

1 AN ACT relating to gubernatorial appointments and declaring an emergency.

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

3 →Section 1. KRS 63.080 is amended to read as follows:

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

9 (2) (a) Except as provided in subsections (3) and (4) of this section, members of the  
10 board of trustees of the University of Kentucky, the board of trustees of the  
11 University of Louisville, members of the board of regents respectively of  
12 Eastern Kentucky University, Western Kentucky University, Morehead State  
13 University, Kentucky State University, Northern Kentucky University, Murray  
14 State University, and the Kentucky Community and Technical College  
15 System~~], and members of the Kentucky Board of Education and the Council~~  
16 ~~on Postsecondary Education]~~ shall not be removed except for cause.

17 (b) Members of the Kentucky Board of Education and the Council on  
18 Postsecondary Education shall not be removed except for cause.

19 (c) A member of a board of trustees or board of regents specified in paragraph  
20 (a) of this subsection may be removed for cause as follows:

21 1. The Governor or the board of trustees or board of regents, as  
22 applicable, shall notify, in writing, the member and the Council on  
23 Postsecondary Education that the member should be removed for  
24 cause and shall specify the conduct warranting removal;

25 2. The member shall have seven (7) days to voluntarily resign or to  
26 provide evidence to the Council on Postsecondary Education that the  
27 member's conduct does not warrant removal;

- 1           **3. Within thirty (30) days after receipt of notice from the Governor or the**  
2           **board, the Council on Postsecondary Education shall review the**  
3           **written notice, investigate the member and the conduct alleged to**  
4           **support removal, and make a nonbinding recommendation, in writing,**  
5           **to the Governor as to whether the member should be removed, a copy**  
6           **of which shall also be provided to the Legislative Research**  
7           **Commission;**
- 8           **4. The Governor shall then make a determination, in writing, whether**  
9           **the member should be removed and shall notify the member, the**  
10           **applicable board, the Council on Postsecondary Education, and the**  
11           **Legislative Research Commission of the determination; and**
- 12           **5. If the Governor's determination is to remove the member, the**  
13           **Governor shall remove the member by executive order, and shall**  
14           **replace the member with a new appointment according to the**  
15           **applicable statutes for the board of trustees or board of regents.**
- 16           **(d) For the purposes of this subsection, a member may be removed for cause**  
17           **for conduct including but not limited to malfeasance, misfeasance,**  
18           **incompetence, or gross neglect of duty.**
- 19           **(3) For a board specified in subsection (2)(a) of this section that is required by law to**  
20           **have proportional representation in its membership based on residence, political**  
21           **affiliation, gender, minority racial composition, or professional qualifications,**  
22           **the Governor or other appointing authority may remove any member of the board**  
23           **and replace him or her with another individual in order to bring the membership**  
24           **into compliance with the statutory proportional representation requirement for**  
25           **the board, provided that the Governor or other appointing authority shall:**
- 26           **(a) Only exercise the removal authority granted in this subsection if**  
27           **appointment at the end of the next expiring term of a member, or at the end**

- 1 of the next expiring term of members if two (2) or more members' terms  
2 expire at the same time, cannot cure the deficiency in the proportional  
3 representation requirement;
- 4 (b) Remove the fewest number of members necessary to bring the membership  
5 into compliance with the proportional representation requirement for the  
6 board;
- 7 (c) Identify the order in which the members were appointed to their current  
8 terms on the board and, beginning with the most recently appointed  
9 member who may be removed and replaced to bring the membership into  
10 compliance with the proportional representation requirement, remove the  
11 member or members according to the length of their tenure on the board,  
12 without taking into account any prior term of service on the board by the  
13 member;
- 14 (d) Provide any member proposed to be removed with the following:
- 15 1. Written notice, at least seven (7) days prior to the member's removal  
16 from the board, stating the statutory proportional representation  
17 requirement that the member does not satisfy; and
- 18 2. An opportunity during the seven (7) day notice period for the member  
19 to voluntarily resign or to provide evidence to the Governor or other  
20 appointing authority that the member does satisfy the proportional  
21 representation requirement or that another member on the board who  
22 also does not satisfy the requirement has a shorter tenure than the  
23 member proposed to be removed;
- 24 (e) Replace any removed member with only those individuals who will bring the  
25 board into compliance with the proportional representation requirement;  
26 and
- 27 (f) Appoint any new member in the same manner as provided by law for the

- 1 member being removed and to fill the remainder of the removed member's  
2 unexpired term.
- 3 (4) For a board of trustees or board of regents specified in subsection (2)(a) of this  
4 section, the Governor may remove for cause all appointed members of the board  
5 and replace the entire appointed membership as follows:
- 6 (a) The Governor shall notify, in writing, the board and the Council on  
7 Postsecondary Education that the entire appointed membership of the board  
8 should be removed for cause and shall specify the conduct warranting  
9 removal;
- 10 (b) The board or its members shall have seven (7) days to voluntarily resign or  
11 to provide evidence to the Council on Postsecondary Education that the  
12 conduct of the board or of individual members does not warrant removal;
- 13 (c) Within thirty (30) days after receipt of notice from the Governor, the  
14 Council on Postsecondary Education shall review the written notice,  
15 investigate the board and the conduct alleged to support removal, and make  
16 a nonbinding recommendation, in writing, to the Governor as to whether  
17 the appointed board membership should be removed, a copy of which shall  
18 also be provided to the Legislative Research Commission;
- 19 (d) The Governor shall then make a determination, in writing, whether the  
20 entire appointed board membership should be removed and shall notify the  
21 members, the Council on Postsecondary Education, and the Legislative  
22 Research Commission of the determination; and
- 23 (e) If the Governor's determination is to remove the entire appointed  
24 membership of the board, the Governor shall remove the members by  
25 executive order, and shall replace the members with new appointments  
26 according to the applicable statutes for the board of trustees or board or  
27 regents.

1 **For the purposes of this subsection, the entire appointed membership of a board**  
2 **of trustees or board of regents may be removed for cause if the board is no longer**  
3 **functioning according to its statutory mandate as specified in the enabling**  
4 **statutes applicable to the board, or if the board membership's conduct as a whole**  
5 **constitutes malfeasance, misfeasance, incompetence, or gross neglect of duty,**  
6 **such that the conduct cannot be attributed to any single member or members.**

7 ➔Section 2. KRS 164.011 is amended to read as follows:

8 (1) There is hereby created and established a Council on Postsecondary Education in  
9 Kentucky as an agency, instrumentality, and political subdivision of the  
10 Commonwealth and a public body corporate and politic having all powers, duties,  
11 and responsibilities as are provided to it by law, appointed for a term set by law  
12 pursuant to Section 23 of the Constitution of Kentucky. The council shall be  
13 composed of the commissioner of education, a faculty member, a student member,  
14 and thirteen (13) citizen members appointed by the Governor. The citizen members  
15 shall be confirmed by the Senate under KRS 11.160, and the commissioner of  
16 education shall serve as a nonvoting ex officio member. Citizen council members  
17 shall be selected from a list of nominees provided to the Governor under the  
18 nominating process set forth in KRS 164.005. If the General Assembly is not in  
19 session at the time of the appointment, persons appointed shall serve prior to  
20 confirmation, but the Governor shall seek the consent of the Senate at the next  
21 regular session or at an intervening extraordinary session if the matter is included in  
22 the call of the General Assembly.

23 (2) By no later than thirty (30) days after May 30, 1997, the Governor's Postsecondary  
24 Education Nominating Committee shall submit nominations to the Governor as set  
25 forth in KRS 164.005. On making appointments to the council, the Governor shall  
26 assure broad geographical and political representation; assure equal representation  
27 of the two (2) sexes, inasmuch as possible; assure no less than proportional