

STATEMENT OF EMERGENCY
200 KAR 6:070E
High Performance Building Standards

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to comply with the mandate of HB 2, passed in the 2008 regular session of the General Assembly, and codified as KRS 56.770 et seq.

It is necessary to promulgate this administrative regulation, which establishes high performance building standards, on an emergency basis in accordance with KRS 13A.190(1)(a)3. and (1)(b)2., so that the Commonwealth can comply with statutory deadlines. KRS 56.775(1) requires that the Finance and Administration Cabinet and state universities that manage their own capital construction projects under KRS 164A.580 shall, beginning July 1, 2009, require that all construction or renovation of public buildings for which fifty percent (50%) or more of the total capital cost is paid by the Commonwealth be designed and constructed, or renovated, to meet the high-performance building standards established in KRS 56.777. This would apply to all projects that have not entered the design phase prior to January 1, 2009. The normal ordinary regulation process will not allow for sufficient time to meet these statutory deadlines in KRS 56.775(1).

This emergency regulation shall be replaced with an ordinary administrative regulation, which is being filed simultaneously in accordance with KRS 13A.190. This ordinary administrative regulation is identical to this emergency administration regulation.

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Steven L. Beshear, Governor

A handwritten signature in black ink, appearing to read "Jonathan Miller", written over a horizontal line.

Jonathan Miller, Secretary
Finance and Administration Cabinet

1 **FINANCE AND ADMINISTRATION CABINET**

2 **Office of the Secretary**

3 **(New Emergency Administrative Regulation)**

4 200 KAR 6:070E. High Performance Building Standards.

5 RELATES TO: KRS 56.770, 56.775, 56.777

6 STATUTORY AUTHORITY: KRS 56.777

7 NECESSITY, FUNCTION, AND CONFORMITY: NECESSITY, FUNCTION, AND

8 CONFORMITY: KRS 56.777(7) requires that the Finance and Administration Cabinet

9 promulgate administrative regulations to establish high performance building standards for state

10 building projects, considering recommendations from the High-Performance Buildings Advisory

11 Committee established by KRS 56.777(7). This administrative regulation establishes the criteria

12 for the high performance building standards and the benchmarks by which the standards will be

13 measured in consideration of the Committee's recommendations.

14 Section 1. Definitions.

15 (1) "Committee" means the High-Performance Buildings Advisory Committee
16 established by KRS 56.777.

17 (2) "ENERGY STAR" is defined by KRS 56.770(17).

18 (3) "LEED" is defined by KRS 56.770(19).

19 (4) "High performance building" is defined by KRS 56.770(7).

20 (5) "Major renovation building project" means a renovation project for which the budget
21 exceeds half of the replacement value of the building being renovated.

1 (6) "Replacement value" means the insured value.

2 Section 2. High Performance Building Standards. The standards established in this
3 section shall apply to high performance buildings, in accordance with KRS 56.777.

4 (1) All new construction and major renovation building projects for the amount of \$25
5 million or more in budget shall be designed, built and submitted for certification to achieve a
6 rating of Silver Level or higher using the LEED 2009 – New Construction Project Scorecard.

7 (2) All new construction and major renovation building projects between \$5 million and
8 \$25 million in budget shall be designed, built and submitted for certification to achieve a rating
9 of Certified level or higher using the LEED 2009 – New Construction Project Scorecard.

10 (3) All new construction and major renovation building projects greater than \$5 million
11 in budget shall additionally achieve a minimum of 7 points for new and for existing buildings
12 under the LEED Energy and Atmosphere Credit 1, Optimize Energy Performance in the LEED
13 2009 - New Construction for Member Ballot.

14 (4) All new construction and major renovation building projects between \$600,000 and
15 \$5 million in budget shall be designed and built using the LEED Rating System as guidance.

16 Section 3. Exemption From Standards. A new construction or major renovation building
17 project that is required to meet the high performance building standards may be granted an
18 exemption from the standards if there is an extraordinary undue burden in accordance with
19 subsections (2) and (3) of this section.

20 (1) An affected agency may request that the Secretary of the Finance and Administration
21 Cabinet, or in the case of a state university, which manages its own capital construction projects
22 under KRS 164A.580, the university's governing board, grant an exemption from the standards
23 in section 2. This request for exemption shall be made in writing and fully justified.

1 (2) The Secretary, or the university’s governing board with actual jurisdiction, shall have
2 the non-delegable authority to grant an exemption from the standards in section 2, if the agency
3 adequately demonstrates that an extraordinary undue burden will be placed upon the agency if
4 project compliance is required. If the Secretary or the university’s governing board grants an
5 exemption, the exemption shall specify the extent to which the standards in section 2 shall be
6 waived.

7 (3) Factors to be considered in determining whether an extraordinary undue burden exists
8 include:

- 9 (a) Whether the cost of compliance exceeds a building’s life-cycle cost savings;
- 10 (b) Whether compliance will increase costs beyond the appropriated funding capacity for
11 a project;
- 12 (c) Whether compliance will compromise the historic nature of a building;
- 13 (d) Whether compliance will violate federal, state or local law; or
- 14 (e) Whether the unique nature of a project makes compliance impractical or not feasible.

15 Section 4. Mandatory Requirement. Pursuant to KRS 56.777(7), each high-performance
16 building shall be designed, constructed, or renovated so that it is capable of being rated as an
17 ENERGY STAR building. An exemption shall not be granted from this requirement.

18 Section 5. For all new construction and major renovation building projects, agencies shall
19 consider and encourage the use of the items identified in KRS 56.777(8).

20 Section 6. In accordance with KRS 56.777(2), the Finance and Administration Cabinet
21 and universities that manage their own capital construction projects under KRS 164A.580 shall
22 give a preference in the leasing process to high performance buildings over other buildings that
23 do not meet these standards, unless an exemption is granted in accordance with Section 2.

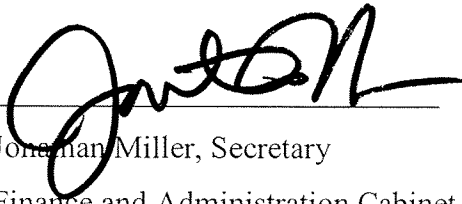
1 Section 7. Incorporation by Reference. (1) The following material is incorporated by
2 reference:

3 (a) “LEED 2009 - New Construction Project Scorecard.”

4 (b) “LEED 2009 - New Construction for Member Ballot.”

5 (2) This material may be inspected, copied or obtained, subject to applicable copyright
6 law, at the Department for Facilities and Support Services, Room 340, Bush Building, Frankfort,
7 Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Approved:



Jonathan Miller, Secretary

Finance and Administration Cabinet

2-17-09

Date

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

(a) “LEED 2009 - New Construction Project Scorecard.” This is a two-page scorecard to grade LEED ratings for New Construction and Major Renovation 2009.

(b) “LEED 2009 - New Construction for Member Ballot.” This is the detailed manual which explains how LEED ratings are scored for New Construction and Major Renovation 2009.