

Guidance on House Bill 678 (2022 Regular Session)

[House Bill \(HB\) 678](#) is a school facilities planning and construction bill that became effective upon the signature of Gov. Andy Beshear on April 8, 2022. The bill, from its effective date until expiration on June 30, 2024, impacts district facility plans (DFP) and school construction projects in several important ways, as follows:

- **Section 1** of the bill provides that local boards of education that choose to adopt a resolution electing to operate under the provisions of HB 678 do not need the Kentucky Department of Education’s (KDE’s) “prior approval for the district’s plans and specifications from the chief state school officer under KRS 162.060, for the use of the district’s capital outlay funds for projects from the commissioner of education under KRS 157.420, and for the district’s transactions by the Kentucky Department of Education under KRS 160.160(3) and (4), and notwithstanding any administrative regulation that requires any of those entities to provide prior approval for the funding, financing, design, construction, renovation, or modification of school facilities.”

To utilize the provisions of Section 1, local district boards of education are required to adopt resolutions by majority vote and adhere to all applicable requirements in statute and administrative regulations, notwithstanding the requirements for prior approval described above. Districts are required to submit BG-1 Project Application forms for recordkeeping and data purposes. Finally, districts may use estimates from architects or engineers who prepared the plans or specifications to estimate the project costs in advance of financing.

- **Section 2** of the bill provides that until June 30, 2024, KDE has 30 business days to approve or deny a local board of education’s submission of a completed DFP, request to purchase property or request to dispose of surplus property. Section 2 is applicable to all school districts, regardless of whether they opt into the provisions of Section 1. The bill grants approval authority to the commissioner of education or the commissioner’s designee. Kentucky Board of Education (KBE) approval is not required. Approved requests are reported to the KBE. A denied request may be appealed to the KBE.
- **Section 3** of HB 678 requires KDE to continue to provide technical assistance and guidance to local boards of education when requested regarding facilities planning, funding, financing, design, construction, renovation and modification, and the acquisition and disposal of property.
- **Section 4** makes Sections 1-3 applicable to submissions and requests by local boards of education that have been made prior to the effective date of the act and are awaiting KDE/KBE approval.

- **Section 5** permits districts to include extracurricular facilities (including athletic facilities) in any priority in a district facility plan.
- **Section 6** clarifies that HB 678 does not waive prior approval for the use of federal Elementary and Secondary School Emergency Relief (ESSER) funds or other funds that federal law requires prior approval.
- **Section 7** requires KDE to conduct a review by June 30, 2023, of the administrative regulations, incorporated materials, design manuals and other guidance the department provides to districts concerning construction, renovation and modification of school facilities to identify inefficiencies in the review and approval process.

The department also is to identify any updates needed to the administrative regulations and materials, including necessary changes to reduce the need for waivers from administrative regulations. Further, KDE is required to discuss with the Department of Housing Buildings and Construction (HBC) whether elements of KBE administrative regulations are appropriate for inclusion in HBC regulations for enforcement. By Sept. 1, 2023, KDE is required to report the outcome of its review to the Interim Joint Committee on Appropriations and Revenue and the Interim Joint Committee on Education.

- **Section 8** is an emergency clause that made HB 678 effective upon the governor's signature for the express purpose of addressing the growing financial loss to districts due to increased construction costs exacerbated by approval delays.

Submission of Local Board Resolution

A local school board electing to conduct projects under HB 678 must adopt a resolution by majority vote and submit the resolution to KDE. Resolutions should be emailed to Tanesha.Keene@education.ky.gov and Katina.Garr@education.ky.gov.

Commencing Construction Projects

Effective April 8, 2022, HB 678 (2022) allows districts that have adopted and submitted to KDE a resolution opting to operate pursuant to the bill's provisions to immediately proceed with projects included on their current DFP without KDE prior approval. This includes extracurricular (athletic) facilities included in Priority 5 of the district's DFP.

Districts that utilize the HB 678 provisions are not required to reconstitute their local planning committees (LPC) or obtain local board approval to use restricted funds on priority 5 extracurricular projects. Local board approval of a resolution electing to operate under the provisions of HB 678 and submission to KDE is sufficient. Projects must be included on the DFP. If a project is not included on the current DFP, then the district must amend its DFP to add the project.

**** NOTE:** Districts should contact the School Facilities Construction Commission (SFCC) prior to the commencement of any project involving Offers of Assistance or any other SFCC funds.

A district amending its DFP must follow the procedures set out in the [Kentucky School Facilities Planning Manual](#). For additional information and technical support for adding a project to a district's DFP, contact your KDE project manager.

In the event a district proceeds with a project under HB 678, which permits the commencement of extracurricular facility construction projects out of DFP order, the district is encouraged to communicate those changes as part of a public meeting. If a district uses any federal funds, including ESSER funds, for a project, pre-approval of an initial BG-1 from KDE is required under the normal BG process

Facilities Planning and Construction (FACPAC) System Changes

To provide continuity of service with minimal interruption, the Facilities Planning and Construction (FACPAC) application is being modified to accommodate the changes provided in HB 678. FACPAC is a linear system, predicated on approvals. KDE will expedite the system processing time for any HB 678 project so that districts and third-party architects can leverage FACPAC for form generation and construction document storage.

All parties will receive the same system notifications and the forms will proceed through the system with the same form statuses (i.e., Saved, Submitted for Review, Approved). Documents noted as "Approved" will be noted as follows: "The district has adopted House Bill 678 (2022). This document has not been reviewed by District Facilities Branch for completeness, accuracy or compliance with statutes and regulations." It is processed as a FACPAC system function only."

Districts that do not conduct projects under HB 678 will experience no change in the FACPAC process. Utilizing FACPAC for construction projects provides a shared document and data repository with third-party architects and allows KDE to generate reports required by the General Assembly and document construction project fund source.

Estimating Project Costs

HB 678 notwithstanding the public advertising requirements of KRS 160.160(2). Those provisions require that a board of education seek competitive bids to establish cost estimates of a construction project in advance of the sale of any bonds, certificates of participation in any leases, or other evidence of financial commitments issued by or on behalf of a board.

HB 678 permits a district operating under Section 1 to use the estimates of the architect or engineer that created project plans or specifications as an alternative to the receipt of advertised, public and competitive bids to estimate project costs in advance of financing.

The use of estimates for a public construction project may save time and money in an environment of increasing construction costs and volatile interest rates by allowing districts to proceed to bond sale in a quicker timeframe. However, districts should be cognizant of possible additional costs to the district that may be incurred if the estimate is either over issuance or under issuance in project amount. Districts are strongly encouraged to discuss the use of estimates with their local board attorneys, fiscal agents and bond counsel to mitigate any potential risks.

Capital Outlay Funds

Under HB 678, a district does not have to receive prior KDE approval to use capital outlay funds for projects. Such funds must still be used as required in [KRS 157.420](#). Additional information on capital outlay funds may be found on the department's [Capital Funds Request](#) webpage.

KRS 160.160(3) and (4) Leasing and Financing Arrangements

A district operating under the provisions of HB 678 does not need KDE prior approval to enter into a mortgage, lien or other encumbrance on any school building owned by the board, or transfer title to any such school building as part of any financing arrangement. However, any transaction being entered into must be pursuant to a detailed plan or procedure specifically authorized in KRS 160.160(3).

Further, a district is not required to receive KDE prior approval to lease, as lessee, a building or public facility that has been or is to be financed at the request of the board or on its behalf through the issuance of bonds by another public body or by a nonprofit corporation serving as an agency and instrumentality of the board, or by a leasing corporation.

Districts still are required to comply with the following: "Any lease, participation, or other financial arrangement shall not involve a final commitment of the board unless and until the purchaser or lender involved in same shall have been determined by public advertising in accordance with KRS Chapter 424. No transaction shall be entered into by the board except upon the basis of public advertising and competitive bidding in accordance with KRS Chapter 424." (KRS 160.160(4))

**** NOTE:** HB 678 specifically states that the provisions of KRS 160.160(5) shall remain in full effect and shall be applicable to leases and bonds authorized by a local board without KDE prior approval. KRS 160.160(5) requires KDE to intercept district funds when the district fails to make required payments. It provides:

Rental payments due by a board under a lease approved by the Department of Education in accordance with subsection (4) of this section shall be due and payable not less than ten (10) days prior to the interest due date for the bonds, notes, or other debt obligations issued to finance the building or public facility. If a board fails to make a rental payment when due under a lease, upon notification to the Department of Education by the paying

agent, bond registrar, or trustee for the bonds not less than three (3) days prior to the interest due date, the Department of Education shall withhold or intercept any funds then due the board to the extent of the amount of the required payment on the bonds and remit the amount to the paying agent, bond registrar, or trustee as appropriate. Thereafter, the Department of Education shall resolve the matter with the board and adjust remittances to the board to the extent of the amount paid by the Department of Education on the board's behalf.

District Facility Plan, Acquisition of Property, Disposal of Surplus Property

HB 678, Section 2 requires KDE to approve or deny any complete DFP, request to purchase or request to dispose of surplus property within 30 business days from date of receipt. This section applies to all DFPs, purchase and disposition requests (including by lease or easement) submitted by districts, whether the local school board passes a resolution to operate under the provisions of 678 or not. The bill delegates the authority to approve DFPs and property requests to the commissioner of education or designee.

Approved requests are reported to the KBE and any denied request may be appealed to the board. The act applies to submissions and requests that have been received by KDE and are under consideration. The department has 30 business days from enactment to approve or deny any pending submission or request. KDE will provide definitions and checklists of “complete” submittals on the applicable Facilities webpages. Should you have questions about pending submissions or request, please contact your KDE Facilities Branch project manager.

School Safety Security Provisions Compliance

[KRS 158.162](#)(4) requires all schools to be in compliance with KRS 158.162(3)(d) no later than July 1, 2022. KRS 158.162(3)(d) states:

Develop and adhere to practices to control the access to each school building. Practices shall include but not be limited to:

1. Controlling outside access to exterior doors during the school day;
2. Controlling the main entrance of the school with electronically locking doors, a camera and an intercom system;
3. Controlling access to individual classrooms;
4. Requiring classroom doors to be equipped with hardware that allows the door to be locked from the outside, but opened from the inside;
5. Requiring classroom doors to remain closed and locked during instructional time, except:
 - a) In instances in which only one (1) student and one (1) adult are in the classroom; or
 - b) When approved in writing by the state school security marshal;

6. Requiring classroom doors with windows to be equipped with material to quickly cover the window during a building lockdown;
7. Requiring all visitors to report to the front office of the building, provide valid identification and state the purpose of the visit; and
8. Providing a visitor's badge to be visibly displayed on a visitor's outer garment.

Per 158.162(d)(7), a district with a school not in compliance with KRS 158.162(3)(d) by July 1, 2022, "shall not be eligible for approval by the Kentucky Department of Education for new building construction or expansion in the 2022-2023 school year and any subsequent year without verification of compliance, except for facility improvements that specifically address the school safety and security requirements of this section, when deemed necessary for the protection of student or staff health and safety, or to comply with other legal requirements or orders."

HB 678 does not waive the requirement that districts comply with the provisions of KRS 158.162 by July 1, 2022. Compliance is determined by the results of reviews conducted by the Office of State School Security Marshal. Even though, for districts opting into the provisions of HB 678, KDE is not approving construction projects, noncompliant districts should not commence construction projects after July 1, 2022, until they are determined to be in compliance by the Office of State School Security Marshal.

Noncompliant districts may engage in "facility improvements that specifically address the school safety and security requirements of this section, when deemed necessary for the protection of student or staff health and safety, or to comply with other legal requirements or orders." Should you have any questions regarding your district's compliance with the required school safety provisions, please contact the Office of State School Security Marshal.

Contacts

For additional questions, please contact the following:

- For questions related to BG-1s and DFPs, contact Tanesha Keene at Tanesha.Keene@education.ky.gov
- For questions about bonds, contact Jeff Coulter at jeffrey.coulter@education.ky.gov
- For questions about capital outlay funds, contact Krystal Smith at krystal.smith@education.ky.gov or Sarah Tandy at sarah.tandy@education.ky.gov
- For questions about facilities, contact the district's KDE Facilities Branch project manager:

Greg Dunbar, Facilities Branch Manager
(502) 564-4362, ext. 4429
Greg.Dunbar@education.ky.gov

James Bauman
(502) 564-4326, ext. 4405
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(502) 564-4326, ext. 4408
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John Gilbert
(502) 564-4326, ext. 4452
John.Gilbert@education.ky.gov

For projects related to offers of School Facilities Construction Commission:

Chelsey Couch, Executive Director
(502) 564-5582
Chelsey.Couch@ky.gov

Kristi Russell, Senior Financial Analyst
(502) 564-5582
Kristi.Russell@ky.gov

For information regarding compliance with school security provisions contact the Office of State School Security Marshal:

Ben Wilcox, State School Security Marshal
(859) 622-2308
Ben.Wilcox@ky.gov