

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION I  
CIVIL ACTION NO. 16-CI-00656

COMMONWEALTH OF KENTUCKY

*ex rel.* ANDY BESHEAR, ATTORNEY GENERAL

INTERVENING PLAINTIFF

v.

**VERIFIED COMPLAINT FOR DECLARATION  
OF RIGHTS AND A PERMANENT INJUNCTION**

MATTHEW G. BEVIN, in his official capacity  
as Governor of the Commonwealth of Kentucky

DEFENDANT

SERVE: Office of the Attorney General  
The Capitol  
700 Capitol Avenue  
Frankfort, Kentucky 40601-3449

and

BONITA K. BLACK

INTERVENING DEFENDANT

SERVE: Bonita K. Black  
7118 Autumn Bent Way  
Crestwood, Kentucky 40014

and

ULYSSES L. BRIDGEMAN, JR.

INTERVENING DEFENDANT

SERVE: Ulysses L. Bridgeman, Jr.  
3309 Collins Lane  
Louisville, Kentucky 40245

and

RONALD L. WRIGHT

INTERVENING DEFENDANT

SERVE: Ronald L. Wright  
12904 Ridgemoor Drive  
Prospect, Kentucky 40059

WILLIAM M. LANDRUM III, In His Official Capacity  
As Secretary of the Finance and Administration Cabinet

DEFENDANT

SERVE: Office of the Attorney General  
The Capitol  
700 Capitol Avenue  
Frankfort, Kentucky 40601-3449

and

THOMAS B. STEPHENS, In His Official Capacities  
As Secretary Of The Personnel Cabinet and  
A Member Of The Board Of Trustees Of  
Kentucky Retirement Systems

DEFENDANT

SERVE: Office of the Attorney General  
The Capitol  
700 Capitol Avenue  
Frankfort, Kentucky 40601-3449

and

MARK LATTIS

SERVE: Mark Lattis  
7005 Court of the Woods  
Louisville, Kentucky 40241

**VERIFIED COMPLAINT FOR DECLARATION  
OF RIGHTS AND FOR INJUNCTIVE RELIEF**

Comes now the Plaintiff, Commonwealth of Kentucky, *ex rel.* Andy Beshear (hereinafter “Attorney General”), by and through counsel, and brings this action for a permanent injunction and declaration of rights against the Defendants, Matthew Griswold Bevin, Governor of the Commonwealth of Kentucky in his official capacity; Bonita K. Black, Ulysses L. Bridgeman, and Ron L. Wright in their individual capacities; William M. Landrum III, Secretary of the Finance and Administration Cabinet in his official capacity, and Thomas B. Stephens, Secretary

of the Personnel Cabinet and a Member of the Board of Trustees of Kentucky Retirement Systems in his official capacities.

### **INTRODUCTION**

Governor Bevin claims “absolute authority” under KRS Chapter 12 to dissolve and reorganize any of the more than approximately 400 state boards, including the Board of Trustees of the Kentucky Retirement Systems (“KRS Board”) and the University of Louisville Board of Trustees (“UofL Board”). These boards are created and governed by dozens of specific statutes that are meant to ensure these boards make decisions that benefit retirees or the university, and not simply do the bidding of the Governor. The Governor’s claimed authority would give him control of how the \$16 billion managed by KRS is invested, as well as decisions about tuition, hiring, and budgets at UofL and every other public university.

These actions violate numerous sections of the Kentucky Constitution, including the prohibition against suspending statutes, the separation of powers, and the Governor’s duty to faithfully execute the law. They further violate the dozens of statutes governing the KRS Board and the UofL Board. Finally, they do not meet the requirements of Chapter 12, as the reorganizations are being used to establish control by the Governor and illegally enlarge his existing authority over them, and not for efficiency.

The Governor’s position threatens the independence of these boards and our very liberty. If the Court were to uphold his claim of absolute authority, the Governor could dissolve and reorganize the Board of Elections, potentially changing the outcomes of democratic process. He could do the same with the Registry of Election Finance if it raised issues with him or his political allies. The potential for abuse is simply untenable. That is exactly why the Governor’s actions are prohibited under Kentucky law.

The Attorney General has a legal duty to uphold Kentucky's Constitution and its laws. As such, the Attorney General must ensure that the Governor comply with the law. The Attorney General, through this action for declaratory and injunctive relief, seeks to uphold the laws of the Commonwealth and respectfully asks this Court to:

- A. Declare the executive orders of Governor Bevin illegal;
- B. Permanently enjoin the Defendants from enforcing his executive orders related to the UofL Board and from interfering further with the UofL Board and its duly appointed Trustees;
- C. Permanently enjoin the Defendants from enforcing his executive order related to the KRS Board and from interfering further with the KRS Board and its duly appointed Trustees.

#### **NATURE OF ACTION**

1. This Verified Complaint for a Declaration of Rights and Permanent Injunction is governed by the Kentucky Declaratory Judgment Act, KRS 418.010, *et seq.*, CR 57, and CR 65 and is initiated by the Attorney General pursuant to his authority under the Kentucky Constitution, KRS Chapter 15, and the common law.

2. KRS 418.040 provides this court with authority to "make a binding declaration of rights, whether or not consequential relief is or could be asked" when a controversy exists. An actual and justiciable controversy regarding violations of the Kentucky Constitution and state laws clearly exists in this action.

3. CR 65 permits this court, in a final judgment, to issue a permanent injunction which may restrict or mandatorily direct the doing of an act.

4. Furthermore, this justiciable controversy is capable of repetition but evading review as evidenced by Governor Bevin's pattern of "reorganizing" various independent boards

and commissions in violation of the law. In fact, the Governor has shown a pattern of “reorganizing” boards right before important decisions were to be made by their members. For example, upon information and belief, the Governor reorganized the Kentucky Horse Park Commission just days before it was set to vote to hire an executive director. Furthermore, upon information and belief, the Governor reorganized the Workers’ Compensation Nominating Commission just days before it was scheduled to provide names to the Governor for Administrative Law Judge appointments. The Governor himself even claims that he has unconstrained, “absolute authority” to disband any board or commission he so chooses.<sup>1</sup>

5. The Commonwealth requests an expedited review pursuant to KRS 418.050 and CR 57. The Governor’s executive orders have caused considerable confusion regarding who shall properly govern UofL and Kentucky Retirement Systems. Time is of the essence and this justiciable controversy presents an immediate concern that must be promptly resolved to permit the boards to perform their statutory functions.

### **PARTIES**

6. The Plaintiff, Commonwealth of Kentucky *ex rel.* Andy Beshear, is the duly elected Attorney General of the Commonwealth of Kentucky and is a constitutional officer pursuant to Sections 91, 92 and 93 of the Kentucky Constitution. Pursuant to KRS 15.020, General Beshear is the chief law officer of the Commonwealth and all of its departments, commissions, agencies and political subdivisions. Attorney General Beshear is duly authorized by the Kentucky Constitution, statutes and the common law, including his *parens patriae* authority, to enforce Kentucky law. As Attorney General, he has the authority to bring actions for injunctive and other relief to enforce the Kentucky Constitution and the Commonwealth’s

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<sup>1</sup> Jack Brammer, *Bevin Says He Has ‘Absolute Authority’ to Disband Any State Board*, LEXINGTON HERALD-LEADER, June 21, 2016 (available at <http://www.kentucky.com/news/politics-government/article85085272.html>). (Last visited June 22, 2016).

statutes and regulations, including the authority to bring an action against the Governor and other state agencies for injunctive relief. *See* KY. CONST. § 91; KRS 15.020.

7. The Defendant, Governor of Kentucky Matthew Griswold Bevin is a duly elected constitutional officer of the Commonwealth of Kentucky, vested with – but limited by – such powers as are afforded him by the Kentucky Constitution and related state laws. The Governor is the chief executive officer of the Commonwealth charged by Section 81 of the Constitution with taking care that the laws of the Commonwealth be “faithfully executed.”

8. The Defendant, Bonita K. Black (“Ms. Black”), is a natural person residing in the Commonwealth of Kentucky whom the Governor purported to name as a member of an Interim Board of Trustees of the University of Louisville (the “UofL Interim Board”) in Executive Order 2016-339. (Exhibit A, Executive Order 2016-339, June 17, 2016 (the “UofL Interim Board Order”).)

9. The Defendant, Ulysses L. Bridgeman (“Mr. Bridgeman”) is a natural person residing in the Commonwealth of Kentucky whom the Governor purported to name as a member of the UofL Interim Board in Executive Order 2016-339. (Exhibit A.)

10. The Defendant, Ronald L. Wright (“Mr. Wright”) is a natural person residing in the Commonwealth of Kentucky whom the Governor purported to name as a member of the UofL Interim Board in Executive Order 2016-339. (Exhibit A.)

11. The Defendant William M. Landrum III (“Finance Secretary Landrum”) is a program cabinet Secretary and has been named as a Defendant in his official capacity as the Secretary of the Finance and Administration Cabinet of the Commonwealth of Kentucky.

12. The Defendant Thomas B. Stephens (“Personnel Cabinet Secretary Stephens”) is a program cabinet Secretary named as a Defendant in his official capacity as the Secretary of the

Personnel Cabinet of the Commonwealth of Kentucky. As KRS 61.645(1)(a) provides, subject to certain limits not relevant to this proceeding, the Secretary of the Personnel Cabinet shall serve as a KRS trustee and member of the Board. Personnel Cabinet Secretary Stephens is also named as a Defendant in his official capacity as a trustee and member of the Board.

13. The Defendant, Mark Lattis, is a natural person residing in the Commonwealth of Kentucky whom the Governor purported to name as a member of the KRS Board in Executive Order 2016-273. (Exhibit B, Executive Order 2016-273, May 18, 2016.)

### **JURISDICTION AND VENUE**

14. An actual, justiciable controversy exists and this Court has subject matter jurisdiction over this action pursuant to KRS 418.040, KRS 23A.010, and Rules of Civil Procedure 57 and 65.

15. Venue is appropriate in this Court pursuant to KRS 452.405, since the primary offices of the Attorney General and the Governor are located in Frankfort, Franklin County, Kentucky. Furthermore, this action generally relates to violations of various Kentucky statutes which were either determined or accomplished in Frankfort, Franklin County, Kentucky. Furthermore, this action generally relates to violations of the Kentucky Constitution, which occurred in Frankfort, Franklin County, Kentucky.

16. Pursuant to KRS 418.040, *et seq.*, this Court may properly exercise *in personam* jurisdiction over the Defendants.

### **NATURE OF THE ACTION**

17. This is an action brought to declare that Governor Bevin's attempts to seize control of the independent governing boards of the Kentucky Retirement Systems (Exhibit C, Executive Order 2016-340, June 17, 2016) and the University of Louisville (Exhibit D,

Executive Order 2016-338, June 17, 2016; Exhibit A, Executive Order 2016-339) under the guise of a “reorganization” are null, void, unconstitutional, and of no effect.

18. This is also an action to declare that Governor Bevin’s attempts to remove the KRS Board Chair, Thomas K. Elliott, by Executive Order and appoint other individuals for the seat for which he was duly appointed (Exhibit E, Executive Order 2016-211, April 20, 2016; Exhibit F, Executive Order 2016-214, April 21, 2016; Exhibit B, Executive Order 2016-273, May 18, 2016) null and void.

19. This is also an action to enjoin Governor Bevin, Finance Secretary Landrum, Personnel Cabinet Secretary Stephens, and all their agents, attorneys and any other persons in active concert or participation with them, from attempting to prevent or interfere with the duly appointed board members’ service as trustees and members of the respective boards.

20. This is also an action to enjoin the purported abolishment of the UofL Board and the KRS Board as set forth in the executive orders issued on June 17, 2016, until it is determined by this Court whether Governor Bevin has the power under the Kentucky Constitution and Kentucky statute(s) to order the “reorganization of the Kentucky Retirement Systems Board of Trustees” and the “reorganization of the University of Louisville Board of Trustees.”

### **FACTUAL BACKGROUND**

#### **I. The Governor’s Illegal Acts Related to the Board of Trustees of the Kentucky Retirement Systems**

##### **A. The Board of Trustees of the Kentucky Retirement Systems**

21. The Kentucky Retirement Systems serves over 350,000 active, inactive and retired members of the Pension Systems. By statute it oversees and administers the Kentucky County Employees Retirement System (“CERS”), the Kentucky Employees Retirement System



(“KERS”), and the State Police Retirement System (“SPRS”) (collectively, the “Pension Systems”).

22. KRS has assets of approximately \$16 billion to pay the pensions and insurance benefits offered by the Pension Systems.

23. The KRS Board performs the critical public function of KRS.

24. By way of example of the work performed by the KRS Board, and as directed by KRS 61.645(19), the Board prepared its 2015 Summary Annual Financial Report (the “2015 Summary Report”) which describes its organization, work, and provides statistical, financial, investment and actuarial data and other information about KRS, its trustees, and its Board. Attached hereto as Exhibit G and incorporated herein by reference is a true and correct copy of the 2015 Summary Report.

25. Various provisions of KRS Chapter 61 outline the duties and responsibilities of the KRS Board. For example, the KRS Board is granted all the powers and privileges of a corporation including to sue and be sued, KRS 61.645(2)(a); to make bylaws, KRS 61.645(2)(b); to conduct the business for which it was formed, KRS 61.645(2)(c); to contract for investment and other services, KRS 61.645(2)(c); and to acquire and hold property, KRS 61.645(2)(c). The Trustees have a fiduciary duty to the Pension Systems. KRS 61.645(15)(a)-(h). In addition, the Trustees themselves elect a board chair and select the Executive Director. KRS 61.645(8)(b); KRS 61.645(9). Trustees may only be removed for cause as outlined in KRS 61.645(6)(b).

26. The investment committee has authority over all investment-related matters of the Pension Systems. KRS 61.650(b)(2). Importantly, the KRS Board Chair appoints three (3) members of the five (5) member investment committee. KRS 61.650(b)(1)(b).

27. Pursuant to KRS 61.645(1), the thirteen (13) trustee members of the KRS Board are selected as follows:

- a. One seat for the office of Secretary of the Personnel Cabinet;
- b. Six seats from eligible candidates by members and retired members of the Pension Systems: two elected by KERS members, three elected by CERS members, and one elected by SPRS members;
- c. Three seats selected by the Governor from lists of nominees provided by the Kentucky Association of Counties, the Kentucky League of Cities, and the Kentucky School Board Association; and
- d. Three seats selected by the Governor provided that one of the three trustees “shall be knowledgeable about the impact of pension requirements on local governments” and two of the three trustees have “investment experience,” which must include at least 10 years of experience in one of six categories of specified expertise.

28. KRS 61.645(3)(a) sets forth the minimum statutorily mandated term of a trustee: “each trustee shall serve a term of four (4) years or until his successor is duly qualified except as otherwise provided in this section.” The plain language of the statute allows a trustee to serve beyond the four year term of years until a qualified successor is identified and appointed. This ensures that there will be no trustee vacancies that could inhibit the important work of the KRS Board.

**B. Governor Bevin’s Prior Attempts To Gain Control of the KRS Board, Its Chair, and Its Functions**

29. Without cause or warning, on or about April 20, 2016, Governor Bevin issued Executive Order 2016-211 which illegally attempted to remove Mr. Elliott as a trustee and

member of the KRS Board before March 31, 2019, the expiration date of Mr. Elliott's current four year term.

30. Executive Order 2016-211 contends that Governor Bevin had the authority to remove Mr. Elliott on April 20, 2016, based upon "Sections 61.645 and 63.080 of the Kentucky Revised Statutes." No cause for Mr. Elliott's removal was provided.

31. Executive Order 2016-211 does not contend that Mr. Elliott fails to have the requisite "investment experience" required by KRS 61.645(1)(e)(5).

32. Executive Order 2016-211 does not contend that Mr. Elliot was convicted of a felony by a court of competent jurisdiction that would provide a basis for removal prior to the end of a trustee's term under KRS 61.645(6)(b).

33. Executive Order 2016-211 does not contend that Mr. Elliott was found by a court of competent jurisdiction to have violated any of the standards of conduct for a public servant specified in KRS 11A.020 or KRS 11A.040 that would provide a basis for removal prior to the end of a trustee's term under KRS 61.645(6)(b).

34. KRS 63.080 states:

(1) Except as provided in subsection (2) of this section and **otherwise provided by law**, any person appointed by the Governor, either with or without the advice and consent of the Senate, may be removed from office by the Governor for any cause the Governor deems sufficient, by an order of the Governor entered in the executive journal removing the officer.

(2) Members of the board of trustees of the University of Kentucky, the board of trustees of the University of Louisville, members of the board of regents respectively of Eastern Kentucky University, Western Kentucky University, Morehead State University, Kentucky State University, Northern Kentucky University, Murray State University, and the Kentucky Community and Technical College System, and members of the Kentucky Board of Education and the Council on Postsecondary Education shall not be removed except for cause.

35. Executive Order 2016-211 violates the “otherwise provided by law” limitation in KRS 63.080(1) because KRS 61.645(6)(b) provides the only basis for removal of a trustee, who is qualified for serving on the KRS Board, prior to the end of a trustee’s term.

36. Prior to the Board’s April 2016 annual meeting, two governor-appointed trustees had their four year term of years end on March 31, 2016: Mike Cherry and Dr. Daniel Bauer. (Exhibit G, p. 4.) Both were replaced by Governor Bevin appointees (David Eager and John Farris) effective after their service terms ended on March 31, 2016. Such appointments were in compliance with KRS 61.645.

37. On April 21, 2016, the KRS Board was scheduled to hold its annual meeting as required under its governing Bylaws, Section 1.1(d). Among other actions for the Board to take during the annual meeting, the positions of Chair and Vice-Chair were to be elected. (Exhibit H, Bylaws of the KRS Board, Sections 1.1(j) and (k).)

38. At the time of the annual meeting, Mr. Elliott was the Chair, and he had almost three full years left on his trustee service term.

39. The annual meeting was the first opportunity for the Board to elect a new Vice-Chair. The service term of the previous Vice-Chair, Dr. Daniel Bauer, had ended on March 31, 2016.

40. Despite the time left in Mr. Elliott’s statutory term of years, on April 20 and April 21, 2016, Governor Bevin issued Executive Orders 2016-211 and 2016-214 which illegally attempted to remove and replace Mr. Elliott as a trustee and member of the KRS Board prior to the end of his service term and to replace him with a statutorily unqualified replacement. The unqualified replacement trustee identified in Executive Order 2016-214 was “William F. Smith, M.D., 951 Oakwood Lane, Madisonville, Kentucky 42431.”

41. Upon information and belief formed after inquiry reasonable under the circumstances, on April 21, 2016, Dr. Smith was a dermatologist in private practice in Madisonville, Kentucky.

42. Upon information and belief formed after inquiry reasonable under the circumstances, on April 21, 2016, Dr. Smith did not have “at least ten (10) years of experience” in the areas of financial expertise required by KRS 61.645(1)(e)(5) and was therefore statutorily barred from being a KRS trustee and Board member.

43. At the beginning of the April 21 KRS Board meeting, it was learned that Governor Bevin had issued Executive Orders 2016-211 and 2016-214. Without any prior notice, Mr. Smith appeared at the meeting to participate despite the illegal Executive Orders attempting to appoint him as a trustee.

44. Mr. Elliott participated in that meeting as a member of the Board without incident. However, upon information and belief, due to the uncertainty created by the Governor’s order, the KRS Board voted to ask the Attorney General for an opinion on the legality of the Governor’s actions.

45. On May 17, 2016, the Office of the Attorney General issued an official opinion stating that the Governor could not remove Mr. Elliott during his term without cause and that Dr. Smith was not qualified to serve as the Trustee with “investment experience” under KRS 61.645(1)(e). *See* OAG 16-004. (Attached as Exhibit I.)

46. On May 18, 2016, the day after the OAG opinion, Dr. Smith declined the appointment from the Governor. However, the Governor, on that same day, by Executive Order 2016-273, appointed Mark Lattis as a Trustee for the position Mr. Elliott legally held.

47. Upon information and belief, On May 19, 2016, relying on the OAG opinion, Mr. Elliott attended the regularly scheduled KRS Board meeting and with the intention to participate as a Trustee.

48. However, upon information and belief, Mr. Elliot was prohibited from participating in the meeting by members of the Governor's staff and others. Specifically, upon information and belief, the Governor's Chief of Staff Blake Brickman and Personnel Secretary Thomas Stevens threatened or indicated to Mr. Elliott that he would be arrested by the Kentucky State Police if he participated in the meeting. Upon information and belief, Brickman and Stevens were accompanied by several Kentucky State Police troopers, who they used to intimidate Mr. Elliott.

49. Upon information and belief, these actions were witnessed, in part, by the KRS Executive Director and other Board Trustees.

50. In addition, upon information and belief, Stevens threatened or indicated to Mr. Vince Lang, an elected KRS Board Trustee, that if he ran for the Chair, Stevens would have him investigated and would seize documents and emails from him.

51. Upon information and belief, acting under these extremely disruptive and coercive conditions, the KRS Board once again delayed its vote on a Board Chair and Vice Chair. Members of the public chose not to comment due to the atmosphere. The Office of the Attorney General, after being requested to review the matter, found there was an open meetings violation. *See* 16-OMD-124 (attached as Exhibit J).

### **C. Governor Bevin' Illegal "Reorganization" and suspension of the KRS Board**

52. On June 17, 2016, Governor Bevin ignored KRS 61.645 and purportedly abolished the statutorily-created KRS Board. (Exhibit C.)

53. Governor Bevin then proceeded to create the “Kentucky Retirement Systems Board of Directors” to replace the KRS Board. (Exhibit C, p. 4, Section II.) Yet, he still refers to the members as “trustees,” not “directors.” *Id.*, Section III

54. In addition to violating KRS 61.645 by purportedly abolishing the KRS Board, Governor Bevin made a number of significant changes to the “Board of Directors” that are contrary to statute including, but not limited to, the following: (1) he increased the number of Governor-appointed trustees from six (6) to ten (10) (see KRS 61.645(1)(e)), thus diluting the votes of the elected, non-appointed trustees; (2) he stripped the power to elect a chair and vice chair from the Board, and provided that power to himself (*compare* Exhibit C, p. 5, Section VI to KRS 61.645(8); and (3) he conditioned the Board’s power to appoint its Executive Director on to his approval (*compare* Exhibit C, p. 6, Section IX to KRS 61.645(9)).

55. The issuance of Executive Order 2016-340 continues the disruption of the operations of the KRS Board and KRS.

## **II. The Governor’s Illegal Acts Related to the University of Louisville Board of Trustees**

### **A. The University of Louisville Board of Trustees**

56. Pursuant to KRS 164.821, University of Louisville Board of Trustees (“UofL Board”) is the Governing body of the University of Louisville. KRS 164.830 provides the UofL board with powers independent of the Governor and states:

The board of trustees of the University of Louisville shall constitute a body corporate, with the usual corporate powers, and shall possess all the authorities, immunities, rights, privileges, and franchises usually attaching to the governing bodies of Kentucky public higher educational institutions.

57. These powers include, but are not limited to, the appointment and removal of a president, faculty, and other personnel, KRS 164.830(1)(a)-(b); granting degrees, KRS 164.830(1)(f); and setting and evaluating the University's strategic agenda, KRS 164.830(g).

58. In addition, the UofL Board is responsible for and controls the University's finances pursuant to KRS 164A.500 *et seq.*

59. As it relates to the Board's membership, KRS 164.821(1) provides:

The government of the University of Louisville is vested in a board of trustees appointed for a term set by law pursuant to Section 23 of the Constitution of Kentucky. The board shall consist of **seventeen (17) members appointed by the Governor**; one (1) member of the teaching faculty of the University of Louisville who shall be the chief executive of the ranking unit of faculty government; a member of the permanent staff of the University of Louisville who shall be the chief executive of the staff senate; and a student member who shall be the president of the student body during the appropriate academic year.

(Emphasis added.)

60. The statute goes on to provide that "Board members may be removed by the Governor for cause, which shall include neglect of duty or malfeasance in office, **after being afforded a hearing with counsel before the Council on Postsecondary Education and a finding of fact by the council.**" KRS 164.821(1)(b) (emphasis added).

61. Additionally, KRS 63.080(2) states as follows:

**Members of the board of trustees of the University of Kentucky, the board of trustees of the University of Louisville**, members of the board of regents respectively of Eastern Kentucky University, Western Kentucky University, Morehead State University, Kentucky State University, Northern Kentucky University, Murray State University, and the Kentucky Community and Technical College System, and members of the Kentucky Board of Education and the Council on Postsecondary Education **shall not be removed except for cause.**

(Emphasis added.)



**B. The Illegal “Reorganization” of the UofL Board and the Illegal Formation of a Temporary Board.**

62. On June 17, 2016, the Governor issued executive order 2016-338 (Exhibit D, the “UofL Reorganization Order”), citing KY. CONST. §§ 69 and 81 and KRS 12.028 as his authority.

63. In the UofL Reorganization Order, the Governor abolished the UofL Board of Trustees and ended the terms of office of its members. (Exhibit D at p. 3.) The Governor “recreated” the Board and deemed that the new membership shall consist of:

A. Ten (10) members appointed by the Governor, at least one (1) of whom shall be a graduate of the University, selected from nominees submitted to the Governor by the Postsecondary Education Nominating Committee in accordance with KRS 164.005.

B. One (1) member of the teaching faculty of the University of Louisville, who shall be the chief executive of the ranking unit of faculty government, who shall serve a one (1) year term.

C. One (1) member of the permanent staff of the University of Louisville, who shall be the chief executive of the staff senate who shall serve a one (1) year term.

D. One (1) student member who shall be the president of the student body during the relevant academic year who shall serve a one (1) year term. The student member shall begin service as a Board member beginning with the first meeting of the academic year for which she or he was selected as student body president.

E. The persons referenced in Subsections B., C., and D. of this Section shall not begin their service as members of the Board until the ten (10) members appointed under Subsection A. of this Section have begun their service as members.

64. The make-up of the recreated Board of Trustees is in direct conflict with and in violation of KRS 164.821, in which the General Assembly determined that UofL shall be governed by a twenty member board.

65. The UofL Reorganization Order suspends the operation of KRS 164.821.

66. Upon information and belief, the Board members were not provided with a hearing before the Council on Postsecondary Education and the Council made no findings of fact.

67. The Governor's directive usurps, invades, and erodes the authority of the legislative branch, a co-equal branch of state government, which has the authority to make law determining the governance of UofL.

68. Upon information and belief, the Governor's illegal actions have even imperiled UofL's accreditation. The Southern Association of Colleges and Schools, UofL's accrediting body, requires that members of the boards of accredited institutions "can be dismissed only for appropriate reasons and by a fair process."<sup>2</sup> The Trustees were provided no such process.

69. Additionally, on June 17, 2016, the Governor issued executive order 2016-339 (Exhibit A, the "UofL Interim Board Order"), citing KY. CONST. §§ 69 and 81 and KRS 12.028 and 63.190.

70. In the UofL Interim Board Order, the Governor, by executive fiat and with no advice and consent of any body, created a three-person Interim Board to govern UofL and named its members. (Exhibit A at 1.)

71. KRS 164.821 does not provide for an interim board of any kind.

72. The make-up of the Interim Board is in direct conflict with and in violation of KRS 164.821, in which the General Assembly determined that UofL shall be governed by a twenty member board.

73. The UofL Interim Board Order suspends the operation of KRS 164.821.

74. Both the UofL Interim Board Order and the UofL Reorganization Order violate the process for nominating Trustees as outlined in KRS 164.005(5)(a) which requires the Governor to choose Trustees from three names provided to him by the Postsecondary Education Nominating Committee for each vacant position.

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<sup>2</sup> SOUTHERN ASSOCIATION OF COLLEGES AND SCHOOLS, "Principles of Accreditation" (5th Ed. 2011) (Available at: <http://www.sacscoc.org/pdf/2012PrinciplesOfAcreditation.pdf>) (last retrieved June 22, 2016).

**CLAIMS****Count I  
Violations of KY. CONST. § 15**

75. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

76. KY Const. §15, entitled, “Laws to be suspended only by General Assembly,” states, “No power to suspend laws shall be exercised unless by the General Assembly or its authority.”

77. KRS 61.645(3)(a) establishes mandatory four year terms of service for a KRS trustee.

78. KRS 61.645(3)(a) limits the removal of KRS Trustees before their fixed terms.

79. KRS 61.645(1) establishes the KRS Board and sets its number of trustees at thirteen (13).

80. KRS 61.645(8) establishes that the KRS Board would elect its Chair and Vice-Chair.

81. KRS 61.645 establishes the duties, powers, construction, and workings of the KRS Board.

82. Executive Orders 2016-211, 2016-214, 2016-273, and 2016-340 suspend KRS 61.645.

83. KRS 164.821 establishes that the University of Louisville Board of Trustees shall have seventeen members appointed by the Governor.

84. KRS 63.080(2) establishes that members of the University of Louisville Board of Trustees “shall not be removed except for cause.”

85. Executive Orders 2016-338 and 2016-339 suspend KRS 164.821 and KRS 63.080.

86. By suspending statutes without the authority of the General Assembly, Governor Bevin has violated Section 15 of the Kentucky Constitution.

**Count II**  
**Violations of Separation of Powers**  
**KY. CONST. §§ 27, 28, 29**

87. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

88. KY Constitution §27 states:

The powers of the government of the Commonwealth of Kentucky shall be divided into three distinct departments, and each of them be confined to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

89. KY Constitution §28 states:

No person or collection of persons being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

90. KY Constitution §29 states:

The Legislative power shall be vested in a House of Representatives and a Senate, which, together, shall be styled the General Assembly of the Commonwealth of Kentucky.

91. By enacting KRS 61.645(3)(a), the General Assembly statutorily established mandatory four year terms of service for a KRS trustee.

92. By enacting KRS 61.645(3)(a), the General Assembly limited the removal of trustees before their fixed terms.

93. By enacting KRS 61.645(1), the General Assembly statutorily established the Board and set its number of trustees at thirteen (13).

94. By enacting KRS 61.645(8), the General Assembly statutorily established that the Board would elect its Chair and Vice-Chair.

95. By enacting KRS 61.645, the General Assembly statutorily established the duties, powers, construction, and workings of the Board.

96. By issuing Executive Orders 2016-211, 2016-214, 2016-273, 2016-340 which violate KRS 61.645, and by the actions of the Governor's representatives to disrupt the May 19 KRS Board meeting and to threaten Mr. Elliott in order to prevent him from participating in the meeting, Governor Bevin and his representatives have violated Sections 27, 28 and 29 of the Kentucky Constitution by invading the province of the General Assembly's legislative power.

97. By enacting KRS 164.821, the General Assembly statutorily established that the University of Louisville Board of Trustees shall have seventeen members appointed by the Governor.

98. By enacting KRS 63.080(2), the General Assembly statutorily established that members of the University of Louisville Board of Trustees "shall not be removed except for cause."

99. By issuing Executive Orders 2016-338 and 2016-339 which violate KRS 164.821 and KRS 63.080, Governor Bevin has violated Sections 27, 28 and 29 of the Kentucky Constitution by invading the province of the General Assembly's legislative power.

**Count III**  
**Violations of Separation of Powers**  
**KY. CONST. § 81**

100. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

101. KY. CONST. §81, entitled, “Governor to enforce the laws,” states, “He shall take care that the laws be faithfully executed.”

102. Governor Bevin and his representatives are required to faithfully execute the Kentucky Constitution and Revised Statutes, including all provisions of KRS 61.645, KRS 63.080, and KRS 164.821.

103. KRS 61.645(3)(a) establishes mandatory four year terms of service for a KRS trustee.

104. KRS 61.645(3)(a) limits the removal of KRS Trustees before their fixed terms.

105. KRS 61.645(1) establishes the KRS Board and sets its number of trustees at thirteen (13).

106. KRS 61.645(8) establishes that the KRS Board would elect its Chair and Vice-Chair.

107. KRS 61.645 establishes the duties, powers, construction, and workings of the KRS Board.

108. Executive Orders 2016-211, 2016-214, 2016-273, and 2016-340 violate the plain language of KRS 61.645.

109. KRS 164.821 establishes that the University of Louisville Board of Trustees shall have seventeen members appointed by the Governor.

110. KRS 63.080(2) establishes that members of the University of Louisville Board of Trustees “shall not be removed except for cause.”

111. Executive Orders 2016-338 and 2016-339 violate the plain language of KRS 164.821 and KRS 63.080.

112. By violating the provisions of the Kentucky Constitution, KRS 61.645, KRS 63.080, and KRS 164.821 as set forth above, Governor Bevin has violated Section 81 of the Kentucky Constitution.

**Count IV**  
**Violations of KRS Chapter 61**

113. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

114. KRS 61.645(3)(a) establishes mandatory four year terms of service for a KRS trustee.

115. KRS 61.645(3)(a) limits the removal of KRS Trustees before their fixed terms.

116. KRS 61.645(1) establishes the KRS Board and sets its number of trustees at thirteen (13).

117. KRS 61.645(8) establishes that the KRS Board would elect its Chair and Vice-Chair.

118. KRS 61.645 establishes the duties, powers, construction, and workings of the Board.

119. Executive Orders 2016-211, 2016-214, 2016-273, and 2016-340 violate the plain language of KRS 61.645.

120. By issuing Executive Orders 2016-211, 2016-214, 2016-273, 2016-340 and by the actions of the Governor’s representatives to disrupt the May 19 KRS Board meeting and to

threaten Mr. Elliott in order to prevent him from participating in the meeting, Governor Bevin has repeatedly violated KRS 61.645 as set forth above.

**Count V**  
**Violations of KRS Chapter 63**

121. Plaintiff incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

122. KRS 63.080(2) establishes that members of the University of Louisville Board of Trustees “shall not be removed except for cause.”

123. By issuing Executive Order 2016-338, the Governor has violated the plain language of KRS 63.080.

**Count VI**  
**Violations of KRS Chapter 164**

124. Plaintiff incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

125. KRS 164.821 establishes that the University of Louisville Board of Trustees shall have seventeen members appointed by the Governor.

126. By issuing Executive Orders 2016-338 and 2016-339, Governor Bevin has repeatedly violated KRS 164.821 as set forth above.

**Count VII**  
**Violations of KRS Chapter 12**

127. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

128. KRS 12.028(2) provides Governor Bevin that he “may propose to the General Assembly, for its approval, changes in the state government organizational structure which may include the creation, alteration or abolition of any organizational unit or administrative body and



the transfer of functions, personnel, funds, equipment, facilities, and records from one (1) organizational unit or administrative body to another.”

129. KRS 12.028(2) provides that the Governor may effect a temporary reorganization “to achieve greater economy, efficiency, and improved administration as the needs of government dictate.”

130. KRS 12.028(2) provides Governor Bevin the power to temporarily reorganize organizational and administrative bodies “between sessions of the General Assembly, temporarily effect a change in the state government organizational structure as described in subsection (1) of this section if such temporary reorganization plan is first reviewed by the interim joint legislative committee with appropriate jurisdiction.”

131. Executive Orders 2016-211, 2016-214, 2016-273, 2016-340, 2016-338, and 2016-339, do not achieve greater economy, efficiency, and improved administration.

132. Governor Bevin exceeded the statutory authority under KRS 12.028 by issuing Executive Orders 2016-211, 2016-214, 2016-273, 2016-340, 2016-338, and 2016-339.

### **Count VIII Declaratory Judgment**

133. Plaintiffs incorporate by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

134. An actual justiciable controversy exists among the parties as to whether:

A. Governor Bevin has violated KY Const. §§15, 27-29, and 81, and KRS 61.645, 63.080 and 164.821 in enacting Executive Orders 2016-211, 2016-214, 2016-273, 2016-340, 2016-338, and 2016-339;

B. Executive Orders 2016-211, 2016-214, 2016-273, 2016-340, 2016-338, and 2016-339 are null and void because they violate the Kentucky Constitution and/or the Kentucky Revised Statutes;

135. Plaintiff is entitled to a declaratory judgment that:

A. Governor Bevin has violated KY Const. §§15, 27-29, and 81, and KRS 61.645, 63.080 and 164.821 in enacting Executive Orders 2016-211, 2016-214, 2016-273, 2016-340, 2016-338, and 2016-339;

B. Executive Orders 2016-211, 2016-214, 2016-273, 2016-340, 2016-338, and 2016-339 are null and void because they violate the Kentucky Constitution and/or the Kentucky Revised Statutes;

### **Count IX Injunctive Relief**

136. Plaintiff incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

137. As described above, Plaintiff is entitled to further relief in the form of injunctive relief, both temporary and permanent, restraining and enjoining the defendants, and all their agents, attorneys and any other persons in active concert or participation with them, from attempting to prevent or interfere with the official business of the duly appointed Trustees of the University of Louisville and Kentucky Retirement Systems.

138. By reason of the actions and violations described above, the Commonwealth has suffered immediate and irreparable injury and will continue to so suffer unless Defendants are immediately restrained and permanently enjoined from such activity by Order of this Court.

139. Plaintiff has no adequate remedy at law or otherwise to address this injury, save in a court of equity.

140. No previous application for a Restraining Order or an Injunction has been refused by any court.

141. Plaintiffs are entitled to further relief as may be shown by the evidence and legal authority that may be presented in this proceeding. Plaintiffs reserve their right to amend this Complaint, as necessary, to request any further relief that he is entitled to seek.

WHEREFORE, Plaintiffs demand judgment against Defendants as set forth in their Prayer for Relief below.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs demand as follows:

I. That this Court issue a declaration and order that:

A. Governor Bevin has violated KY Const. §§15, 27-29, 81 and KRS 61.645, 63.080, and 164.821 in enacting Executive Orders 2016-211, 2016-214, 2016-273, 2016-340, 2016-338, and 2016-339 and by attempting to enforce any and all of those Orders; and

B. Executive Orders 2016-211, 2016-214, 2016-273, 2016-340, 2016-338, and 2016-339 are null and void because they violate the Kentucky Constitution and/or the Kentucky Revised Statutes; and

II. That a restraining order, temporary injunction and a permanent injunction be issued by this Court restraining and enjoining the Defendants, and all their agents, attorneys, representatives, and any other persons in active concert or participation with them, from attempting to prevent or interfere with the official business of the duly appointed Trustees of the University of Louisville and Kentucky Retirement Systems; and

III. Plaintiff be awarded any and all other relief to which they may appear entitled, including their attorneys' fees and costs.

DATE: June 21, 2016.

Respectfully Submitted,

COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

ANDY BESHEAR  
ATTORNEY GENERAL

By: /s/ Mitchel T. Denham  
Mitchel T Denham  
Assistant Deputy Attorney General  
La Tasha Buckner, Director  
Office of Civil and Environmental Law  
S. Travis Mayo  
Joseph A. Newberg, II  
Assistant Attorneys General  
Office of the Attorney General  
700 Capitol Avenue  
Capitol Building, Suite 118  
Frankfort, Kentucky 40601-3449  
(502) 696-5300  
(502) 564-8310 FAX

Counsel for Intervening Plaintiff,  
Commonwealth of Kentucky

VERIFICATION

I, J. MICHAEL BROWN, Deputy Attorney General, upon being duly sworn, do hereby swear that I have read the foregoing Verified Intervening Complaint and the factual allegations set out herein are true and correct to the best of my knowledge and belief.



J. MICHAEL BROWN

COMMONWEALTH OF KENTUCKY )  
)  
COUNTY OF JEFFERSON )

Subscribed and sworn to before me this 22 day of June, 2016, by J. Michael Brown.

My commission expires: June 20 2019.



NOTARY PUBLIC, STATE AT LARGE, KY

Notary Id. No.: 535537



MATTHEW G. BEVIN  
GOVERNOR

EXECUTIVE ORDER

Secretary of State  
Frankfort  
Kentucky

2016-339  
June 17, 2016

RECEIVED AND FILED  
DATE June 17, 2016  
10:28am

ALISON LUNDERGAN GRIMES  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY R. Adler

**RELATING TO THE TEMPORARY APPOINTMENT  
OF INTERIM MEMBERS OF THE UNIVERSITY OF  
LOUISVILLE BOARD OF TRUSTEES**

WHEREAS, by Executive Order 2016-338, the Board of Trustees of the University of Louisville Board was abolished and then re-created; and

WHEREAS, under said Executive Order the Governor's Postsecondary Education Nominating Committee was directed to meet as soon as practicable and submit within fourteen (14) days from the date of said Executive Order thirty (30) nominees for the ten (10) gubernatorial appointments to the Board, pursuant to KRS 164.005; and

WHEREAS, in the interim period the Board will be without members; and

WHEREAS, it would be preferable and would promote greater economy, efficiency and improved administration for the Board to have interim members who can temporarily govern the University, if and as needed, until appointments can be made pursuant to Executive Order 2016-338;

NOW, THEREFORE, I, Matthew G. Bevin, Governor of the Commonwealth of Kentucky, under the authority vested in my by Sections 69 and 81 of the Kentucky Constitution, and KRS 12.028, KRS 63.190, and otherwise, do hereby Order and Direct the following:

- I. An interim Board of Trustees ("Interim Board") is hereby created to govern the University of Louisville until such time as permanent appointments are made to the Board of Trustees pursuant to Section III of Executive Order 2016-338; and
- II. The Interim Board shall consist of three (3) members, having such powers and responsibilities as given to the Board of Trustees by Executive Order 2016-338 and otherwise by law; and
- III. I hereby appoint the following as members of the Interim Board who shall choose one of their membership as Chairperson and one as Vice-Chairperson:

Exhibit A



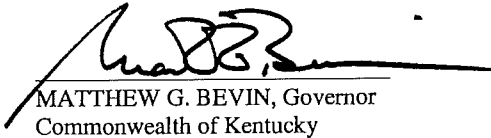
MATTHEW G. BEVIN  
GOVERNOR

EXECUTIVE ORDER

Secretary of State  
Frankfort  
Kentucky

2016-339  
June 17, 2016

- A. Bonita Kay Black, Louisville, Kentucky
  - B. Ulysses Lee Bridgeman, Jr., Louisville, Kentucky
  - C. Ron Wright, M.D., Louisville, Kentucky
  - IV. The Finance and Administration Cabinet, the Personnel Cabinet, the Governor's Office of Policy and Management, and all other state agencies necessary to effectuate this Order, shall take all necessary action to do so.
  - V. This Order is effective immediately.
- Please issue commissions to them.



MATTHEW G. BEVIN, Governor  
Commonwealth of Kentucky



ALISON LUNDERGAN GRIMES  
Secretary of State



**MATTHEW G. BEVIN**  
GOVERNOR

**EXECUTIVE ORDER**

**Secretary of State**  
Frankfort  
Kentucky

**2016-339**  
**June 17, 2016**

**REORGANIZATION PLAN**

It is the policy of this Administration to provide the citizens of this Commonwealth with an economical and efficient governmental structure, as well as practices that are administered in a consistent, ethical and coordinated manner. Therefore, pursuant to the provisions of KRS 12.028, the Governor hereby implements this Executive Order, which appoints a temporary three (3) person Interim Board of Trustees for the University of Louisville, pending the appointment of ten (10) permanent Trustees pursuant to Executive Order 2016-338, until subsequent ratification or non-ratification by the Kentucky General Assembly.

**SUMMARY OF PLAN**

Executive Order 2016-338 abolished and recreated the University of Louisville Board of Trustees with a new, smaller and more efficient governing membership and more focused vision and purpose designed to carry out the statutory mandates established for the University of Louisville, as well as the obligations and commitments it has to the people of Kentucky. It reduced the gubernatorial appointive membership from 17 to 10 members. It also eliminated the superfluous requirement for a gubernatorial appointment based on recommendations from the alumni association. That Executive Order recognized the dysfunction that had existed on the part of the Board and that a smaller membership is more streamlined and can more efficiently govern, oversee and manage the affairs of the institution. However, as a result of Executive Order 2016-338, the Board will be without members until new permanent appointments can be made under its terms. This Executive Order provides for the appointment of three (3) temporary members of an Interim Board to govern and oversee the administration of the University during the short period of time until permanent trustees can be appointed. As a result, greater economy, efficiency, transparency and improved administration of the University and its affairs will be achieved. The foregoing change is needed in order to promote greater economy, efficiency and improved administration.

**PERSONNEL IMPACT**

This temporary reorganization is for short-term administrative purposes only with no resulting personnel impact and will not result in any increased personnel or other expenditures to Kentucky State Government or the University.

**FISCAL IMPACT**

Any budget and personnel expenditures for the newly created Interim Board of Trustees will be less than those of the former Board. There will be tangible and intangible expense savings associated with this reorganization based upon expense savings due to the decreased number of trustees. No fiscal increases are anticipated.





MATTHEW G. BEVIN  
GOVERNOR


EXECUTIVE ORDER

Secretary of State  
Frankfort  
Kentucky

2016-273  
May 18, 2016

By virtue of the authority vested in me by Section 61.645 of the Kentucky Revised Statutes, I, Matthew G. Bevin, Governor of the Commonwealth of Kentucky, do hereby appoint Mark Lattis, 7005 Court of the Woods, Louisville, Kentucky 40241, as a member of the Board of Trustees of the Kentucky Retirement Systems, replacing William F. Smith, Madisonville, who declined appointment, representing members at-large, to serve for a term expiring March 31, 2019.

Please issue a commission to him.

  
MATTHEW G. BEVIN, Governor  
Commonwealth of Kentucky

  
ALISON LUNDERGAN GRIMES  
Secretary of State

Exhibit B

RECEIVED AND FILED

DATE 5/18/16

ALISON LUNDERGAN GRIMES  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY 



MATTHEW G. BEVIN  
GOVERNOR

## EXECUTIVE ORDER

Secretary of State  
Frankfort  
Kentucky

2016-340  
June 17, 2016

RECEIVED AND FILED  
DATE June 17, 2016  
2:56pm  
ALISON LUNDERGAN GRIMES  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY K. Adler

**RELATING TO THE REORGANIZATION OF THE**  
**KENTUCKY RETIREMENT SYSTEMS BOARD OF TRUSTEES**  
**AS THE KENTUCKY RETIREMENT SYSTEMS BOARD OF DIRECTORS**

WHEREAS, the Commonwealth of Kentucky should promote the effective and efficient management of state government operations; and

WHEREAS, it is the responsibility of state government to provide the citizens of the Commonwealth with an economical and efficient governmental structure that can be administered in a consistent, ethical, and coordinated manner; and

WHEREAS, the Kentucky Employees Retirement System, the State Police Retirement System, and the County Employees Retirement System are programs that have provided benefits to retirees and should be in a solid position to do the same for future retirees; and

WHEREAS, these three systems are administered under one administrative agency known as the Kentucky Retirement Systems which is also responsible for the administration of retiree health benefits for members of these systems as well as disability and death benefits; and

WHEREAS, pursuant to KRS 61.645, the Kentucky Retirement Systems is currently overseen, governed and administered by a Board of Trustees consisting of thirteen (13) members, including the Personnel Cabinet Secretary, elected representatives from all three retirement systems, and specific appointments by the Governor; and

WHEREAS, increasing medical costs and market changes have substantially increased the costs of the long-term obligations of our retirement programs; and

WHEREAS, actuarial reports have demonstrated a significant increase in the Unfunded Actuarial Accrued Liability of the Kentucky Employees Retirement System,



**MATTHEW G. BEVIN**  
GOVERNOR

**EXECUTIVE ORDER**

**Secretary of State**  
Frankfort  
Kentucky

**2016-340**  
**June 17, 2016**

the State Police Retirement System, and the County Employees Retirement System due in part to different accounting methods required by the Governmental Accounting Standards Board; and

**WHEREAS**, as Governor, I fully recognize the Commonwealth's obligation to fulfill the expectations of current retirees and employees participating in the Kentucky Employees Retirement System, the State Police Retirement System, and the County Employee Retirement System, as well as the commitment to ensure that Kentucky state government, municipalities, local school districts and other affected entities are able to remain solvent while attempting to offer competitive retirement benefits in the future; and

**WHEREAS**, in February 2016 the Pew Charitable Trusts released a research brief recommending state public pension systems to adopt specific steps to improve greater transparency through greater disclosure including:

- (i) Adopting comprehensive fee-reporting standards;
- (ii) Making investment policy statements transparent and accessible;
- (iii) Disclosing bottom-line performance, both net and gross of fees;
- (iv) Expanding reporting to include longer-term performance results;
- (v) Reporting results by asset class, net and gross of fees; and

**WHEREAS**, Kentucky's pension stakeholders and general public would benefit from more accessible information related to the management and oversight of Kentucky's public pension systems; and

**WHEREAS**, the three systems administered by the Kentucky Retirement Systems Board of Trustees have not consistently been administered in the open, transparent and expert manner that current and future retirees, employees and citizens of Kentucky deserve and expect; and



**MATTHEW G. BEVIN**  
GOVERNOR

**EXECUTIVE ORDER**

**Secretary of State**  
Frankfort  
Kentucky

**2016-340**  
**June 17, 2016**

**WHEREAS**, in order to more efficiently and better carry out the management, operation and oversight duties and responsibilities of the Kentucky Retirement Systems, including the enhancement of investment experience among the members of its governing board and to achieve better administration, I have determined that said governing board established by the provisions of KRS 61.645 should be expanded to include additional gubernatorial appointees having investment experience for the purpose of achieving greater expertise, economy, efficiency, transparency and improved administration of the Kentucky Retirement Systems; and

**WHEREAS**, I have determined that the Kentucky Retirement Systems Board of Trustees, as established by the provisions of KRS 61.645, should be abolished, recreated, and restructured with a more focused and expert vision and purpose designed to carry out the objectives of honoring the expectations of current retirees and employees participating in the Kentucky Employees Retirement Systems, as well the commitment to ensure that Kentucky state government, municipalities, local school districts and other affected entities are able to remain solvent and, therefore, reorganization efforts should be taken immediately in order to promote and achieve greater transparency, economy, efficiency, expertise and improved oversight over, and administration of, the Kentucky Retirement Systems:

**NOW, THEREFORE**, I, Matthew G. Bevin, Governor of the Commonwealth of Kentucky, under the authority vested in me by the Kentucky Constitution, Sections 69 and 81, and KRS 12.028, do hereby Order and Direct the following:

- I. The Kentucky Retirement Systems Board of Trustees as established by KRS 61.645 is abolished. The terms of the members appointed by the Governor and serving on the Kentucky Retirement Systems Board of Trustees as it existed prior to the filing of this Order shall expire immediately upon the filing of this Order, except as hereinafter expressly provided.



**MATTHEW G. BEVIN**  
GOVERNOR

**EXECUTIVE ORDER**

**Secretary of State**  
Frankfort  
Kentucky

**2016-340**  
**June 17, 2016**

- II. The Kentucky Retirement Systems Board of Directors ("Board") is hereby recreated and established as an agency of state government charged with the responsibility of securing, managing and overseeing the combined retirement systems in a fiduciary capacity.
- III. The Board shall consist of the following:
- A. The Secretary of the Personnel Cabinet;
  - B. Three (3) trustees, who shall be members or retired from the County Employees Retirement System, elected by the members and retired members of the County Employees Retirement System. The terms of the members who were elected and serving on the Kentucky Retirement Systems Board of Trustees as it existed prior to the filing of this Order shall continue in accordance with the terms of their election.
  - C. One (1) trustee, who shall be a member of or retired from the State Police Retirement System, elected by the members and retired members of the State Police Retirement System, respectively. The term of the member who was elected and serving on the Kentucky Retirement Systems Board of Trustees as it existed prior to the filing of this Order shall continue in accordance with the term of his or her election.
  - D. Two (2) trustees, who shall be members of or retired members from, the Kentucky Employees Retirement System, elected by the members and retired members of the Kentucky Employees Retirement System, respectively. The terms of the members who were elected and serving on the Kentucky Retirement Systems Board of Trustees as it existed prior to the filing of this Order shall continue in accordance with the terms of their election.
  - E. Ten (10) trustees, appointed by the Governor. Of the ten (10) trustees appointed by the Governor:
    - 1. One (1) trustee shall be appointed from a list of three (3) applicants submitted by the Kentucky League of Cities. The term of the member who was serving on the Kentucky Retirement Systems Board of Trustees as it existed prior to the filing of this Order, James A. Fulkerson, shall continue in accordance with the terms of his appointment, to-wit; until July 1, 2017. The term of such member shall expire upon the end of his current term and his successor shall be appointed by the Governor upon submission of a list of three (3) nominees submitted by the Kentucky League of Cities;
    - 2. One (1) trustee shall be appointed from a list of three (3) applicants submitted by the Kentucky Association of Counties. The term of the member who was serving on the Kentucky Retirement Systems Board of Trustees as it existed prior to the filing of this Order, Randy K.



MATTHEW G. BEVIN  
GOVERNOR

EXECUTIVE ORDER

Secretary of State  
Frankfort  
Kentucky

2016-340  
June 17, 2016

Stevens, shall continue in accordance with the terms of his appointment, to-wit; until July 1, 2017. The term of such member shall expire upon the end of his current term and his successor shall be appointed by the Governor upon submission of a list of three (3) nominees submitted by the Kentucky Association of Counties;

3. One (1) trustee shall be appointed from a list of three (3) applicants submitted by the Kentucky School Boards Association. The term of the member who was serving on the Kentucky Retirement Systems Board of Trustees as it existed prior to the filing of this Order, Joseph L. Hardesty, shall continue in accordance with the terms of his appointment; to-wit; until July 1, 2017. The term of such member shall expire upon the end of his current term and his successor shall be appointed by the Governor upon submission of a list of three (3) nominees submitted by the Kentucky School Board Association; and
  4. One (1) trustee shall be knowledgeable about the impact of pension requirements upon local governments;
  5. Six (6) trustees shall have investment experience. For purposes of this subparagraph, a trustee with "investment experience" means an individual who does not have a conflict of interest, as provided by KRS 61.655, and who has at least ten (10) years of experience in one (1) of the following areas of expertise:
    - a. A portfolio manager acting in a fiduciary capacity;
    - b. A professional securities analyst or investment consultant;
    - c. A current or retired employee or principal of a trust institution, investment or finance organization, or endowment fund acting in an investment-related capacity;
    - d. A chartered financial analyst in good standing as determined by the CFA Institute;
    - e. A university professor who teaches economics or investment-related studies; or
    - f. Any other professional with exceptional experience in the field of public or private finances.
- IV. The seven (7) at-large members of the Board appointed by the Governor shall serve for a term of four (4) years, except that of the members named in Section V., below, four (4) shall serve for a term of three (3) years and three (3) shall serve for a term of two (2) years. Any member of the Board appointed to fill a vacancy occurring for any reason other than by expiration of a term shall be appointed for the remainder of the unexpired term. A majority of the voting members of the Board shall constitute a quorum for the transaction of business. Members shall receive no compensation for serving on the Board, but shall be reimbursed for travel expenses for attending meetings and performing other official functions, consistent with the reimbursement policy for state employees.



**MATTHEW G. BEVIN**  
GOVERNOR

**EXECUTIVE ORDER**

**Secretary of State**  
Frankfort  
Kentucky

**2016-340**  
**June 17, 2016**

- V. In addition to the aforementioned appointed members, I hereby appoint the following as members of the Board pursuant to Subsections E. 4 and E. 5, of Section III, above:
- A. John R. Farris, of Lexington, Kentucky, to serve for a term of three (3) years. Said term will expire on June 17, 2019.
  - B. David L. Eager, of Louisville, Kentucky, to serve for a term of three (3) years. Said term will expire on June 17, 2019.
  - C. Mark W. Lattis, of Louisville, Kentucky, to serve for a term of three (3) years. Said term will expire on June 17, 2019.
  - D. William S. Cook, of Louisville, Kentucky, to serve for a term of three (3) years. Said term will expire on June 17, 2019.
  - E. David L. Harris, of Nicholasville, Kentucky, to serve for a term of two (2) years. Said term will expire on June 17, 2018.
  - F. Neil P. Ramsey, of Louisville, Kentucky, to serve for a term of two (2) years. Said term will expire on June 17, 2018.
  - G. John E. Chilton, of Louisville, Kentucky, to serve for a term of two (2) years. Said term will expire on June 17, 2018.
- VI. The Governor shall appoint one (1) member to serve the Board's Chairperson and one member to serve as Vice Chairperson with authority to act as the Chairperson in the absence of the Chairperson or if the office of the Chairperson is vacant. The Chairperson and Vice Chairperson shall serve at the pleasure of the Governor. I hereby appoint John Farris to serve as Chairperson and David L. Eager to serve as Vice-Chairperson.
- VII. Except as otherwise provided herein, the Board shall have all powers held by the Kentucky Retirement Systems Board of Trustees as it existed prior to the filing of this Order, which powers are hereby transferred to the Board.
- VIII. Except as otherwise provided herein, the Board shall have exclusive control and direction over all duties, functions, and responsibilities previously exercised by the Kentucky Retirement Systems Board of Trustees as it existed prior to the filing of this Order. All authority, functions, and responsibilities vested in the Kentucky Retirement Systems Board of Trustees as it existed prior to the filing of this Order are transferred to the newly created Board, which shall utilize that authority, function, and responsibility to carry out the functions of the Board. All duties, functions, responsibilities, records, equipment, staff, and supporting budgets of the Kentucky Retirement Systems Board of Trustees as it existed prior to the filing of this Order and all





**MATTHEW G. BEVIN**  
GOVERNOR

**EXECUTIVE ORDER**

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**June 17, 2016**

functions, rights, powers, duties, and obligations set forth in KRS 61.510 through 61.705 and other relevant provisions of law are hereby transferred to the Board.

- IX. To carry out the functions relating to its duties and responsibilities, the Board shall appoint an Executive Director who shall be approved by the Governor and who shall serve at the pleasure of the Board. The Board shall set the qualification and salary for the position of Executive Director under the provisions of KRS 64.640.
- X. The Executive Director shall be responsible for the following:
  - A. The day-to-day operations of the Board;
  - B. Preparing annual reports of the Board's program of work;
  - C. Carrying out policy and program directives of the Board;
  - D. Preparing and submitting to the Board for its approval a proposed biennial budget of the Board; and
  - E. Performing all other duties and responsibilities assigned by the Board or by law.
- XI. Effective ninety (90) days from the date of this Order, all employees of the systems, except for the Executive Director, shall be subject to the state personnel system established pursuant to KRS 18A.005 to 18A.204 and shall have their salaries determined by the Secretary of the Personnel Cabinet.
- XII. All individuals associated with the investment and management of retirement system assets, whether contracted investment advisors, board members, or staff employees, shall adhere to "The Code of Ethics and Standards of Professional Conduct," the "Asset Manager Code of Professional Conduct" if the individual is managing retirement system assets, and the "Code of Conduct for Members of a Pension Scheme Governing Body" if the individual is a board member, promulgated by the CFA Institute.
- XIII. Effective July 1, 2016, in addition to any currently required disclosures, the Board shall direct the Executive Director to post the following information to the retirement systems' web site:
  - A. All investment holdings and fees and commissions for each fund administered by the Board. The Board shall update the list of holdings and fees and commissions on a quarterly basis. Investment holdings, fees and commissions shall be disclosed by each individual manager, including underlying individual managers in fund and funds and individual underlying holdings, and investment fees and commissions shall include



MATTHEW G. BEVIN  
GOVERNOR

EXECUTIVE ORDER

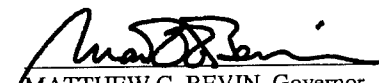
Secretary of State  
Frankfort  
Kentucky

2016-340  
June 17, 2016

any profit sharing, carried interest, or any other partnership incentive arrangements or agreements.

- B. All contracts or offering documents for services, goods, or property purchased or utilized by the systems.
- XIV. With approval of the Board, the Executive Director may enter into agreements with any state agency or political subdivision of the state, any postsecondary education institution, or any other person or entity to enlist assistance to implement the duties and responsibilities of the Board.
- XV. The Board shall have the power to promulgate administrative regulations. All administrative regulations promulgated under the authority of the Kentucky Retirement Systems Board of Trustees as it existed prior to the filing of this Order and in effect prior to the filing of this Order shall remain in full force and effect and shall be administered by the Board until changed and re-promulgated by the Board.
- XVI. The Finance and Administration Cabinet, the Personnel Cabinet, the Governor's Office of Policy and Management and all other agencies necessary to effectuate this Order shall take all necessary action to do so.

Please issue Commissions to Board members hereby appointed.

  
MATTHEW G. BEVIN, Governor  
Commonwealth of Kentucky

  
ALISON LUNDERGAN GRIMES  
Secretary of State



**MATTHEW G. BEVIN**  
GOVERNOR

**EXECUTIVE ORDER**

**Secretary of State**  
Frankfort  
Kentucky

**2016-340**  
**June 17, 2016**

**REORGANIZATION PLAN**

It is the policy of this Administration to provide the citizens of this Commonwealth with an economical and efficient governmental structure, as well as regulatory practices that are administered in a consistent, ethical and coordinated manner. Therefore, pursuant to the provisions of KRS 12.028, the Governor hereby implements this Executive Order which temporarily reorganizes a state government board until subsequent ratification or non-ratification by the Kentucky General Assembly.

**SUMMARY OF PLAN**

This Executive Order abolishes the Kentucky Retirement Systems Board of Trustees and creates the Kentucky Retirement Systems Board of Directors ("Board") with a new and more efficient governing membership, with increased expertise in the area of investment experience and a more focused vision and purpose designed to carry out the statutory mandates established for the Board, as well as the obligations and commitments it has to the people of Kentucky. It increases the gubernatorial appointive membership from 6 to 10 members. The additional members must have investment experience. As a result, greater economy, efficiency, transparency and improved administration of the Board of Kentucky Retirement Systems and its affairs will be achieved.

The foregoing changes are needed in order to promote greater economy, efficiency and improved administration.

**PERSONNEL IMPACT**

Including the increase in the number of members on the recreated Board, this reorganization is for administrative purposes with no resulting personnel impact and will not result in any increased personnel or other expenditures to Kentucky State Government or the University.

**FISCAL IMPACT**

The budget and personnel expenditures for the newly created Board will be essentially the same as those of the former Board. No fiscal increases are anticipated.



MATTHEW G. BEVIN  
GOVERNOR

EXECUTIVE ORDER

RECEIVED AND FILED  
DATE June 17, 2016  
10:26 am

Secretary of State  
Frankfort  
Kentucky

2016-338  
June 17, 2016

ALISON LUNDERGAN GRIMES  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY K. Allen

**RELATING TO THE REORGANIZATION OF THE  
UNIVERSITY OF LOUISVILLE BOARD OF TRUSTEES**

**WHEREAS**, the Commonwealth of Kentucky should promote the effective and efficient management of state government operations; and

**WHEREAS**, it is the responsibility of state government to provide the citizens of the Commonwealth with an economical and efficient governmental structure that can be administered in a consistent, ethical, transparent and coordinated manner; and

**WHEREAS**, pursuant to KRS 164.821, the University of Louisville is currently governed and administered by a Board of Trustees consisting of twenty (20) members, including seventeen (17) members appointed by the Governor; one (1) member of the teaching faculty of the University of Louisville who is the chief executive of the ranking unit of faculty government; one (1) member of the permanent staff of the University of Louisville who is the chief executive of the staff senate; and one (1) student member who is the president of the student body during the relevant academic year; and

**WHEREAS**, the University of Louisville Board of Trustees is responsible for providing governance and oversight for the University's administration and is accountable for the health, reputation and integrity of the University community in all aspects; and

**WHEREAS**, the University of Louisville Board of Trustees has legal fiduciary responsibility, which includes a duty of loyalty, a duty of care, and a duty of obedience, so as to advance the best interests of the institution in all aspects of its operation, so as to set a positive example for the faculty, staff and students and so as to inspire confidence throughout the University community, the citizens of the Commonwealth and the general public at large; and

Exhibit D



**MATTHEW G. BEVIN**  
GOVERNOR

**EXECUTIVE ORDER**

**Secretary of State**  
Frankfort  
Kentucky

**2016-338**  
**June 17, 2016**

**WHEREAS**, the University of Louisville has recently been involved in several high-profile incidents that have cast the institution in a negative light; and

**WHEREAS**, it is apparent that the administration of the University of Louisville and the members of its Board of Trustees have become operationally dysfunctional; and

**WHEREAS**, it is apparent that the University of Louisville Board of Trustees is irreparably fractured and broken and that a strained relationship exists between certain trustees and the University administration, which is seriously damaging the entire University community in many ways, including making it more difficult to raise funds through philanthropy and to attract good and high quality students and both academic and administrative staff, and reflects negatively upon the Commonwealth as a whole; and

**WHEREAS**, the University's Board of Trustees has acted in a manner that manifests a lack of transparency and professionalism; and

**WHEREAS**, the reputation of the University of Louisville as an academic institution is at risk, and I, as Governor, cannot forbear any longer in preventing that from occurring; and

**WHEREAS**, pursuant to KRS 164.321, the Boards of Regents of Eastern Kentucky University, Morehead State University, Murray State University, Western Kentucky University, Kentucky State University and Northern Kentucky University are comprised of eleven (11) members, eight (8) of whom are appointed by the Governor, one (1) of whom is a member of the teaching faculty, one (1) of whom is a member of nonteaching personnel, and one (1) of whom is a member of the student body; and

**WHEREAS**, I believe that a more streamlined Board of Trustees with a smaller number of members can more efficiently and economically oversee, govern and manage the affairs of the University of Louisville and improve its administration; and



**MATTHEW G. BEVIN**  
GOVERNOR

**EXECUTIVE ORDER**

**Secretary of State**  
Frankfort  
Kentucky

**2016-338**  
**June 17, 2016**

**WHEREAS**, I have determined that the University of Louisville Board of Trustees, as established by the provisions of KRS 164.821, should be abolished, altered, recreated, and restructured with a new, smaller and more efficient governing membership and a more focused vision and purpose designed to carry out the statutory mandates established for the institution, as well as the obligations and commitments it has to the citizens of the Commonwealth, and, therefore, that reorganization efforts should be taken immediately in order to achieve greater economy, efficiency, transparency and improved oversight and administration of the University of Louisville:

**NOW, THEREFORE**, I, Matthew G. Bevin, Governor of the Commonwealth of Kentucky, under the authority vested in me by the Kentucky Constitution, Sections 69 and 81, KRS 12.028, and otherwise, do hereby Order and Direct the following:

- I. The University of Louisville Board of Trustees as established by KRS 164.821 is abolished. The terms of the members appointed by the Governor serving on the University of Louisville Board of Trustees as it existed prior to the filing of this Order shall expire immediately upon the filing of this Order.
- II. The University of Louisville Board of Trustees ("Board") is hereby recreated, established, and charged with the responsibility of securing, governing, managing, overseeing and being responsible for all aspects of the University of Louisville in a fiduciary capacity in accordance with the laws of the Commonwealth.
- III. The Board shall consist of the following:
  - A. Ten (10) members appointed by the Governor, at least one (1) of whom shall be a graduate of the University, selected from nominees submitted to the Governor by the Postsecondary Education Nominating Committee in accordance with KRS 164.005.
  - B. One (1) member of the teaching faculty of the University of Louisville, who shall be the chief executive of the ranking unit of faculty government, who shall serve a one (1) year term.
  - C. One (1) member of the permanent staff of the University of Louisville, who shall be the chief executive of the staff senate who shall serve a one (1) year term.



**MATTHEW G. BEVIN**  
GOVERNOR

**EXECUTIVE ORDER**

**Secretary of State**  
Frankfort  
Kentucky

**2016-338**  
**June 17, 2016**

- D. One (1) student member who shall be the president of the student body during the relevant academic year who shall serve a one (1) year term. The student member shall begin service as a Board member beginning with the first meeting of the academic year for which she or he was selected as student body president.
- E. The persons referenced in Subsections B., C., and D. of this Section shall not begin their service as members of the Board until the ten (10) members appointed under Subsection A. of this Section have begun their service as members.
- IV. The members serving by virtue of their positions as set forth in Section III., Subsections B., C., and D., shall serve as members of the Board only so long as they continue to serve in their respective leadership positions within the University.
- V. The Governor shall make his other appointments so as to divide the citizen representation upon the board to reflect proportional representation of the two (2) leading political parties in the Commonwealth based on the state's voter registration and shall reflect no less than proportional representation of the minority racial composition of the Commonwealth, using the most recent data from the United States Census Bureau. Where that calculation results in a number exceeding a round number, it shall be increased to the next highest round number.
- VI. The members of the Board appointed by the Governor shall serve for a term of six (6) years, except that of the members first appointed, one (1) shall serve for a term of six (6) years, one (1) shall serve for a term of (5) years, two (2) shall serve for a term of four (4) years, two (2) shall serve for a term of three (3) years, two (2) shall serve for a term of two (2) years, and two (2) shall serve for a one (1) year term. Board members shall serve no more than two (2) consecutive terms. Any member appointed to fill a vacancy occurring for any reason other than by expiration of a term shall be appointed for the remainder of the unexpired term. A majority of the voting members of the Board shall constitute a quorum for the transaction of business. Members shall receive no compensation for serving on the Board, but shall be reimbursed for travel expenses for attending meetings and performing other official functions, consistent with the reimbursement policy for state employees. Board members who reside outside the Commonwealth shall not be reimbursed for out-of-state travel expenses.
- VII. The Governor's Postsecondary Education Nominating Committee is hereby directed to meet as soon as practicable and submit thirty (30) nominees for Board membership to the Governor pursuant to KRS 164.005, no later than fourteen (14) days from the date hereof.
- VIII. The members of the Board appointed by the Governor shall annually elect one (1) of their number to serve as Chairperson of the Board and one (1) of their



**MATTHEW G. BEVIN**  
GOVERNOR

**EXECUTIVE ORDER**

**Secretary of State**  
Frankfort  
Kentucky

**2016-338**  
**June 17, 2016**

number to serve as Vice Chairperson to act in the absence or temporary disability of the Chairperson.

- IX. Except as may be otherwise set forth herein, the Board shall have all corporate and other powers vested in the University of Louisville Board of Trustees as it existed prior to the filing of this Order.
- X. Except as otherwise provided herein, the Board shall have exclusive control and direction over all duties, functions and responsibilities previously exercised by the University of Louisville Board of Trustees as it existed prior to the filing of this Order. All powers, authority, functions, and responsibilities vested in the University of Louisville Board of Trustees as it existed prior to the filing of this Order are hereby transferred to the newly created Board, which shall utilize that authority, function, and responsibility to carry out the functions of the Board. All duties, functions, responsibilities, records, policies, procedures, rules, regulations, equipment, staff and supporting budget of the University of Louisville Board of Trustees as it existed prior to the filing of this Order, and all functions, rights, powers, duties, and obligations set forth by law are hereby transferred to the Board created by this Order.
- XI. The Board shall assure continuance of all legal and contractual rights, functions, duties, and liabilities, including, but not limited to, those associated with outstanding bonds, in accordance with KRS 164.0057.
- XII. Members of the Board shall be required to attend and complete such orientation program as may be prescribed by the Council on Postsecondary Education under KRS 164.020, or otherwise, as a condition of their service.
- XIII. Board members may be removed by the Governor for cause, which shall include neglect of duty or malfeasance in office, after being afforded a hearing, with right to counsel, before the Council on Postsecondary Education and a finding of fact by said Council.
- XIV. If the student member of the Board does not maintain his or her position as student body president or his or her status as a full-time student at any time during that academic year, a special election shall be held to select a full-time student member. The student member selected as a replacement shall serve for the remainder of the term for which her or his predecessor was selected.
- XV. The faculty member, staff member, and student body member of the Board shall cease to be eligible for membership on the Board upon termination of their respective relationships with the University or if they cease to serve in the leadership positions set forth in Section III, and vacancies occurring for this reason shall be filled for the remainder of the respective terms in the same manner.





MATTHEW G. BEVIN  
GOVERNOR

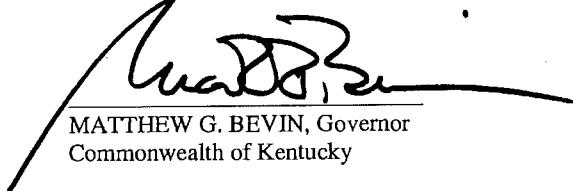
EXECUTIVE ORDER

Secretary of State  
Frankfort  
Kentucky

2016-338  
June 17, 2016

- XVI. Vacancies among the citizen members of the Board appointed by the Governor occurring by death, resignation, or any other cause shall be filled by appointments made by the Governor for the expiration of the term, subject to the qualifications set forth in this Order and otherwise by law.
- XVII. The Finance and Administration Cabinet, the Personnel Cabinet, the Governor's Office of Policy and Management, and all other state agencies necessary to effectuate this Order, shall take all necessary action to do so.
- XVIII. This Executive Order is effective immediately.

  
ALISON LUNDERGAN GRIMES  
Secretary of State

  
MATTHEW G. BEVIN, Governor  
Commonwealth of Kentucky



**MATTHEW G. BEVIN**  
GOVERNOR

**EXECUTIVE ORDER**

**Secretary of State**  
Frankfort  
Kentucky

**2016-338**  
**June 17, 2016**

**REORGANIZATION PLAN**

It is the policy of this Administration to provide the citizens of this Commonwealth with an economical and efficient governmental structure, as well as regulatory practices that are administered in a consistent, ethical and coordinated manner. Therefore, pursuant to the provisions of KRS 12.028, the Governor hereby implements the following Executive Order which temporarily reorganizes a state government board until subsequent ratification or non-ratification by the Kentucky General Assembly.

**SUMMARY OF PLAN**

This Executive Order abolishes and recreates the University of Louisville Board of Trustees with a new, smaller and more efficient governing membership and more focused vision and purpose designed to carry out the statutory mandates established for the University of Louisville, as well as the obligations and commitments it has to the people of Kentucky. It reduces the gubernatorial appointive membership from 17 to 10 members. It also eliminates the superfluous requirement for a gubernatorial appointment based on recommendations from the alumni association. The Executive Order recognizes the dysfunction that exists on the part of the Board and recognizes that a smaller membership is more streamlined and can more efficiently govern, oversee and manage the affairs of the institution. As a result, greater economy, efficiency, transparency and improved administration of the University and its affairs will be achieved.

The foregoing changes are needed in order to promote greater economy, efficiency and improved administration.

**PERSONNEL IMPACT**

Except for the reduction in the number of members on the recreated Board, this reorganization is for administrative purposes with no resulting personnel impact and will not result in any increased personnel or other expenditures to Kentucky State Government or the University.

**FISCAL IMPACT**

The budget and personnel expenditures for the newly created Board of Trustees will be less than those of the former Board. There will be tangible and intangible expense savings associated with this reorganization based upon expense savings due to the decreased number of trustees. No fiscal increases are anticipated.



MATTHEW G. BEVIN  
GOVERNOR

EXECUTIVE ORDER

Secretary of State  
Frankfort  
Kentucky

2016 – 211  
April 20, 2016

WHEREAS, pursuant to Executive Order 2015-234, Thomas K. Elliott, 324 Browns Lane, Louisville, Kentucky 40207, was reappointed to serve as a member of the Board of Trustees of the Kentucky Retirement Systems, representing members-at-large, for a term expiring March 31, 2019:

NOW THEREFORE, I, Matthew G. Bevin, Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me pursuant to the provisions of Sections 61.645 and 63.080 of the Kentucky Revised Statutes, do hereby Order and Direct the following:

1. Thomas K. Elliott is hereby removed as a member of the Board of Trustees of the Kentucky Retirement System, representing members-at-large.
2. The Secretary of the Finance and Administration Cabinet and the Secretary of Personnel Cabinet shall take all steps necessary to effectuate the provisions of this Order.

  
MATTHEW G. BEVIN, Governor  
Commonwealth of Kentucky

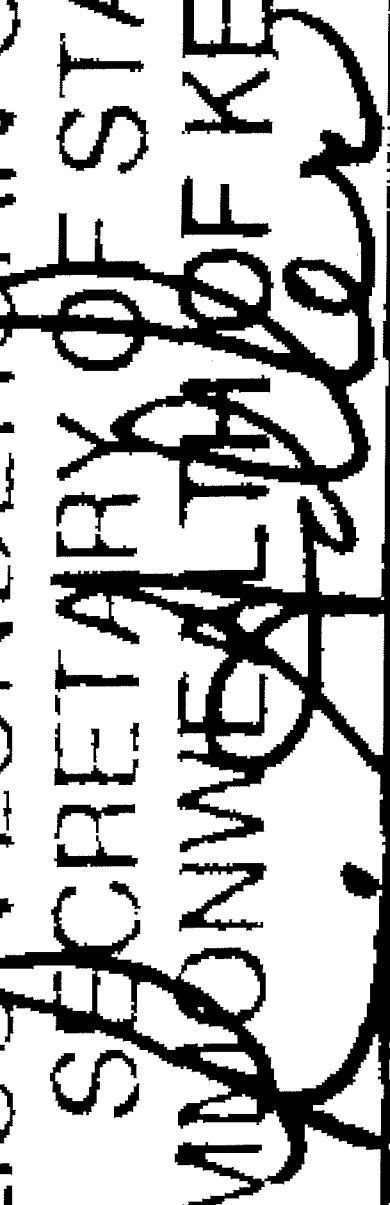
  
ALISON LUNDERGAN GRIMES  
Secretary of State

Exhibit E

RECEIVED AND FILED

DATE

4/20/16

ALISON LUNDERGAN GRIMES  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY 



MATTHEW G. BEVIN  
GOVERNOR


EXECUTIVE ORDER

Secretary of State  
Frankfort  
Kentucky

2016 - 214  
April 21, 2016

By virtue of the authority vested in me by Section 61.645 of the Kentucky Revised Statutes, I, Matthew G. Bevin, Governor of the Commonwealth of Kentucky, do hereby appoint William F. Smith, M.D., 951 Oakwood Lane, Madisonville, Kentucky 42431, as a member of the Board of Trustees of the Kentucky Retirement Systems, replacing Thomas K. Elliott, representing members at-large, to serve for an unexpired term expiring March 31, 2019.

Please issue a commission to him.

  
MATTHEW G. BEVIN, Governor  
Commonwealth of Kentucky

  
ALISON LUNDERGAN GRIMES  
Secretary of State

Exhibit F

RECEIVED AND FILED

DATE

4/21/16

ALISON LUNDETTGAN GRIMES  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY 



# SUMMARY ANNUAL FINANCIAL REPORT

# 2015

## Kentucky Retirement Systems

A component unit of the  
Commonwealth of Kentucky

Kentucky Employees  
Retirement System (KERS)

County Employees  
Retirement System (CERS)

State Police Retirement  
System (SPRS)

## Certificate of Achievement

The Government Finance Officers Association (GFOA) awarded a Certificate of Achievement for Excellence in Financial Reporting to the Kentucky Retirement Systems for its Comprehensive Annual Financial Report (CAFR) for the fiscal year ended June 30, 2014. The Certificate of Achievement is a prestigious national award recognizing excellence in the preparation of state and local government financial reports and is valid for a period of one year. This was the sixteenth consecutive award earned by KRS. In order to be awarded a Certificate of Achievement, a government unit must publish an easily readable and efficiently organized document. The report must satisfy both generally accepted accounting principles and applicable legal requirements. We believe our 2015 CAFR will continue to meet the Certificate of Achievement Program's requirements, and we will be submitting it to the GFOA for their consideration.



## To the Trustees & Membership

The Kentucky Retirement Systems (KRS) is pleased to present our second Summary Annual Financial Report for the fiscal year (FY) ended June 30, 2015. This report is intended to summarize key statistical, financial, investment, and actuarial data from our Comprehensive Annual Financial Report (CAFR) and contains additional information about KRS, such as a schedule of KRS Board of Trustee and committee meetings for the next calendar year. The much more detailed CAFR, prepared in accordance with standards established by the Government Finance Officers Association (GFOA), can be viewed and downloaded at [www.kyret.ky.gov](http://www.kyret.ky.gov).

KRS administers three retirement systems: the Kentucky Employees Retirement System (KERS) for the employees of the Commonwealth, its agencies and instrumentalities; the State Police Retirement System (SPRS) for uniformed state police personnel; and the County Employees Retirement System (CERS) for the employees of counties, cities and other local government entities. Both the KERS and CERS systems have a nonhazardous and hazardous pension plan. All employees participating in SPRS are hazardous duty. In addition, each system has an insurance plan. In total, KRS administers five (5) pension plans and five (5) insurance plans.

### Some of the many highlights from the 2015 fiscal year include:

- In early April 2015, KRS began the process of working through complex issues and drafting regulations to implement House Bill 62, which created an avenue for certain types of participating employers to exit the KERS or CERS systems. This process is continuing during the current 2016 fiscal year.
- The severe underfunding in the KERS nonhazardous pension plan continued as a very significant issue for KRS. The funding dropped from 21.1% to 19.0% based on the 2015 Actuarial Valuation Results. It is of critical importance that the General Assembly continue its commitment to fully fund the actuarially required contributions (ARC) and we encouraged the General Assembly to find additional funds over and above the ARC when and if feasible.
- Through its internal and external legal counsel, KRS dealt with various lawsuits, including the appeal of a federal bankruptcy ruling in the Seven Counties Services, Inc. case. This appeal was ongoing throughout FY 2015. If Seven Counties Services were ultimately successful in obtaining a legal ruling that allows it to withdraw from KERS without paying its proportionate share of the unfunded liability of the system, then all other participating employers would be adversely affected through the payment of higher employer contribution rates.
- Capital market performance for the fiscal year made it difficult for most public pension plans across the country to reach their expected returns. Allocations in private equity, real estate, and U.S. public equities (particularly large cap growth equity) drove performance. The KRS Pension Fund returned 2.01% trailing the benchmark return of 3.13% and the KRS Insurance fund returned 1.89% versus its benchmark of 3.79%. These returns, while positive, contrasted with strong fiscal year 2014 investment returns of 15.5% for Pension and Insurance of 14.89%. Additionally, although there was no impact on net investment performance, KRS began reporting private equity fees as a component of investment expense to enhance performance transparency.





## Our History

The Kentucky Employees Retirement System (KERS) was created in 1956 by the Kentucky General Assembly in order to supplement the benefits provided by Social Security. When the first actuarial valuation was completed June 30, 1957, there were 16,000 employees participating in KERS and assets of \$2.8 million. The State Police Retirement System (SPRS) and County Employees Retirement System (CERS) were established in 1958. The first actuarial valuation of SPRS was conducted June 30, 1959. No actuarial valuation of CERS was conducted until June 30, 1960 because the statutes did not authorize retirements from the system prior to July 1, 1960. On June 30, 1960, there were 68 counties and 2,617 employees participating in CERS, and SPRS included 415 uniformed state troopers. Currently, KRS serves 355,552 active, inactive and retired members in the combined systems, and manages approximately \$16.0 billion in assets. There are 1,491 participating employers.

- As required by the passage of Senate Bill 2 (2013 legislative session), a new Tier 3 Hybrid Cash Balance Plan was established. Pension members who began participating in January 2014, received interest on contribution payments for the first time at the conclusion of the 2015 fiscal year. Members in this tier are guaranteed a 4% interest credit on their balance and the account is credited with 75% of the amount of returns exceeding 4% based on five-year geometric investments returns.
- During the year, GASB 68, Accounting and Financial Reporting for Pensions, was implemented. This affected the financial statements of our employers requiring that employers recognize and report a proportionate share of their plan's net pension liability as part of their financial statements. KRS' actuary and our accounting division provided this information to each employer.
- KRS staff continued to provide benefit services to our members. In FY 2015, KRS administered approximately 75,000 health insurance contracts for non-Medicare eligible and Medicare eligible benefit recipients, processed 7,100 retirement applications, and answered 253,700 inbound calls. More than 11,000 members were counseled on-site and we hosted 11 pre-retirements seminars across the Commonwealth.
- KRS continued to expand our website (<http://www.kyret.ky.gov>) to meet member information needs. We added video offerings, increased the use of webinars, social media ([www.facebook.com/kyretirement](http://www.facebook.com/kyretirement)), digital newsletters, KRS YouTube, and added video teleconferencing capability.

## Conclusion

I would like to thank the KRS Board of Trustees, the dedicated KRS staff, and our external advisors and service providers for making the 2015 fiscal year a very successful year for KRS. We look forward to continuing success and providing our members with the high quality service they deserve.

William A. Thielen, Esq. // Executive Director

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6	Who We Serve
8	Evolution of Benefits
10	Pension Benefits by County
12	Who Participates
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16	Investments Highlights
21	Actuarial Valuations

## 2016 KRS MEETING SCHEDULE

### BOARD OF TRUSTEES

*Quarterly*  
February 18  
May 19  
September 8  
December 1

*Annual*  
April 21

### COMMITTEE MEETINGS

**AUDIT**  
February 4  
May 5  
August 25  
November 3

**INVESTMENT**  
February 2  
May 3  
August 23  
November 2

**RETIREE HEALTH PLAN**  
February 9  
May 10  
September 1  
November 8

**HUMAN RESOURCES**  
February 18  
May 19  
September 8  
December 1

**DISABILITY & APPEALS**  
Check website for dates  
and times.

**BUDGET & LEGISLATION**  
Scheduled as needed.

*\*Dates subject to change.  
Please visit our website for  
updates.*

Phone (800) 928-4646  
(502) 696-8800  
Mail Perimeter Park West  
1260 Louisville Road  
Frankfort KY 40601  
Fax (502) 696-8822

The Board of Trustees is comprised of thirteen members: two elected by KERS members, three elected by CERS members, one elected by SPRS members, the Secretary of the State Personnel Cabinet serves ex officio, and six were appointed by Governor Steve Beshear. Three of the six appointees are selected from lists of nominees provided by the Kentucky Association of Counties, the Kentucky League of Cities, and the Kentucky School Board Association, so that each organization has a representative.



**Thomas Elliott**  
Chair  
Governor Appointee  
Term ends March 31, 2019



**Dr. Daniel Bauer**  
Vice Chair  
Governor Appointee  
Term ends March 31, 2016



**Mike Cherry**  
Governor Appointee  
Term ends March 31, 2016



**Edwin Davis**  
Elected by CERS  
Term ends March 31, 2017



**Keith Peercy**  
Elected by SPRS  
Term ends March 31, 2019



**J.T. Fulkerson**  
Governor Appointee  
Term ends July 1, 2017



**William Summers**  
Elected by CERS  
Term ends March 31, 2017



**Dinah T. Bevington**  
Interim Personnel Secretary  
Term ends Ex-Officio



**Vince Lang**  
Elected by KERS  
Term ends March 31, 2017



**Joseph Hardesty**  
Governor Appointee  
Term ends July 1, 2017



**David Rich**  
Elected by CERS  
Term ends October 31, 2017



**Mary Helen Peter**  
Elected by KERS  
Term ends March 31, 2017

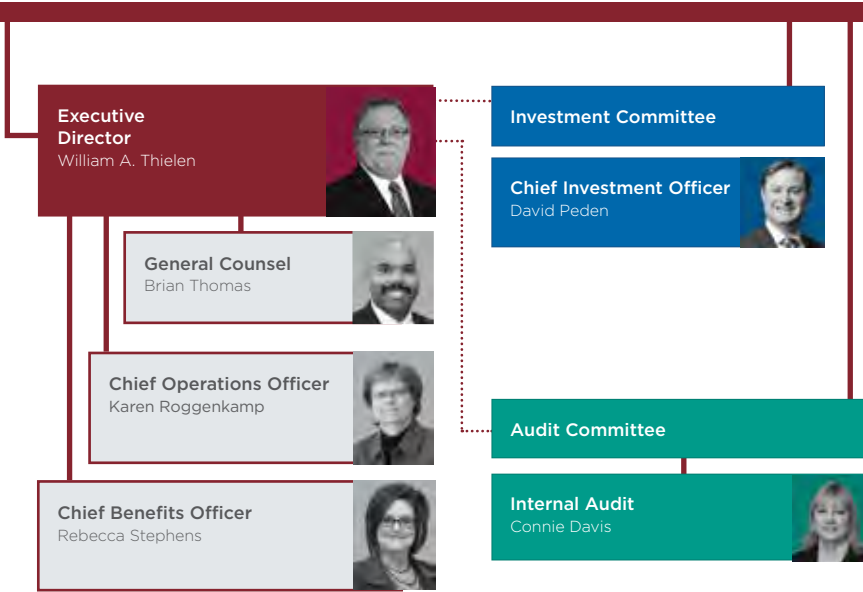


**Randy Stevens**  
Governor Appointee  
Term ends July 1, 2017



# 2015

## Agency Structure as of December 1, 2015



### KRS DIVISIONS

<b>Accounting</b> Todd E. Coleman	<b>Legal</b> Brian Thomas
<b>Communications</b> Scarlett Consalvi	<b>Member Services</b> Shauna Miller
<b>Disability &amp; Death</b> Liza Welch	<b>Membership Support</b> Kevin Gaines
<b>Employer Reporting, Compliance &amp; Education</b> Sarah Webb	<b>Planning &amp; Constituent Services</b> Shawn Sparks
<b>Enterprise &amp; Technology Services</b> Mark McChesney	<b>Procurement &amp; Office Services</b> Joe C. Gilbert
<b>Human Resources</b> Marlane Robinson	<b>Retiree Health Care</b> Connie Pettyjohn
<b>Internal Audit</b> Connie Davis	<b>Retiree Payroll</b> David Nix
<b>Investments</b> David Peden	
Total KRS Employees -258	

### OUR MEMBERS ARE VERY IMPORTANT KENTUCKIANS.

These men and women are those that build and protect our way of life in our state. They consist of law enforcement, emergency services, fire and rescue, city and state government, health departments, military affairs, court personnel, utilities, school board, and more. *These employees are the core of everyday life for the citizens of Kentucky.*

### FINDING OUR COMPREHENSIVE ANNUAL REPORT ON OUR WEBSITE

To view the Comprehensive Annual Financial Report (CAFR) in its entirety, please visit us online.

1. Go to **KYRET.KY.GOV**
2. Click on **ABOUT** tab
3. Select **PUBLICATIONS**
4. Select **COMPREHENSIVE ANNUAL FINANCIAL REPORTS**
5. Click on **2015 CAFR**



### CONSULTANTS

#### Actuarial Services

- Cavanaugh Macdonald Consulting, LLC

#### Auditing Services

- Dean Dorton Allen Ford, PLLC

#### Legal Services

- Ice Miller, LLP
- Polsinelli
- Reinhart Boerner Van Deuren
- Stoll Keenon Ogden, PLLC

#### Investment Consultants

- R.V. Kuhns
- ORG Real Property
- Albourne
- PCA Associates

Master Custodian - Bank of New York, Mellon

# Who We Are



## SYSTEM Statistics

### Kentucky Retirement Systems Membership Totals

Fiscal Year	Active	Inactive	Retired	Total
2010	144,837	92,379	81,765	318,981
2011	144,894	95,025	84,680	324,599
2012	139,352	107,353	87,472	334,177
2013	137,368	112,462	90,796	340,626
2014	137,138	117,039	93,946	348,123
2015	136,318	121,604	97,630	355,552

## SYSTEMS

### KERS - (Kentucky Employees Retirement System)

This system consists of two plans - **Nonhazardous and Hazardous**. Each plan is a cost-sharing multiple-employer defined benefit pension plan that covers all regular full-time members employed by any state department, board, or agency directed by Executive Order of the Governor to participate in KERS.

### CERS - (County Employees Retirement System)

This system consists of two plans - **Nonhazardous and Hazardous**. Each plan is a cost-sharing multiple-employer defined benefit pension plan that covers all regular full-time members employed by each participating county, city, and school board, and any additional eligible local agencies participating in CERS.

### SPRS - (State Police Retirement System)

This system is a single-employer defined benefit pension plan that covers all full-time state troopers employed by the Kentucky State Police.

## HOW WE DIFFER FROM OTHER PUBLIC RETIREMENT SYSTEMS

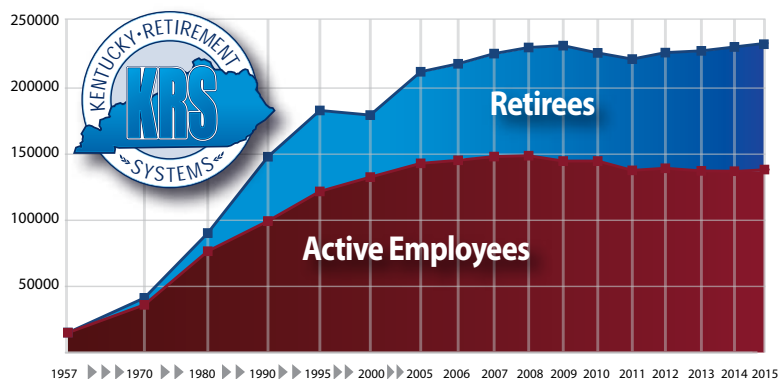
Many other retirement systems have only one pension plan and do not provide insurance plans. KRS administers both Pension and Insurance plans for our members. We manage three Systems, two are further split into Hazardous and Nonhazardous plans.

We maintain three different pension benefit tiers within our defined benefit plans. Each tier resulted from legislation enacted by the Kentucky General Assembly.

Medical Insurance coverage is provided based on the member's initial participation date and length of service. Members receive either a percentage or dollar amount for insurance coverage.



<div> <div>TIER 1</div> <div>TIER 2</div> <div>TIER 3</div> </div>				
Membership Statistics - by Tiers				
	Active	Inactive	Retired	Total
<b>KERS Nonhazardous</b>				
Tier 1	25,560	33,700	38,821	98,081
Tier 2	9,525	7,831	6	17,362
Tier 3	4,204	948	0	5,152
<b>Total</b>	<b>39,289</b>	<b>42,479</b>	<b>38,827</b>	<b>120,595</b>
<b>KERS Hazardous</b>				
Tier 1	2,019	1,977	2,573	6,569
Tier 2	1,175	1,299	2	2,476
Tier 3	738	485	0	1,223
<b>Total</b>	<b>3,932</b>	<b>3,761</b>	<b>2,575</b>	<b>10,268</b>
<b>CERS Nonhazardous</b>				
Tier 1	48,985	54,921	48,503	152,409
Tier 2	22,844	16,151	12	39,007
Tier 3	11,140	1,893	0	13,033
<b>Total</b>	<b>82,969</b>	<b>72,965</b>	<b>48,515</b>	<b>204,449</b>
<b>CERS Hazardous</b>				
Tier 1	6,280	1,601	6,388	14,269
Tier 2	2,167	485	1	2,653
Tier 3	741	56	0	797
<b>Total</b>	<b>9,188</b>	<b>2,142</b>	<b>6,389</b>	<b>17,719</b>
<b>SPRS</b>				
Tier 1	658	180	1,323	2,161
Tier 2	180	55	1	236
Tier 3	102	22	0	124
<b>Total</b>	<b>940</b>	<b>257</b>	<b>1,324</b>	<b>2,521</b>
<b>KERS TOTALS</b>				
Tier 1	83,502	92,379	97,608	273,489
Tier 2	35,891	25,821	22	61,734
Tier 3	16,925	3,404	0	20,329
<b>Total</b>	<b>136,318</b>	<b>121,604</b>	<b>97,630</b>	<b>355,552</b>



### Membership Statistics

	ACTIVE MEMBERSHIP		RETIRED MEMBERSHIP	
	Average Age	Average Salary	Average Age	Average Annual Benefit Payment
KERS Nonhazardous	45	\$39,539	68	\$22,215
KERS Hazardous	40.7	\$33,114	63.5	\$15,943
CERS Nonhazardous	48	\$28,406	69.7	\$11,611
CERS Hazardous	39.1	\$52,730	61.2	\$27,259
SPRS	36.8	\$48,842	61.9	\$40,121

## KRS Fiscal Year 2015 FAST FACTS

74,697 Retiree Healthcare Plan Holders	704 Disability Applications
11,381 Member Office Visits	Call Center 253,759 Inbound Calls
7,137 New Retirements	8,646 YouTube Views
15,245 Benefit Estimates	Over 3,000 Facebook Followers
7,324 Service Purchase Estimates	KRS Website 1,268,454 Views
	Field Visits 6,750

# EVOLUTION of Benefits

*Legislative changes - how they have impacted the plans*

Twenty years ago, KRS managed simplistic single-tiered pension and insurance plans for each system. Today, we administer complex multi-tiered pension and insurance plans. During this same period, our membership has nearly doubled.

**TIER 1**

**Members participating before September 1, 2008**

Tier 1 is a defined benefit plan because it uses a specific formula to determine benefits and the assets of the plan remain in a single investment pool.

**TIER 2**

**Members participating on or after September 1, 2008 through December 31, 2013**

In 2008, House Bill 1 was passed modifying the benefits for those hired on or after September 1, 2008. It still remained a Defined Benefit Plan but some restrictions were added.

## Requirements for Retirement

### Nonhazardous

- Age 65 or older with 1+ month of service credit.
- Any age with 27+ years of service credit.

*The requirements for a Reduced Benefit are:*

- Prior to age 65 with at least 25 but less than 27 years of service credit.
- Age 55 with at least 5 years of service credit.

### Hazardous

- Age 55 or older with 1+ month of service credit.
- Any age with 20+ years of service credit.

- Age 50 with 15, but less than 20, years of service credit.

### Nonhazardous

- Age 65 or older with 5+ years of service credit.
- Rule of 87  
Age 57+ if age plus service credit equals 87 years.

*The requirements for a Reduced Benefit are:*

- Age 60+ with at least 10 years of service credit.

### Hazardous

- Age 60 or older with 5+ years of service credit.
- Any age with 25+ years of service credit.

- Age 50 with 15 years of service credit.

## Calculating Benefits

Benefits for Tier 1 and 2 are calculated using a formula.



**FINAL Compensation**



**Benefit FACTOR**



**Years of SERVICE**

## Medical Insurance Coverage - Non Medicare and Medicare plans

Participation prior to 7/01/2003

House Bill 290 -  
Participation 7/01/2003 - 8/31/2008

## BENEFIT TIERS

KRS currently administers three different pension benefit tiers within our defined benefit plans. The Hybrid Cash Balance plan was established as a part of Senate Bill 2, enacted by the Kentucky General Assembly during 2013 Regular Session.

A member's tier depends on their initial participation date with KRS. Participation date is when the member began paying contributions and earning service credit with KRS. Please note this date may be different from when the member was hired. Participation date can change the level of pension and health insurance benefits to which the member is entitled, health insurance eligibility, and eligibility to purchase service.



### Members participating on or after January 1, 2014

In 2013, Senate Bill 2 was passed and the plans were redesigned to operate as a Cash Balance Plan for members participating on or after January 1, 2014. This plan is a hybrid plan because it has characteristics of both a defined benefit plan and a defined contribution plan.

#### Nonhazardous

- Age 65 or older with 5+ years of service credit.
- Rule of 87  
Age 57+ if age plus service credit equals 87 years.

#### Hazardous

- Any age with 25+ years of service credit.
- Age 60 with 5+ years of service credit.

No reduced benefit options

Tier 3 uses an Annuity Option with Upside Sharing

House Bill 1 - Participation on or after 9/01/2008

### Upside Sharing Interest

Upside sharing interest is credited to both the member contribution balance and Employer Pay Credit balance. Upside sharing interest is an additional interest credit. Member accounts automatically earn 4% interest annually. The GANIR is calculated on an individual system basis. It is possible that one system may get an upside sharing percentage, and another system would not.

The chart below shows the interest calculated on the members' balances as of June 30, 2014, and credited to each member account on June 30, 2015.

#### 2015 Upside Sharing- (A-B) X 75% = C then C+B=D

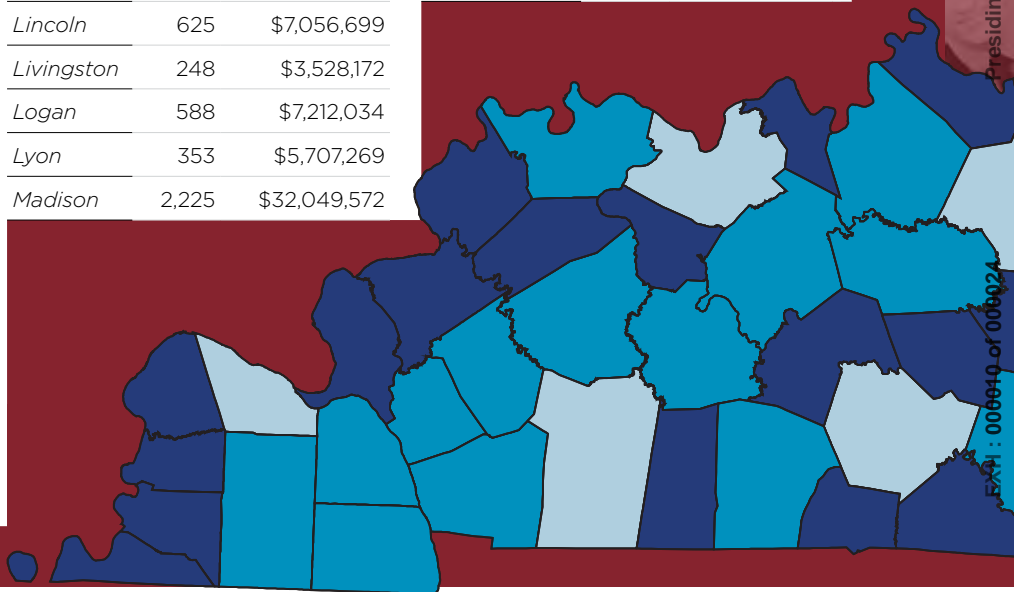
System	A 5 Year Geometric Average Return (GANIR)	B Guarantee Rate	C Upside Sharing Interest	D Interest Rate Earned	Total Interest Credited To Members' Accounts
KERS Nonhazardous	9.04%	4.00%	3.78%	7.78%	\$60,343
KERS Hazardous	9.10%	4.00%	3.83%	7.83%	19,655
CERS Nonhazardous	9.03%	4.00%	3.77%	7.77%	101,587
CERS Hazardous	9.12%	4.00%	3.84%	7.84%	19,870
SPRS	9.12%	4.00%	3.84%	7.84%	*

\* No members in the SPRS received interest as of June 30, 2015 due to the timing of Tier 3 members participation dates.

**GANIR** - A 5 year average geometric investment return, if exceeds 4% then member's account will be credited with 75% of the amount of the returns over 4% on the account balance as of June 30 of the previous year.

## 2015 Total Fiscal Year KRS Pension Benefits Paid by County

County	Payees	Total	County	Payees	Total	County	Payees	Total
Adair	453	\$6,818,083	Grant	585	\$9,529,135	Magoffin	338	\$4,260,996
Allen	376	\$4,233,210	Graves	815	\$11,286,977	Marion	527	\$6,440,781
Anderson	1,341	\$28,904,473	Grayson	668	\$8,741,993	Marshall	819	\$10,583,945
Ballard	218	\$2,733,932	Green	258	\$3,419,585	Martin	247	\$2,366,236
Barren	978	\$13,715,527	Greenup	578	\$7,101,949	Mason	382	\$5,700,535
Bath	358	\$4,709,768	Hancock	217	\$2,563,065	Mccracken	1,498	\$24,636,317
Bell	678	\$9,275,416	Hardin	1,924	\$28,048,716	Mccreary	372	\$3,575,215
Boone	1,548	\$27,442,725	Harlan	577	\$8,206,856	McLean	296	\$3,649,843
Bourbon	525	\$7,455,532	Harrison	442	\$5,694,874	Meade	395	\$4,936,187
Boyd	954	\$14,462,362	Hart	308	\$4,020,863	Menifee	223	\$2,730,494
Boyle	864	\$13,729,020	Henderson	981	\$14,898,060	Mercer	720	\$11,482,694
Bracken	209	\$2,390,361	Henry	923	\$17,746,278	Metcalfe	308	\$3,260,128
Breathitt	456	\$6,200,032	Hickman	117	\$1,676,036	Monroe	234	\$2,447,822
Breckinridge	417	\$5,387,553	Hopkins	1,141	\$15,452,670	Montgomery	598	\$8,108,931
Bullitt	1,301	\$20,514,875	Jackson	292	\$3,554,513	Morgan	579	\$8,622,037
Butler	324	\$3,784,399	Jefferson	16,022	\$301,842,155	Muhlenberg	649	\$6,921,478
Caldwell	527	\$6,856,190	Jessamine	930	\$14,618,467	Nelson	919	\$14,124,267
Calloway	1,030	\$12,554,359	Johnson	587	\$8,283,949	Nicholas	204	\$2,381,781
Campbell	1,382	\$23,327,970	Kenton	2,117	\$38,921,692	Ohio	597	\$5,723,139
Carlisle	120	\$1,447,274	Knott	406	\$5,573,354	Oldham	1,270	\$22,808,005
Carroll	326	\$4,366,567	Knox	548	\$7,643,196	Owen	758	\$10,905,196
Carter	768	\$8,671,213	Larue	338	\$4,668,322	Owsley	214	\$2,731,635
Casey	350	\$4,037,577	Laurel	1,177	\$17,307,170	Pendleton	325	\$4,856,724
Christian	1,552	\$23,745,309	Lawrence	311	\$3,498,761	Perry	720	\$9,675,774
Clark	772	\$11,617,466	Lee	235	\$3,005,469	Pike	1,157	\$15,706,890
Clay	556	\$6,906,647	Leslie	232	\$2,999,267	Powell	363	\$4,180,458
Clinton	244	\$2,638,704	Letcher	565	\$6,819,724	Pulaski	2,102	\$32,376,756
Crittenden	215	\$2,445,240	Lewis	308	\$3,262,626	Robertson	146	\$967,683
Cumberland	184	\$2,357,988	Lincoln	625	\$7,056,699			
Daviess	2,389	\$37,641,584	Livingston	248	\$3,528,172			
Edmonson	208	\$2,641,356	Logan	588	\$7,212,034			
Elliott	179	\$2,075,741	Lyon	353	\$5,707,269			
Estill	369	\$4,529,742	Madison	2,225	\$32,049,572			
Fayette	5,253	\$102,784,270						
Fleming	438	\$6,917,015						
Floyd	840	\$12,129,904						
Franklin	6,901	\$184,449,385						
Fulton	170	\$1,690,280						
Gallatin	117	\$1,856,356						
Garrard	416	\$5,648,687						





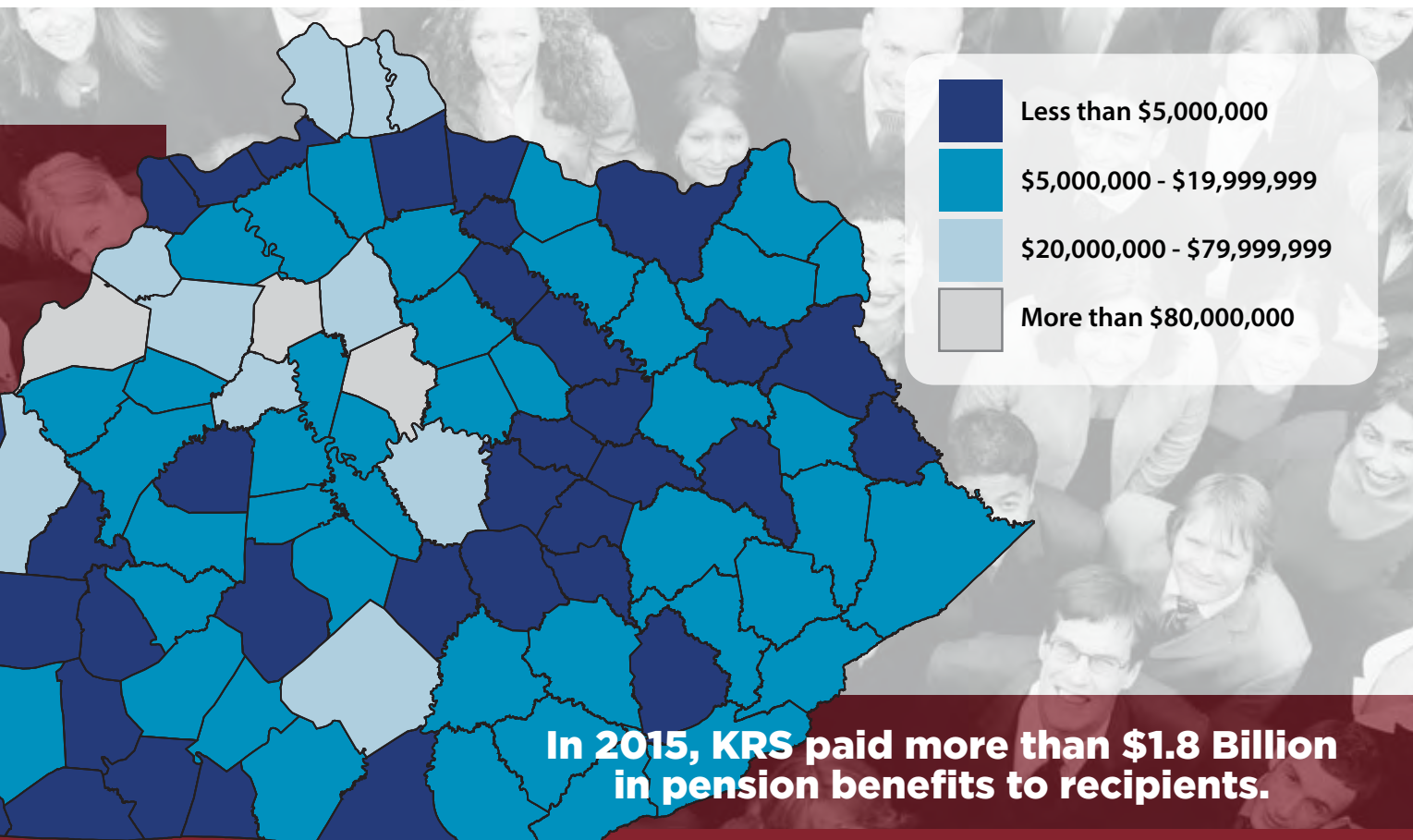
County	Payees	Total
Rockcastle	366	\$4,492,577
Rowan	889	\$13,049,379
Russell	549	\$6,680,470
Scott	1,122	\$20,117,069
Shelby	1,619	\$34,358,575
Simpson	297	\$2,662,275
Spencer	445	\$7,991,484
Taylor	600	\$7,692,621
Todd	261	\$3,082,913
Trigg	508	\$7,140,935
Trimble	269	\$3,404,528
Union	332	\$3,416,218
Warren	2,635	\$40,914,197
Washington	365	\$4,498,264
Wayne	503	\$6,342,507
Webster	330	\$3,737,181
Whitley	965	\$12,825,801
Wolfe	340	\$4,493,958
Woodford	947	\$20,631,450

Pension Benefits paid to retirees and beneficiaries of Kentucky Retirement Systems have a wide ranging impact on the state's economic health. In fiscal year 2015, KRS paid **more than \$1.8 billion** to its recipients. More than 94 percent of these recipients live in Kentucky. Not only do these dollars impact those receiving a benefit, but according to the National Institute of Retirement Security (NIRS), **each \$1.00 paid out in pension benefits supported \$1.67 in total economic activity in Kentucky**. As you can see in the chart, each county in the Commonwealth is impacted by pension benefits, and in an unsteady economy, the consistent addition of pension funds into the economy is a stabilizing element.

### 2015 Total Fiscal Year Retirement Pension Payments

	Payees	%	Payments
Kentucky Total	104,249	94.25%	\$1,704,727,909
Out of State	7,035	5.75%	\$104,309,612
<b>Grand Total</b>	<b>111,284</b>	<b>100.00%</b>	<b>\$1,809,037,521</b>

\* This table represents all payees receiving a monthly payment during the fiscal year.



# Who Participates

## Principal Participating Employers in KERS

Participating Employer	Rank	Covered Employees	% of Total System
Department For Community Based Services	1	4,427	10.01%
Department Of Highways	2	3,965	8.96%
Department Of Corrections	3	3,787	8.56%
Judicial Department Administrative Office Of The Courts	4	1,371	3.10%
Department Of Juvenile Justice	5	1,308	2.96%
Bluegrass ORG	6	1,044	2.36%
Department for Behavioral Health Developmental Intellectual Disabilities	7	950	2.15%
Eastern Kentucky University	8	938	2.12%
Kentucky State Police	9	938	2.12%
Department Of Revenue	10	903	2.04%
All Others		24,601	55.62%
<b>Total</b>		<b>44,232</b>	<b>100%</b>

## Schedule of Participating Employers in KERS

Agency Classification	Number of Agencies	Number of Employees
County Attorneys	62	329
Health Departments	60	2,727
Master Commissioner	33	78
Non-P1 State Agencies	39	1,356
Other Retirement Systems	2	290
P1 State Agencies	139	31,972
Regional Mental Health Units	12	3,087
Universities	7	4,393
<b>Total</b>	<b>354</b>	<b>44,232</b>

## Schedule of Participating Employers in CERS

Agency Classification	Number of Agencies	Number of Employees
Airport Boards	5	526
Ambulance Services	20	416
Area Development Districts	14	723
Boards of Education	173	48,385
Cities	220	10,072
Community Action Agencies	21	2,675
Conservation Districts	47	58
County Attorneys	75	626
County Clerks	16	596
Development Authorities	6	11
Fire Departments	38	783
Fiscal Courts	118	11,049
Health Departments	1	318
Housing Authorities	42	434
Jailers	2	31
Libraries	86	1,230
Other Retirement Systems	2	3
P1 State Agencies	4	1,637
Parks and Recreation	7	66
Planning Commissions	16	222
Police Departments	2	16
Riverport Authorities	5	73
Sanitation Districts	9	351
Sheriff Departments	12	778
Special Districts & Boards	50	1,424
Tourist Commissions	23	171
Urban Government Agencies	2	6,799
Utility Boards	120	3,886
<b>Total</b>	<b>1,136</b>	<b>93,378</b>



## Top 10 Participating Employers in CERS

Participating Employer	Rank	Covered Employees	% of Total System
Jefferson County Board Of Education	1	6,614	7.08%
Louisville Jefferson County Metro Government	2	5,217	5.59%
Fayette County Board Of Education	3	1,916	2.05%
Judicial Department Administrative Office Of The Courts	4	1,637	1.75%
Lexington Fayette Urban County Government	5	1,582	1.69%
Pike County Board Of Education	6	1,144	1.23%
Boone County Board Of Education	7	1,134	1.21%
Hardin County Board Of Education	8	1,022	1.09%
Bullitt County Board Of Education	9	981	1.05%
Warren County Board Of Education	10	896	0.96%
All Others		71,235	76.29%
<b>Total</b>		<b>93,378</b>	<b>100%</b>

## Schedule of Participating Employers in SPRS

Kentucky State Police - Uniformed Officers	1	948
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**TOTAL PARTICIPATING EMPLOYERS 1,491**

## HOW MEMBERS' BENEFITS ARE FUNDED

**Benefits are funded by three sources.**

01

### EMPLOYEE CONTRIBUTION

The contribution rate is set by State statute.

02

### EMPLOYER CONTRIBUTION

An amount paid by the employer participating in KRS (state and local government agencies). All employer rates are set each year by the KRS Board of Trustees based on actuarial valuations and recommendations; however, the KERS and SPRS employer rates are subject to final adoption by the Kentucky General Assembly in the biennial state budget legislation.

03

### INVESTMENT RETURNS

This represents the largest portion of every benefit dollar paid. Each System has its own asset base from which each system's benefits are drawn. KRS follows a policy of thoughtfully growing our asset base while protecting against undue risk and losses in any particular investment area.

	Employer Contribution Rates			
	PENSION		INSURANCE	
	FY2015	FY2014	FY2015	FY2014
KERS Non Haz	30.84%	17.29%	7.93%	9.50%
KERS Haz	16.37%	14.89%	9.97%	17.32%
CERS Non Haz	12.75%	13.74%	4.92%*	5.15%*
CERS Haz	20.73%	21.77%	13.58%*	13.93%*
SPRS	53.90%	39.50%	21.86%	31.65%

\* Final rate as a result of the 10 year phase-in of increases to the insurance rate.

# FINANCIAL HIGHLIGHTS

## Management's Discussion & Analysis

Additional information and footnotes are included in the Comprehensive Annual Financial Report (CAFR) which can be viewed online at [KYRET.KY.GOV](http://KYRET.KY.GOV)

### Pension Funds

» The combined net position of all pension funds administered by Kentucky Retirement Systems (KRS) decreased by \$369.4 million during fiscal 2015. While all systems ended with a net decrease in net position, the Kentucky Employees Retirement System (KERS) Nonhazardous plan had the largest decline of \$250.5 million. Although net investment returns were 2.38% for KERS Nonhazardous, they only partially offset the net benefits outflow of \$291.3 million.

» Total contributions reported for fiscal 2015, totaled \$1,322.9 million compared to \$1,055.7 million in fiscal 2014. This increase is due to a rise in the employer contribution rates, the collection of additional health insurance contributions, and the proceeds of Bank of America settlement of \$23.0 million. The member health insurance contribution totaled \$12.6 million, for the fiscal year ended June 30, 2015, compared to \$12.4 million in the prior fiscal year.

» The net depreciation in the fair value of investments was \$14.8 million for the fiscal year ended June 30, 2015 compared to net appreciation of \$1,361.9 million for the prior fiscal year. This \$1.4 billion decrease was due to unfavorable market conditions. Unrealized losses were the primary cause of the decrease, as KRS moved from an unrealized gain in fiscal 2014 of \$489 million to an unrealized loss in fiscal 2015 of \$557 million. Realized gains decreased to \$542 million, slightly below prior year's realized gains of \$873 million.

» Interest, dividend and net securities lending income for fiscal 2015 was \$300.7 million compared to \$327.5 million in fiscal 2014. The decrease was related to less private equity dividend capitalization and a reduced asset base.

» Pension benefits paid to retirees and beneficiaries for fiscal 2015 totaled \$1,832.8 million compared to \$1,769.8 million in fiscal 2014. Refund of contributions paid to former members upon termination of employment for fiscal 2015 totaled \$32.9 million compared to \$33.6 million in fiscal 2014.

» 2015 administrative expense totaled \$33.2 million (Pension \$31.0 million; Insurance \$2.2 million) compared to \$34.2 million (Pension \$32.6 million; Insurance \$1.6 million) for the prior year.

### Insurance Fund

» The combined net position of the insurance fund administered by KRS increased by \$92.5 million during fiscal 2015. Total combined net position for the fiscal year was \$4.25 billion. All but one system ended with a net increase in net position. SPRS ended the fiscal year with a net decrease of \$244,000.

» Employer contributions of \$343.6 million were received in fiscal 2015 compared to \$397.4 million in fiscal 2014. Total contributions declined 12.9% primarily due to a decrease in employer contribution rates across all systems. A decrease in insurance premiums and the Medicare drug reimbursement added to the decline as well, which is a result of less retirees covered under the self-insured program.

» The reimbursement of retired-reemployed health insurance for fiscal 2015 totaled \$8.8 million compared to \$5.6 million in the prior fiscal year. This is due to an upward trend of retirees returning to the workforce.

» Interest, dividend and net securities lending income for fiscal 2015 was \$100.5 million compared to \$97.1 million in fiscal 2014.

» The net appreciation in the fair value of investments for fiscal 2015 was \$3.9 million compared to net appreciation of \$445.7 million for the prior fiscal year, due to unfavorable market conditions. Overall investment income decreased by \$450.7 million. Unrealized losses were the primary cause of the decrease as KRS moved from an unrealized gain in the prior fiscal year of \$288 million to an unrealized loss in fiscal 2015 of \$126 million. Realized gains decreased to \$130 million, slightly below prior fiscal year's realized gains of \$158 million.

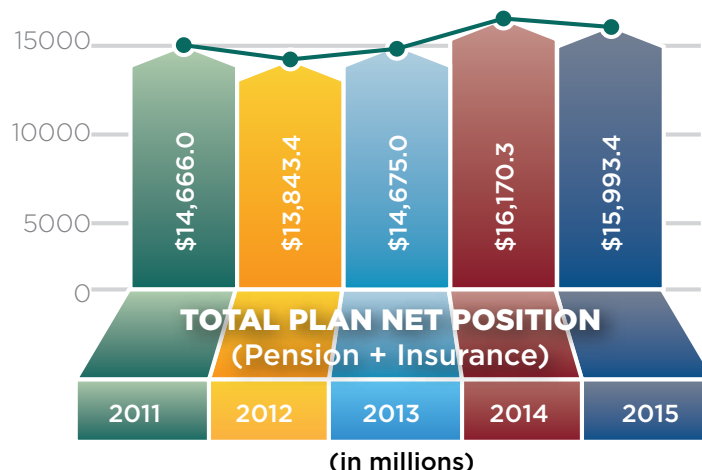


Table 1. Plan Net Position (in Millions)

Pension Funds				Insurance Fund			Total		
Assets	2015	2014	2013	2015	2014	2013	2015	2014	2013
Cash & Investments	\$12,217.5	\$12,758.2	\$12,431.7	\$4,451.2	\$4,392.4	\$3,992.1	\$16,668.7	\$17,150.6	\$16,423.8
Receivables	459.2	750.2	136.1	148.1	289.3	49.1	607.3	1,039.5	185.2
Equip/Int Assets, net of dep/amort.	9.9	10.5	16.1	-	-	-	9.9	10.5	16.1
<b>Total Assets</b>	<b>12,686.6</b>	<b>13,518.9</b>	<b>12,583.9</b>	<b>4,599.3</b>	<b>4,681.7</b>	<b>4,041.2</b>	<b>17,285.9</b>	<b>18,200.6</b>	<b>16,625.1</b>
<b>Total Liabilities</b>	<b>(1,040.1)</b>	<b>(1,503.0)</b>	<b>(1,430.8)</b>	<b>(352.4)</b>	<b>(527.3)</b>	<b>(519.3)</b>	<b>(1,392.5)</b>	<b>(2,030.3)</b>	<b>(1,950.1)</b>
<b>Plan Net Position</b>	<b>\$11,646.5</b>	<b>\$12,015.9</b>	<b>\$11,153.1</b>	<b>\$4,246.9</b>	<b>\$4,154.4</b>	<b>\$3,521.9</b>	<b>\$15,893.4</b>	<b>\$16,170.3</b>	<b>\$14,675.0</b>

Table 2. Changes in Plan Net Position (in Millions)

Pension Funds				Insurance Fund			Total		
Additions	2015	2014	2013	2015	2014	2013	2015	2014	2013
Member Cont.	\$298.5	\$275.0	\$276.3	-	-	-	\$298.5	\$275.0	\$276.3
Employer Cont.	985.9	768.3	741.8	\$343.6	\$397.4	\$447.3	1,329.5	1,165.7	1,189.1
Health Ins. Cont.	12.6	12.4	9.1	-	-	-	12.6	12.4	9.1
Pension Spiking Cont.	2.9	-	-	-	-	-	2.9	-	-
BOA Settlement	23.0	-	-	-	-	-	23.0	-	-
Premiums Rec'd	-	-	-	0.9	2.4	26.3	0.9	2.4	26.3
Retired Remp Ins.	-	-	-	8.8	5.6	5.8	8.8	5.6	5.8
Medicare Subsidy	-	-	-	-	-	11.2	-	-	11.2
Invest. Inc. (net)	204.4	1,643.0	1,140.8	76.4	527.1	313.6	280.8	2,170.1	1,454.4
Total Additions	1,527.3	2,698.7	2,168.0	429.7	932.5	804.2	1,957.0	3,631.2	2,972.2
<b>Deductions</b>									
Benefit Payments	1,832.8	1,769.7	1,706.2	-	-	-	1,832.8	1,769.7	1,706.2
Refunds	32.9	33.6	32.2	-	-	-	32.9	33.6	32.2
Administrative Ex.	31.0	32.6	30.5	2.2	1.6	9.8	33.2	34.2	40.3
Healthcare Costs	-	-	-	335.0	298.4	361.9	335.0	298.4	361.9
Total Deductions	1,896.7	1,835.9	1,768.9	337.2	300	371.7	2,233.9	2,135.9	2,140.6
<b>Increase (Decrease) in Plan Net Position</b>	<b>(\$369.4)</b>	<b>\$862.8</b>	<b>\$399.1</b>	<b>\$92.5</b>	<b>\$632.5</b>	<b>\$432.5</b>	<b>(\$276.9)</b>	<b>\$1,495.3</b>	<b>\$831.6</b>

Table 3. Investment Income (Loss) for Pension Funds (in Millions)

Asset	2015	2014	2013
Increase (Decrease) in fair value of investments	(\$557)	\$489	\$426
Investment income net of investment expense	219	281	250
Gain on sale of investments	542	873	465
<b>Net Investment Income</b>	<b>\$204</b>	<b>\$1,643</b>	<b>\$1,141</b>

Table 4. Investment Income (Loss) for Insurance Fund (in Millions)

Asset	2015	2014	2013
Increase (Decrease) in fair value of investments	(\$126)	\$288	\$125
Investment income net of investment expense	72	81	81
Gain on sale of investments	130	158	108
<b>Net Investment Income</b>	<b>\$76</b>	<b>\$527</b>	<b>\$314</b>

Schedule of Administrative Expenses (in Thousands)

	2015	2014	2013
Total Pension Fund Administrative Expenses	31,020	32,593	30,581
Total Insurance Fund Administrative Expenses	2,180	1,614	9,758
<b>Total Administrative Expenses</b>	<b>\$33,200</b>	<b>\$34,207</b>	<b>\$40,339</b>



# INVESTMENT HIGHLIGHTS

Additional information and footnotes are included in the Comprehensive Annual Financial Report (CAFR) which can be viewed online at [KYRET.KY.GOV](http://KYRET.KY.GOV)



## Investment Policies

Visit <https://kyret.ky.gov/investments>

to read our Statement of Investment policy. Other policies include Brokerage, Securities Trading, Placement Agents, Proxy Voting and more.

## U.S Economy Strong ... *will it be dragged down by economic weakness worldwide?*

In a world starved for economic growth, the United States continues to be one of the few bright spots. As such, investors continue to look favorably upon U.S. private and public equity markets as well as real estate. The U.S. stock market provided a solid return for the fiscal year, evidenced by the Russell 3000 Index return of 7.25%; however, this was a drop off from the prior two fiscal years.

During the fiscal year, several geopolitical and macro events occurred pointing to a struggling global economy. One of the few bright spots outside of the U.S. was found in the European economy which is no longer shrinking, but experiencing modest growth (2.0%). Greece continued to affect the world stock markets as it worked through its debt problems and fears of contagion persisted. In an attempt to fight its way out of a twenty-five year deflationary environment, Japan's central bank pumped an unprecedented amount of liquidity into its economy. Some debate exists as to whether China is experiencing a property bubble, and if so, to what extent and affects, if any, it may have on the overall economy. Additionally, as it relates to property values in China; there is some speculation that their banking system, specifically those like the U.S. community and regional banks, may be under stress associated with overbuilding.

As China's economy transitions from one of an infrastructure build-out to one more consumer driven, its consumption (ie. demand) for commodities of all types has slowed, and as a major consumer of such has led to a significant decline in commodity values. This decline combined with an already strengthening U.S. Dollar has really stressed emerging market economies; as a result, emerging market equities were the worst performing asset class for the fiscal year. Because many emerging economies are so dependent on the commodity and agricultural markets continued headwinds are forecasted until global demand recovers.

Global Fixed Income was not a meaningful contributor to performance this year. The fiscal year started poorly for credit sensitive fixed income due to the sell-off in oil, which led to a decrease in the price of bonds issued by any energy related company. Energy companies made up approximately 20% of high yield indices, heavily influencing their performance for the year. Credit sensitive fixed income recovered in the second half of the fiscal year, but not enough so to push the sector into positive territory for the year.

To sum up, the U.S. has been in recovery for some time now. Europe continues to struggle to get a foothold witnessed by modest growth, while emerging countries are left wanting. A global economy starved for growth is turning to the U.S. as its safe haven to pull the rest of the world along. It remains to be seen who will influence whom.

## INVESTMENT OBJECTIVES

The investment objectives of the portfolios are to produce results that exceed the stated goals over both short-term and long-term periods.

**Shorter-Term** (*5 years and less*): The returns of the particular asset classes of the managed funds of the Systems, measured on a year-to-year basis, should exceed the returns achieved by a policy benchmark portfolio composed of comparable unmanaged market indices.

**Medium-Term** (*5 to 30 years*): The returns of the particular asset classes of the managed funds of the Systems, measured on a rolling year basis, should exceed the returns achieved by a policy benchmark portfolio composed of comparable unmanaged market indices and perform above median in an appropriate peer universe, if there is one.

**Longer-Term**: The total assets of the Systems should achieve a return measured over 30 to 40 years which exceeds the actuarially required rate of return of 7.75% while also exceeding the return achieved by its total fund benchmark. (Note: The actuarially required rate of return was lowered to 7.5% effective July 1, 2015.)

In keeping with the Board of Trustees' fiduciary responsibility, where all else equal, the Board encourages the investment of the Systems' assets in securities of corporations that provide a positive contribution to the economy of the Commonwealth of Kentucky.

## INVESTMENT STRATEGIES

### Diversification

KRS portfolios are diversified on several levels. Portfolios are diversified through the use of multiple asset classes. Asset allocations are revisited on a periodic basis and represent an efficient allocation to achieve overall return and risk characteristics. The individual asset classes are diversified through the use of multiple portfolios that are managed both by the Investment Division Staff and by external investment advisors. Finally, portfolios within each of the asset classes are diversified through both investment styles and the selection of individual securities. Each portfolio advisor is afforded discretion to diversify its portfolio(s) within the parameters established by the Board of Trustees.

### Rebalancing

Proper implementation of the investment policy requires that a periodic adjustment, or rebalancing, of assets be made to ensure conformance with KRS' Statement of Investment Policy target levels. Such rebalancing is necessary to reflect sizeable cash flows and performance imbalances among asset classes and investment advisors.

### Investments Performance Review Procedures

At least once each quarter, the Investment Committee, on behalf of the Board of Trustees, reviews the performance of the portfolio for determination of compliance with the Statement of Investment Policy. The investment Committee also reviews a report created and presented by the KRS Compliance Officer who is part of the independent internal Audit Department.

### Investment Consulting

The Board employs industry leading external consultants to assist in determining and reviewing the asset allocation guidelines and the performance of both the internally managed and externally managed assets.

## ASSET ALLOCATION BY SYSTEM

KRS creates a specific investment strategy for each of the ten (10) managed portfolios. An asset liability study is conducted every five (5) years to determine the optimal asset allocation required to meet each systems' long-term goals. Asset allocation is the single most influential factor to an investment strategy's performance. Therefore, individual plans' performance may vary as a result of different asset allocations and cash flow needs to fund benefit payments.

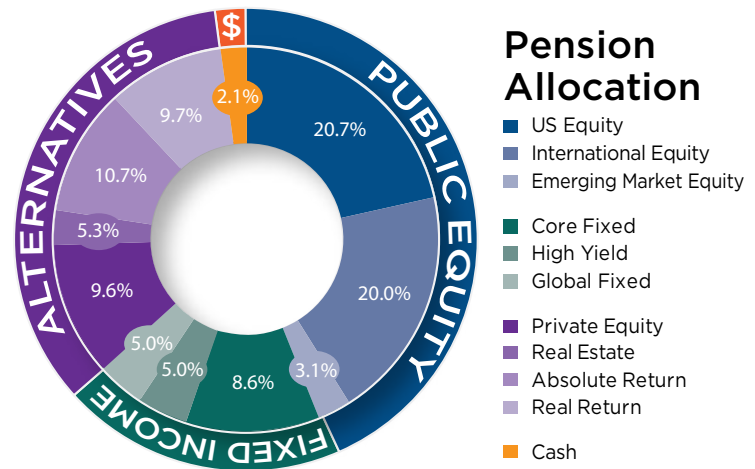
## LONG-TERM RESULTS:

For the 10-years ended June 30, 2015, the KRS pension fund portfolio earned an annualized total net return of 6.05% versus the benchmark annualized return of 6.30%.

## Pension Investment Performance

For the fiscal year ended June 30, 2015, the KRS pension fund produced a net return of 2.01%, underperforming its benchmark return of 3.13%, as well as the actuarially required rate of return of 7.75%. It should be noted that the actuarially required rate is an annualized return that may not be met, or possibly greatly surpassed in any given year; this objective has been met over the long-term.

The underperformance of the pension fund can primarily be attributed to relative weak performance in the U.S. and Emerging Market spaces, combined with relative underperformance within several asset classes. Both the overweight to credit versus interest rate sensitive securities within the Fixed Income portfolio and overweight to debt within the Real Estate portfolio hampered performance. The solid absolute returns provided by the Private Equity allocation, combined with the downside protection offered by the Non-US Equity portfolio bolstered returns for the period.



## Net Returns By Allocation - Pension Funds

Structure	Inception	Market Value	% of	1 Year		3 Years		5 Years		10 Years		Inception To Date	
		(Millions)	Total	KRS	Index	KRS	Index	KRS	Index	KRS	Index	KRS	Index
Total Fund	4/1/1984	\$ 11,488.01	100%	2.01	3.13	9.32	9.64	9.18	9.85	6.05	6.30	9.35	9.49
Total Public Equity	4/1/1984	5,033.56	43.82	0.68	0.64	13.33	13.13	11.67	12.31	6.40	6.17	10.79	10.64
US Equity	4/1/1984	2,376.88	20.69	6.04	7.29	17.15	17.73	16.90	17.52	8.18	8.27	11.39	11.37
International	7/1/2000	2,296.21	19.99	-3.99	-4.85	10.62	9.92	6.85	8.35	5.35	5.46	2.56	3.13
EQ Emerging Markets	7/1/2011	360.47	3.14	-6.66	-4.77	3.58	4.08	-	-	-	-	0.37	-1.26
Fixed Income	4/1/1984	2,145.36	18.67	1.44	1.61	3.70	2.33	5.02	3.85	4.88	4.60	7.82	7.54
Real Return	7/1/2011	1,110.47	9.67	-3.98	-2.86	1.29	2.32	-	-	-	-	3.86	2.91
Absolute Return	4/1/2010	1,231.94	10.72	5.49	6.08	8.71	6.43	6.59	4.15	-	-	5.75	3.97
Real Estate	7/1/1984	620.82	5.34	7.85	12.40	9.30	11.60	11.42	13.44	6.03	6.00	5.73	6.21
Private Equity	7/1/2002	1,104.58	9.62	9.61	9.61	14.33	14.33	13.83	13.83	8.74	10.73	11.25	10.87
Cash Account	1/1/1988	241.28	2.10	0.16	0.02	0.36	0.05	0.35	0.06	1.91	1.34	3.87	3.42

Note: Market values are adjusted for accruals and expenses

## Net Returns By System - Pension Fund

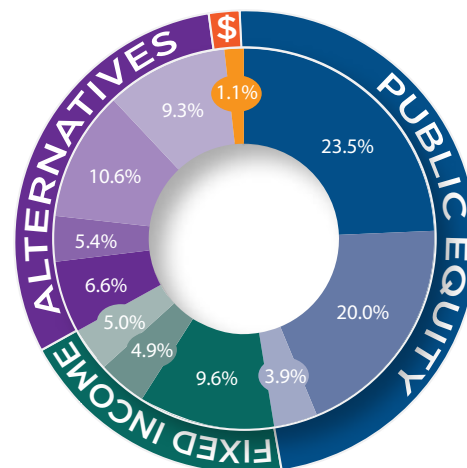
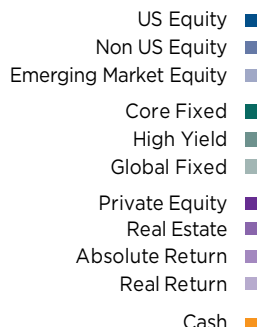
Plan	Market Value	% of Total	1 Year		3 Years		5 Years		GANIR	10 Years		Inception To Date	
(Millions)			KRS	Index	KRS	Index	KRS	Index		KRS	Index	KRS	Index
KERS	\$2,256.12	19.6%	2.38	2.73	9.43	9.52	9.25	9.78	9.04	6.09	6.26	9.36	9.48
KERS HAZ	548.75	4.8%	1.87	2.38	9.3	9.52	9.17	9.78	9.10	6.05	6.26	9.34	9.48
CERS	6,382.18	55.6%	1.92	2.3	9.28	9.5	9.16	9.77	9.03	6.04	6.26	9.34	9.48
CERS HAZ	2,063.51	18.0%	1.96	2.32	9.28	9.51	9.16	9.77	9.12	6.04	6.26	9.34	9.48
SPRS	237.44	2.1%	1.87	2.35	9.29	9.49	9.17	9.77	9.12	6.05	6.25	9.34	9.48
Total	\$11,488.00	100.0%	2.01	3.13	9.32	9.64	9.18	9.85		6.05	6.3	9.35	9.49



## Insurance Investment Performance

The KRS insurance fund gained 1.86% net of expenses for the fiscal year ended June 30, 2015, compared to the benchmark's 3.79% return and the actuarially required rate of 7.75%. The insurance fund suffered from the same root causes of underperformance as the pension fund. The slight relative underperformance of the insurance fund versus the pension fund was due primarily to a greater allocation to emerging market equities, a weaker performing asset class, and a lower allocation to private equity, one of the better performing asset classes during the period.

## Insurance Allocation



## Net Returns By Allocation- Insurance Fund

Structure	Inception	Market Value (Millions)	% of Total	1 Year		3 Years		5 Years		10 Years		Inception To Date	
				KRS	Index	KRS	Index	KRS	Index	KRS	Index	KRS	Index
<b>Total Fund</b>	<b>4/1/1987</b>	<b>\$4,213.51</b>	<b>100%</b>	<b>1.86</b>	<b>3.79</b>	<b>8.82</b>	<b>9.86</b>	<b>9.33</b>	<b>11.09</b>	<b>5.52</b>	<b>6.02</b>	<b>7.47</b>	<b>7.91</b>
<b>Total Public Equity</b>	7/1/1992	1,997.66	47.41	0.93	0.70	13.22	12.98	11.34	12.18	6.08	5.88	8.76	8.58
US Equity	7/1/1992	991.84	23.54	6.28	7.29	17.07	17.73	16.72	17.42	7.84	8.11	9.53	9.36
International	7/1/2000	841.61	19.97	-4.17	-4.85	10.38	9.92	6.32	8.29	5.40	5.10	2.57	2.12
EQ Emerging Markets	7/1/2011	164.20	3.90	-6.74	-4.77	3.59	4.08	-	-	-	-	0.39	-1.26
<b>Fixed Income</b>	7/1/1992	824.48	19.57	0.16	1.61	3.01	2.33	4.65	4.30	4.91	4.64	6.62	6.46
Real Return	7/1/2011	393.47	9.34	-3.90	-2.77	0.85	2.35	-	-	-	-	3.51	2.93
Absolute Return	4/1/2010	227.44	5.40	5.55	6.08	8.67	6.43	6.59	4.15	-	-	5.64	3.97
Real Estate	5/1/2009	447.18	10.61	7.79	12.40	8.42	11.60	11.76	13.44	-	-	8.64	4.53
Private Equity	7/1/2002	276.55	6.56	14.56	14.56	15.85	15.85	15.66	15.66	9.14	10.17	9.44	10.16
Cash Account	7/1/1992	46.74	1.11	0.21	0.02	0.31	0.05	0.28	0.06	1.74	1.34	2.88	2.75

Note: Market values are adjusted for accruals and expenses

## Net Returns By System - Insurance Fund

Plan	Market Value (Millions)	% of Total	1 Year		3 Years		5 Years		10 Years		Inception To Date	
			KRS	Index	KRS	Index	KRS	Index	KRS	Index	KRS	Index
KERS	\$653.93	15.5%	1.44	2.39	8.5	9.48	9.13	10.87	5.42	5.91	7.44	7.87
KERS HAZ	437.83	10.4%	1.82	2.56	8.88	9.55	9.37	10.91	5.53	5.93	7.48	7.88
CERS	1,906.85	45.3%	1.96	2.68	8.89	9.59	9.37	10.93	5.54	5.94	7.48	7.89
CERS HAZ	1,051.04	24.9%	1.96	2.7	8.89	9.6	9.37	10.94	5.54	5.94	7.48	7.89
SPRS	163.86	3.9%	1.9	2.75	8.88	9.61	9.36	10.95	5.53	5.94	7.48	7.89
<b>Total</b>	<b>\$4,213.51</b>	<b>100.0%</b>	<b>1.86</b>	<b>3.79</b>	<b>8.82</b>	<b>9.86</b>	<b>9.33</b>	<b>11.09</b>	<b>5.52</b>	<b>6.02</b>	<b>7.47</b>	<b>7.91</b>

## Total Portfolio - Actual vs Benchmarks

Asset	Index	Pension Funds			Insurance Fund		
		Actual	Benchmark	Difference	Actual	Benchmark	Difference
US Equity	Russell 3000	20.69%	20.50%	↑.19%	23.54%	20.00%	↑3.54%
International	MSCI ACWI ex US GD	19.99%	20.0%	↓.01%	19.97%	20.00%	↓.03%
EQ Emerging Markets	MSCI Emerging Markets GD	3.14%	2.90%	↑.24%	3.90%	4.00%	↓.10%
Fixed Income	Barclays Capital US Universal	18.67%	19.30%	↓.66%	19.57%	20.00%	↓.63%
Real Return	CPI + 300 bps	9.67%	10.00%	↓.33%	9.34%	10.00%	↓.66%
Absolute Return	HFR FOF: Diversified Lagged (1 month)	10.72%	10.00%	↑.78%	5.40%	10.00%	↓.60%
Real Estate	NCREIF Open-End Diversified Core GR	5.34%	4.50%	↑.84%	10.61%	5.00%	↑5.61%
Private Equity	Russell 3000 Quarter Lagged + 400 bps	9.62%	10.00%	↓.38%	6.56%	10.00%	↓4.44%
Cash Account	CG 3-Mo U.S. Treasury Bill	2.10%	2.80%	↓.70%	1.11%	1.00%	↑.11%

Note: The above table demonstrates the long-term benchmark allocations of the Funds.

## Investment Expenses

KRS incurs various fees and expenses to manage Investment portfolios. These include Commissions Paid and external Investment fees/expenses (ex: advisory fees, stock loan fees, managerial fees, custodial expense, taxes, insurance). The expense charts summarize the Commissions Paid and External Investment Expense by Asset Class. Regarding Private Equity expenses, our 2015 financial statements also provide additional reporting transparency details (see the 2015 CAFR Note W – Investment Fees).

## External Investment Expense - Asset Class

	Pension	Insurance	Total
U.S. Public	\$2,662,459	\$796,367	<b>\$3,458,826</b>
International	5,902,552	1,884,151	<b>7,786,703</b>
Emerging Market	2,147,466	949,049	<b>3,096,515</b>
Fixed Income	8,428,907	2,767,263	<b>11,196,170</b>
Real Return	5,112,008	2,047,470	<b>7,159,478</b>
Absolute Return	5,581,543	1,944,631	<b>7,526,174</b>
Real Estate	6,839,124	2,851,000	<b>9,690,124</b>
Private Equity	42,708,431	13,511,406	<b>56,219,837</b>
Cash	2,030,000	1,000,000	<b>3,030,000</b>
Accruals	92,706	232,922	<b>325,628</b>
Total	<b>\$81,505,195</b>	<b>\$27,984,259</b>	<b>\$109,489,454</b>
Fund Market Value	<b>\$11,488,006,228</b>	<b>\$4,213,508,928</b>	<b>\$15,701,515,156</b>
Percent of Investment Assets	0.709%	0.664%	0.697%

## Schedule of Commissions Paid

	Total Shares	Commissions Paid	\$ Per Share
U.S. Equities	61,537,088	\$1,725,089	0.028
	Total Value of Trades	Commissions Paid	As a % of Trade
International Equities	\$1,631,272,032	\$1,692,477	0.104
Total		<b>\$3,417,566</b>	

The Governmental Accounting Standards Board recognizes that it may not be possible or cost-beneficial to separate certain investments expenses from either the related investment income or the general administrative expenses of the plan. KRS has displayed all investment related fees and expenses identifiable and captured by our custodial bank BNY Mellon and KRS staff.

# ACTUARIAL HIGHLIGHTS

Additional information and footnotes are included in the Comprehensive Annual Financial Report (CAFR) which can be viewed online at [KYRET.KY.GOV](http://KYRET.KY.GOV)

## Annual Actuarial Valuation

### What is an Actuarial Valuation?

An actuarial valuation is an analysis conducted by a certified actuary that requires demographic and economic assumptions to be made in order to determine how much money a pension plan needs to pay future liabilities.

### What is its Purpose?

According to the Government Finance Officers Association: "The purpose of an actuarial valuation is 1) to determine the amount of actuarially determined contributions (i.e. an amount that if contributed consistently and combined with investment earnings would be sufficient to pay promised benefits in full over the long term) and 2) to measure the plan's funding progress."

### Actuarial Assumptions

Actuaries must make assumptions since the future is unknown. Two types of assumptions are used in valuations – demographic and economic. Demographic assumptions concern the characteristics of the plan membership and include such things as rates of retirement, terminations before retirement, disability, and mortality. The two key economic assumptions are rate of return on investments and payroll growth rates. Actuarial assumptions are based on past experience, statistical studies and judgment about expected future experience.

### Employer Contribution Rates

Under Kentucky law, the KRS Board must approve employer contribution rates for each fiscal year based upon an actuarial valuation. Employer contribution rates become effective one year after the valuation date, which is always the last day of a fiscal year.

For each retirement system, KRS administers both a pension and insurance fund. The total employer contribution rate is comprised of a contribution to each fund. Rates consist of the normal cost (the cost

of benefits earned in the year of the valuation) and an amortization payment on the unfunded accrued liability (UAL), which is the difference between the current assets held by the plans and the accrued liability for benefits already earned in past years. The administrative expenses of the plans are also included as a part of the total employer pension fund contribution.

### Funding Levels

The "funded status" or "funding level" is the ratio of current assets to the liabilities owed for benefits already earned. Ideally, pension and insurance plans will have 100% of the assets on hand needed to pay its future liabilities. Each year, the funding levels of the KRS pension and insurance plans are determined by the annual actuarial valuation.

## 2015 Actuarial Valuation Results

**Unfunded Actuarial Accrued Liability** KRS Pension and Insurance Funds had the following Unfunded Actuarial Accrued Liabilities:

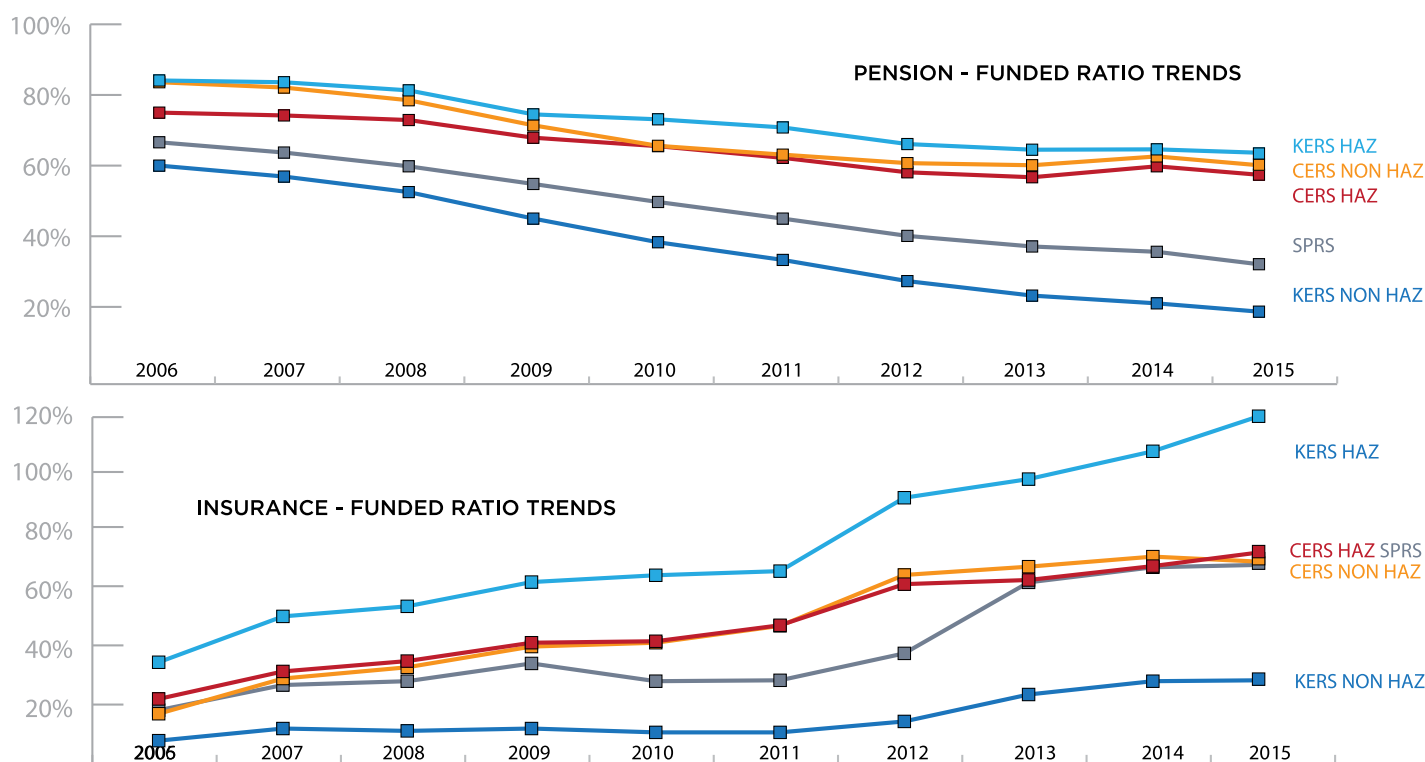
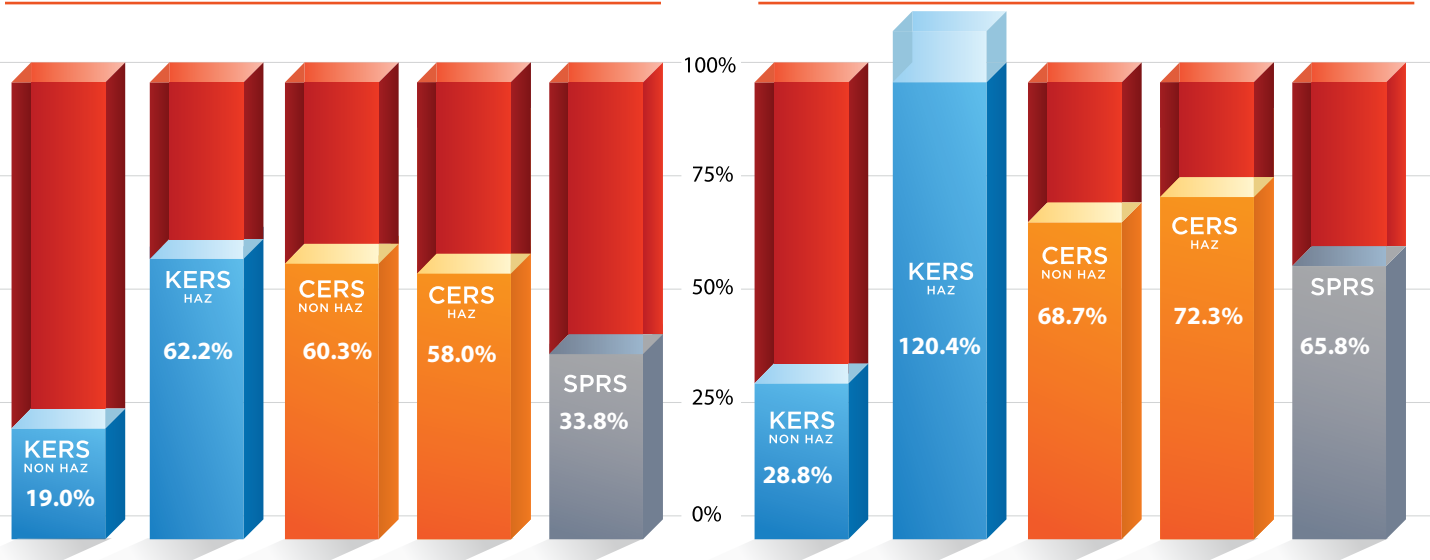
	Pension Fund Unfunded Accrued Liabilities (UAL) as of June 30		Insurance Fund Unfunded Accrued Liabilities (UAL) as of June 30	
System	2015 UAL	Funded Ratio	2015 UAL	Funded Ratio
KERS Non Haz	\$10,008,682,909	19.0%	\$1,718,686,990	28.8%
KERS Haz	338,745,630	62.2%	(76,609,957)	120.4%
CERS Non Haz	4,265,476,908	60.3%	910,370,977	68.7%
CERS Haz	1,516,524,591	58.0%	416,308,115	72.3%
SPRS	485,768,500	33.8%	87,063,770	65.8%
<b>Total</b>	<b>\$16,615,198,538</b>		<b>\$3,055,819,895</b>	
<b>Total Unfunded Actuarial Accrued Liability</b>			<b>\$19,671,018,433</b>	

## Funding Status and Trends

# 2015

### PENSION - FUNDED / UNFUNDED LIABILITY

### INSURANCE - FUNDED / UNFUNDED LIABILITY



### Why are funding levels changing?

**Pension Funds:** In recent years, funding levels for the pension funds have fallen dramatically due to a number of factors, including: higher than expected retirement rates; unfunded Cost of Living Adjustments (COLAs); investment losses including significant market declines in 2000-2002 and again in 2008-2009; and the shortfall in contributions to the KERS and SPRS plans in 15 out of 22 years prior to the 2015 fiscal year.

**Insurance Funds:** Funding levels for the insurance funds over the last 10 years have risen due to a number of factors, including: increased employee contributions and legislative changes.

## Summary of Actuarial Valuation Results

	KERS Non-Haz	KERS Haz	CERS Non-Haz	CERS Haz	SPRS
<b>Recommended Rate Fiscal 2015-2016</b>					
Pension Fund Contribution	38.93%	21.08%	13.95%	21.71%	66.47%
Insurance Fund Contribution	8.35%	2.74%	4.93%	9.79%	18.87%
Recommended Employer Contribution	47.28%	23.82%	18.88%	31.50%	85.34%
<b>Funded Status as of Valuation Date</b>					
<b>PENSION FUND</b>					
Actuarial Liability	\$12,359,672,849	\$895,433,387	\$10,740,325,421	\$3,613,307,547	\$734,156,446
Actuarial Value of Assets	\$2,350,989,940	\$556,687,757	\$6,474,848,513	\$2,096,782,956	\$248,387,946
Unfunded Liability on Actuarial Value of Assets	\$10,008,682,909	\$338,745,630	\$4,265,476,908	\$1,516,524,591	\$485,768,500
Funding Ratio on Actuarial Value of Assets	19.02%	62.17%	60.29%	58.03%	33.83%
Market Value of Assets	\$2,307,858,072	\$550,120,310	\$6,416,853,506	\$2,073,397,045	\$246,968,144
Unfunded Liability on Market Value of Assets	\$10,051,814,777	\$345,313,077	\$4,323,471,915	\$1,539,910,502	\$487,188,302
Funding Ratio on Market Value of Assets	18.67%	61.44%	59.75%	57.38%	33.64%
<b>INSURANCE FUND</b>					
Actuarial Liability	\$2,413,705,252	\$374,904,234	\$2,907,827,440	\$1,504,015,233	\$254,838,710
Actuarial Value of Assets	\$695,018,262	\$451,514,191	\$1,997,456,463	\$1,087,707,118	\$167,774,940
Unfunded Liability on Actuarial Value of Assets	\$1,718,686,990	(\$76,609,957)	\$910,370,977	\$416,308,115	\$87,063,770
Funding Ratio on Actuarial Value of Assets	28.79%	120.43%	68.69%	72.32%	65.84%
Market Value of Assets	\$687,684,080	\$441,626,285	\$1,948,454,097	\$1,061,560,788	\$165,018,209
Unfunded Liability on Market Value of Assets	\$1,726,021,172	(\$66,722,051)	\$959,373,343	\$442,454,445	\$89,820,501
Funding Ratio on Market Value of Assets	28.49%	117.80%	67.01%	70.58%	64.75%
<b>MEMBER DATA</b>					
Number of Active Members	30,056	3,886	80,852	9,172	937
Total Annual Payroll (Active Members) <sup>1</sup>	\$1,544,234,409	\$128,680,130	\$2,296,715,957	\$483,640,601	\$45,764,515
Average Annual Pay (Active Members)	\$39,539	\$33,114	\$28,406	\$52,730	\$48,842
Number of Retired Members & Beneficiaries	42,269	3,758	52,651	8,034	1,460
Average Annual Retirement Allowance	\$20,904	\$15,016	\$11,306	\$25,162	\$37,624
Number of Vested Inactive Members	9,806	460	13,649	708	63
Number of Inactive Members Due a Refund	38,454	4,094	66,530	1,948	362

*1 Annual payroll included in the Summary of Actuarial Valuation Results is based upon the annualized monthly payroll for active members as of the valuation date. The annual payroll recorded in the financial section is based upon the sum of the monthly payroll for active members recorded for each month of fiscal year ending June 30, 2015.*

## Our Mission

*The mission of Kentucky Retirement Systems (KRS) is to build the strength of the trust funds to ensure that adequate resources are available to meet all obligations, while helping members and beneficiaries achieve financial security in retirement. KRS is committed to efficiently and effectively administering the benefit programs established by the General Assembly. Members are current and former government employees or retirees, who either contribute money into our trust funds, or who are receiving pension benefits, or who will receive benefits or a refund of contributions in the future.*



### **Kentucky Retirement Systems**

1260 Louisville Rd, Frankfort, KY 40601

(502) 696-8800 or (800) 928-4646 • Fax: (502) 696-8822

**Website:** <https://kyret.ky.gov>

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Document Prepared By KRS Communications Division



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

ANDY BESHEAR  
ATTORNEY GENERAL

**OAG 16-004**

CAPITOL BUILDING, SUITE 118  
700 CAPITOL AVENUE  
FRANKFORT, KENTUCKY 40601  
(502) 696-5300  
FAX: (502) 564-2894

May 17, 2016

*Subject:* Whether the Governor may remove a Kentucky Retirement Systems trustee at will prior to the expiration of the trustee's appointed term, and whether a particular appointee to the Kentucky Retirement Systems Board of Trustees is qualified for that appointment

*Requested by:* William A. Thielen, Executive Director  
Kentucky Retirement Systems

*Written by:* Matt James  
Assistant Attorney General

*Syllabus:* The Governor may not remove a Kentucky Retirement Systems trustee at will prior to the expiration of the trustee's appointed term. The Governor's recent appointee to the Kentucky Retirement Systems Board of Trustees does not qualify as a professional with at least ten years of experience in finances.

*Statutes construed:* KRS 61.645; KRS 63.080

*OAGs cited:* OAG 16-001

***Opinion of the Attorney General***

William A. Thielen, Executive Director of Kentucky Retirement Systems ("Retirement Systems"), has requested an opinion of this office on two issues: 1) whether the Governor may remove a Retirement Systems trustee at will prior to the expiration of the trustee's appointed term, and 2) whether an appointee to the

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Retirement Systems Board of Trustees is qualified for that appointment.<sup>1</sup> We advise that the Governor may not remove a Retirement Systems trustee at will prior to the expiration of the trustee's appointed term. The Governor's appointee to the Retirement Systems board does not qualify as a professional with at least ten years of experience in finances.

Thomas K. Elliott was appointed to the Retirement Systems Board of Trustees effective Apr. 1, 2011, and reappointed on Apr. 1, 2015. His term was set to expire on Mar. 31, 2019. Mr. Elliott was appointed as the investment expert trustee under KRS 61.645(1)(e). On Apr. 20, 2016, Governor Matt Bevin issued an executive order removing Mr. Elliott as a trustee, citing KRS 63.080 and 61.645. On Apr. 21, 2016, Gov. Bevin issued another executive order appointing Dr. William F. Smith to replace Mr. Elliott. At issue are: 1) whether the Governor may remove a Retirement Systems trustee at will, and 2) whether Dr. Smith is qualified as his replacement.<sup>2</sup>

#### **I. Removal of a Retirement Systems Trustee Prior to the Expiration of the Trustee's Term**

KRS 61.645(3)(a) provides that "each trustee shall serve a term of four (4) years or until his successor is duly qualified except as otherwise provided in this section." KRS 61.645(6)(b) provides that "a trustee shall be removed from office upon conviction of a felony or for a finding of a violation of any provision of KRS 11A.020 or 11A.040 by a court of competent jurisdiction." As authority for the removal of Mr. Elliott, the Governor cites to KRS 63.080, which provides:

- (1) Except as provided in subsection (2) of this section and otherwise provided by law, any person appointed by the Governor, either with or without the advice and consent of the Senate, may be removed from office by the Governor for any cause the Governor deems sufficient, by an order of the Governor entered in the executive journal removing the officer.

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<sup>1</sup> These questions are raised in two separate opinion requests, which have been combined.

<sup>2</sup> What is not at issue in this opinion is any question or evaluation of the performance of any Retirement System trustee or the Retirement System itself. This opinion is concerned only with the legal questions involving the removal of a trustee and the appointment of another.



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KRS 63.080(1) provides that except as specified in KRS 63.080(2) and otherwise provided by law, any person appointed by the governor may be removed by the governor for any cause. KRS 63.080(2) provides that the boards of state universities, the Kentucky Board of Education, and the Council on Postsecondary Education may only be removed for cause. The Governor argues that "except for the members of the boards of trustees of the various state universities, colleges, and governing education boards, the Governor may remove any person he or she appoints unless 'otherwise provided by law.'"<sup>3</sup>

In OAG 16-001, we addressed the application of the Governor's authority under KRS 63.080(1) in the context of the Governor's removal of a member of the Horse Park Commission. We advised that "KRS 63.080 does not provide a Governor with the power to remove a duly appointed member of the Kentucky Horse Park Commission during his or her term. Instead, a Governor must wait until the term set forth under KRS 148.260 ends before he may replace the member." OAG 16-001. We relied on the language of KRS 148.260(3), which provides that "the appointed members of the commission shall hold their offices for a term of four (4) years." In interpreting KRS 63.080(1) and KRS 148.260(3), we reasoned that "the statutes should be read together and harmonized if possible. . . . KRS

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<sup>3</sup> In support of his argument, the Governor cites to the case of *Johnson v. Laffoon*, 77 S.W.3d 345 (Ky. 1934). In *Laffoon*, Gov. Laffoon announced his intention to remove Johnson from the offices of road commission and chairman of the state highway commission without cause. *Id.* at 346. The former Court of Appeals upheld the Governor's power to make such a removal. *Id.* at 350. However, *Laffoon* dealt with a predecessor to KRS 63.080, KY. STAT. § 3750, which provided at the time that "any person heretofore or hereafter appointed to an office by the Governor either with or without the advice and consent of the Senate may be removed therefrom by the Governor, during the term for which he was appointed, for any cause the Governor may deem sufficient." *Id.* at 346. The version of KY. STAT. § 3750 applied in *Laffoon* contained the additional phrase "during the term for which he was appointed," which is no longer part of KRS 63.080(1), and did not contain the additional phrase "and as otherwise provided by law," which is now present in KRS 63.080(1). Therefore the holding of *Laffoon* is not controlling.

The Governor also cites to a 1995 miscellaneous letter from this office to the Secretary of the Governor's Executive Cabinet, in which we interpreted *Laffoon* to allow the Governor to remove a member of the Real Estate Appraisers Board without cause. That letter, which was not a formal Opinion of the Attorney General, did not consider the subsequent amendments to the version of KY. STAT. § 3750 applied in *Laffoon*, and to the extent it constitutes any expression of the views of this office, it is hereby withdrawn.

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63.080(1) provides that other laws limit the removal authority of the Governor. KRS 148.206(3) does just that. It 'otherwise provide[s] by law' a set term for which an appointee "shall hold their office." Thus, the statutes do not conflict." OAG 16-001 (citations omitted). We generally advised that the "otherwise provided by law" includes other statutes which provide that board members shall serve their terms.

In this case, we see no reason to deviate from the reasoning of OAG 16-001. In addition, a Retirement Systems trustee may only be removed for commission of a felony or violations of the Executive Branch Ethics Code. KRS 61.645(3)(a) provides that "each trustee shall serve a term of four (4) years or until his successor is duly qualified except as otherwise provided in this section." "'Shall' is mandatory." KRS 446.010(39); see also *Commonwealth v. Wright*, 415 S.W.3d 606, 609 (Ky. 2013) ("The term 'shall' is a word of command and . . . must be given a compulsory meaning."). KRS 61.645(3)(a) thus makes it mandatory that each trustee shall serve a term of four years. Further, KRS 61.645(6)(b) provides that "a trustee shall be removed from office upon conviction of a felony or for a finding of a violation of any provision of KRS 11A.020 or 11A.040 by a court of competent jurisdiction." "It is a familiar and general rule of statutory construction that the mention of one thing implies the exclusion of another." *Fox v. Grayson*, 317 S.W.3d 1, 8 (Ky. 2010). KRS 61.645(6)(b) provides only that a trustee may be removed upon conviction of a felony or a violation of KRS 11A.020 or 11A.040, provisions of the Executive Branch Ethics Code. In specifying the grounds for which a Retirement Systems trustee may be removed, the legislature is presumed to have excluded all other grounds for removal.

In interpreting the provisions of KRS 61.645 with KRS 63.080(1), "where there is an apparent conflict between statutes or sections thereof, it is the duty of the court to try to harmonize the interpretation of the law so as to give effect to both sections or statutes if possible." *Commonwealth v. Halsell*, 934 S.W.2d 552, 555 (Ky. 1996). To interpret KRS 63.080(1) as giving the Governor the authority to remove Retirement Systems trustees at will would render KRS 61.645(3)(a) and 61.645(6)(b) effectively meaningless, as the Governor could remove any of his appointees to the Retirement Systems board at any time. To interpret KRS 61.645(3)(a) and KRS 61.645(6)(b) as "otherwise provided by law" in KRS 63.080(1) would harmonize the statutes and give effect to them all.

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More generally, similar to the Horse Park Commission in OAG 16-001, the Retirement Systems board is intended to be "an independent agency with an independent governing board that is intended to be outside the normal operation and influence of the Executive Cabinet and the Governor, with the exception of his appointing power of Commissioners for mandatory four year terms." *Id.* As noted in OAG 16-001:

If the current KRS 63.080(1) were read as the Governor's Office argues, it would leave the four year term required . . . as well as virtually every other term of years established for any board or commission meaningless. . . . It would effectively remove the independence or autonomy of the numerous boards or commissions the legislature has created, often times for the specific purpose of removing them from the direct control of the Governor.

The Governor has been granted power over boards and agencies such as Retirement Systems in that the Governor is allowed to appoint significant numbers of members to many of them, and sometimes controlling numbers of members. To further hold that the Governor may remove any of his appointees at will would damage or destroy the independence that such boards have. The Governor retains full power under KRS 63.080(1) to remove any of his appointees whose terms are not specified or are not otherwise protected by law, such as cabinet secretaries. However, the legislature intended for boards such as Retirement Systems to have a level of stability, independence, and insulation from political influence. Our interpretation preserves these boards as independent agencies, while the Governor still retains significant influence over such boards through the power of appointment.

Accordingly, we advise that the Governor is prohibited from using KRS 63.080(1) to remove a Retirement Systems trustee, as the removal of a Retirement Systems trustee is otherwise provided by law.

## **II. Qualifications of the Governor's Appointee to the Retirement Systems Board of Trustees**

KRS 61.645(1) provides that the Retirement Systems board is composed of thirteen members. One of those trustees is the secretary of the Personnel Cabinet,

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three are elected by the members of the County Employees Retirement System, one is elected by the members of the State Police Retirement System, two are elected by the members of the Kentucky Employees Retirement System, and six are appointed by the Governor. KRS 61.645(1)(e) provides that of the six trustees appointed by the Governor, one must be knowledgeable about the impacts of pensions on local governments, three are selected from lists submitted by the Kentucky League of Cities, the Kentucky Association of Counties, and the Kentucky School Boards Association, and two shall have investment experience. KRS 61.645(1)(e)(5) specifies the qualifications of the trustees with investment experience:

Two (2) trustees shall have investment experience. For purposes of this subparagraph, a trustee with "investment experience" means an individual who does not have a conflict of interest, as provided by KRS 61.655, and who has at least ten (10) years of experience in one (1) of the following areas of expertise:

- a. A portfolio manager acting in a fiduciary capacity;
- b. A professional securities analyst or investment consultant;
- c. A current or retired employee or principal of a trust institution, investment or finance organization, or endowment fund acting in an investment-related capacity;
- d. A chartered financial analyst in good standing as determined by the CFA Institute;
- e. A university professor, teaching economics or investment-related studies; or
- f. Any other professional with exceptional experience in the field of public or private finances.

KRS 61.645(1)(e)(5) further defines "investment experience" as ten years of experience as a portfolio manager, a professional securities analyst or investment consultant, an employee or principal of a trust institution, investment or finance organization, a chartered financial analyst, a university professor teaching economics or investment, or any other professional with exceptional experience in finances.

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We are presented with a limited factual record in determining the qualifications of Dr. Smith. Mr. Thielen cites to a newspaper article authored by Dr. Smith in which he describes his experience:

William F. Smith is a physician in private practice in Madisonville, Ky., with a special interest in public pension analysis. He was a Presidential Scholar at Murray State University, where he earned a degree in engineering physics with an emphasis in mathematics, biology, and chemistry, and uses a purely mathematical approach to analyze pension data.

He has worked with a number of legislators during the past few years, including several legislators who were on the state pension task force.<sup>4</sup>

The Governor stated that:

Dr. Smith is a "professional" with "exceptional experience in the field of public and private finances." His educational background includes a comprehensive understanding of the mathematical and actuarial principles required to properly manage both defined benefit and cash balanced pension systems. Consistent with that background, Dr. Smith has personally undertaken and engaged in an extensive analysis of both the Kentucky Retirement System (KRS) and the Kentucky Teacher's Retirement System. Also consistent with that background, he recently served on the KRS Transition Commission for Governor Bevin and assisted Senator Damon Thayer while he was serving as co-chair of the KRS Pension Task Force. He has also worked directly with Senator Joe Bowen, who is co-chair of the Public Pension Oversight Board, regarding public pension issues.

While Dr. Smith does appear to have some experience with pension systems, KRS 61.645(1)(e)(5) expressly requires "at least ten (10) years of experience in one (1) of the following areas of expertise." Further, in interpreting statutes, "each section is to be construed in accord with the statute as a whole."

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<sup>4</sup> William F. Smith, *Unraveling \$34 billion Ponzi Scheme*, THE STATE JOURNAL (June 29, 2015), <http://www.state-journal.com/2015/06/29/unraveling-34-billion-ponzi-scheme/>.

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*Combs v. Hubb Coal Corp.*, 934 S.W.2d 250, 253 (Ky. 1996). The other provisions of KRS 61.645(1)(e)(5) all list specific areas of practice in professional investment experience or education. Construing KRS 61.645(1)(e)(5)(f) in accord with the other provisions of KRS 61.645(1)(e)(5), we interpret KRS 61.645(1)(e)(5)(f) to require at least ten years of experience as a financial professional of some kind.

The Governor claims that Dr. Smith qualifies as having "exceptional experience in the field of public and private finances," and while his experience may be exceptional in some sense, it is not clear from the record before us that Dr. Smith has ten years of experience in public or private finances. The Governor had an opportunity to demonstrate Dr. Smith's qualifications and specify the number of years of financial experience, but did not provide a resume or other documentation proving his qualifications; the Governor only provided the paragraph quoted above. The Governor correctly notes that "provisions in statutes and Constitutions imposing restrictions upon the right of a person to hold office should receive a liberal construction in favor of his eligibility." *Horton v. Morrow*, 106 S.W.2d 81, 82 (Ky. 1937). However, while we are presented with limited evidence, the evidence we are presented with does not indicate that Dr. Smith has ten years of experience as a financial professional. Accordingly, although additional evidence may indicate otherwise, based on the limited record before us, we advise that Dr. Smith is not qualified for the position of Retirement Systems trustee as a "professional with exceptional experience in public or private finances." As he was not qualified to hold the position when he was appointed, his appointment is void *ab initio*. See *Bowling v. Natural Res. & Envtl. Prot. Cabinet*, 891 S.W.2d 406, 411 (Ky. Ct. App. 1994).

In summary, the Governor may not remove a Retirement Systems trustee at will prior to the expiration of the trustee's term. The record before us indicates the Governor's appointee to the Retirement Systems board, Dr. Smith, is not qualified as a professional with ten years of experience in public or private finances.

ANDY BESHEAR  
ATTORNEY GENERAL



Matt James  
Assistant Attorney General



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

ANDY BESHEAR  
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118  
700 CAPITOL AVENUE  
FRANKFORT, KENTUCKY 40601  
(502) 696-5300  
FAX: (502) 564-2894

16-OMD-124

June 13, 2016

In re: Jim Carroll/The Kentucky Retirement Systems Board of Trustees

**Summary:** The Kentucky Retirement Systems Board of Trustees violated the Open Meetings Act at its public meeting on May 19, 2016, when a Board member indicated that other Board members faced arrest and/or investigation if they participated in the meeting or stood for election as Board Chair. These indications and/or threats were supplemented by the presence of third parties from other state governmental entities, including the Governor's Chief of Staff, as well as the presence of multiple law enforcement officers prior to the meeting and during the meeting. These actions violated KRS 61.840 by placing a condition other than those required for the maintenance of order on the attendance of any member of the public. However, the Board did not violate KRS 61.810(1) or (2) by conducting any meeting of a quorum of Board members outside of the public meeting, or a series of less than quorum meetings where the members attending one or more of the meetings collectively constituted at least a quorum of members.

*Open Meetings Decision*

This appeal presents two questions under the Kentucky Open Meetings Act (the "Act") related to the May 19, 2016, public meeting of the Kentucky Retirement Systems Board of Trustees (the "Board"). Before the meeting began, Secretary of the Kentucky Personnel Cabinet, who is also a Board member, and the Governor's Chief of Staff indicated and/or threatened - with law

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enforcement officers present – that a Board member would face arrest if he attempted to participate in the meeting. Also before the start of the meeting, the Secretary of the Personnel Cabinet further indicated and/or threatened an investigation of a Board member if he sought election as the Board Chair, which would affect his ability to serve as Chair.

The first question the appeal presents is whether the Board violated the Act based on (1) the indications and/or threats of arrest or investigation by a Board member and third parties from other state governmental entities, and (2) the presence of multiple law enforcement officers who could effectuate an arrest.<sup>1</sup> This office finds that the Board violated KRS 61.840 by placing conditions other than for the maintenance of order on the attendance of any member of the public to attend the May 19, 2016, public meeting.

The second question this appeal presents is whether the Board violated the Act at the same public meeting when some Board members engaged in multiple conversations prior to the public meeting with the Secretary of the Personnel Cabinet, who is also a Board member, and non-Board members from other state governmental entities. According to the record, these conversations concerned the indication and/or threat that (1) a Board member faced arrest if he attempted to participate in the meeting, and (2) another Board member should not seek election as Board Chair because he may be or was the subject of an investigation. While this office is troubled by any indications and/or threats of arrest or investigation were made, and that such indications and/or threats may violate other Kentucky statutes or ethics rules, this office concludes that the Board did not violate KRS 61.810(1) or (2), because conversations did not constitute either a closed meeting of a quorum of Board members or a series of less than quorum meetings where the Board members attending collectively constituted a quorum.

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<sup>1</sup> The record contains a factual dispute as to whether Kentucky State Police officers confirmed that the Board member would be arrested. This office cannot resolve that factual dispute in this decision. See 00-OMD-169.



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## I. Open Meetings Complaint, Agency Response, and Appeal

On May 20, 2016, Jim Carroll, of the Kentucky Government Retirees, submitted a written complaint to the Kentucky Retirement Systems in which he requested a review of "the applicability of Kentucky open meetings law, specifically KRS 61.840, regarding the conditions present during the Kentucky Retirement Systems board of trustees meeting of May 19, 2016." Carroll alleged that several Kentucky State Police Troopers were deployed to prevent Board member Tommy Elliott from participating in the meeting. He asserted that "the overwhelming police presence created an intimidating atmosphere," and that "[a] reasonable person would conclude that it could have easily created a chilling effect on public attendance." Carroll attached to his complaint a document entitled "Trustee Removal Controversy Timeline," outlining events leading up to the May 19, 2016 meeting, including that Board member and Chair Thomas "Tommy" Elliott served as Chair at the Board meeting on April 21, 2016.

In response to the complaint, William Thielen, the Executive Director of the Kentucky Retirement Systems ("Director Thielen"), agreed that the events at the meeting may have possibly violated the Act. Director Thielen stated that and the various conversations held outside of the public view may have violated the Open Meetings Act. He further stated that the "threat" of placing a Board member under arrest for participating in the meeting created an atmosphere where the meeting could be perceived as closed in violation of the Act.

Specifically, Director Thielen asserted that Board member and Chair Thomas "Tommy" Elliott ("Elliott") did not participate in the public meeting due to the threat of arrest. He stated that a member of the public who had requested to participate in the meeting did not do so, and that other members of the public in attendance expressed concern about the police presence.

Director Thielen alleged that Thomas Stephens, the Secretary of the Kentucky Personnel Cabinet and a Board member ("Secretary Stephens"), Blake Brickman, Chief of Staff to the Governor ("Chief of Staff Brickman"), and Leslie Bilby, Executive Director of the Personnel Cabinet Office of Legal Services ("Director Bilby"), threatened Elliott with arrest if he tried to participate in the meeting. Director Thielen stated that five (5) Kentucky State Police officers accompanied Secretary Stephens, Chief of Staff Brickman, and Director Bilby,

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and confirmed that Elliott would be placed under arrest. Director Thielen alleged that the threat of arrest prevented Elliott, who had been willing to participate in the meeting based on good-faith reliance of Attorney General Opinion 16-004, from participating in the meeting. In addition, Director Thielen asserted that Secretary Stephens – in the presence of Director Bilby – also stated to another Board member that the administration would immediately initiate an investigation into that Board member if he sought election as Board Chair. The record establishes that this other Board member was Vince Lang (“Lang”).

As a means of remedying the alleged violations, Director Thielen stated that at its next meeting the Board would consider its options to resolve the issues that arose prior to the May 19, 2016, meeting. Director Thielen further stated that the Kentucky Retirement Systems would request that the Kentucky State Police not interfere with Board meetings in the future unless requested by the Board or the Executive Director. By letter dated June 3, 2016, to Kentucky State Police Commissioner Richard Sanders, Director Thielen requested that officers under Commissioner Sanders’ command refrain from attending the meetings of the Board in any official capacity, unless requested by the Kentucky Retirement Systems to deal with a threat of public safety.

Finding the agency response inadequate, Carroll submitted a written appeal to this office on May 25, 2016, pursuant to KRS 61.846(3). Carroll asserted the Kentucky Retirement Systems’ apparent limitations in being able to address and rectify the alleged violations, and sought review of the agency’s response. He alleged that the disproportionate law enforcement presence that Kentucky Retirement Systems did not request created a chilling effect that discouraged public participation at the meeting.

By letter on May 31, 2016, the Attorney General requested additional documentation from the Kentucky Retirement Systems, pursuant to KRS 61.846(2). On June 2, 2016, Brian Thomas, General Counsel for Kentucky Retirement Systems, provided the following additional documentation: the audio recording of the May 19, 2016 public meeting; a copy of the Notice and Agenda for the meeting; and the written accounts of nine (9) members of the Board. On June 7, 2016, Thomas provided the written account of Secretary Stephens, which the Kentucky Retirement Systems had inadvertently not previously provided.

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On June 2, 2016, Director Thielen submitted a written response to the appeal, adopting and incorporating by reference its response to the initial complaint. In the response, Director Thielen further stated that, "It is unclear to Kentucky Retirement Systems if there was a violation of the Open Meetings Act or not."

On June 3, 2016, the Attorney General requested additional documentation from Chief of Staff Brickman, pursuant to KRS 61.846(2). Stephen Pitt, General Counsel to the Governor, responded to the request on behalf of Chief of Staff Brickman by letter dated June 7, 2016. In the letter, Pitt stated that Chief of Staff Brickman declined to provide a response, but that Chief of Staff Brickman was in general agreement with Secretary Stephens.

## II. Factual Background of the Public Meeting

On May 19, 2016, the Board held its regularly-scheduled quarterly meeting, which was a public meeting for which the Board provided notice. According to the Agenda, the meeting was scheduled to begin at 9:00 a.m., with the election of the Board Chair and Vice Chair listed as the third item on the Agenda. The Agenda listed Public Comment as the sixth item on the Agenda.

Leading up to the meeting, Governor Matthew Bevin issued an executive order on April 20, 2016, purportedly removing Elliott from the Board prior to the March 31, 2019 expiration of Elliott's statutory term. Believing the Governor had acted beyond his authority, at the next Board meeting on April 21, 2016, Director Thielen and the Board decided to and did request an opinion from the Attorney General as to whether the Governor may remove a trustee at will prior to the expiration of his statutory appointed term.<sup>2</sup> As previously mentioned, a document that Carroll attached to his complaint indicated that Elliott served as Chair at the April 21, 2016 meeting. The record does not indicate that Elliott's participation at the meeting caused any disruption.

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<sup>2</sup> Pursuant to KRS 61.645(3), "each trustee shall serve a term of four (4) years or until his successor is duly qualified except as otherwise provided in this section." Elliott was appointed to the Board effective April 1, 2011, and re-appointed on April 1, 2015. See OAG 16-004.

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On May 17, 2016, in OAG 16-004, this office advised that the Governor lacked authority to remove a trustee at will prior to the expiration of his statutory appointed term. Under the opinion of the Attorney General, Elliott remained a member of the Board.

Based on the record, the Board intended to rely on OAG 16-004 at the public meeting. The record also shows that Tommy Elliott planned to participate at the meeting as a Board member in reliance on OAG 16-004. The record further demonstrates that Lang planned to seek election as Board Chair. As the record shows, neither of those events occurred, because of the circumstances that preceded the public meeting.

According to the record, Kentucky State Police officers were visibly present at the location of the Board meeting on May 19, 2016 – before and during the meeting. Board member Joseph Hardesty (“Hardesty”) stated as follows in his written account:

When I arrived at the meeting of May 19, I noticed four state police standing at the entrance to the KRS building.

Once inside the building, Hardesty recalled that when he went to the offices behind the conference room he saw Director Thielen and Elliott talking with Secretary Stephens and others, and that several Kentucky State Police officers were in the same area.

**A. Facts Regarding Elliott’s Participation in the Meeting**

According to the record, the conversation concerning Elliott’s participation in the meeting involved Elliott, Director Thielen, Chief of Staff Brickman, and Secretary Stephens, and later grew to include Board members Mary Helen Peter and Joseph Hardesty.<sup>3</sup> In his response, Director Thielen states

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<sup>3</sup> In his written account, Elliott stated that Board members Lang and William Summers were also part of the conversation at times. The response of Director Thielen and some of the written accounts of Board members indicate that Director Bilby was also part of the conversation. Secretary Stephens stated that, to the best of his knowledge, other Board members who entered

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that Secretary Stephens, Chief of Staff Brickman, and Director Bilby "threatened" Elliott with arrest if he attempted to participate in the meeting. He further states, "Accompanying these individuals were five KSP officers who confirmed that Mr. Elliott would be placed under arrest."

Similarly, in his written account Elliott claims that upon his arrival to the building Secretary Stephens and Chief of Staff Brickman stated that they needed to talk with him, and the three (3) of them stepped into Director Thielen's office, after which Elliott closed the door. Elliott writes:

Brickman immediately began to inform in a raised voice that, YOU are not going to attend this meeting, You are not on this board, You are not the Chair, You are not going to vote, and You will not sit at the (board) table. AND if you attempt to there are State Police in the lobby and they will arrest you and take you to jail.

Elliott states that when he asked what he would be arrested for, Chief of Staff Brickman stated that he would be arrested for disruption of a public meeting, a misdemeanor under KRS 525.150. He states that when he exited the office, he informed other Board members and Director Thielen of the conversation and a debate ensued between Secretary Stephens and Chief of Staff Brickman, attorneys, Director Thielen, Hardesty and Summers. Hardesty provides in his written account that when he asked for the authority for arresting Elliott, the Governor's Assistant General Counsel cited to a specific Kentucky statute making it a misdemeanor to disrupt a public meeting.

Elliott also wrote in his account that he entered the meeting room with Brickman and Kentucky State Police officers. He states that after Chief of Staff Brickman told him he could not sit at the Board table and directed him to sit elsewhere, Elliott first stood in the room and then sat down with two (2) officers standing near him.

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and exited the office space at various times did not participate in the conversation. Hardesty recalled that an Assistant General Counsel to the Governor was also present.

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In his written account, Secretary Stephens states that he participated in a conversation with Director Thielen, Elliott, Peter, and Chief of Staff Brickman in an office space exterior to the main Board room. Secretary Stephens states that the purpose of the conversation was to avoid any type of disruption to the Board meeting and to de-escalate any tensions. He asserts that other Board members entered and exited the office space at various times, but, to the best of his knowledge, they did not participate in the conversation. Secretary Stephens states that he and Chief of Staff Brickman "explained" that should he insist on being seated at the meeting he would be in violation of KRS 525.150, which makes it a misdemeanor to obstruct or interfere with a lawful meeting in the Commonwealth.<sup>4</sup>

Secretary Stephens also claims only three (3) Kentucky State Police officers were present – two (2) uniformed and one (1) non-uniformed. He claims that, to the best of his knowledge, no member of the Kentucky State Police made any statement to Elliott or any Board member that Elliott would be placed under arrest if he "entered the meeting."

As the audio recording of the meeting reveals, Director Thielen began the public meeting by stating that representatives of the Governor's Office and the Personnel Cabinet had indicated that Elliott could not participate in the meeting, and had "threatened" to have him arrested under a misdemeanor statute if tried to participate. The audio recording of the meeting also establishes that Director Thielen informed those in attendance that, under the circumstances, Elliott had decided "to sit this one out." No one commented on, asked to comment on, or voiced disagreement with Director Thielen's statements at the beginning of the meeting.

The Attorney General cannot resolve factual disputes in the context of an open meetings appeal. 00-OMD-169. While some disputed details exist in the record as outlined above, there is no factual dispute that a conversation occurred

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<sup>4</sup> Under KRS 525.150(1), "[a] person is guilty of disrupting meetings and processions in the second degree when, with intent to prevent or disrupt a lawful meeting, procession, or gathering, he or she does any act tending to obstruct or interfere with it physically or makes any utterance, gesture, or display designed to outrage the sensibilities of the group." Disrupting meetings and processions in the second degree is a Class B misdemeanor. KRS 525.150(2).

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involving Secretary Stephens, Chief of Staff Brickman, and Elliott, and later involved Hardesty, Peter, and Director Thielen. Regardless of whether Secretary Stephens or Chief of Staff Brickman “threatened” or “explained” the possibility of arrest to Elliott, there is no factual dispute that they indicated to Elliott that if he attempted to participate in the public meeting, he faced arrest under KRS 525.150. These undisputed facts, based on the record, are the only facts the office considers in this appeal.

In addition, there is no factual dispute that multiple Kentucky State Police officers, who could effectuate an arrest, were present before and during the public meeting. While there are differing accounts as to how many Kentucky State Police officers were present, publicly-available video images and photographs published by media indicate between three (3) and four (4) law enforcement officers with visible badges and holstered firearms were present during the meeting. The photographs show that least one (1) uniformed officer and one (1) plain-clothed officer stood at a door and near Elliott, who was seated away from the Board table with other members of the public. The video images and photographs also show another uniformed officer stood at another door during the meeting. In addition, a photograph shows a plain-clothed officer with a badge and holstered firearm standing in the meeting room at some point during the meeting. A photograph also shows the door nearest Elliott without any officers at some point in time, and the back of an officer exiting the other door at some point.<sup>5</sup> Nothing in the record suggests that either Director Thielen or a quorum of the Board requested the presence of law enforcement officers before or during the meeting.

#### **B. Facts Regarding Lang’s Potential Election as Board Chair**

In his response, Director Thielen states that Secretary Stephens and Director Bilby had a conversation with another Board member in which they asserted the administration would immediately initiate an investigation into the

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<sup>5</sup> See cn|2 Pure Politics, “Ky. State Police ready to arrest ousted pension board chairman if he took seat among trustees,” <http://mycn2.com/politics/ky-state-police-ready-to-arrest-ousted-pension-board-chairman-if-he-took-seat-among-trustees> (May 19, 2016) (last visited June 9, 2016). See also Kevin Wheatley, @KWheatley\_cn2, [https://twitter.com/kwheatley\\_cn2](https://twitter.com/kwheatley_cn2) (May 19, 2016) (last visited June 9, 2016).

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Board member if he sought election as Board Chair. Again, the record establishes that this other Board member was Lang.

In his written account Lang states that before the meeting at 8:55 a.m., Secretary Stephens and Director Bilby asked him to meet with them in the privacy of Director Thielen's conference room. Lang provides:

Once inside, Mr. Stephens told me I would not serve as Chair. He stated that if I was elected there would be an immediate investigation. All my e-mails and documents would be seized and there would be damaging documents released.

Lang further asserts that after he stated his qualifications for the Chair position and that his role as Chair would be to preside over meetings and appoint members to committees, Secretary Stephens repeated "the same threatening comments" about an investigation of his records if he were elected Chair. Lang states that Secretary Stephens claimed that Lang would use his influence as Chair to influence a personnel matter involving Lang's wife. Lang asserts that Secretary Stephens referenced several elected officials contacting the administration on his wife's behalf. However, the record does not indicate that Lang's wife is affiliated with the Board or the Kentucky Retirement Systems. Instead, any personnel matter would presumably be pending before Secretary Stephens' Personnel Cabinet.

In his written account, Secretary Stephens asserts that Director Thielen's statement regarding the conversation with Lang is a mischaracterization. However, Secretary Stephens does not offer any details as to what he discussed with Lang. Rather, Secretary Stephens states that it appears an organized meeting of certain Board members occurred prior to the meeting to coordinate the particular member's election as Board chair. He also states that he has received information that this other Board member may have violated the Conflict of Interest Policy for the Kentucky Retirement Systems. Stephens stated that the investigation is ongoing and may call into question the Board member's



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ability to serve as Chair. He states that the information will be brought to the Board's attention at the appropriate time.<sup>6</sup>

While a dispute in the record exists as to the details of the conversation exists, there is no disputed fact that the conversation occurred prior to the meeting between Secretary Stephens, Director Bilby, and Lang, and that it pertained to Lang's potential election as Board Chair. Further, based on Secretary Stephens' statement that he has received information about Lang that will be shared with the Board at the appropriate time, and an ongoing investigation of Lang that may call into question his ability to serve as Chair, this office may infer that he and Lang discussed this information and a potential or actual investigation of Lang that could affect his ability to serve as Board Chair. Again, Secretary Stephens did not offer any details as to what he discussed with Lang, including any statement to the contrary of such an inference.

### C. The Record of the Public Meeting

As the audio recording of the public meeting reveals, the meeting began with Director Thielen informing those of the indication to Elliott that members of the Governor's office and the Personnel Cabinet had indicated that Elliott could not participate on the Board, that he was no longer a member of the Board under the executive order, and that they had threatened to have Elliott arrested under a misdemeanor statute if he attempted to participate. Director Thielen continued by saying that, under the circumstance, Elliott had decided "to sit this one out." Director Thielen introduced two (2) new members of the Board, one of whom was sworn in after the Board roll was called.

Then, Director Thielen stated the next item on the agenda was the election of officers, but that he thought the Board had things to cover before it addressed that item. Director Thielen asked Elliott for comment, but Elliott declined in an inaudible manner. Director Thielen then announced his retirement from the Kentucky Retirement Systems prior to the previously-announced time.

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<sup>6</sup> This office would note that while a Board member using his official position to "investigate" another Board member, outside of the province or control of the Board, raises serious questions about potential conflicts of interest, such an inquiry is not relevant to this appeal.

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After Thielen expressed his thoughts on the issues that deferring the election of a Chair and Vice Chair would create, an unidentified Board member recalled pertinent prior events – the executive order with respect to Elliott's position, the Board's choice to ask for an Attorney General opinion, and the implication that the Board would follow whatever the Attorney General advised. This Board member stated that Board members came in that morning confronted with the Kentucky State Police to arrest Elliott if he participated in the meeting, which he found "extremely troubling." The Board member found it "troubling that Mr. Elliott would be threatened with arrest if he sat at the table and voted." He stated that the Board needed to proceed with its business despite what had happened that day.

Then, Peter moved to nominate Lang for consideration as Board Chair, which was seconded. After discussion had concluded, but during further discussion, an unidentified Board voiced his belief that it was imprudent for the Board to elect a Chair under the circumstances. However, this Board member recognized the necessity of a Chair to continue the meeting.

After Peter asked whether to withdraw her motion or amend it to nominate Lang as Chair for the meeting, Lang asked to address the Board. After stating that he did not want to add additional controversy or cause more friction, Lang said he was okay with deferring the vote to another date and that he had no desire to chair the meeting. This prompted the withdrawal of motion and the second, and the Board passed a motion to defer the election of Board officers. The Board subsequently elected Hardesty to serve as the Chair for the remainder of the meeting.

At approximately the 16:30 mark of the meeting, Hardesty announced the Public Comment item with a three-minute time limit on the Agenda, and said the Board added the item to the Agenda a few meetings earlier. Hardesty introduced Larry Totten for Public Comment. Declining to offer public comment, Totten said:

... What I want to talk about has absolutely nothing to do what's gone on here this morning, but the mood of the timing is, uh, changed dramatically and I don't think it's appropriate for me to

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make the remarks or any suggestions I wanted to make, so I will defer that until possibly the September meeting.

## V. Analysis

This office finds that the Board, a public agency,<sup>7</sup> through the actions of a Board member and third parties from state governmental entities outside of the Board, violated KRS 61.840 by placing a condition other than those required for the maintenance of order on the attendance of any member of the public. However, the conversations that occurred prior to the public meeting concerning Elliott's participation in the meeting and Lang's potential election as Board Chair did violate KRS 61.810(1) or (2), as they did not constitute a closed meeting of a quorum or Board members, or a series of less than quorum meetings where the Board members attending collectively constituted a quorum.

### A. Open Meetings Act Requires an Open Government

The Kentucky Open Meetings Act mandates that our government should be an open one. See 04-OMD-102. In its "Legislative statement of policy," the Act pronounces "that the basic policy of KRS 61.805 to 61.850 is that the formation of public policy is public business and shall not be conducted in secret and exceptions provided for by KRS 61.810 or otherwise provided for by law shall be strictly construed." KRS 61.800. The Kentucky Supreme Court has further held: "The express purpose of the Open Meetings Act is to maximize notice of public meetings and actions. The failure to comply with the strict letter of the law in conducting meetings of a public agency violates the public good." *Floyd County Bd. of Educ. v. Ratliff*, 955 S.W.2d 921, 923 (Ky. 1987); 08-OMD-180.

This appeal presents a situation that appears to violate the very spirit and essence of the Act. A behind-closed-door indication of arrest if a Board member attempts to participate, or of an investigation of a Board member who potentially may seek election as Chair, made with the intent to alter decisions or behavior

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<sup>7</sup> As a state government agency created by Kentucky statute, the Kentucky Retirement Systems Board of Trustees is a public agency under KRS 61.805(2)(e) and is subject to the Kentucky Open Meetings Act. See KRS 61.645(1); *Commonwealth v. Kentucky Retirement Systems*, 396 S.W.3d 833, 837 (Ky. 2013).

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related to a public meeting for public business, violates the mandate that public business not be conducted in secret. Moreover, the presence of multiple law enforcement officers, who can effectuate an arrest, at the request of someone other than the agency head or a quorum of the Board, equates to conducting public business through force. Neither scenario has a place in a democratic government that must be open. As detailed below, the actions violated KRS 61.840.

**B. Violation of KRS 61.840**

As the Attorney General has recognized, KRS 61.840 vests the public with a virtually unconditional right to attend all meetings of a public agency like the Kentucky Retirement Systems Board of Trustees. 14-OMD-022 (*citing* 00-OMD-169). Specifically, KRS 61.840 provides:

No condition other than those required for the maintenance of order shall apply to the attendance of any member of the public at any meeting of a public agency. No person may be required to identify himself in order to attend any such meeting. All agencies shall provide meeting room conditions which insofar as is feasible allow effective public observation of the public meetings. All agencies shall permit news media coverage, including but not limited to recording and broadcasting.

The Attorney General has addressed this provision of the Open Meetings Act in several decisions regarding the question of whether the conduct of a member(s) of the public during a public meeting was disruptive enough to interfere with the maintenance of order and to justify the removal of citizen(s). *Id.*; 08-OMD-249. None of the decisions summarized in 08-OMD-249 were in favor of the public agency. *See* 14-OMD-022.

Based on the record, this office specifically focuses on whether: the participation of Elliott as a Board member or the potential election of Lang as Board Chair threatened the maintenance of order to (1) warrant the indication of the potential arrest of Elliott or the investigation of Lang, and (2) justify the presence of multiple Kentucky State Police officers before and during the meeting. This is not a close case. Neither Elliott's participation as a Board

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member nor Lang's potential election as Chair threatened the maintenance of order. Thus, the Board – through the indications and/or threats of Secretary Stephens and third parties from other state governmental entities – improperly placed upon the meeting the following conditions: the potential arrest of Elliott, intentional presence of three to four law enforcement officers prior to the meeting and standing during the meeting, including two standing near Elliott, with visible badges and holstered firearms; and (2) the potential investigation of Lang.

First, Elliott and the Board had a good faith basis in relying on the opinion of the Attorney General, OAG 16-004. Pursuant to KRS 15.020, the Attorney General is the chief law officer of the Commonwealth and all of its departments, commissions, agencies, and political subdivisions, and is the legal adviser of all state officers, departments, commissions, and agencies. Government officials are expected to abide by an opinion of the Attorney General until a Court rules otherwise or the legislature changes the law. *See York v. Commonwealth*, 815 S.W.2d 415, 417 (Ky. App. 1991). Furthermore, governmental officers who rely upon an opinion of the Attorney General would be acting in good faith. *See Babb v. Moore*, 374 S.W.2d 516, 518 (Ky. 1964). *See also* OAG 84-136, OAG 09-004. While Kentucky Courts are not bound by opinions of the Attorney General, they can and have afforded them great weight and have considered them highly persuasive. *See York*, 815 S.W.2d at 415; *Louisville Metro Dep't of Corrections v. King*, 258 S.W.3d 419, 421 (Ky. App. 2007) (citing *Woodward, Hobson & Fulton, L.L.P. v. Revenue Cabinet*, 69 S.W.3d 476, 480 (Ky. App. 2002)). *Valentine v. Personnel Cabinet*, 322 S.W.3d 505, 5-7 (Ky. App. 2010) (citing *Lexington H-L Serv., Inc. v. Lexington-Fayette Urban County Gov't*, 297 S.W.3d 579, 583 (Ky. App. 2009); *Eplion v. Burchett*, 354 S.W.3d 598, 603, n. 6 (Ky. App. 2011) (citing *King*, 258 S.W.3d at 421-22)).

The Kentucky Retirement Systems Board of Trustees was expected to abide by the opinion of the Attorney General in OAG 16-004. As such, the Board relied in good faith on the opinion of the Attorney General in OAG 16-004 in anticipation of the May 19, 2016. As a Board member, Elliott also had a good faith basis for relying on OAG 16-004. While others may disagree with the opinion of the Attorney General, such disagreement does not and cannot legitimize direct indications of arrest, whether relayed as threats or explanations, toward those who rely on the opinion.

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As this office has recognized, like other provisions of the Open Meetings Act, KRS 61.840 does not afford the public the right to participate in public meetings. 14-OMD-022; 95-OMD-99. However, in *City of Lexington v. Davis*, 221 S.W.2d 659, 661, the former Kentucky Court of Appeals acknowledged that “a public meeting presupposes the right of the public freely to attend such meetings with the concurrent right freely to express any approval or disapproval of any action or course about to be taken.” The Court continued by writing: “Anything which tends to ‘cabin, crib or confine’ the public in this respect would be destructive of the right expressly provided in KRS 89.550 above.” 221 S.W.2d at 661. While the statute the Court referenced dealt with a city board of commissioners, the right it expressly provided was that all meetings were to be public. *See id.*

Along with citing *Davis* in recognizing the concurrent right of the public to freely express any approval or disapproval of any action or course of a public agency, 94-ORD-45; OAG 78-522, this office has repeatedly cited to *Davis* in open meetings decisions to encourage public agencies to adopt procedural rules that include allowing members of the public to address the agency. *See* 14-OMD-022; 08-OMD-249; 02-OMD-181; 95-OMD-99. Here, the record shows that the Board did adopt such a practice, adding to the Agenda of its meetings time for public comment, with a three-minute limit.<sup>8</sup>

The record clearly establishes that Elliott intended to attend and participate in the May 19, 2016, public meeting as a Board member. Elliott participated as a Board member at the April 21, 2016, Board meeting, the day after the issuance of the executive order purportedly removing him. The record does not indicate that Elliott’s participation as a Board member at that meeting disrupted the meeting.

As the record further shows, the Board intended to conduct the May 19, 2016, meeting in reliance on the opinion of the Attorney General that the

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<sup>8</sup> Although this office may only decide if a violation of KRS 61.805 to KRS 61.850 has occurred, and may not determine whether a public agency followed its own rules, the Board’s adopted practice is relevant to the undisputed fact that a member of the public deferred his planned public comment because of the conditions placed on the meeting and the resulting mood of the meeting.

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Governor lacked authority to remove Elliott as a trustee. The record shows that the public business the Board intended to undertake at the meeting included the election of the Board Chair and Vice Chair.

The record clearly establishes that, prior to the meeting, Secretary Stephens, who is a Board member, and third parties from other state governmental entities, including Chief of Staff Brickman, informed Elliott that he was not a Board member and would face arrest under a criminal misdemeanor statute if he attempted to participate in the meeting. The record also clearly establishes that Thielen informed all of those in attendance when the meeting began. Consequently, Elliott did not participate in the meeting and instead sat in the audience with members of the public, with two (2) law enforcement officers standing nearby. The record shows that law enforcement officers stood at two (2) separate doors of the room during the public meeting. Each of the officers wore a visible badge and a holstered firearm, and at times two (2) officers stood in close proximity to Elliott. Regardless of whether or when these officers left the meeting, their presence was a condition the Board placed on the meeting without the maintenance of order having been threatened.

This office finds that the conditions the Board placed on the attendance of any member of the public to attend the May 19, 2016, public meeting were not for the maintenance of order. It is not clearly established that Elliott's participation in the public meeting as a Board member, acting in good-faith reliance on the opinion of the Attorney General, threatened the maintenance of order to warrant that he face arrest for a criminal misdemeanor if attempted to participate. Indeed, Elliott participated as a Board member at the April 21, 2016, meeting and nothing in the record demonstrates that his actions disrupted that meeting.

Conditioning Elliott's attendance on not participating as a Board member, or face arrest if he did, and having law enforcement officers present and standing near him during the meeting, violated KRS 61.840. The Board could have imposed conditions other than the condition of potential arrest to insure the maintenance of order during the meeting. If Elliott had participated in the meeting and had caused a disruption that impeded public business, the Board could have asked him to cease his conduct or leave the meeting room. If Elliott persisted in his conduct so as to impede public business, the Board then could

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have requested law enforcement officers remove him from the room. *See* OAG 80-191; OAG 78-242.

Indeed, this office has previously held that the Open Meetings Act was violated in a similar, but less egregious situation. 14-OMD-022. There, the chair of a public agency asked a member of the public to stop speaking during a meeting, then asked him to leave the meeting when he continued to speak, ultimately leading to the county Sheriff escorting him from the meeting. *Id.* The office found that conditioning the public member's continued attendance on silence violated the KRS 61.840 because he was not so disruptive as to impede public business. *Id.* The office further held that the agency should have attempted to impose less restrictive conditions rather than immediate ejection. "To hold otherwise would promote the arbitrary removal of members of the public without justification." *Id.* (citing 08-OMD-249).

Here, the situation is more egregious. An indication and/or threat of arrest was made to Elliott before the meeting, and not after a disruption. Rather than a single Sheriff approaching and escorting an individual out of a meeting, here numerous law enforcement officers were present before the meeting, accompanied Elliott and Chief of Staff Brickman into the meeting room, and stood near Elliott. The least restrictive conditions were certainly not employed.

In reality, nothing in the record suggests that Elliott's participation as a Board member in good faith reliance on the Attorney General opinion threatened the maintenance of order. The indication of his arrest if he tried to participate, and the presence of law enforcement officers prior to the meeting and standing in the room during the meeting, created an atmosphere that chilled or confined the public's right to freely attend the public meeting. The condition also chilled or confined the public's concurrent right to freely express their approval or disapproval of any action the Board may have taken. Would a member of the public feel free to attend a public meeting of a public agency where multiple law enforcement officers are standing by the doors to the room where the meeting is held, and a Board member has been informed that he faces arrest if he attempts to participate in the meeting? This office does not believe so. Thus, the Board violated KRS 61.840.



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Following its proposed remedy, the Kentucky Retirement Systems, through Director Thielen, did request that the Kentucky State Police not attend future meetings in an official capacity unless upon the request of the Kentucky Retirement Systems to deal with a threat of public safety. However, this request does not insure that individual Board members or third parties of outside state governmental entities could not ignore the request in the future, and utilize law enforcement officers without the request of the public agency or a quorum of the Board. Certainly, law enforcement officers may attend public Board meetings, but third parties cannot utilize law enforcement for the inappropriate purposes discussed herein.<sup>9</sup>

The record also establishes that Secretary Stephens also indicated an investigation to Lang if he sought election as Board Chair. During the meeting, after being nominated for Board Chair but before a vote occurred, Lang declined to be considered for the position at that time. The Board agreed to defer the election of officers until a later meeting. This office finds that the indication of an investigation of Lang if he sought election as Board Chair, which he subsequently declined to so seek, violated KRS 61.840. The record does not suggest that Lang's nomination as Board Chair and a Board vote on the nomination would have disrupted the maintenance of order at the meeting. In addition, the audio recording reveals that Secretary Stephens did not comment on Lang's nomination during discussion or further discussion in the meeting. Thus, the condition was not for the maintenance of order in violation of KRS 61.840.

Indeed, the conditions the Board placed upon meeting disrupted the public business of the Board. Even though the audio recording of the meeting indicates a cordial atmosphere at times during the meeting, the Board did not elect officers as it intended to, despite members stating the necessity and importance of electing a Chair and Vice Chair, and a member of the public did not offer comment as he intended to.

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<sup>9</sup> Although it is not necessary this analysis, the office notes its strong belief that a public agency cannot circumvent the requirements of the Open Meetings Act by using a third party outside of the agency to violate the Act. Such conduct would violate the purpose and spirit of the Act.

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Finally, even in this office's narrow analysis finding the Open Meetings Act was violated, it must be noted that the actions by several individuals in this instance were egregious. A democratic government is built on laws, and disagreements as to civil laws are resolved in a court of law, not by force. Whether the indication of arrest was a "threat" or "explanation," it raises significant concerns as to the methods and judgment displayed by the individuals who made them. It cannot be repeated. This Office further suggests that the law enforcement agency involved in this situation should evaluate how it became involved and how to avoid doing so in the future.

**C. No Violation of KRS 61.810**

Although the Board violated KRS 61.840, it did not violate KRS 61.810(1) or (2) by holding a closed meeting with a quorum of Board members, or having a series of less than quorum meetings where the members attending collectively constitute at least a quorum of the members of the public agency. The Kentucky Open Meetings Act prohibits "meeting in number less than quorum for the express purpose of avoiding the open meetings requirements of the Act." *Yeoman v. Commonwealth of Kentucky, Health Policy Board*, 983 S.W.2d 474 (Ky. 1998). As KRS 61.810(2) provides:

Any series of less than quorum meetings, where the members attending one (1) or more of the meetings collectively constitute at least a quorum of the members of the public agency and where the meetings are held for the purpose of avoiding the requirements of subsection (1) of this section, shall be subject to the requirements of subsection (1) of this section. Nothing in this subsection shall be construed to prohibit discussions between individual members where the purpose of the discussions is to educate the members on specific issues.

Accordingly, violation of the Open Meetings Act as it relates to "secret" or closed meetings is predicated on two kinds of prohibited conduct: (1) a private meeting of a quorum of the members of an agency at which public business is discussed or action is taken, and (2) a series of less-than-quorum meetings attended by members of the agency collectively constituting a quorum and held for the purpose of circumventing the requirements of the Act. 09-OMD-093.

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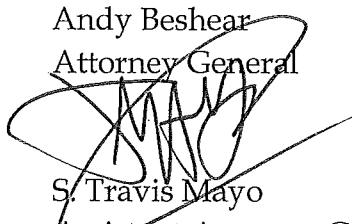
The third element requires a showing that the gatherings are held for the purpose of avoiding the requirements of the Open Meetings Act. *Id.*

In this matter, the record does not show that the Board conducted a private meeting of a quorum of its members at which public business was discussed or any action was taken. Likewise, the record does not show that prior to the May 19, 2016, public meeting the Board conducted a series of less than quorum meetings attended by its members collectively constituting a quorum.

Under KRS 61.645(8)(c), a majority of the trustees constitutes a quorum of the Board. As the Board consists of thirteen (13) trustees, a quorum of the Board would be seven (7) trustees. The record demonstrates that the conversations concerning Elliott and Lang, although behind closed doors, did not involve a quorum of the Board members at one time, and did not involve a series of less than quorum meetings where members attending the meetings collectively constituted a quorum of Board members. Rather, the record shows that the series of conversations involved five (5) Board members, collectively. Therefore, the Board did not violate KRS 61.810(1) or (2).

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.846(4)(a). The Attorney General should be notified of any action in circuit court, but should not be named as a party in that action or in any subsequent proceedings.

Andy Beshear  
Attorney General



S. Travis Mayo  
Assistant Attorney General

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Distributed to:

William Thielen  
Jim Carroll

**KENTUCKY RETIREMENT SYSTEMS  
BOARD OF TRUSTEES**

**STATEMENT OF BYLAWS AND COMMITTEE ORGANIZATION**

**Section 1.1 General Administration.**

This Statement of Bylaws and Committee Organization of the Board of Trustees is adopted pursuant to the authority of KRS 61.645. The law shall control if any inconsistency exists between the law and this Statement of Bylaws and Committee Organization of the Board of Trustees.

- a. **BOARD YEAR.** The Board Year shall be from April 1 of each calendar year through March 31 of the following year.
- b. **QUORUM; PARLIAMENTARY AUTHORITY.** As required by KRS 61.645(8)(c), a majority of the trustees on the board or any committee shall constitute a quorum, for transaction of business and all actions taken by the board or any committee shall be by affirmative vote of a majority of the trustees present and constituting a quorum. The most recent edition of Robert's Rules of Order shall be the parliamentary authority.
- c. **MEETINGS.** Meetings of the Board and Committees will be conducted consistent with the Open Meetings Act, KRS 61.805 to 61.850. The Open Meetings Act shall control if any inconsistency exists between the Open Meetings Act and these bylaws.
- d. **ANNUAL MEETING.** The annual meeting of the Board shall be held on the third Thursday of each Board Year.
- e. **REGULAR QUARTERLY MEETINGS.** The regular quarterly meetings shall be held on the third Thursday of February and May, the second Thursday of September, and on the first Thursday of December.
- f. **SPECIAL MEETINGS.**
  - 1. Special meetings of the Board of Trustees shall be held upon the call of the Chair of the Board of Trustees or the Executive Director. Upon the request of a majority of the members of the Board, the Chair of the Board of Trustees or Executive Director may call a special meeting.
  - 2. Special meetings of a Standing or *Ad hoc* Committee of the Board of Trustees shall be held upon the call of the Committee Chair or the Executive Director. Upon the request of a majority of the members of the Standing or *Ad hoc*

Committee, the Committee Chair or Executive Director may call a special meeting.

3. Notice of a special meeting of the board or a Standing or *Ad hoc* committee shall be posted as soon as practicable, but at least twenty-four hours (24) before the meeting is scheduled. The notice of a special meeting shall include the date, time, and location of the special meeting and the agenda for the special meeting.
- g. NOTICE OF MEETINGS.** Members of the Board and committees shall be given written and/or email notice of the time and place of each regular or special meeting and of the business to be considered at least ten (10) days prior to such meeting, except that when circumstances warrant a special meeting of the Board or a committee, such notice shall be given as soon as reasonably possible, but not less than twenty-four (24) hours prior to the special meeting.
- h. RECORDS OF PROCEEDINGS.** All official acts of the Board shall be recorded in the minutes. The Executive Director shall cause the minutes to be transcribed and presented for approval or amendment at the next regular meeting. The minutes or a copy certified by the Chair and Executive Director shall be on file in the retirement office and open to public inspection.
- i. CHANGE IN MEETING DATES.** Any regular or special meeting of the Board may be changed by following the procedure prescribed in these Bylaws for calling special meetings.
- j. CHAIR AND VICE CHAIR OF THE BOARD.** The board shall elect a chair and a vice chair at each annual meeting to hold office for the ensuing Board Year or until their successors are elected. The chair shall not serve more than four (4) consecutive years as chair or vice-chair of the board. The vice-chair shall not serve more than four (4) consecutive years as chair or vice-chair of the board. A trustee who has served four (4) consecutive years as chair or vice-chair of the board may be elected chair or vice-chair of the board after an absence of two (2) years from the positions.
- k. COMMITTEES.** The Board may create Committees with such powers and duties as the Board may determine.

The Chair of the Board of Trustees, unless otherwise determined by the Board, shall name the members of each Committee. Committee members shall serve concurrently with the appointing Chair.
- l. CONFLICTS OF INTEREST.** Board members shall file a financial disclosure statement with the Executive Branch Ethics Commission by April 15 of each calendar year, or within thirty (30) days following departure from office as a member of the Board, or as otherwise provided by law.

**m. TRAVEL POLICY GUIDELINES.**

1. All travel for official business of Kentucky Retirement Systems must be done in accordance with the Kentucky Retirement Systems Travel Policy and Procedures adopted by the Board of Trustees.
2. No more than six (6) Board members may be passengers on the same airline flight. A maximum of two (2) senior staff members may be passengers on the same flight.

**n. ELECTION POLICY GUIDELINES.** All elections for elected members of the Board of Trustees of Kentucky Retirement Systems must be conducted in accordance with the provisions of KRS 61.645 and the Kentucky Retirement Systems Board of Trustees Election Policy and Procedures adopted by the Board.**o. VIOLATIONS OF BY-LAWS OR BOARD POLICIES.** If a complaint is made that a member of the Board violated these by-laws or any policy approved by the Board, the Board shall follow the procedure found in the Conflict of Interest and Confidentiality Policy in investigating the complaint.**Section 1.2 Board Responsibilities.**

- a. The Board shall make bylaws.
- b. The Board shall appoint an Executive Director and fix the Executive Director's salary.
- c. The Board shall adopt a compensation and classification plan applicable to all KRS employees other than the Executive Director and the Chief Investment Officer. The Board shall authorize and instruct the Executive Director to cause the name, position and salary of each employee to be posted on the website of KRS and otherwise be subject to public review pursuant to Kentucky Revised Statutes 61.870 to 61.884. The Executive Director shall present a list of the salaries of the KRS executive staff, including: the Executive Director; Chief Officers; Deputy Chief Officers; Division Directors; Deputy Controller; Information Security Officer; General Counsel; and Assistant General Counsel to the Board at its regular quarterly meeting in September each year, unless the Board directs that the data be presented at a different time or more frequently.
- d. The Board shall act on contracts for rental of office space, and professional services including but not limited to the auditor, actuary, legal counsel, medical examiners, and hearing officers.
- e. The Board shall act on legislative and regulatory changes proposed by the staff of the retirement systems.



- f. The Board shall ratify the audited financial statements.
- g. The Board shall ratify the actions of its Committees.
- h. The Board shall act on the recommendations of the actuary and shall adopt actuarial assumptions and contribution rates.
- i. The Board shall adopt contribution rates toward medical insurance premiums.
- j. The Board shall provide oversight concerning programs and services for members, retirees, beneficiaries, and participating employers.
- k. The Board shall select candidates for each trustee ballot.
- l. The Board, or individual members of the Board, should ordinarily refer all news media inquiries to the Executive Director and/or the KRS Board Chair and should not speak on behalf of the Board or KRS with the news media. However, nothing in this subsection is intended to prevent individual board members from speaking to the media concerning their actions and decisions as individual board members.

### **Section 1.3 Executive Director Responsibilities.**

- a. The Executive Director shall appoint all staff to all positions in the retirement systems, and shall manage the staff to perform all administrative functions of Kentucky Retirement Systems.
- b. The Executive Director shall develop a biennial budget and necessary budget amendments.
- c. The Executive Director shall be responsible for information and record management, and shall develop and maintain a disaster recovery plan.
- d. The Executive Director shall establish and implement policies in conformance with statutes, regulations and Board policies related to benefits administration.
- e. The Executive Director shall provide oversight of litigation and report significant developments to the Board.
- f. The Executive Director shall act as legislative liaison, and represent the Board at legislative hearings and other legislative meetings.
- g. The Executive Director shall oversee the administrative appeals and disability appeals hearing process.
- h. The Executive Director shall recommend legislative or regulatory changes and propose draft language.

- i. The Executive Director shall provide technical assistance to the members of General Assembly, Governor's office, state and local government officials, members, retirees, and beneficiaries of the retirement systems.
- j. The Executive Director shall communicate with the mass media and other agencies, entities or institutions, including responding to correspondence or inquiries addressed to the Board.
- k. The Executive Director shall implement any statutory or regulatory changes and take appropriate action to conform with federal law.
- l. The Executive Director shall coordinate reciprocal benefits with the other state administered retirement systems in Kentucky.
- m. The Executive Director shall present a list of the salaries of the KRS executive staff, including: the Executive Director; Chief Officers; Deputy Chief Officers; Division Directors; Deputy Controller; Information Security Officer; General Counsel; and Assistant General Counsel to the Board at its regular quarterly meeting in September each year, unless the Board directs that the data be presented at a different time or more frequently.
- n. The Executive Director shall present a budget-to-actual expenditure analysis to the Board at each quarterly meeting of the Board.

## **Section 2.1 Standing Committees.**

The Board shall have the Standing Committees specified in Section 2.2, each of them to have the duties and responsibilities as therein set forth, together with such other duties and responsibilities as the Board may by resolution determine. In each Board Year, the Chair, elected at the annual meeting, shall appoint Board members to Committees as specified in Section 2.2, unless otherwise determined by the Board. Each committee shall have a Chair and the Board Chair shall appoint the Chair of each Committee, unless otherwise determined by the board. A Committee may (but is not required to) elect a Vice Chair from among its members by a majority vote of its membership. A Vice Chair so elected shall preside at meetings of the Committee in the absence or inability to act of the Committee Chair. Any Board member may attend any meeting of any Committee of which he or she is not a member but shall not have a vote.

## **Section 2.2 Committee Duties and Responsibilities.**

The Standing Committees of the Board are, and shall have respective duties and responsibilities, as follows:

- a. **Administrative Appeals Committees.** There shall be two (2) Administrative Appeals Committees, which may be combined with the Disability Appeals



Committees. Consistent with the provisions of KRS Chapter 13B, the Committees shall meet in alternate months, as needed, to act in matters of administrative appeals. Each Committee shall consist of three (3) members; however, the members appointed to one committee may also serve from time to time on the other committee. The Committees shall ensure that the retirement laws are administered impartially and uniformly and that the actions of the retirement system resulting in the appeal were correct and fair under the applicable statutes and regulations.

1. **Committee Responsibilities.** In matters of administrative appeals, the Committee members shall consider the administrative record including the recommended order and any exceptions filed and it may adopt the hearing officer's recommended order, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate. The Committee may also recommend legislative changes to improve the administration of the benefits. Any recommended legislative changes shall be referred to the Legislative and Budget Committee for study.
  2. **Chief Benefits Officer Responsibilities.** The Chief Benefits Officer or designated staff will coordinate meeting dates and determine which cases will be reviewed. Staff will compile the administrative records and distribute the files to the Committee members prior to each meeting. Staff may provide legal or technical advice to the Committee.
- b. **Audit Committee.** The Committee shall consist of a maximum of seven (7) members and will act on behalf of the Board in fulfilling its oversight responsibilities for the financial reporting process, the system of internal control, the internal and external audit processes, and the process for monitoring compliance with laws, regulations and the code of conduct.
1. **Committee Responsibilities.** The Committee will meet quarterly, with authority to convene additional meetings, as circumstances require. The regular quarterly meetings shall be held on the first Thursday of February, May, August, and November. The committee shall have the authority to review reports by the Internal Auditor and to recommend appropriate policies and procedures. Additional responsibilities are enumerated in the Audit Committee Charter of the Board of Trustees.
  2. **Internal Auditor Responsibilities.** The Internal Auditor will be responsible for the planning, implementation and reporting of audits and the internal audit plan. The Internal Auditor will also be responsible for the functional control of audit activities in relation to the objectives of the Division of Internal Audit. Additional responsibilities are enumerated in the Division of Internal Audit Charter.
  3. **Audit Charters.** The Audit Committee Charter of the Board of Trustees and the Division of Internal Audit Charter are hereby incorporated by reference.

c. **Disability Appeals Committees.** There shall be two (2) Disability Appeals Committees, which may be combined with the Administrative Appeals Committees. Consistent with the provisions of KRS Chapter 13B, the Committees shall meet in alternate months, as needed, to act in matters of disability appeals. Each Committee shall consist of three (3) members; however the members appointed to one committee may serve from time to time on the other committee. The Committees shall ensure that the disability retirement laws are administered impartially and uniformly and that all members who apply for disability retirement benefits, and who qualify under the applicable statutes, are approved for benefits.

1. **Committee Responsibilities.** In matters of disability appeals the Committee members shall consider the administrative record including the recommended order and any exceptions filed and it may adopt the hearing officer's recommended order, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate. The Committee may also recommend legislative changes to improve the administration of the benefits. Any recommended legislative changes shall be referred to the Legislative and Budget Committee for study.

2. **Chief Benefits Officer Responsibilities.** The Chief Benefits Officer or designated staff will coordinate meeting dates and determine which cases will be reviewed. Staff will compile the administrative records and distribute the files to the Committee members prior to each meeting. Staff may provide legal or technical advice to the Committee.

d. **Investment Committee.** The Committee shall consist of a maximum of five (5) members and will act on behalf of the Board on investment related matters to assure the prudent investment of the retirement systems' assets to achieve the long-term funding goals established in the Board's Statement of Investment Policy.

1. **Committee Responsibilities.** The Committee will meet quarterly to review reports from investment staff, investment consultants and investment managers with authority to convene additional meetings, as circumstances require. The regular quarterly meetings shall be held on the first Tuesday of February, May, and August, and the first Wednesday of November. The Committee will monitor investment performance and management practices and make reports and recommendations to the Board. The Committee will approve the selection and termination of service providers. The Committee will evaluate whether the policy, the investment activities, and management controls and processes continue to be consistent with meeting the retirement systems' goals and perform other duties specified in the Statement of Investment Policy. The Committee may also recommend legislative changes to improve the administration of investment related matters. Any recommended legislative changes shall be referred to the Legislative and Budget Committee for study.

2. **Chief Investment Officer Responsibilities.** The Chief Investment Officer ("CIO") will administer the assets of the retirement systems consistent with the policies, guidelines and limits established by the law, and the Statement of Investment Policy and the Investment Committee. The CIO will provide members of the Committee with assessments of service providers and performance reports. The CIO will identify issues for consideration by the Investment Committee and prepare recommendations regarding those issues. The CIO will recommend changes to service providers, statutes, policies or guidelines as needed to maintain a productive relationship between the investment program and its goals. The CIO will communicate with the mass media and other agencies, entities or institutions regarding investment related issues.
3. **Investment Policy.** The Statement of Investment Policy: Insurance Fund and The Statement of Investment Policy: Pension Funds are hereby incorporated by reference.
- e. **Legislative and Budget Committee.** The Legislative and Budget Committee shall consist of a maximum of seven (7) members and shall review the retirement systems administrative budget and recommend additions or reductions in specific program areas or budgetary items. The Committee reviews and recommends statutory changes to the Board related to the administration of benefits and compliance with federal law and determines which changes are in the best interests of the retirement systems.
  1. **Committee Responsibilities.** The Committee will meet only as necessary. Meetings may be called as set forth in Section 1.1(f) of these bylaws. The Committee shall have the authority to review budget recommendations and legislative recommendations of members of the Board, staff or others. The Committee may approve, reject and modify changes, as well as provide policy guidance for staff in drafting changes. The Committee will present the final recommendations to the Board.
  2. **Executive Director Responsibilities.** The Executive Director will schedule meetings, prepare the budget document and supporting schedules, prepare draft changes to Kentucky Revised Statutes and present them to Committee members prior to the date of a meeting. Staff will research the impact of proposed changes and report the results to the Committee. Staff will also make preliminary contacts with legislators, employers and interest groups to assist in formulating legislation to accommodate all interested parties. Staff will work with the General Assembly, Legislative Research Commission, the Governor's Office and interest groups to obtain passage of the Board's legislative proposals, or advocate other interests supported by the Board.
- f. **Human Resources Committee.** The Committee shall consist of a maximum of five (5) members and shall assist the Executive Director and the Board of Trustees in attracting and retaining a competent, creative and motivated workforce.

1. **Committee Responsibilities.** The Committee shall meet on the third Thursday of February and May, the second Thursday of September, and the first Thursday of December with authority to convene additional meetings, as circumstances require. The Committee recommends personnel policies to the Board. The Committee reviews and recommends salaries for executive staff based on comparable salaries and job performance. The Committee shall ensure the provisions enumerated in KRS 61.645 (9) are administered in a fair and equitable manner. The provisions of KRS 61.645(9) are herein incorporated by reference. The Committee may also recommend legislative changes to improve the administration of the personnel system. Any recommended legislative changes shall be referred to the Legislative and Budget Committee for study.
  2. **Executive Director Responsibilities.** The Executive Director and his staff will maintain and provide the Committee with data on salaries of comparable positions in comparable businesses or similarly structured retirement systems. Staff will identify issues for consideration by the Committee and prepare recommendations regarding those issues.
- g. **Retiree Health Plan Committee.** The Committee shall consist of a maximum of seven (7) members and shall assist the Board in providing a group hospital and medical insurance plan for present and future recipients of a retirement allowance from KERS, CERS, and SPRS as required by KRS 61.702.
1. **Committee Responsibilities.** The Committee will meet quarterly to review reports from retirement staff and retiree health insurance consultants with authority to convene additional meetings, as circumstances require. The regular quarterly meetings shall be held on the second Tuesday of February and May, the first Thursday of September, and the second Tuesday of November. The Committee will monitor retiree health insurance matters and make reports and recommendations to the Board. The Committee will evaluate retiree health insurance issues and obligations set forth in state and federal law. The Committee may, as deemed necessary, evaluate health insurance companies, health maintenance organizations, self-insurance proposals, and other ways of providing a group hospital and medical insurance plan for retirees as provided in KRS 61.702. The Committee may negotiate and recommend appropriate contracts for execution by the Board. The Committee may solicit reports and actuarial analyses in order to analyze issues regarding retiree health insurance. The Committee may also recommend legislative changes to improve the administration of retiree health insurance related matters. Any recommended legislative changes shall be referred to the Legislative and Budget Committee for study.
  2. **Executive Director Responsibilities.** The Executive Director and his staff will maintain and provide the Committee with necessary information to execute its responsibilities. The Executive Director and his staff will provide advice



regarding state and federal laws and regulations. Staff will identify issues for consideration by the Committee and prepare recommendations regarding those issues.

- h. In addition to the duties and responsibilities described in Section 2.2, each Standing Committee may develop appropriate policies and proposals to be ratified by the Board.

### **Section 2.3 Delegations of Authority by the Board.**

- a. Except as may be prohibited by or inconsistent with law, the Board may delegate to any Standing Committee of the Board any power, authority, duty or responsibility conferred on the Board by law. In the case of any such delegation, the decision or action of the Committee within the scope of its delegated authority shall constitute the decision or action of the Board. The Board may at any time rescind the delegated authority as a whole or in part, except that a rescission of authority with respect to quasi-judicial matters delegated to a Committee shall not operate to affect the proceedings or the final action of any such matter pending before the Committee when the Board acts to rescind. This exception is designed to preclude the Board from using its authority to rescind a delegation to interfere with the process or outcome of a quasi-judicial proceeding then in progress before a Committee which had properly commenced the proceeding within the scope of its authority.

#### **b. Request for Proposal (RFP) Process.**

1. The Standing Committee charged with oversight of the area germane to the RFP shall ensure that the most appropriate vendors are chosen to provide services to the retirement systems consistent with the "Kentucky Retirement Systems Procurement Policy." The Standing Committee will review and make recommendations for appropriate vendors during its regularly scheduled meeting or at a special meeting if necessary.
2. The Chair shall appoint a RFP Committee as needed to review and make recommendations regarding RFPs that are not within an area germane to a Standing Committee. The RFP Committee will not have regular meetings, but will meet as a Special Meeting at the call of the Executive Director or the Chair.
3. **Staff Responsibilities.** Staff will solicit and screen responses for eligibility and completeness. Staff will conduct any preliminary due diligence necessary to assist in the screening of responses and the selection of the finalists presented for consideration by the Committee.

### **Section 2.4 *Ad hoc* Committees.**

In addition to the Standing Committees specified in Section 2.2, the Chair or the Board may at any time establish an *ad hoc* Committee of the Board and fix its duties and

responsibilities for any purpose which in the judgment of the Chair or the Board is better served by a temporary rather than Standing Committee. Each such Committee shall consist of such number of members as the Chair shall determine, and the Chair shall also then appoint the chair and designate the other members of the Committee unless otherwise determined by the Board.

### **Section 2.5 Limitations on Authority.**

No Committee shall have any power or authority, nor shall the Board delegate to it power or authority, as to any of the following:

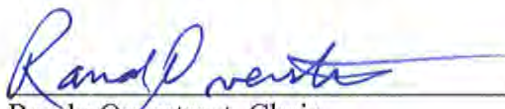
- a. The amendment or repeal of any Board resolution.
- b. Action on other matters committed by Board resolution or by Kentucky law (including the common law of trusts respecting the delegation or the non-delegation of fiduciary responsibilities) to the Board under terms or provisions that make such action non-delegable.

### **Section 2.6 Amendment of Bylaws**

These bylaws may be amended at any regular meeting of the KRS Board of Trustees by a vote of a majority of the entire membership of the Board.

### **Section 3.0 Certification of Statement of Bylaws and Committee Organization.**

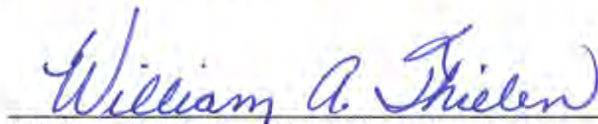
We, the Chair of the Board of Trustees and the Executive Director of the Kentucky Retirement Systems, do certify that this Statement of Bylaws and Committee Organization was approved by the Board on this the 5<sup>th</sup> Day of December 2013.



Randy Overstreet, Chair

12-5-13

Date



William A. Thielen, Executive Director

12-5-13

Date

**COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION I  
CASE NO. 16-CI-0656**

THOMAS K. ELLIOTT, *et al.*

PLAINTIFF

v.

MATTHEW G. BEVIN, GOVERNOR, *et al.*

DEFENDANTS

\*\* \*\* \*

**NOTICE**

Please take notice that the undersigned will make the following motion before the Franklin Circuit Court, Division I on Thursday, June 23, 2016 at 2:30 p.m. at a pre-existing hearing set by the Court.

**MOTION TO INTERVENE OF COMMONWEALTH OF KENTUCKY,  
*ex rel.* ANDY BESHEAR, ATTORNEY GENERAL**

Comes the Commonwealth of Kentucky, *ex rel.* Andy Beshear, Attorney General (hereafter “Commonwealth” or “Attorney General”), through counsel and moves this Court for leave to intervene as a Plaintiff in the above-styled action as a matter of right pursuant to CR 24.01 and KRS 418.075 and/or by permission pursuant to CR 24.02. The Commonwealth provides the below Memorandum in Support of its Motion to Intervene.

**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE**

**INTRODUCTION**

On June 17, 2016, Governor Matt Bevin, by executive decree, removed duly appointed members of the independent governing boards of the Kentucky Retirement Systems and the University of Louisville. On the very same day, the Governor used the pre-text of a “re-

organization” under KRS Chapter 12 to seize control of these independent boards. In doing so, he has violated several sections of the Kentucky Constitution, including KY. CONST. §§ 15, 27, 28, 29, 81. He has also violated numerous statutes enacted by the General Assembly, including provisions of KRS Chapter 61 and KRS Chapter 164. This action was done in an attempt to gain control and power over the operations, personnel, and finances of these independent entities.

This Court should grant leave to the Commonwealth, *ex rel.* Andy Beshear, Attorney General, to intervene in this action. Under CR 24.01, the Attorney General may intervene as a matter of right. Pursuant to KRS 418.045, the Attorney General has a right to be heard in matters which challenge the constitutionality of an act of the General Assembly. Further, the Attorney General may intervene in this action by permission under CR 24.02.

As the duly-elected Attorney General of the Commonwealth of Kentucky, Attorney General Andy Beshear is a constitutional officer and is the chief law officer of the Commonwealth and all of its departments, commissions, agencies, and political subdivisions. *See* KY. CONST. §§ 91, 92, 93; KRS 15.020. The Attorney General is duly authorized to enforce Kentucky law, by bringing actions for injunctive relief and other relief, under the Kentucky Constitution, Kentucky statute, and the common law, including his *parens patriae* authority. In accordance with this authority, the Attorney General may bring an action for injunctive relief against the Governor of Kentucky and Kentucky state agencies. *See* KY. CONST. § 91; KRS 15.020.

On behalf of the Commonwealth, the Attorney General seeks to exercise his authority and intervene in this action to protect the Constitution and to protect the Commonwealth from the unlawful acts of the Governor and his appointees as outlined further below and in the



Commonwealth's Intervening Verified Complaint For Declaration Of Rights And For Injunctive Relief. (hereafter "Intervening Complaint").

### **FACTUAL BACKGROUND**

#### **A. The Governor's Illegal Acts Related to The Kentucky Retirement Systems Board of Trustees.**

##### **1. The Kentucky Retirement Systems Board of Trustees.**

The Kentucky Retirement Systems Board ("KRS Board") was established by the Kentucky General Assembly in KRS 61.645. By statute it oversees and administers the Kentucky County Employees Retirement System ("CERS"), the Kentucky Employees Retirement System ("KERS"), and the State Police Retirement System ("SPRS") (collectively, the "Pension Systems"). Pursuant to KRS 61.645(1), the Kentucky Retirement Systems is governed by its Board, which is composed of thirteen (13) trustee members selected in accordance with KRS 61.645. KRS 61.645(3)(a) states that "each trustee shall serve a term of four (4) years or until his successor is duly qualified except as otherwise provided in this section." Before the expiration of a trustee's statutory term of years, pursuant to KRS 61.645(6)(b), a trustee "shall be removed from office upon conviction of a felony or for a finding of a violation of any provision of KRS 11A.020 or 11A.040 by a court of competent jurisdiction."

The KRS Board oversees approximately \$16 billion in assets and serves over 350,000 active, inactive, and retired members of the Pension Systems. Various provisions of KRS Chapter 61 outline the duties and responsibilities of the KRS Board. For example, the KRS Board is granted all the powers and privileges of a corporation including to sue and be sued, KRS 61.645(2)(a); to make bylaws, KRS 61.645(2)(b); to conduct the business for which it was formed, KRS 61.645(2)(c); to contract for investment and other services, KRS 61.645(2)(c); and

to acquire and hold property, KRS 61.645(2)(c). The Trustees have a fiduciary duty to the Pension Systems. *See* KRS 61.645(15)(a)-(h). In addition, the Trustees themselves elect a board chair and select the Executive Director. *See* KRS 61.645(8)(b); KRS 61.645(9). Trustees may only be removed for cause as outlined in KRS 61.6445(6)(b).

One of the original Plaintiffs in this action, Thomas K. Elliott, was initially appointed to the KRS Board on April 1, 2011 by then Governor Steve Beshear to a term of four (4) years. He was reappointed to a second four year term on April 1, 2015. Mr. Elliott was appointed and is qualified to serve as the investment expert trustee under KRS 61.645(1)(e). His term is set to expire on March 31, 2019. Mr. Elliott was elected as Chair by his fellow Trustees in 2015. Importantly, the KRS Board Chair appoints three (3) members of the five (5) member investment committee. KRS 61.650(b)(1)(b). The investment committee has authority over all investment-related matters of the Pension Systems. KRS 61.650(b)(2).

2. The Governor's Attempts to Gain Control of the KRS Board, Its Chair, and Its Functions

The Governor, seeking control of the KRS Board and its Chair, illegally and without notice or cause, removed Mr. Elliott as a Trustee on April 20, 2016 pursuant to Executive Order 2016-211. In his place, the Governor appointed Dr. William F. Smith, a dermatologist, as the Trustee with "investment experience." This occurred the day before the KRS Board was scheduled to meet and hold its annual elections for officers, including the Chair. Mr. Elliott was the Chair and was eligible for another term as Chair. Due to the uncertainty created by the Governor's order, the KRS Board voted to ask the Attorney General for an opinion on the legality of the Governor's actions.

On May 17, 2016, the Office of the Attorney General issued an official opinion stating that the Governor could not remove Mr. Elliott during his term without cause and that Dr. Smith

was not qualified to serve as the Trustee with “investment experience” under KRS 61.645(1)(e). *See* OAG 16-004. On May 18, 2016, the day after the OAG opinion, Dr. Smith declined the appointment from the Governor. However, on that same day the Governor appointed Mark Lattis as a Trustee for the position Mr. Elliott legally held.

On May 19, 2016, relying on the OAG opinion, Mr. Elliott attempted to attend the regularly scheduled KRS Board meeting and participate as a Trustee. However, he was prohibited from participating in the meeting by members of the Governor’s staff and others. Specifically, the Governor’s Chief of Staff Blake Brickman and Personnel Secretary Thomas Stevens, who is also a KRS Board member, threatened or indicated to Mr. Elliott that he would face arrest by the Kentucky State Police if he participated in the meeting. Brickman and Stevens were accompanied by several Kentucky State Police troopers. These actions were witnessed, in part, by the Executive Director and other Board Trustees. In addition, evidence exists that Stephens threatened or indicated to Mr. Vince Lang, an elected Trustee, that if he ran for the Chair, Stephens would have him investigated and would seize documents and emails from Mr. Lang.

Acting under these extremely disruptive and coercive conditions, the KRS Board once again delayed its vote on a Board Chair and Vice Chair. A member of the public who had planned to offer public comment chose not to because of the atmosphere. The Office of the Attorney General, received an Open Meetings Appeal and found there was an open meetings violation. *See* 16-OMD-124.<sup>1</sup>

On June 17, 2016, the Plaintiffs in this action filed their original Complaint. On that same day, Governor Bevin issued yet another illegal executive order to gain control of the KRS

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<sup>1</sup> The Attorney General’s Open Meetings Decision 16-OMD-124 outlines the facts surrounding this meeting in greater detail.

Board. This order, Executive Order 2016-340, purports to abolish the statutorily created KRS Board. In doing so, it completely suspends KRS 61.645. In its place, the Order creates the “Kentucky Retirement Systems Board of *Directors*.” In addition to violating KRS 61.645 by purportedly abolishing the KRS Board, Governor Bevin made a number of significant changes to the “Board of Directors” that are contrary to statute including, but not limited to, the following: (1) he increased the number of Governor appointed trustees from six (6) to ten (10) (*See* KRS 61.645(1)(e)), thus diluting the votes of the elected, non-appointed trustees; (2) he stripped the power to elect a chair and vice chair, and provided that power to himself (EO 2016-340, p. 5, Section VI to KRS 61.645(8); and (3) he stripped the sole power of the Board to appoint KRS’ Executive Director, and provided that he had to approve the selection of an Executive Director (EO 2016-340, p. 6, Section IX to KRS 61.645(9)).

The name change and the provisions of the order are nothing more than a pre-text to gain control of the KRS Board and its Investment Committee. Under this “re-organization” the Governor has seized control of the independent KRS Board. As outlined in both the Plaintiff’s Amended Complaint and the Commonwealth’s Intervening Complaint, this act is in violation of the Kentucky Constitution and KRS 61.645.

**B. The Governor’s Illegal Acts Related to The University of Louisville Board of Trustees.**

**1. The University of Louisville Board of Trustees.**

The University of Louisville has a long and rich history serving as a postsecondary educational institution of Jefferson County, Metro Louisville, and the Commonwealth of Kentucky. Pursuant to KRS 164.821, University of Louisville Board of Trustees (“UofL Board”) has been the Governing body of the University of Louisville. KRS 164.830 provides the UofL Board with powers independent of the Governor and states:

The board of trustees of the University of Louisville shall constitute a body corporate, with the usual corporate powers, and shall possess all the authorities, immunities, rights, privileges, and franchises usually attaching to the governing bodies of Kentucky public higher educational institutions.

These powers include, but are not limited to, the appointment and removal of a president, faculty, and other personnel, KRS 164.830(1)(a)-(b); granting degrees, KRS 164.830(1)(f); and setting and evaluating the University's strategic agenda, KRS 164.830(g). In addition, the UofL Board is responsible for the University finances pursuant to KRS 164A.500 *et seq.*

As it relates to the Boards membership, KRS 164.821(1) provides:

The government of the University of Louisville is vested in a board of trustees appointed for a term set by law pursuant to Section 23 of the Constitution of Kentucky. The board shall consist of seventeen (17) members appointed by the Governor; one (1) member of the teaching faculty of the University of Louisville who shall be the chief executive of the ranking unit of faculty government; a member of the permanent staff of the University of Louisville who shall be the chief executive of the staff senate; and a student member who shall be the president of the student body during the appropriate academic year.

The Board members may be removed by the Governor **for cause**, but only “**after being afforded a hearing with counsel before the Council on Postsecondary Education and a finding of fact by the council.**” KRS 164.821(1)(b)(emphasis added).

2. The Illegal “Reorganization” of the UofL Board and the Illegal Formation of a Temporary Board.

Like the KRS Board, the Governor has attempted to gain control of the UofL Board. On June 17, 2016, the Governor issued Executive Order 2016-338 purporting to abolish the UofL Board citing KY. CONST. §§ 69 and 81 and KRS 12.028 as his authority (“UofL Reorganization Order”). In the UofL Reorganization Order, the Governor abolished the UofL Board of Trustees and ended the terms of office of its duly appointed Trustees.

None of these Trustees were provided with the statutorily required hearing before the Council on Postsecondary Education and no findings of fact were made related to their removal.

Instead, the Governor cut their statutory terms short by executive decree. The Governor's illegal actions have imperiled UofL's accreditation. The Southern Association of Colleges and Schools, UofL's accrediting body, requires that members of the boards of accredited institutions "can be dismissed only for appropriate reasons and by a fair process." SOUTHERN ASSOCIATION OF COLLEGES AND SCHOOLS, "Principles of Accreditation" (5th Ed. 2011).<sup>2</sup>

In their place, the Governor "recreated" the Board and deemed that the new membership shall consist of:

- A. Ten (10) members appointed by the Governor, at least one (1) of whom shall be a graduate of the University, selected from nominees submitted to the Governor by the Postsecondary Education Nominating Committee in accordance with KRS 164.005.
- B. One (1) member of the teaching faculty of the University of Louisville, who shall be the chief executive of the ranking unit of faculty government, who shall serve a one (1) year term.
- C. One (1) member of the permanent staff of the University of Louisville, who shall be the chief executive of the staff senate who shall serve a one (1) year term.
- D. One (1) student member who shall be the president of the student body during the relevant academic year who shall serve a one (1) year term. The student member shall begin service as a Board member beginning with the first meeting of the academic year for which she or he was selected as student body president.
- E. The persons referenced in Subsections B., C., and D. of this Section shall not begin their service as members of the Board until the ten (10) members appointed under Subsection A. of this Section have begun their service as members.

The make-up of the recreated Board of Trustees is in direct conflict with and in violation of KRS 164.821, in which the General Assembly determined that UofL shall be governed by a twenty (20) member board. Moreover, the UofL Reorganization Order suspends the operation of KRS 164.821.

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<sup>2</sup> Available at: <http://www.sacscoc.org/pdf/2012PrinciplesOfAcreditation.pdf>

Additionally, on June 17, 2016, the Governor issued Executive Order 2016-339 (“UofL Interim Board Order”), citing KY. CONST. §§ 69 and 81 and KRS 12.028 and 63.190. In the UofL Interim Board Order, the Governor, by executive fiat and with no advice and consent of any body, created a three-person Interim Board to govern UofL and named its members.

The make-up of the Interim Board is in direct conflict with and in violation of KRS 164.821, in which the General Assembly determined that UofL shall be governed by a twenty member board. These are three individuals appointed by the Governor without going through the process required in KRS 164.005. The Governor has granted these three individuals with authority over the entire operations of the University of Louisville, its finances, and its personnel.

As with the KRS Board order, the UofL Board Executive Orders are pre-texts to gaining control of the UofL Board and authority over its choose of officers and finances. It achieves nothing other than to remove the statutorily appointed Trustees from the board and provide the Governor with unfettered authority in choosing the replacements.

### **ARGUMENT IN SUPPORT OF INTERVENTION**

Through intervention in this action, the Attorney General seeks to uphold the Constitution and laws of the Commonwealth. More specifically, he asks this Court to declare the Governor’s Executive Orders regarding the KRS Board and the UofL Board in violation of the Kentucky Constitution and various statutes, including KRS 61.645 and KRS 164.821.

As the chief law officer of the Commonwealth, the Attorney General has the common law and statutory right to intervene in this action. Therefore, this Court should allow the Attorney General to intervene on behalf of the Commonwealth under CR 24.01, KRS 148.075, and/or CR 24.02.

**I. THE ATTORNEY GENERAL MAY INTERVENE AS A MATTER OF RIGHT.**

Pursuant to CR 24.01, the Attorney General may intervene in this action as a matter of right. As CR 24.01(1) provides:

Upon timely application anyone shall be permitted to intervene in an action (a) *when a statute confers an unconditional right to intervene*, or (b) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless that interest is adequately represented by existing parties.

(Emphasis Added). The Attorney General has the right to intervene in this case based on his common law and statutory authority to protect the people of the Commonwealth.

**A. The Attorney General has Common Law and Statutory Authority to Intervene to Maintain Actions on Behalf of the Commonwealth.**

Under KY. CONST. § 91, the Attorney General is a constitutional officer. “The source of authority of the Attorney General is the people who establish the government, and his primary obligation is to the people.” *Hancock v. Terry Elkhorn Mining Co.*, 503 S.W.2d 710, 715 (Ky. 1973). Further, KRS 15.020 mandates that the Attorney General, as the chief law officer of the Commonwealth, “shall exercise all common law duties and authority pertaining to the office of the Attorney General under the common law.”

As the Supreme Court of Kentucky has recognized, “It is generally held that in the exercise of his common-law powers, an attorney general may not only control and manage all litigation in behalf of the state, but he may also intervene in all suits or proceedings which are of concern to the general public.” *Hancock*, 503 S.W.2d at 715 (*quoting* 7 Am. Jur. 2d *Attorney General* § 6). “The attorney general may intervene in civil actions and proceedings pursuant to constitutional powers, statutory powers, rules of court, or common law powers. The attorney



general may intervene as authorized for matters of compelling public interest or state interest ...  
.” 7A C.J.S. *Attorney General* § 54.

In *Commonwealth ex rel. Conway v. Thompson*, the Court reiterated the powers of the Attorney General, writing:

It is unquestioned that “[a]t common law, [the Attorney General] had the power to institute, conduct[,] and ***maintain*** suits and proceedings for the enforcement of the laws of the state, the preservation of order, and the protection of public rights.” Or, in other words, “[u]nder the common law, the attorney general has the power to bring any action which he or she thinks necessary to protect the public interest, a broad grant of authority which includes the power to act to enforce the state's statutes.”

300 S.W.3d 152, 173 (Ky. 2009) (footnotes omitted) (emphasis added). The Attorney General, as a constitutional officer and the chief law officer of the Commonwealth, has the common law powers to control and maintain all litigation on behalf of the state and to intervene in all suits or proceedings which are of concern to the general public.

The Attorney General’s common law and statutory authority includes not only the power to initiate suits, but to maintain actions already commenced in the public interest. *See Thompson*, 300 S.W.3d at 173. In *Hancock*, 503 S.W.2d 710, the former Kentucky Court of Appeals held that the Attorney General’s powers extend to intervention under CR 24.01(1) whenever the public interest is concerned. There, the Court considered the Attorney General’s motion to intervene under CR 24.01 in an action involving load limits on highways. *Id.* at 715. The Court wrote:

The Attorney General, as chief law officer of this Commonwealth, charged with the duty of protecting the interest of all the people, the traveling public, the school children in the school buses, and the very existence of the roads, had such a vital interest in this litigation that he had a right to intervene at least insofar as the public issues advanced in the action were involved.

*Id.* In addition, the Attorney General has a statutory right to be heard specifically regarding the constitutionality of statutes. KRS 418.075(1) states:

In any proceeding which involves the validity of a statute, the Attorney General of the state shall, before judgment is entered, be served with a copy of the petition, and shall be entitled to be heard, and if the ordinance or franchise is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the petition and be entitled to be heard.

In constitutional challenges, the Attorney General must “be given the *opportunity* to intervene and be heard on the matter” and is “entitled to be heard.” *Commonwealth v. Hamilton*, 411 S.W.3d 741, 751 (Ky. 2013). “There is no question as to the right of the Attorney General to appear and be heard in a suit brought by someone else in which the constitutionality of a statute is involved.” *Commonwealth ex rel. Hancock v. Paxton*, 516 S.W.2d 865, 868 (Ky. 1974).<sup>3</sup>

As in *Hancock*, this action concerns the duty of the Attorney General to protect the public interest. The public interest in this action is indisputable. In *Boone Creek Properties, LLC v. LFUCG*, 442 S.W.3d 40, (Ky. 2014), the Kentucky Supreme Court stated that—as an imperative to protecting our democracy—we must be able to “promptly eliminate” violations of the law:

For a representative government that draws its authority from the respect, good will, and consent of the people, rather than by the force of its armed police and military, *the ability to promptly eliminate ongoing violations of laws enacted by the people's representatives is essential to the ability to govern and maintain order in the community. Its inability to do so is injurious and harmful to the government and the community it serves.*

*Id.* (emphasis added).

This action brings important constitutional and legal question of the Governor’s authority 1) to suspend and ignore statutes enacted by the General Assembly; 2) to remove duly appointed

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<sup>3</sup> Additionally, CR 24.03 provides that “when the constitutionality of an act of the General Assembly affecting the public interest is drawn into question in any action, the movant shall serve a copy of the pleading, motion or other paper first raising the challenge upon the Attorney General.”

trustees from these independent boards; and 3) to reorganize independent boards to seize control of their operations, finances, and personnel. The Governor's directives usurp, invade, and erode the authority of the legislative branch, a co-equal branch of state government, which has the authority to make law determining the governance of both KRS and UofL. Only the General Assembly has the authority to suspend statutes. Furthermore, the Governor must faithfully execute the laws of the Commonwealth including KRS 61.645 and KRS 164.821 related to these independent boards. The Attorney General seeks intervention to eliminate these ongoing violations of the law. Thus, the Attorney General has a right to intervene as the chief law officer of the Commonwealth, charged with the duty of protecting the interest of the people of Kentucky and the Constitution.

The Commonwealth's claims related to the KRS Board are based on the exact same facts as the claims in the Plaintiff's Amended Complaint. The Commonwealth's claims related to the UofL Board are based on similar facts and the same legal analysis. They are so closely related that this Court should hear them both at the same time for judicial economy. The similarities are numerous. First, the "re-organization" orders were entered on the same day. Second, both the UofL Board and KRS Board orders remove duly appointed members from their respective boards in violation of the term limits and cause provisions in the respective enabling statutes. Third, both apply to boards that are not enumerated in KRS 12.020 and the Commonwealth argues are not subject to the Governor's reorganizational authority. Fourth, both are designed to vest power and control of these independent boards with one person – the Governor.

The United States Supreme Court addressed a similar situation in *Spangler v. United States*, 415 F.2d 1242 (1969). In *Spangler*, the United States sought intervention as a matter of right in a pending civil rights class action. *Id.* at 1243. The complaint in intervention expanded

the underlying action against three Pasadena, California public high schools by bringing in the entire Pasadena Public School system. *Id.* In addition, it requested additional injunctive relief. *Id.* The Supreme Court reversed the lower court ruling striking these portions of complaint in intervention, holding it would be “meaningless to give [a party] an absolute right to intervene in order to protect his interests, if once in the proceedings he was barred from raising questions necessary for his own protection.” *Id.* at 1245. The Court further stated:

Where there exists a sufficiently close relationship between the claims and defenses of the intervenor and those of the original defendant to permit adjudication of all claims in one forum and in one suit without unnecessary delay – and to avoid as well the delay and waste of judicial resources attendant upon requiring separate trials – the district court is without discretion to deny the intervenor the opportunity to advance such claims.

*Id.* at 1245.

As in *Spangler*, the Attorney General has a statutory right to intervene in this action alleging violation of the constitution.<sup>4</sup> He also has the common law right to maintain this action to “advance the public issues involved.” *Hancock*, 503 S.W.2d 715. This right would be meaningless if he were not permitted to protect all of the Commonwealth’s interests related to the authority of the Governor to suspend statutes by Executive Order in both matters. The additional claims center on similar facts and the same legal analysis. Denial of intervention will cause unnecessary delay and will waste judicial resources. Therefore, the Attorney General’s motion to intervene as a matter of right should be granted.

**B. The Attorney General’s Intervention in this Action is Timely.**

Moreover, the Attorney General timely seeks to intervene in this action. In *Hazel Enterprises, LLC v. Cmty. Fin. Servs. Bank*, 382 S.W.3d 65 (Ky. App. 2012), the Court specified the factors for when intervention as a matter of right is timely under CR 24.01:

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<sup>4</sup> The *Spangler* Court interpreted Fed. Rule. Civ. Pro. 24(a). CR 24.01 conforms to the federal rule. 6 Ky. R. Civ. Pro. Ann. Rule 24.01.

(1) [T]he point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenor knew or reasonably should have known of his interest in the case; (4) the prejudice to the original parties due to the proposed intervenor's failure, after he or she knew or reasonably should have known of his or her interest in the case, to apply promptly for intervention; and (5) the existence of unusual circumstances militating against or in favor of intervention.”

*Id.* at 68.

Here, the Attorney General meets the factors pronounced in *Hazel*. This is less than a week old. The original action was filed on June 17, 2016, and the amended complaint filed only yesterday. No responsive pleadings have been filed. CR 24.01 even permits intervention, in rare circumstances, post-judgment. *Arnold v. Com. ex rel. Chandler*, 62 S.W.3d 66 (2001). Therefore, the Commonwealth’s motion is timely. *See Government Employees Ins. Co. v. Winsett*, 153 S.W.3d 862 (Ky. App. 2004) (Prior to trial or other disposition of the case, a motion to intervene to protect subrogation rights is presumptively timely.).

Furthermore, the Attorney General seeks to assert his right to intervene to uphold the Constitution and the laws of the Commonwealth. This intervention creates both judicial and executive efficiencies. The Governor’s Office and the other parties will only have to litigate one lawsuit related to the Governor’s authority to suspend statutes which permeate both the Amended Complaint and the Intervening Complaint. The original parties will not be prejudiced by any delay. As such, the Attorney General’s intervention in this action is timely.

## **II. ALTERNATIVELY, THE ATTORNEY GENERAL MAY INTERVENE BY PERMISSION OF THE COURT.**

Even if the Attorney General did not have authority to intervene in this action as a matter of right – which he does – this Court should allow his intervention under CR 24.02. In pertinent part, CR 24.02, which governs permissive intervention, provides:

Upon timely application anyone may be permitted to intervene in an action: ...  
(b) when an applicant's claim or defense and the main action have a question of law or fact in common ... . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Accordingly, CR 24.02 allows intervention by permission whenever the applicant for intervention has a claim in common with the main action. “Permissive intervention requires that the intervenor have an interest or claim *in common* with the litigants in the underlying action.” *Bailey v. Bertram*, 471 S.W.3d 687, 691 (Ky. 2015).

The Attorney General seeks to protect the interests of the Commonwealth by asking this Court to require the Governor to follow the Constitution and the laws duly enacted by the General Assembly. In this action, the original Plaintiffs attack the validity of the Governor’s Executive Orders removing a duly appointed KRS Board Trustee and then “reorganizing” the KRS Board. Likewise, as outlined in greater detail above and in the Intervening Complaint, the Commonwealth challenges those same orders and also challenges similar orders relating to the UofL Board.

The Attorney General’s right to seek relief for the improper and unlawful actions of the Governor shares common questions of law and fact with the underlying action. This Court should resolve the Attorney General’s Intervening Complaint and the Petitioner’s action together. Furthermore, allowing the Attorney General to intervene in this action will not unduly delay or prejudice the adjudication of the rights of the original parties. Therefore, this Court should allow the Attorney General to intervene in this action.

### **CONCLUSION**

For the foregoing reasons, the Commonwealth of Kentucky, *ex rel.* Andy Beshear, Attorney General, respectfully requests that this Court grant its Motion to Intervene in this action.

Respectfully Submitted,

COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

ANDY BESHEAR  
ATTORNEY GENERAL

By: /s/ Mitchel T. Denham  
Mitchel T Denham  
Assistant Deputy Attorney General  
La Tasha Buckner, Director  
Office of Civil and Environmental Law  
S. Travis Mayo  
Joe Newberg  
Assistant Attorneys General  
Office of the Attorney General  
700 Capitol Avenue  
Capitol Building, Suite 118  
Frankfort, Kentucky 40601-3449  
(502) 696-5300  
(502) 564-8310 FAX

Counsel for Intervening Plaintiff,  
Commonwealth of Kentucky

**CERTIFICATE OF SERVICE**

I hereby certify the foregoing that a true and accurate copy of the Motion To Intervene Of Commonwealth Of Kentucky, *ex Rel.* Andy Beshear, Attorney General was served on the individuals whose names appear on the following Service List by U.S. Mail and additionally the methods prescribed below on this the 22<sup>nd</sup> day of June, 2016.

/s/ Mitchel T. Denham  
Michel T. Denham

**SERVICE LIST**

Hon. M. Stephen Pitt  
General Counsel  
Office of the Governor  
The Capitol, Suite 100  
700 Capitol Avenue  
Frankfort, Kentucky 400601  
[steve.pitt@ky.gov](mailto:steve.pitt@ky.gov)  
Counsel for Defendant Governor Bevin  
and Defendant Secretary Landrum  
*Via electronic mail, and hand delivery*

Bonita K. Black  
7118 Autumn Bent Way  
Crestwood, Kentucky 40014  
*Via U.S. Mail*

Ulysses L. Bridgeman, Jr.  
3309 Collins Lane  
Louisville, Kentucky 40245  
*Via U.S. Mail*

Ronald L. Wright  
12904 Ridgemoor Drive  
Prospect, Kentucky 40059  
*Via U.S. Mail*

Mark Lattis  
7005 Court of the Woods  
Louisville, Kentucky 40241

Secretary Thomas B. Stevens  
501 High Street  
Frankfort, Kentucky 40601  
*Via Hand Delivery*

Hon. Dana L. Collins  
Hon. Kevin L. Chlarson  
Hon. Katherine T. Reisz  
MIDDLETON REUTLINGER  
401 South Fourth Street, Suite 2600  
Louisville, Kentucky 40202  
502-584-1135  
[dcollins@middletonlaw.com](mailto:dcollins@middletonlaw.com)  
[kchlarson@middletonlaw.com](mailto:kchlarson@middletonlaw.com)  
[kreisz@middletonlaw.com](mailto:kreisz@middletonlaw.com)  
*Via email*

Counsel for Plaintiffs Elliott and Peter

Hon. Brian Thomas  
General Counsel  
Kentucky Retirement Systems  
Kentucky Retirement Systems  
Perimeter Park West  
1260 Louisville Road  
Frankfort, Kentucky 40601  
*Via email*



**COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION I  
CASE NO. 16-CI-0656**

THOMAS K. ELLIOTT, *et al.*

PLAINTIFFS

v.

MATTHEW G. BEVIN, GOVERNOR, *et al.*

DEFENDANTS

\*\* \*\* \*

**ORDER GRANTING MOTION TO INTERVENE**

This matter is before the Court on the motion of the Intervening Plaintiff, the Commonwealth of Kentucky, *ex rel.* Andy Beshear, Attorney General, by and through counsel, on Motion to Intervene. The Court having considered the Motion and the Commonwealth's Verified Intervening Complaint, and having heard oral argument on the Motion, and being otherwise sufficiently advised, GRANTS the right of Movant to intervene as a Plaintiff in the above captioned action.

\_\_\_\_\_  
Hon. Phillip J. Shepherd  
Judge, Franklin Circuit Court

\_\_\_\_\_  
Date

TENDERED BY:

/s/ Mitchel T. Denham

Mitchel T Denham

Assistant Deputy Attorney General

La Tasha Buckner, Executive Director

Office of Civil and Environmental Law

S. Travis Mayo

Joe Newberg

Assistant Attorneys General

Office of the Attorney General

700 Capitol Avenue

Capitol Building, Suite 118

Frankfort, Kentucky 40601-3449

(502) 696-5300

(502) 564-8310 FAX

Counsel for Intervening Plaintiff,

Commonwealth of Kentucky

9684249F-1907-43F5-90A7-4338177F7A8B : 000138 of 000138

Presiding Judge: HON. PHILLIP J. SHEPHERD (648260)

TD : 000002 of 000002