracting;
 4. Ongoing public charter school oversight and evaluation; and
 5. Charter approval, renewal, and revocation decision making.
- (2) In reviewing applications, the charter school authorizer is encouraged to give preference to applications that demonstrate the intent, capacity, and capability to provide comprehensive learning experiences to:
- (a) Students identified by the applicants as at risk of academic failure;
 - (b) Students residing in the attendance area of a school in which at least fifty percent (50%) of the students enrolled qualify for free and reduced-price lunch; and
 - (c) Students with special needs as identified in their individualized education program as defined in KRS 158.281.
- (3) The application review process shall include a thorough evaluation of each application, an in-person interview with the applicant group, and an opportunity in a public forum for local residents to provide input and learn about the charter application. In deciding whether to approve a charter application, the authorizer shall:
- (a) Grant charters only to applicants that have demonstrated competence in all elements of the application requirements identified in this section and Section 4 of this Act;
 - (b) Base decisions on documented evidence collected through the application

- review process; and
- (c) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.
- (4) No later than sixty (60) days following the filing of the charter application, the authorizer shall approve or deny the charter application in an open meeting.
- (5) An application shall be approved if the charter school authorizer finds that:
- (a) The charter school described in the application meets the requirements established by this section and Section 4 of this Act;
- (b) The applicant demonstrates the ability to operate the school in an educationally and fiscally sound manner; and
- (c) Approving the application is likely to improve student learning and achievement and further the purposes established by Section 1 of this Act.
- (6) If an application is denied:
- (a) The reasons for the denial shall be provided, in writing, by the authorizer to the applicant; and
- (b) A copy shall be sent to the Kentucky Board of Education and shall be kept on file until the end of the 2021-2022 academic year.
- (7) (a) Within sixty (60) days of approval of an application by an authorizer, the board of directors of the approved charter school and the authorizer shall execute a legally binding charter contract that sets forth the academic and operational performance expectations and measures by which the charter school will be evaluated.
- (b) The executed charter contract shall become the final authorization for the charter school. The charter contract shall include:
1. The term of the contract;
 2. The agreements relating to each item required under subsection (3) of Section 4 of this Act, 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 charter school;
 5. The allocation of funds to the charter school by the authorizer;
 6. The process the authorizer will use to provide ongoing oversight, including a process to conduct annual site visits;
 7. The specific commitments of the charter school authorizer relating to its obligations to oversee, monitor the progress of, and supervise the charter school;
 8. The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the charter school, including the process the authorizer will use for correcting any deficiencies found in the annual review;
 9. The process for revision or amendment to the terms of the charter contract agreed to by the authorizer and the board of directors of the charter school;
 10. The process agreed to by the authorizer and the board of directors of the charter school that identifies how disputes between the authorizer and the board will be handled; and
 11. Any other terms and conditions agreed to by the authorizer and the board of directors.
- (c) 1. The performance provisions within a charter contract shall be based on a performance framework that sets forth the academic and operational performance indicators, measures, and metrics to be used by the authorizer to evaluate each public charter school. The performance framework shall include at a minimum indicators,

measures, and metrics for:

- a. Student academic proficiency;
 - b. Student academic growth;
 - c. Achievement gaps in both student proficiency and student growth between student subgroups, including race, gender, socioeconomic status, and areas of exceptionality;
 - d. Attendance;
 - e. Recurrent enrollment from year to year;
 - f. College or career readiness at the end of grade twelve (12);
 - g. Financial performance and sustainability; and
 - h. Board of directors' performance and stewardship, including compliance with all applicable statutes, administrative regulations, and terms of the charter contract.
2. The performance framework shall allow the inclusion of additional rigorous, valid, and reliable indicators proposed by a charter school to augment external evaluations of its performance. The proposed indicators shall be consistent with the purposes of Sections 1 to 9 of this Act and shall be negotiated with the authorizer.
 3. The performance framework shall require the disaggregation of student performance data by subgroups, including race, gender, socioeconomic status, and areas of exceptionality.
 4. The authorizer shall be responsible for collecting, analyzing, and reporting to the state board all state-required assessment and achievement data for each public charter school it oversees.
- (d) Annual student achievement performance targets shall be set, in accordance with the state accountability system, by each public charter school in conjunction with its authorizer, and those measures shall be

designed to help each school meet applicable federal, state, and authorizer goals.

(e) The charter contract shall be signed by the chair of the governing board of the authorizer and the chair of the board of directors of the charter school. An approved charter application shall not serve as a charter contract for the charter school.

(f) No charter school may commence operations without a charter contract executed according to this section and approved in an open meeting of the governing board of the authorizer.

(8) Within five (5) days after entering into a charter contract, a copy of the executed contract shall be submitted by the authorizer to the commissioner of education.

(9) A charter school authorizer may provide other services to a charter school, but shall not require such an arrangement as a condition to issuing the contract authorizing the charter school.

(10) The state board shall promulgate administrative regulations to establish the process to be used to evaluate the performance of a charter school authorizer, based upon the requirements of Sections 1 to 9, 10, 11, 12, 13, and 14 of this Act, and the actions to be taken in response to failures in performance.

(11) The commissioner of education shall apply for financial assistance through the federal government for the planning, program design, and initial implementation of charter schools in the state within sixty (60) days after the effective date of this Act or at the first available grant application period. Federal grants include but are not limited to the Charter Schools Program administered by the United States Department of Education.

(12) By August 31, 2017, and annually thereafter, each charter school authorizer shall submit to the commissioner of education, the secretary of the Education and Workforce Development Cabinet, and the Interim Joint Committee on Education

a report to include:

- (a) The names of each charter school operating under contract with the authorizer during the previous academic year that:
 - 1. Closed during or after the academic year; or
 - 2. Had the contract nonrenewed or revoked;
- (b) The names of each charter school operating under contract with the authorizer during the previous academic year that have not yet begun to operate;
- (c) The number of applications received, the number reviewed, and the number approved;
- (d) A summary of the academic and financial performance of each charter school operated under contract with the authorizer during the previous academic year; and
- (e) The authorizing duties and functions performed by the authorizer during the previous academic year.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

- (1) Upon the approval of a charter contract by a charter school authorizer, the applicant shall be permitted to operate a charter school for a term of up to five (5) years.
- (2) The board of directors of the charter school shall:
 - (a) Petition the Kentucky Retirement Systems board of trustees for participation by noncertified personnel in the County Employees Retirement System. Notwithstanding KRS 78.510 to 78.852, the Kentucky Retirement Systems board of trustees shall approve the participation of any charter school whose board petitions to participate in the County Employees Retirement System;

- (b) Apply for federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code no later than six (6) months following approval of a charter contract by a charter school authorizer unless a determination has been made by the Internal Revenue Service that charter schools will be treated similarly to other public schools without filing a separate application for determination; and
- (c) Negotiate and execute a charter contract with the governing body of the authorizer.
- (3) A charter school shall have all corporate powers necessary and desirable for carrying out a charter school program in accordance with this section and the terms of the charter contract, including all of the powers of a local board of education and of a local school district, except as otherwise provided in this section and Section 3 of this Act.
- (4) The powers granted to a charter school under this section constitute the performance of essential public purposes and governmental purposes of this state. A charter school shall be exempt to the same extent as other schools from all taxation, fees, assessments, or special ad valorem levies on its earnings and its property. Instruments of conveyance to or from a charter school and any bonds or notes issued by a charter school, together with the income received, shall at all times be exempt from taxation.
- (5) A charter school shall not have the power to levy taxes or to acquire property by eminent domain.
- (6) The board of directors of the charter school shall have final authority over policy and operational decisions of the charter school, although the decision-making authority may be delegated to the administrators and staff of the school in accordance with the provisions of the charter contract.
- (7) Notwithstanding any other statute to the contrary, no civil liability shall attach to

any charter school authorizer or to any of its members or employees, individually or collectively, for any acts or omissions of the charter school. Neither the local school district nor the Commonwealth shall be liable for the debts or financial obligations of a charter school or any person or corporate entity who operates a charter school.

(8) Upon revocation or nonrenewal of a charter contract, the authorization of the charter school shall be revoked by the authorizer in compliance with the notice and hearing requirements of Section 8 of this Act.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

(1) A charter contract may be renewed by the authorizer for a term of up to five (5) years in accordance with this section, although the authorizer may reduce the term based on the performance, demonstrated capacities, and particular circumstances of a charter school and may grant renewal with specific conditions for necessary improvements to a charter school. The renewal application shall be submitted to the authorizer by the board of directors no later than six (6) months prior to the expiration of the existing charter contract unless the authorizer waives the deadline for good cause. A renewal application shall include:

(a) Evidence that the charter school continues to meet or exceed state student performance measures adopted by the Kentucky Board of Education under KRS 158.6453, excluding nontested program reviews, and academic program requirements found in the charter school's contract;

(b) A report of the progress of the school in achieving the educational objectives set forth in the charter contract;

(c) A report of the progress of the charter school in meeting the goals of the academic performance framework in the charter contract;

(d) A detailed financial statement that discloses the cost of administration,

instruction, and other spending categories for the school that will allow a comparison of the costs to other schools. The financial statement shall be in the form prescribed by the authorizer;

(e) Copies of each of the annual reports of the school required by subsection (2) of Section 9 of this Act, including the school report cards and the certified financial statements;

(f) Indicators of parent and student satisfaction; and

(g) Any other information the authorizer may require.

(2) In making charter contract renewal decisions, an authorizer shall:

(a) Base decisions on evidence of the performance of the school over the term of the charter contract in accordance with the performance framework set forth in the charter contract;

(b) Ensure that data used in making renewal decisions are available to the school and the public; and

(c) Provide a written report to the school summarizing the evidence basis for the renewal decision. Upon approval of a renewal, a new or revised agreement shall be executed as provided in subsection (7) of Section 5 of this Act. Any denial of a renewal shall be governed by Section 8 of this Act.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

(1) (a) A charter school authorizer may revoke a charter contract, decide not to renew a charter contract, or place a charter school on probationary status if the authorizer determines the charter school:

1. Fails to meet or make sufficient progress on the assessment measures adopted by the Kentucky Board of Education under KRS 158.6453, excluding nontested program reviews, and the academic performance requirements found in the charter school contract;

2. Fails to adhere to generally accepted accounting standards; or
 3. Commits a material and substantial violation of any of the terms, conditions, standards, or procedures required under Sections 1 to 9, 10, 11, 12, 13, and 14 of this Act, or under the charter contract.
- (b) A charter school authorizer shall revoke or shall not renew a contract if the charter school's progress does not meet, for three (3) consecutive years, state student performance measures adopted by the Kentucky Board of Education under KRS 158.6453, excluding nontested program reviews, and academic program requirements found in the charter school's contract.
- (2) The charter school authorizer may place a charter school on probationary status to allow the implementation of a remedial action plan. The failure of a charter school to comply with the terms and conditions of a remedial action plan may result in revocation of the school's charter contract.
- (3) An authorizer shall develop a process for the revocation and nonrenewal of a charter contract that:
- (a) Provides the charter school with a timely notification of the prospect of revocation or nonrenewal of the charter contract and the reasons for such possible closure;
 - (b) Allows the charter school sixty (60) days or a length of time agreed upon by the charter school and the authorizer to prepare a response;
 - (c) Within thirty (30) days of the receipt of the response from the charter school, provides the charter school the opportunity to have a hearing before the authorizer, which shall be recorded, and at which the charter school may be represented by counsel and may call witnesses on behalf of the charter school; and
 - (d) Requires a final determination to be made within sixty (60) days of the hearing or, if no hearing is requested, within sixty (60) days of the receipt of

the response from the charter school. The final determination shall be conveyed in writing to the charter school.

(4) If a charter authorizer revokes or does not renew a charter contract, the authorizer shall adopt a resolution in a public meeting stating the reasons for the revocation or nonrenewal.

(5) Within thirty (30) days of adoption of the resolution required by subsection (4) of this section, the charter authorizer shall:

(a) Report the action taken to the commissioner of education; and

(b) Provide a copy of the resolution and a written report to the commissioner of education and the charter school.

(6) Any individual or group may bring a complaint to the board of directors of a charter school alleging a violation of this section, the charter contract, or any other provision of law relating to the management or operation of the charter school. If, after presentation of the complaint to the board of directors, the individual or group determines that the board of directors has not adequately addressed the complaint, the individual or group may present the complaint to the charter school authorizer, which shall investigate and respond. The charter school authorizer shall have the power and the duty to issue appropriate remedial orders to charter schools under its jurisdiction to effectuate this section.

(7) (a) If a charter school closes, the authorizer shall oversee the closing and shall work with the charter school to ensure timely notification to parents, orderly transition of students and student records to receiving schools, and proper disposition of school funds, property, and assets in accordance with the requirements of paragraphs (b) and (c) of this subsection.

(b) The assets of the charter school shall be distributed by the authorizer first to satisfy outstanding payroll obligations for employees of the school and then to creditors of the school. If the assets are insufficient to satisfy outstanding

obligations, the authorizer shall petition the Circuit Court of the county in which the charter school is located to prioritize the distribution of assets, with preference given to outstanding payroll obligations.

(c) Any funds remaining after outstanding obligations are satisfied shall be returned to the district in which the charter school was located.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner of education shall annually, by July 1, distribute information announcing the availability of the charter school process described in Sections 1 to 9, 10, 11, 12, 13, and 14 of this Act to each local school district.

(2) (a) A charter school shall submit an annual report to the authorizer and the commissioner of education no later than the first day of August of each year for the preceding school year.

(b) The report shall include but not be limited to the following components:

1. A charter school report card that shall include measures of the comparative academic and fiscal performance of the school. The measures shall include but not be limited to graduation rates, dropout rates, performance of students on standardized tests, college entry rates, total spending per student, and administrative spending per student;

2. A narrative of the progress made toward the achievement of the goals set forth for charter schools; and

3. A copy of the most recent audit of the charter school as required by subsection (2)(f) of Section 3 of this Act.

(3) The commissioner of education shall report annually to the Interim Joint Committee on Education:

(a) The number, location, and a brief description of new charter schools

established during the preceding year;

(b) The academic progress of students attending charter schools, as measured against comparable schools, wherever practicable; and

(c) Any other information regarding charter schools that the commissioner or an authorizer deems necessary.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 159 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, "charter school" has the same meaning as in Section 2 of this Act.

(2) (a) Students qualified under KRS 158.030, 158.100, or 159.010, relating to school entrance requirements and school compulsory attendance, who meet the requirements of this subsection are eligible for admission to a charter school.

(b) Enrollment decisions shall be made in a nondiscriminatory manner and shall not be limited based on intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry.

(c) A charter school shall accept an application for enrollment from any student who submits the application on or before April 1 of each year and who:

1. Is currently attending the school and is applying to return for the following year;

2. Is a sibling of a student already attending the school;

3. Is a child of a teacher or administrator at the school;

4. Is currently enrolled in a school classified by the Kentucky Board of Education as a school that needs improvement as a result of its accountability performance; or

5. Meets the following requirements:
- a. Qualifies for free or reduced-price lunch; and
 - b. Resides within the attendance area of the local school district in which the charter school is located.
- (d) 1. If the number of applications for enrollment under paragraph (c) of this subsection exceeds the capacity of the school, students shall be selected for admission by a random selection lottery, except that an enrollment preference shall be provided to students returning to the charter school in the second or any subsequent year of operation, siblings of students already enrolled in the charter school, and children of teachers and school administrators.
2. a. If the number of applications for enrollment under paragraph (c) of this subsection does not meet the capacity of the school, enrollment shall be opened to any student who resides within the attendance area of the local school district in which the charter school is located and submits an application for enrollment on or before May 15 of each year.
- b. An application for enrollment shall be marked with the date on which it was received.
 - c. A student shall be enrolled according to the date the application was received and a waiting list shall be created if the number of applications received exceeds the capacity of the school.
- (e) A charter school shall provide a list of enrolled students to the authorizer, the school district in which the charter school is located, and the Kentucky Department of Education no later than May 31 of each year the charter school operates.
- (3) A student who enrolls in a charter school shall commit to remain through the

entire school year. A student who seeks to withdraw during the school year shall apply in writing to the charter school board of directors, unless the student enrolls in another district because he or she has moved out of the attendance area of the local school district in which the charter school is located.

(4) A student may be suspended or expelled from the school setting in accordance with KRS 158.150. Students may be refused admission into another school until the period of suspension or expulsion has expired, consistent with the requirements of due process.

(5) A charter school may initiate the permanent exit of a student from the school only if the student demonstrates a serious threat to the safety and security of the school staff, students, or environment. A student shall be entitled to a due process hearing according to the provisions of KRS 158.150 before a permanent exit is imposed.

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, "charter school," "local board," and "local school district" have the same meanings as in Section 2 of this Act.

(2) A charter school shall comply with all provisions of this section and Sections 1 to 9, 10, 11, 12, 13, and 14 of this Act.

(3) A local board shall not require any employee of the local school district to be employed in a charter school or any student enrolled in the school district to attend a charter school. A local board shall not harass, threaten, discipline, discharge, retaliate, or in any manner discriminate against any district employee involved directly or indirectly with an application to establish a charter school as authorized under this section.

(4) A teacher employed by a local board under a continuing service contract may be granted a two (2) year leave of absence to teach in a charter school if the leave of

absence is mutually agreed upon by the local board and the teacher. The leave of absence shall commence on the first day of service to the charter school. Upon the request of the teacher, an additional one (1) year leave of absence may be provided upon the mutual agreement of the teacher and the local board. At the end of three (3) years, the relationship between the teacher and the local board shall be determined by the local board. The local board shall notify the teacher of the decision.

- (5) (a) 1. Teachers and employees in a charter school shall participate in the Kentucky Teachers' Retirement System or the County Employees Retirement System, as determined by their eligibility for participation in the appropriate system.
2. The charter school shall remit to the appropriate retirement system the employer contributions required by law for participating employers.
3. Teachers and other certified personnel shall make any required employee contributions to the Kentucky Teachers' Retirement System under KRS 161.220 to 161.716.
4. Classified employees shall make any required employee contributions to the County Employees Retirement System under KRS 78.510 to 78.852.
- (b) A person who is employed in a charter school shall accrue service credit for retirement in the same manner as do local school district employees.
- (c) A charter school employee shall be provided the health and life insurance and other benefit programs extended to local school district employees.
- (d) Any state appropriation for retirement, health, or life insurance benefits made on behalf of a local public school employee shall also be made on behalf of a charter school employee.
- (6) Notwithstanding any other statute to the contrary, certified employees of a

charter school shall not be covered under a local school collective bargaining agreement.

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, "authorizer," "board of directors," "charter school," "local board," and "local school district" have the same meanings as in Section 2 of this Act.

(2) Funding for a charter school shall be negotiated as part of the charter agreement between the authorizer and the charter school under Section 5 of this Act. At a minimum, the agreement shall require the local board in which the charter school is located to provide funding to the charter school at levels comparable to funding provided to other schools in the local school district.

(3) A charter school shall be eligible for federal and state competitive grants and shall not be excluded from an opportunity to participate as an independent educational entity as long as the available grants align with the grade levels included in the charter school and the other criteria established for the respective grants.

(4) A charter school shall receive a proportionate share of moneys generated under federal and state categorical aid programs for students that are eligible for the aid and attending the charter school.

(5) (a) The board of directors of a charter school may accept gifts, donations, or grants of any kind made to the school and expend or use the gifts, donations, or grants in accordance with the conditions prescribed by the donor.

(b) A gift or donation shall not be required for admission or used as a means to gain admission to the charter school.

(c) A gift, donation, or grant shall not be accepted by the board of directors if it

is subject to a condition that is contrary to law or contrary to the terms of the contract between the charter school and the authorizer.

(d) All gifts, donations, or grants shall be reported to the charter school authorizer in the charter school's annual report.

➔Section 13. KRS 161.220 is amended to read as follows:

As used in KRS 161.220 to 161.716 and 161.990:

- (1) "Retirement system" means the arrangement provided for in KRS 161.220 to 161.716 and 161.990 for payment of allowances to members;
- (2) "Retirement allowance" means the amount annually payable during the course of his natural life to a member who has been retired by reason of service;
- (3) "Disability allowance" means the amount annually payable to a member retired by reason of disability;
- (4) "Member" means the commissioner of education, deputy commissioners, associate commissioners, and all division directors in the State Department of Education, employees participating in the system pursuant to KRS 196.167(3)(b)1., and any full-time teacher or professional occupying a position requiring certification or graduation from a four (4) year college or university, as a condition of employment, and who is employed by public boards, institutions, or agencies as follows:
 - (a) Local boards of education;
 - (b) Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Western Kentucky University, and any community colleges established under the control of these universities;
 - (c) State-operated secondary area vocational education or area technology centers, Kentucky School for the Blind, and Kentucky School for the Deaf;
 - (d) The Education Professional Standards Board, other public education agencies as created by the General Assembly, and those members of the administrative staff of the Teachers' Retirement System of the State of Kentucky whom the

- board of trustees may designate by administrative regulation;
- (e) Regional cooperative organizations formed by local boards of education or other public educational institutions listed in this subsection, for the purpose of providing educational services to the participating organizations;
 - (f) All full-time members of the staffs of the Kentucky Association of School Administrators, Kentucky Education Association, Kentucky Vocational Association, Kentucky High School Athletic Association, Kentucky Academic Association, and the Kentucky School Boards Association who were members of the Kentucky Teachers' Retirement System or were qualified for a position covered by the system at the time of employment by the association in the event that the board of directors of the respective association petitions to be included. The board of trustees of the Kentucky Teachers' Retirement System may designate by resolution whether part-time employees of the petitioning association are to be included. The state shall make no contributions on account of these employees, either full-time or part-time. The association shall make the employer's contributions, including any contribution that is specified under KRS 161.550. The provisions of this paragraph shall be applicable to persons in the employ of the associations on or subsequent to July 1, 1972;
 - (g) Employees of the Council on Postsecondary Education who were employees of the Department for Adult Education and Literacy and who were members of the Kentucky Teachers' Retirement System at the time the department was transferred to the council pursuant to Executive Order 2003-600;
 - (h) The Office of Career and Technical Education, except that the executive director shall not be a member;
 - (i) The Office of Vocational Rehabilitation;
 - (j) The Kentucky Educational Collaborative for State Agency Children;
 - (k) The Governor's Scholars Program;

- (l) Any person who is retired for service from the retirement system and is reemployed by an employer identified in this subsection in a position that the board of trustees deems to be a member;
- (m) Employees of the former Cabinet for Workforce Development who are transferred to the Kentucky Community and Technical College System and who occupy positions covered by the Kentucky Teachers' Retirement System shall remain in the Teachers' Retirement System. New employees occupying these positions, as well as newly created positions qualifying for Teachers' Retirement System coverage that would have previously been included in the former Cabinet for Workforce Development, shall be members of the Teachers' Retirement System;
- (n) Effective January 1, 1998, employees of state community colleges who are transferred to the Kentucky Community and Technical College System shall continue to participate in federal old age, survivors, disability, and hospital insurance, and a retirement plan other than the Kentucky Teachers' Retirement System offered by Kentucky Community and Technical College System. New employees occupying positions in the Kentucky Community and Technical College System as referenced in KRS 164.5807(5) that would not have previously been included in the former Cabinet for Workforce Development, shall participate in federal old age, survivors, disability, and hospital insurance and have a choice at the time of employment of participating in a retirement plan provided by the Kentucky Community and Technical College System, including participation in the Kentucky Teachers' Retirement System, on the same basis as faculty of the state universities as provided in KRS 161.540 and 161.620;
- (o) Employees of the Office of General Counsel, the Office of Budget and Administrative Services, and the Office of Quality and Human Resources

within the Office of the Secretary of the former Cabinet for Workforce Development and the commissioners of the former Department for Adult Education and Literacy and the former Department for Technical Education who were contributing to the Kentucky Teachers' Retirement System as of July 15, 2000;~~and~~

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

(q) Qualified teachers as defined in Section 2 of this Act employed by a board of directors of a charter school as defined in Section 2 of this Act.

- (5) "Present teacher" means any teacher who was a teacher on or before July 1, 1940, and became a member of the retirement system created by 1938 (1st Extra. Sess.) Ky. Acts ch. 1, on the date of the inauguration of the system or within one (1) year after that date, and any teacher who was a member of a local teacher retirement system in the public elementary or secondary schools of the state on or before July 1, 1940, and continued to be a member of the system until he, with the membership of the local retirement system, became a member of the state Teachers' Retirement System or who becomes a member under the provisions of KRS 161.470(4);
- (6) "New teacher" means any member not a present teacher;
- (7) "Prior service" means the number of years during which the member was a teacher in Kentucky prior to July 1, 1941, except that not more than thirty (30) years' prior service shall be allowed or credited to any teacher;
- (8) "Subsequent service" means the number of years during which the teacher is a member of the Teachers' Retirement System after July 1, 1941;
- (9) "Final average salary" means the average of the five (5) highest annual salaries which the member has received for service in a covered position and on which the

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

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

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

- (10) "Annual compensation" means the total salary received by a member as compensation for all services performed in employment covered by the retirement system during a fiscal year. Annual compensation shall not include payment for any benefit or salary adjustments made by the public board, institution, or agency to the member or on behalf of the member which is not available as a benefit or salary adjustment to other members employed by that public board, institution, or agency. Annual compensation shall not include the salary supplement received by a member under KRS 157.197(2)(c), 158.6455, or 158.782 on or after July 1, 1996. Under no circumstances shall annual compensation include compensation that is earned by a member while on assignment to an organization or agency that is not a public board, institution, or agency listed in subsection (4) of this section. In the event that federal law requires that a member continue membership in the retirement system even though the member is on assignment to an organization or agency that is not a public board, institution, or agency listed in subsection (4) of this section, the member's annual compensation for retirement purposes shall be deemed to be the annual compensation, as limited by subsection (9) of this section, last earned by the member while still employed solely by and providing services directly to a public board, institution, or agency listed in subsection (4) of this section. The board of trustees shall determine if any benefit or salary adjustment qualifies as annual compensation. For an individual who becomes a member on or after July 1, 2008, annual compensation shall not include lump-sum payments upon termination of employment for accumulated annual or compensatory leave;
- (11) "Age of member" means the age attained on the first day of the month immediately following the birthdate of the member. This definition is limited to retirement eligibility and does not apply to tenure of members;
- (12) "Employ," and derivatives thereof, means relationships under which an individual provides services to an employer as an employee, as an independent contractor, as

an employee of a third party, or under any other arrangement as long as the services provided to the employer are provided in a position that would otherwise be covered by the Kentucky Teachers' Retirement System and as long as the services are being provided to a public board, institution, or agency listed in subsection (4) of this section;

- (13) "Regular interest" means interest at three percent (3%) per annum, except for an individual who becomes a member on or after July 1, 2008, "regular interest" means interest at two and one-half percent (2.5%) per annum for purposes of crediting interest to the teacher savings account or any other contributions made by the employee that are refundable to the employee upon termination of employment;
- (14) "Accumulated contributions" means the contributions of a member to the teachers' savings fund, including picked-up member contributions as described in KRS 161.540(2), plus accrued regular interest;
- (15) "Annuitant" means a person who receives a retirement allowance or a disability allowance;
- (16) "Local retirement system" means any teacher retirement or annuity system created in any public school district in Kentucky in accordance with the laws of Kentucky;
- (17) "Fiscal year" means the twelve (12) month period from July 1 to June 30. The retirement plan year is concurrent with this fiscal year. A contract for a member employed by a local board of education may not exceed two hundred sixty-one (261) days in the fiscal year;
- (18) "Public schools" means the schools and other institutions mentioned in subsection (4) of this section;
- (19) "Dependent" as used in KRS 161.520 and 161.525 means a person who was receiving, at the time of death of the member, at least one-half (1/2) of the support from the member for maintenance, including board, lodging, medical care, and related costs;

- (20) "Active contributing member" means a member currently making contributions to the Teachers' Retirement System, who made contributions in the next preceding fiscal year, for whom picked-up member contributions are currently being made, or for whom these contributions were made in the next preceding fiscal year;
- (21) "Full-time" means employment in a position that requires services on a continuing basis equal to at least seven-tenths (7/10) of normal full-time service on a fiscal year basis;
- (22) "Full actuarial cost," when used to determine the payment that a member must pay for service credit means the actuarial value of all costs associated with the enhancement of a member's benefits or eligibility for benefit enhancements, including health insurance supplement payments made by the retirement system. The actuary for the retirement system shall determine the full actuarial value costs and actuarial cost factor tables as provided in KRS 161.400;
- (23) "Last annual compensation" means the annual compensation, as defined by subsection (10) of this section and as limited by subsection (9) of this section, earned by the member during the most recent period of contributing service, either consecutive or nonconsecutive, that is sufficient to provide the member with one (1) full year of service credit in the Kentucky Teachers' Retirement System, and which compensation is used in calculating the member's initial retirement allowance, excluding bonuses, retirement incentives, payments for accumulated sick, annual, personal and compensatory leave, and any other lump-sum payment. For an individual who becomes a member on or after July 1, 2008, payments for annual or compensatory leave shall not be included in determining the member's last annual compensation;
- (24) "Participant" means a member, as defined by subsection (4) of this section, or an annuitant, as defined by subsection (15) of this section;
- (25) "Qualified domestic relations order" means any judgment, decree, or order,

including approval of a property settlement agreement, that:

- (a) Is issued by a court or administrative agency; and
 - (b) Relates to the provision of child support, alimony payments, or marital property rights to an alternate payee; and
- (26) "Alternate payee" means a spouse, former spouse, child, or other dependent of a participant, who is designated to be paid retirement benefits in a qualified domestic relations order.

➔Section 14. KRS 78.510 is amended to read as follows:

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

- (1) "System" means the County Employees Retirement System;
- (2) "Board" means the board of trustees of the system as provided in KRS 78.780;
- (3) "County" means any county, or nonprofit organization created and governed by a county, counties, or elected county officers, sheriff and his employees, county clerk and his employees, circuit clerk and his deputies, former circuit clerks or former circuit clerk deputies, or political subdivision or instrumentality, including school boards, charter schools as defined in Section 2 of this Act, charter county government, or urban-county government participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency, organization, or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (4) "School board" means any board of education participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (5) "Examiner" means the medical examiners as provided in KRS 61.665;
- (6) "Employee" means every regular full-time appointed or elective officer or employee of a participating county and the coroner of a participating county, whether or not he

qualifies as a regular full-time officer. The term shall not include persons engaged as independent contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 78.510 to 78.852;

- (7) "Employer" means a county, as defined in subsection (3) of this section, the elected officials of a county, or any authority of the county having the power to appoint or elect an employee to office or employment in the county;
- (8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;
- (9) "Service" means the total of current service and prior service as defined in this section;
- (10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1958, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided;
- (11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1958, for which creditable compensation was paid. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work. Twelve (12) months of current service in the system shall be required to validate prior service;
- (12) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' account, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4), together with interest credited on the amounts, and any other amounts the member shall have contributed thereto, including interest credited thereon. For members who begin participating on or after September 1, 2008,

"accumulated contributions" shall not include employee contributions that are deposited into accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, as prescribed by KRS 61.702(2)(b);

- (13) "Creditable compensation" means all salary, wages, and fees, including payments for compensatory time, paid to the employee as a result of services performed for the employer or for time during which the member is on paid leave, which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation", including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). A lump-sum bonus, severance pay, or employer-provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's service with the system in which it is recorded if it is equal to or greater than one thousand dollars (\$1,000). If compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, sick leave except as provided in KRS 78.616(5), and other items determined by the board shall be excluded. Creditable compensation shall also include amounts that are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code. Creditable compensation shall also include elective amounts for qualified transportation fringes paid or made available on or after January 1, 2001, for calendar years on or after January 1, 2001, that are not includable in the gross income of the employee by reason of 26 U.S.C. sec. 132(f)(4). For employees who begin participating on or after September 1, 2008, creditable compensation shall not include payments for compensatory time. Creditable compensation shall not include training incentive payments for city

officers paid as set out in KRS 64.5277 to 64.5279;

(14) "Final compensation" means:

- (a) For a member who begins participating before September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;
- (b) For a member who is not employed in a hazardous position, as provided in KRS 61.592, whose effective retirement date is between August 1, 2001, and January 1, 2009, and whose total service credit is at least twenty-seven (27) years and whose age and years of service total at least seventy-five (75), final compensation means the creditable compensation of the member during the three (3) fiscal years the member was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used. Notwithstanding the provision of KRS 61.565, the funding for this paragraph shall be provided from existing funds of the retirement allowance;
- (c) For a member who begins participating before September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service

- credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used;
- (d) For a member who begins participating on or after September 1, 2008, but prior to January 1, 2014, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) complete fiscal years immediately preceding retirement divided by five (5). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit. If the member does not have five (5) complete fiscal years that each contain twelve (12) months of service credit, then one (1) or more additional fiscal years shall be used; or
- (e) For a member who begins participating on or after September 1, 2008, but prior to January 1, 2014, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) complete fiscal years he was paid at the highest average monthly rate divided by three (3). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit;
- (15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, and shall include employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, one thousand nine hundred fifty (1,950) hours for seven and one-half (7.5) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;

- (16) "Retirement allowance" means the retirement payments to which a member is entitled;
- (17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables adopted by the board. In cases of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member, unless the member has chosen the Social Security adjustment option as provided for in KRS 61.635(8), in which case the member's actual age shall be used. For members who begin participating in the system prior to January 1, 2014, no disability retirement option shall be less than the same option computed under early retirement;
- (18) "Normal retirement date" means the sixty-fifth birthday of a member unless otherwise provided in KRS 78.510 to 78.852;
- (19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year. The "fiscal year" shall be the limitation year used to determine contribution and benefits limits as set out in 26 U.S.C. sec. 415;
- (20) "Agency reporting official" means the person designated by the participating agency who shall be responsible for forwarding all employer and employee contributions and a record of the contributions to the system and for performing other administrative duties pursuant to the provisions of KRS 78.510 to 78.852;
- (21) "Regular full-time positions," as used in subsection (6) of this section, shall mean all positions that average one hundred (100) or more hours per month, determined by using the number of hours actually worked in a calendar or fiscal year, or eighty (80) or more hours per month in the case of noncertified employees of school boards, determined by using the number of hours actually worked in a calendar or school year, unless otherwise specified, except:
- (a) Seasonal positions, which although temporary in duration, are positions which

- coincide in duration with a particular season or seasons of the year and that may recur regularly from year to year, in which case the period of time shall not exceed nine (9) months, except for employees of school boards, in which case the period of time shall not exceed six (6) months;
- (b) Emergency positions that are positions that do not exceed thirty (30) working days and are nonrenewable;
 - (c) Temporary, also referred to as probationary, positions that are positions of employment with a participating agency for a period of time not to exceed twelve (12) months and not renewable; or
 - (d) Part-time positions that are positions that may be permanent in duration, but that require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty, except in case of noncertified employees of school boards, the school term average shall be eighty (80) hours of work per month, determined by using the number of months actually worked in a calendar or school year, in the performance of duty;
- (22) "Alternate participation plan" means a method of participation in the system as provided for by KRS 78.530(3);
- (23) "Retired member" means any former member receiving a retirement allowance or any former member who has on file at the retirement office the necessary documents for retirement benefits and is no longer contributing to the system;
- (24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits

in the event of the member's death. As used in KRS 61.702, beneficiary shall not mean an estate, trust, or trustee;

- (26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall not be considered a recipient, except for purposes of KRS 61.623;
- (27) "Person" means a natural person;
- (28) "School term or year" means the twelve (12) months from July 1 through the following June 30;
- (29) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (30) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula in KRS 61.5525, except the determination of the actuarial cost for classified employees of a school board shall be based on their final compensation, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;
- (31) "Participating" means an employee is currently earning service credit in the system as provided in KRS 78.615;
- (32) "Month" means a calendar month;
- (33) "Membership date" means the date upon which the member began participating in the system as provided in KRS 78.615;
- (34) "Participant" means a member, as defined by subsection (8) of this section, or a

retired member, as defined by subsection (23) of this section;

- (35) "Qualified domestic relations order" means any judgment, decree, or order, including approval of a property settlement agreement, that:
- (a) Is issued by a court or administrative agency; and
 - (b) Relates to the provision of child support, alimony payments, or marital property rights to an alternate payee;
- (36) "Alternate payee" means a spouse, former spouse, child, or other dependent of a participant, who is designated to be paid retirement benefits in a qualified domestic relations order;
- (37) "Accumulated employer credit" means the employer pay credit deposited to the member's account and interest credited on such amounts as provided by KRS 16.583 and 61.597; and
- (38) "Accumulated account balance" means:
- (a) For members who began participating in the system prior to January 1, 2014, the member's accumulated contributions; or
 - (b) For members who began participating in the system on or after January 1, 2014, in the hybrid cash balance plan as provided by KRS 16.583 and 61.597, the combined sum of the member's accumulated contributions and the member's accumulated employer credit.