

BOARD OF REGENTS
for
KENTUCKY STATE UNIVERSITY



Special Called Meeting of the Board of Regents

Monday, May 9, 2022

10:00 a.m.

2nd Floor Julian M. Carroll

Academic Service Building

Frankfort, Kentucky 40601

**KENTUCKY STATE UNIVERSITY BOARD OF REGENTS
SPECIAL CALLED MEETING**

***** Meeting Will be Conducted In-Person and by Teleconference*****

Monday, May 9, 2022

10:00 a.m.

Board of Regents Room
2nd Floor Julian M. Carroll Academic Services Building
Frankfort, Kentucky 40601
(Primary Physical Location)

Zoom Link: <https://kysu.zoom.us/j/95683658865>

Webinar ID: 956 8365 8865

Phone One-Tap: +13017158592,,95683658865# or +13126266799,,95683658865#

AGENDA

- | | |
|---|---|
| 1. Call to Order | Regent Gerald Patton
Board Chair |
| 2. Roll Call | Elise Borne
Board Secretary |
| 3. Approval of Agenda | Chair Patton |
| 4. Ratification of Committee Appointments for 2022-2023 | Chair Patton |
| 5. Board Orientation/Training | Dr. Clara Ross Stamps
Acting President

Attorney Lisa Lang
General Counsel

Elise Borne |
| 6. Action Items | |
| A. Approval of Quarterly Meeting Dates | Chair Patton |
| B. Approval of Statement of Work with Protiviti Government Services, Inc. | Dr. Gerald Shields, VP of Finance and Administration/CFO |
| C. Approval to Engage the Services of The Registry Advisory Services | Dr. Clara Ross Stamps |
| D. Approval of the Financial Exigency Policy | Attorney Lisa Lang |
| 7. Closing Remarks | Chair Patton |
| 8. Adjournment | Chair Patton |
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KENTUCKY STATE UNIVERSITY BOARD OF REGENTS

ACTION ITEM: 6A

ACTION ITEM:

Approval of Quarterly Meeting Dates for 2022-2023.

FACTS:

KRS 164.340 Meeting of Boards, stipulates in pertinent part, “[t]he governing board shall meet quarterly at the institution or at such other place as is agreed upon.” In congruence with KRS 164.340, Article VI, Section 6.2 of *The Gold Book: Bylaws of the Kentucky State Board of Regents* states that, “...the Board of Regents shall meet quarterly in regular session...” As such, and in conformity with both KRS 164.340 and the Gold Book, the proposed Quarterly Meeting dates for 2022-2023 are as follows:

July 15, 2022
October 12, 2022
January 11, 2023
April 12, 2023

BUDGETARY IMPLICATIONS:

N/A

RECOMMENDATION:

Chair Patton recommends that the Board of Regents approve the presented Quarterly Meeting dates for 2022-2023.

MOTION:

Approve the Quarterly Meeting Dates for 2022-2023.



KENTUCKY STATE UNIVERSITY BOARD OF REGENTS

ACTION ITEM: 6B

ACTION ITEM:

Approve the Statement of Work with Protiviti Government Services, Inc. ("Protiviti").

FACTS:

Protiviti Government Services, Inc. (a subsidiary of Robert Half International) shall provide accountants who shall report directly and exclusively to Vice President and Chief Financial Officer, Dr. Gerald D. Shields to provide accounting services for FY 2021 and FY 2022. Dr. Shields who shall be solely responsible for reviewing and approving any and all work performed by these accountants. These accountants will provide services shall commence on May 9, 2022 and will continue to work through September 30, 2022.

Kentucky State University negotiated the proposed agreed upon Statement of Work In accordance with KRS 164.A.575(2) with Protiviti Government Services, Inc. ("ProGov" or "Protiviti), a vendor who maintains a General Services Administration price agreement with the United States of America.

BUDGETARY IMPLICATIONS:

Protiviti shall invoice Kentucky State University on a monthly basis for actual hours worked at an hourly rate not to exceed the rate contained in the contract between General Services Administration and Protiviti. Any out of pocket expense will be billed upon the actual amounts Incurred. The total cost of the work shall not exceed \$449,780.

RECOMMENDATION:

Acting President Stamps recommends that the Board of Regents approve the Statement of Work with Protiviti Government Services, Inc.

MOTION:

Approve the Statement of Work with Protiviti Government Services, Inc. ("Protiviti").



KENTUCKY STATE UNIVERSITY BOARD OF REGENTS

ACTION ITEM: 6C

ACTION ITEM:

Approval to engage in the services of The Registry Advisory Services (The Registry).

FACTS:

The Registry Advisory Services (The Registry) is the nation's premier placement firm for interim higher education administrators. With more than 1,000 current Members, The Registry is able to supply consultants and interim leaders for short- and long-term projects in dozens of different capacities on college and university campuses.

Institutions of higher education challenged by tuition declines, budgetary pressures, demographic shifts and the Covid-19 pandemic routinely retain The Registry because it is the only placement firm with consultants that have the requisite experience to respond to these challenges in nimble, creative ways.

Kentucky State University seeks to retain The Registry to provide will provide candidates to serve as the interim President for Kentucky State University until a permanent President is selected.

BUDGETARY IMPLICATIONS:

N/A

RECOMMENDATION:

Acting President Stamps recommends that the Board of Regents approve the engagement of The Registry Advisory Services.

MOTION:

Approve to engage in the services of The Registry.



KENTUCKY STATE UNIVERSITY BOARD OF REGENTS

ACTION ITEM: 6D

ACTION ITEM:

Approval of the Financial Exigency Policy.

FACTS:

House Bill 250, an act relating to Kentucky State University, was signed into law on April 8, 2022. One of the corrective measures in HB 250 states as follows:

[N]otwithstanding any existing Kentucky State University policies relating to financial exigency, the Kentucky State University board of regents shall execute a new financial exigency policy by May 15, 2022 that will expedite the restructuring of university operations. The board of regents shall provide a copy of the new exigency policy to the Council on Postsecondary Education and the director of the Legislative Research Commission by June 1, 2022.

The attached Financial Exigency Policy is an emergency response to address KSU's financial situation and the first of several processes and procedures to remediate KSU's financial shortfall.

This policy replaces the existing Financial Exigency Policy (2015) in its entirety.

BUDGETARY IMPLICATIONS:

To Be Determined.

RECOMMENDATION:

Acting President Stamps recommends that the Board of Regents Approve the Financial Exigency Policy.

MOTION:

Approve the Financial Exigency Policy.

FINANCIAL EXIGENCY

2.8.7 Financial Exigency

The following policy, approved by the Board of Regents, governs financial exigency at the University.

2.8.7.1 Definition

Financial exigency which justifies the termination of tenured faculty or staff is an imminent financial condition which seriously jeopardizes the quality of the University's academic program and the ability of the University to fulfill its obligations to the public. Projections of enrollment, or instructional subsidies, and of other sources of revenue must indicate that the shortage of funds will be both severe and persistent. The Board of Regents must find that institutional operations within such budgetary constraints requires a reduction in personnel such that tenured faculty or staff must be terminated or laid off, or probationary faculty must be terminated or laid off prior to the end of their respective appointments. Such a reduction in faculty or staff positions shall be deemed required only if, in the Board's judgment, it will have an effect substantially less detrimental to the institution's ability to fulfill its mission than with other forms of budgetary curtailments available to the institution.

2.8.7.2 Program Reduction or Elimination

The Board will review the faculty ratios in each degree program as well as the cost per student for each academic course. If it is determined that budgetary conditions, governmental mandate or economic currents have resulted in reduced student enrollment within certain colleges, schools, units or programs then the Board may eliminate or curtail such college, school, unit or program.

2.8.7.3 Faculty and Staff Committee

Any time a financial exigency is declared; the President shall designate or create a standing committee approved by the Board to consult with the President. The committee shall consist of faculty and staff members who represent the various academic and administrative units of the University. The faculty members shall be chosen from a list of faculty members provided to the President by the Faculty Senate and the staff members shall be provided to the President by the Rotating Advisory Committee or such other committee as is designated as the official representative of all University staff members. The committee shall act as the representative of the faculty's and staff's interest in both their personal and professional concerns for the University's programs.

2.8.7.4 Preliminary Determination and Statement

If the Board declares that a state of financial exigency exists or is imminent or a program change has occurred or should seriously be considered, and termination of one or more faculty or staff may be a required as a consequence of either circumstance, it shall prepare a statement that identifies the state of financial exigency or other program change. The statement shall outline the options for response which might involve termination of employment. This statement shall be transmitted to the Faculty and Staff Committee with a request for its action in accordance with this policy. This statement shall also be published and made available to all faculty and staff. Pending committee action, the Board shall undertake, through the President's Office, to obtain advice and recommendations with respect to the matters addressed in the statement.

2.8.7.5. Duties of the Faculty and Staff Committee

In the event that a financial exigency is declared, the President shall consult with and seek advice from the faculty and staff committee at least twenty (20) days before the Board takes any final action which might result in layoffs or termination. The President and the committee shall consider identifiable alternative methods of budget reductions; determine which colleges, schools, units or programs, faculty or staff positions should be eliminated; and prepare a report, with supportive documents, for submission to the Board. Such a report shall include both majority recommendations and minority reports. It shall be the responsibility of the committee to recommend criteria that may be used by the President and the Board for academic program evaluations and priorities. A decision to curtail or discontinue an academic or administrative unit shall be made in the best interests of the students and the University's mission.

2.8.7.6 Individual Designations

Once the Board has declared a state of financial exigency and has identified the particular departments or administrative units in which a reduction in staff is necessary, it shall be the primary responsibility of the President to recommend to the Board which individuals are to be terminated or laid off. Such a recommendation shall normally follow seniority, unless an exception is made to preserve the diversity of specializations with a department or unit, to preserve academic accreditation or when strict application of seniority would otherwise threaten a viable academic or administrative program or department or unit.

2.8.7.7 Seniority

The following sequence shall be followed in determining seniority: tenured faculty or staff of superior academic rank would have preference for retention over tenured faculty of lesser rank. A faculty or staff member who has obtained tenure prior to another faculty or staff member of the same rank would have preference over the latter faculty or staff member. If tenure and rank considerations are the same for two faculty members,

the faculty member with the longer period of employment would have retention preference. Only in a case where program needs dictate other considerations will a non-tenured faculty or staff member be retained over a tenured person. Such a situation will only be warranted upon a showing that diversity of specialty is necessary to preserve academic accreditation or when application of seniority threatens a viable academic program.

2.8.7.8 University Obligations

In making specific recommendations for termination of individual tenured faculty or staff positions, the President shall take into account the following: If funded vacancies exist, reasonable effort will be made to offer the tenured faculty or staff member another existing position within the institution for which the tenured person is qualified by experience and education.

2.8.7.9 Lay-Off Status

A faculty or staff member whose position has been eliminated or reduced in accordance with the provisions of this policy shall, at the end of the appropriate notice period, be placed on lay-off status, unless the lay-off notice has been rescinded prior to that time. A person on lay-off status shall remain on such status until:

- a. For a probationary faculty, the probationary appointment would have expired under its own terms;
- b. For tenured faculty or staff, the earliest of one of the following occurs: Reappointment to the position or failure to accept such reappointment would terminate the faculty or staff member's employment;
- c. Resignation; or
- d. Failure by the affected faculty or staff member to notify the President not later than December 15 of each year while on lay-off status as to his or her location, employment status, and desire to remain on lay-off status. Failure to prove such notice of desire to remain on lay-off status shall terminate such person's employment.

A person on lay-off status has all of the reemployment rights and also has the following minimal rights: participation in departmental, unit, and institutional activities permitted by departmental and/or unit guidelines; continued use of campus facilities; continued participation in fringe benefit programs which are not dependent on payroll or require University financial contributions.

2.8.7.10 Notification

The President shall send to each tenured faculty or staff member recommended for termination a written notice of the Board's initial decision to make such termination. The notice shall include a statement of the basis for the decision, a description of the manner in which the decision to terminate was made, that the tenured faculty or staff member will be provided an opportunity to have the particular decision reconsidered by the President with advice from the Faculty and Staff Committee, and the rights of the said faculty or staff member.

2.8.7.11 Reconsideration

A tenured faculty or staff member may secure reconsideration of the decision by filing a written request with the President within thirty (30) days after receipt of notice. The Faculty and Staff Committee shall consider the information furnished to the tenured faculty or staff member and provide him or her with an opportunity to furnish it with written information or statement tending to prove the accuracy and correctness of the facts stated in the request. A genuine effort will be made to resolve the entire matter by informal methods of preliminary inquiry, consultation, discussion, and confidential mediation. No formal evidentiary hearing of an adversarial nature will be conducted on such a complaint. If the difficulty is not resolved in fifteen (15) days, the Committee shall submit to the President a written report containing its advice and recommendation with a supporting statement of its specific reasons. After consideration of the report, the President shall make a recommendation to the Board.

2.8.7.12 Final Matters

A faculty or staff member having been laid off because of financial exigency shall upon recall have restored to his or her credit sick leave which had been accrued and unused at the time of separation as well as being restored to his or her status prior to such lay-off. Eligibility for all other University benefits will be consistent with personnel policies and benefits in effect at the time of recall.



KENTUCKY STATE UNIVERSITY POLICIES AND PROCEDURES

POLICY TITLE: FINANCIAL EXIGENCY

SECTION/NUMBER: TDB

APPROVED BY: BOARD OF REGENTS [DATE TDB]

EFFECTIVE DATE: TDB

REVISED FROM: JANUARY 23, 2015 FINANCIAL EXIGENCY POLICY

PURPOSE:

On or about April 8, 2022, upon signatory execution by Governor Andy Beshear, House Bill 250 (hereinafter “HB250”), was formally approved to maintain Kentucky State University’s financial solvency and to ensure its future viability.

As part of the legislation, Section 1.(1) of HB250 declares, in part, as follows:

Section 1. (1) The General Assembly hereby finds a significant lack of efficiency and effectiveness in the instructional and operational performance of Kentucky State University and determines that immediate appropriate corrective action is warranted as follows:

(a) Whereas Kentucky State University does not have sufficient resources or reserves to continue operating as currently structured, the General Assembly declares that a state of financial exigency exists at Kentucky State University from the effective date of this Act until June 30, 2023. Notwithstanding any existing Kentucky State University policies relating to financial exigency, the Kentucky State University board of regents shall execute a new financial exigency policy by May 15, 2022, that will expedite the restructuring of university operations. The board of regents shall provide a copy of the new exigency policy to the Council on Postsecondary Education and the director of the Legislative Research Commission by June 1, 2022;

(b) In accordance with KRS 164.350 and 164.365, the Kentucky State University board of regents has the authority to terminate employment of any university employee, including tenured employees, upon 30 days' notice in accordance with the university's personnel policies and subject to the recommendation of the president or acting president, or in the case of the termination of the president or acting president, the recommendation of the Council on Postsecondary Education...

In accordance with the legislature’s enacted legislation, Kentucky State University (hereinafter “KSU”), in establishing this policy, aims to fulfill the directives and intent of HB250 and utilize due diligence to manage effectively and efficiently the declaration of financial exigency and to remediate the legislative finding of lack instructional and

ALL POLICIES ARE SUBJECT TO AMENDMENT

operational effectiveness to ensure the continued viability and mission of Kentucky's oldest historically Black institution.

POLICY STATEMENT:

A declaration of financial exigency is defined as a significant decline in the financial resources of an institution that fundamentally compromises the academic integrity of the institution as a whole, that cannot be alleviated by less drastic means than the termination of staff and faculty, including tenured faculty appointments, and that affects the university as a whole and threatens its ability to carry out its fundamental educational mission. The gravity of such a declaration requires deliberate and thorough consideration of all retrenchment measures. Therefore, in accordance with its legislative directive and to ensure the continued viability of the University, KSU has created this policy to ensure the utilization of due diligence in prioritizing the educational needs of the University and the students in which it serves.

Pursuant to HB250 and Section 164.350 of the Kentucky Revised Statute (hereinafter, "KRS"), the Kentucky State University Board of Regents (hereinafter "Board") has been granted authority by the Commonwealth of Kentucky over the University's budgetary and personnel matters in the assurance and maintenance of a quality educational program within the available financial resources. Accordingly, upon approval by the Board, employment of employees, including those who are tenured, may be terminated or compensation reduced pursuant to the declaration of financial exigency and in accordance with the institutional procedures set out below.

RELATED PROCEDURES:

The University's primary mission as a public, comprehensive, historically black land-grant institution is to "...[impact] individuals by providing quality teaching...and public service to enable productive lives within the diverse global economy." Because the University receives public support and student fees for performing this primary activity, the overarching principle that guides the University in times of financial exigency through the application of this policy is that the University shall significantly reduce or eliminate expenditures that do not directly contribute to the development of educated persons.

Financial Exigency Plan

Upon Board approval of the Financial Exigency Policy, the President shall create a Financial Exigency Committee, which may consist of his/her Council members and/or other direct appointments ("Committee"). The Committee shall develop a Financial Exigency Plan ("Plan") that includes, at the minimum:

- A. The identification of areas/personnel to be affected by the proposed plan – the affected area(s) may encompass all the operations of the University or may be limited to specific divisions, departments, programs, and personnel.

B. In making specific recommendations for termination or reduced compensation of individual(s), proposed rubrics (**Appendix A and Appendix B**) will be used to assist in the decision-making process. See Appendices

1. Faculty (including those with tenure) - the committee shall take into account the following: **[Criteria TBD]**
2. Staff – the committee shall take into account the following: **[Criteria TBD]**
3. While the above-mentioned factors may be deemed relevant, the primary consideration shall be the maintenance of a sound and balanced educational program that is consistent with the functions and responsibilities of the institution.

The Committee shall submit the proposed Financial Exigency Plan along with any supporting documentation to the President.

Termination or Reduced Compensation Process

Upon approval of the Plan by the President, the President or his/her designee shall send any impacted employee a written statement by email and Certified United States Mail, setting forth the basis for the employment decision, stating the employee's final date of employment or effective date for reduced compensation, and any other pertinent financial information, if any.

As stipulated by HB250, the terminated employee shall be given 30 days' notice or 30 days' pay in lieu of notice.

Appeal for Reconsideration

- A. Tenured Faculty – A terminated faculty member with tenure may secure reconsideration of the President's decision by filing a written request emailed and mailed/hand-delivered to the Office of the President within ten (10) business days after the date in which the employment decision was issued. The request for reconsideration shall specify the grounds upon which the faculty member contends that the recommendation of the Committee to terminate his/her employment was arbitrary or capricious and shall include a short, plain statement of facts that the faculty member believes support the contention.

The Committee will be notified by the President or his/her designee of any such appeal and provided the opportunity, within ten (10) business days following receipt of the request for reconsideration, to offer in rebuttal whatever relevant data the Committee utilized in making the decision.

Within ten (10) business days following the opportunity for rebuttal, and upon consideration of the appeal and the rebuttal, if any, the President will issue a final determination.

In the event the decision to terminate is upheld, the tenured faculty member may submit to the President a request for appeal to the Board of Regents. The President or his/her designee will submit to the Board of Regents for consideration at the

next regularly scheduled meeting of the Board the (1) notice of termination, (2) request for reconsideration, (3) Committee rebuttal, if any, and (4) the final decision of the President. No formal evidentiary hearing will be conducted. Any appeal will be considered by the Board on the basis of the documentation provided and a final decision rendered.

If, within ten (10) business days after receiving the notice of termination, the tenured faculty member makes no written request for reconsideration, his or her employment shall be terminated upon approval on the date of the Board meeting specified in the notice.

- B. Staff – Pursuant to KSU’s Human Resources Policy Manual, employment at the University is at-will, and as such, terminated staff members shall not have a right of appeal.

Final Action(s)

Regardless of the provisions of any other sections of KSU’s handbooks and/or policies, upon Board approval, the employment of any employee terminated pursuant to procedures established within the Financial Exigency Policy is final. This policy and procedure hereby supersede and replace in its entirety any and all previous policies of the like.

An employee having been terminated because of financial exigency shall be eligible for all applicable University benefits consistent with personnel policies in effect at the time of termination.

DEFINITIONS:

Business Day: A business day in this policy shall be defined as a day during which KSU offices are open.

Financial Exigency: Financial exigency in this policy shall be defined as a significant decline in the financial resources of an institution that fundamentally compromises the academic integrity of the institution as a whole, that cannot be alleviated by less drastic means than the termination of staff and faculty, including tenured faculty appointments, and that affects the university as a whole and threatens its ability to carry out its fundamental educational mission.

Financial Exigency Committee: A committee created by the President consisting of his/her Council members and/or other direct appointments for the purpose of developing a financial exigency plan in accordance with this policy.

Financial Exigency Plan: A plan to alleviate immediate financial burdens necessary to ensure the continued viability and mission of the University.

University: University in this policy shall be defined as Kentucky State University.

ENTITIES AFFECTED:

All Kentucky State University employees, including those with tenure status.

POLICY OWNER/INTERPRETING AUTHORITY:

Kentucky State University Board of Regents, Office of the President, Office of Finance and Administration/Office of the General Counsel

RELATED POLICIES/DOCUMENTS: N/A

STATUTORY OR REGULATORY REFERENCES:

- HB 250
- KRS 164.300 - Purpose of state universities and colleges
- KRS 164.350 - General powers and duties of boards of regents
- KRS 164.360 - Appointment and removal of president, faculty, and employees
- KRS 164.365 - Governing boards to have exclusive control of employment, tenure, and official relations of employees

DRAFT