

1 **FINANCE AND ADMINISTRATION CABINET**

2 **Office of the Secretary**

3 **(New Administrative Regulation)**

4 200 KAR 6:070. 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.

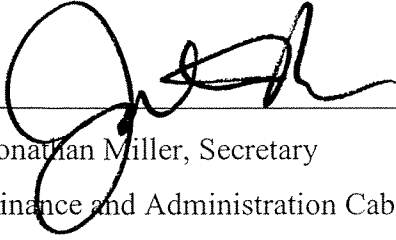
1 Section 7. Incorporation by Reference. (1) The following material is incorporated by
2 reference:

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on April 22, 2008 at 10am EST in the conference room of the 2nd Floor of the Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601. Individuals interested in being heard at the hearing shall notify this agency in writing at least 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by close of business on April 15, 2008, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: DeVon Hankins, Policy Advisor, 392 Capital Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

**REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT**

Administrative Regulation #: 200 KAR 6:070.

Contact person: DeVon Hankins, Policy Advisor, Finance and Administration Cabinet, Room 392 Capital Annex, Frankfort, Kentucky 40601, Phone: (502) 564-6660, FAX: (502) 564-9875.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes high performance building standards in accordance with KRS 56.775 and KRS 56.777.

(b) The necessity of this administrative regulation: 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.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation adopts high performance building standards in accordance with KRS 56.777(7).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will establish the standards required by KRS 56.777 mandating more efficient energy use in public buildings.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:
N/A.

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes:
N/A

(d) How the amendment will assist in the effective administration of the statutes:
N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: State government and

state universities that manage their own capital construction projects under KRS 164A.580 and also the vendor community who bid on such projects.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The high performance building standards established by this regulation will allow state government and state universities to maximize the use of energy efficiency measures in the construction, renovation, and maintenance of public buildings owned or leased by such entities and allow the vendor community to share their expertise in such matters with the Commonwealth, for the benefit of all parties concerned.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Up to 3% to 6% of the capital construction budget for any capital construction project subject to these standards; this is expected to be offset by an approximately 25% to 30% reduction in costs.

(b) On a continuing basis: Same as (a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Capital construction project funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees established or increased directly or indirectly.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)
Tiering is not applied as this regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 200 KAR 6:070

Contact Person: DeVon Hankins

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet and state universities that manage their own capital construction projects under KRS 164A.580.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 56.770 to 56.784.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Not applicable.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Not applicable.

(c) How much will it cost to administer this program for the first year? Unknown.

(d) How much will it cost to administer this program for subsequent years? Unknown.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other Explanation: The actual cost of administrating this program (i.e. high performance building standards) should be minimal. However, the actual cost of implementation (i.e. actually having these standards in place for new buildings) will be 3% to 6% of the capital construction budget for any capital construction project subject to these standards; this is expected to be offset by an approximately 25% to 30% reduction in costs.

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.