KENTUCKY CHAPTER AMERICAN PLANNING ASSOCIATION

ORIENTATION AND CONTINUING

EDUCATION HANDBOOK

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Orientation and Continuing Education Handbook

KRS 147A.027

Introduction

This handbook has been compiled by the Kentucky Chapter of the American Planning Association (KAPA) in order to provide guidance to its members and others involved or interested in land use planning in the State of Kentucky. Specifically this handbook provides information on meeting the requirements of HB55 as codified in KRS 147A.027. This handbook provides factual information, as well as information based upon opinions of the KAPA Executive Committee. As with any requirement under the law, users of this handbook are encouraged to consult with their own legal counsel concerning the ramifications of the law as cited, and its application to each particular fact situation. Throughout this handbook the terms or references "HB 55" and "KRS 147A.027" are used interchangeably since one is the codification of the other.

History/Importance

House Bill 55, a bill requiring continuing education for planning commissioners, board of adjustment members and planning professionals was filed for consideration by the Kentucky State House of Representatives during its 2001 session. It was sponsored by Representative Jim Wayne of Jefferson County and was supported by KAPA. An earlier version of the bill had been considered by the 2000 general Assembly but failed. The current version was favorably received. It won passage and was signed by Governor Paul Patton. The effective date of the legislation was June 21, 2001. It is codified in Kentucky Revised Statutes (KRS) 147A.027.

This groundbreaking piece of legislation is of extreme importance to the State of Kentucky. For the first time in the State (and in the United States), planning commissioners, board of adjustment members and planning professionals are required to receive orientation and training. This professional education effort is a vital part of efforts to provide legally based, thorough, and informed consideration of planning proposals and projects that affect the quality of life in Kentucky. KAPA is pleased and proud to have been involved in this legislation's passage and efforts to insure its timely and complete application. This handbook is one step towards meeting that goal.

Text of HB55-KRS 147A.027

The text of the bill, as codified in KRS 147A.027, is provided as an appendix to this handbook. It should be reviewed carefully and completely to understand its requirements. The remainder of this handbook contains information and suggestions on how to best meet these requirements.

Effects of HB 55 on Planning Commissioners

The effects of HB 55 are felt immediately upon the appointment of a new planning commissioner. Subsection (1) (a) of the law requires that newly appointed planning

commissioners receive four (4) hours of "orientation training". That training, to qualify, must be received either within a year (12 months) prior to the date of appointment or within 120 days following appointment.

Existing planning commissioners must also be trained. Subsection (2) (a) of the law requires that each planning commissioner receive no less than eight (8) hours of continuing education training during two consecutive

calendar years following appointment. For commissioners in office at the time of the law's effective date the requirement would begin on the effective date of the law. No one is exempt from the training requirement.

Effects of HB 55 on Board of Adjustment Members

The effects of HB 55 are the same for board of adjustment members. Subsection (1) (a) of the law also requires that newly appointed board of adjustment members receive four (4) hours of "orientation training". That training to qualify must be received either within the year (12 months) prior to the date of appointment or within 120 days following appointment.

Current BOA members must also be trained. Subsection (2) (a) of the law requires that each board of adjustment member receive no less that eight (8) hours of continuing education training during two consecutive calendar years following appointment. For board members in office at the time of the law's effective date the requirement would begin on the effective date of the law. As with commissioners, BOA members are not exempt from the training requirement.

Effects of HB 55 on Planning Professionals

The educational requirements for planning professionals are greater than for planning commissioners or board of adjustment members. Subsection (1) (b) of the law requires that newly employed planning professionals receive eight (8) hours of "orientation training". That training, to qualify, must be received either within the year (12 months) prior to the date of employment or within 120 days following employment.

Current planning professionals are not exempt from training requirements. Subsection (2) (b) of the law requires that each planning professional receive no less that sixteen (16) hours of continuing education training during two consecutive calendar years. For planning professionals employed at the time of the law's effective date the requirement would begin on the effective date of the law.

Who is considered a planning professional? KRS 147A.027 provides some guidance in its language. Throughout the law, it refers to "planning professional, zoning administrator, and administrative official, and each planning professional's deputies and assistants". It would appear from a broad reading of this language that anyone involved in planning related activities should receive the required orientation and training. It is recommended that, when in doubt, train.

Administration of HB 55 Requirements

KRS 147A.027, subsection (3), provides that the planning commission or the appropriate legislative body is "responsible for providing training" as required by this law. In particular, the commission or the legislative body is to provide funding for the training. This need not be costly since the planning commission, under subsection (4) of KRS 147A.027 determines what training qualifies for credit. Jurisdictions without adequate funding for off site training are encouraged to explore ways to train on site. A listing of KAPA resources for training are attached as an appendix to this handbook and can be found at the KAPA website at www.kapa.org. Other resources are available from the American Planning Association (APA web address: www.planning.org).

In terms of record keeping, by the specific dictates of KRS 147A.027 (1) (c) and (2) (c) as well as subsection (5), the planning commission is responsible for keeping records concerning the compliance with this law. Written statements of attendance are supposed to be filed with the commission secretary. By law "each statement shall identify the date of each program attended, its subject matter, location, sponsors, and the time spent on each program". For KAPA sponsored events or training this information will be provided. Attached as an appendix to this handbook are forms that can be used for self-sponsored training or that otherwise eligible for credit. Also attached is a sample log sheet for tracking training obtained by an individual.

Time used for training is to be accounted for and reported on a minute for minute basis. For example, a training video that is 1.5 hours long will be credited as 1.5 hours of training. Rounding time up, no more than 15 minutes, to the next ½ hour is permissible for ease of record keeping.

Subject matter for training is contained in KRS 147A.027 subsection (4). The following is a listing taken directly from that section:

> "Land use planning; zoning; floodplains; transportation; community facilities; ethics; public utilities; wireless telecommunications facilities; parliamentary procedure; public hearing procedure; administrative law; economic development; housing; public buildings; building construction; land subdivision; and powers and duties of the board of adjustment."

However, it further states, in the same section, that a planning commission may approve other subject matter stating that, "other topics reasonably related to the duties of planning officials or planning professionals may be approved by majority vote of the planning commission prior to December 31 of the year for which credit is sought". Once again, planning commissions and boards of adjustment with limited budgets are encouraged to self-train using resources available as referenced in this handbook.

Penalties/Consequences

There are penalties and consequences for not complying with the terms of KRS 147A.027. Per subsection (7) of the law, a planning commissioner or board member

that does not comply with the training requirements is subject to removal from office according to the provisions of KRS 100.157 and 100.217 respectively. Noncompliance might also jeopardize action taken by a board while a non-qualifying member is serving. That is an issue that will be resolved by the courts. However, it is not recommended to tempt fate in such a circumstance.

The penalty for professional planners not meeting the requirements is perhaps more harsh. Subsection (8) of KRS 147A.027 provides that no governmental entity performing local planning under KRS 100 shall employ a planning professional who fails to meet these requirements. Thus planning professionals are faced with loss of employment for failure to comply with the training requirement.

FREQUENTLY ASKED QUESTIONS CONCERNING HB55

Who is required to have training? According to the specific terms of HB 55, all planning commission members, board of adjustment members and professional staff members are to have training. Please refer to KRS 147A.027 (1) (a) and (b), and (2) (a) and (b) for specific requirements.

What about dual members, a person who is both a planning commissioner and BOA member? Persons who are both members of the planning commission and the board of adjustments need not double the amount of training they receive. They need to meet the requirement once.

Who is professional staff for the purposes of HB 55? Anyone who gives substantive guidance concerning regulations or procedure as it relates to any matter administrated by the planning commission or the board of adjustments is considered professional staff. In some circumstances that might include personnel who would appear to be clerical staff. A determination as to who is required to be trained should be made with documentation

by the planning commission.

Who accounts for or tracks the hours received? By the specific provisions of HB 55, the planning commission (with the assistance of the person receiving the training) accounts for the hours of training received by those required to get training.

The planning commission even tracks hours for the BOA? HB 55 specifically provides that the planning commission is to account for the hours of training received by all persons, including BOA members and professional staff.

How is time accounted for? Some sessions that KAPA offers seem to give more credit than time spent? Generally, time is accounted for on a minute for minute basis. However it is acceptable to round time up by no more than 15 minutes to the nearest half-hour. KAPA, for its conference sessions, often does this. All sessions offered by KAPA will have the hours credit designated for each session. For non-KAPA sessions or training, it is the responsibility of the planning commission to designate the credit hours.

The planning commission has a lot of responsibility under HB 55. Do the requirements of HB 55 need to be an agenda item at meetings? Not necessarily. The planning commission can designate an individual to track hours of training received. That individual can report periodically to the commission, the status of training. The commission secretary shall certify, by December 31 of each calendar year, the hours of training received.

Do the planning commission and board of adjustment meetings themselves count as training? No. Anything considered part of the commission or board's

normal duties does not count as training. This also applies to professional staff who will not get credit for attending meetings.

Our planning commission has a special project on going (i.e. Comp Plan update). Do the meetings for this project count? No. Unless there is a training element included in the project. For instance, at the beginning of many projects there is an orientation session held at which the purpose of the comprehensive plan or other item is described as is the relevant sections of state law. This type of non-project specific presentation is eligible for credit. Ultimately, each commission will have to decide whether a particular session qualifies for credit.

Can I watch a video or read a book and it count as training? Yes. These types of activities count towards training. It is suggested that to document such activities, and to eliminate the possibility of abuse, that each person requesting credit, document time spent and provide a written summary of material reviewed. This written summary should be kept with the other materials documenting compliance.

I read my "Planning Magazine" every month when it comes from APA. Does that count? No. But membership in APA and KAPA is valued educationally. It is suggested that a planning commission offer credit (no more than 1 hour per year) for commissioners or board members that are members of both KAPA and APA. Such credit is not available for professional staff since such professional membership is seen as a normal part of employment.

Do training session have to be approved by KAPA? No. Sessions do not have to be approved by KAPA or APA. They must be approved by the particular planning commission. There is, as part of HB 55, a list of topics that do qualify. If a commission wants KAPA approval of a session for documentation purposes, the form on which credit is claimed can be forwarded the KAPA's professional development officer for his signature.

I'm going to school. Does that count? Yes it can. If the class deals with one of the subject matter areas covered by HB 55 then it would count on an hour for hour basis. Obviously, someone enrolled in a college course in planning will meet, in one semester, the requirements for the two-year period under HB 55.

If I, as a current planning commissioner or BOA member, am re-appointed do I need to meet the orientation requirement for new members? No. The requirement for orientation is only for newly appointed members, not re-appointments. Persons having served on commissions or boards in the past are subject to the orientation requirement however.

My planning commission is holding an orientation session for new members. Can I, an existing member, go and obtain training to meet my requirement? Yes. However the session should be designed to provide benefit to new and existing

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members and allow for interaction between new and existing members to allow for cross training. Such sessions do not qualify towards regular training requirement (no double credit for one session) for new members only as orientation.

I'm a professional planner that has just changed jobs. I met the two-year requirement at my old job and it hasn't expired. Do I need to meet it again? No, but you do need to meet the orientation requirement, particularly if you are a planner coming into Kentucky from another state. It is suggested that such orientation focus on local laws, regulations and customs. The planning commission, as the body certifying training, may give credit (as orientation) for past training sessions attended particularly for planners transferring from one job to another in state. Individual planning commissions must make that determination. Documentation concerning your compliance with any of the training requirements should be forwarded from your old employer to your new employers in order to certify compliance.

I am a private sector planner. Do I have to meet the requirement for training? Yes. HB 55 clearly states that if you are to be employed by a public entity that you must complete training. In the case of a private sector planner you can track your own time and provide certification of meeting the requirement on a jurisdiction by jurisdiction basis. It is suggested that a private sector planner might be well served to join the 60 Hour Club, sponsored by KAPA, which tracks hours of continuing education. A private sector planner need not be "oriented" before each new job. However it is suggested that new private sector planners be oriented as part of their employment by a private sector firm.

Training is required over a two-year period. Do I have to split the hours equally between the two years or can I get them all in one year or the other? You can get all the hours in one year or the other or split the equally or unequally as long as they add up in total to the required amount at the end of the two year period.

Is training accounted for by fiscal years or calendar years? KRS 147A.027 states, in several sections, that training is to be accounted for by calendar years.

We are accounting by calendar year. What about training that I received earlier in 2001, does it count? If it can be documented and if approved by the planning commission then such training does, in KAPA's opinion, count. The key is that the planning commission must approve such credit. Certain attorneys disagree with this interpretation since it gives credit for training received prior to the effective date of HB 55. Each commission should consult their own attorney for advice concerning the application of this portion of the law.

I earned a lot of hours in one particular two-year period. Do they carry over? No. Hours of training received are on good for credit within the two-year period in which they are earned.

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As a professional AICP planner I am meeting the requirements of the CPDP program. Are the requirements of HB 55 in addition to these other requirements? No. The programs are independent o each other. You must still meet the minimum under HB 55 in terms of required hours for any two-year period however.

Can a deficiency in training on the part of a commissioner of board member be raised as part of a lawsuit challenging that entity's action? Yes it can be raised although HB 55 is so new that there is not any precedent as to the impact that it will have. However the requirements of HB 55 are very serious and should be treated as such since they might result in the action of a commission or board being overturned.

Appendix A

KRS 147A.027

KRS 147A.027 - Orientation and continuing education training for planning and zoning

officials and staff.

(1)

(a) Each planning commissioner and board of adjustment member of a planning unit shall, within one (1) year prior to appointment, or within one hundred twenty (120) days of appointment, attend a minimum of four (4) hours of orientation training in one (1) or more of the subjects listed in subsection (4) of this section.

(b) Each planning professional, zoning administrator, and administrative official, and each planning professional's deputies and assistants, shall, within one (1) year prior to being employed, or within one hundred twenty (120) days of employment, attend a minimum of eight (8) hours of orientation training in one (1) or more of the subjects listed in subsection (4) of this section.

(c) Each of the individuals listed in paragraphs (a) and (b) of this subsection shall certify his or her attendance by a written statement filed with the secretary of his or her respective planning commission within one hundred forty (140) days of appointment or employment. Each statement shall identify the date of each program attended, its subject matter, location, sponsors, and the time spent in each program.

(2)

(a) Each planning commissioner and board of adjustment member of a planning unit shall, within each period of two (2) consecutive calendar years, starting at the date of the individual's appointment, attend no less than eight (8) hours of continuing education in any of the subjects listed in subsection (4) of this section.

(b) Each planning professional, zoning administrator, and administrative official, and each planning professional's deputies and assistants, shall, within each period of two (2) consecutive calendar years, starting at the date of the individual's appointment, attend no less than sixteen (16) hours, of continuing education in any of the subjects listed in subsection (4) of this section.

(c) Each of the individuals listed in paragraphs (a) and (b) of this subsection shall certify his or her attendance by a written statement filed with the secretary of his or her respective planning commission by December 31 of each calendar year. Each statement shall identify the date of each program attended, its subject matter, location, sponsors, and the time spent in each program.

1. The planning commission or the legislative body of the city, county, urban-county, charter county government, or consolidated local government in which the planning commission has jurisdiction or, in the case of a joint planning unit, has representation in, shall be responsible for providing training as required by subsections (1) and (2) of this section or for providing funding to each planning commissioner, board of adjustment member, full time planning professional, zoning administrator, administrative official, and planning professional's deputies or assistants so that each individual may obtain training as required by subsections (1) and (2) of this section from other sources.

2. The subjects for the education required by subsections (1) and (2) of this section shall include, but not be limited to, the following: land use planning; zoning; floodplains; transportation; community facilities; ethics; public utilities; wireless telecommunications facilities; parliamentary procedure; public hearing procedure; administrative law; economic development; housing; public buildings; building construction; land subdivision; and powers and duties of the board of adjustment. Other topics reasonably related to the duties of planning officials or planning professionals may be approved by majority vote of the planning commission prior to December 31 of the year for which credit is sought.

(5) Each local planning commission shall keep in its official public records originals of all statements and the written documentation of attendance required in subsection (6) of this section filed with the secretary of the planning commission pursuant to paragraph (c) of subsection (1) and paragraph (c) of subsection (2) of this section for three (3) years after the calendar year in which each statement and appurtenant written documentation is filed.

1. Each planning commissioner, board of adjustment member, full time planning professional, zoning administrator, administrative official, and planning professional's deputies or assistants shall be responsible for obtaining written documentation signed by a representative of the sponsor of any continuing education course for which credit is claimed, acknowledging the fact that the individual attended the program for which credit is claimed. That documentation shall be filed with the secretary of the planning commission as attachments to the statements required by paragraph (c) of subsection (1) and paragraph (c) of subsection (2) of this section.

2. If a planning commissioner or board of adjustment member fails to:

(a) Complete the requisite number of hours of orientation training and continuing education within the time allotted under subsections (1) and (2) of this section;

(b) File the statement required by paragraph (c) of subsection (1) and paragraph (c) of subsection (2) of this section; or

(c) File the documentation required by subsection (6) of this section; the planning commissioner shall be subject to removal from office according to the provisions of KRS 100.157, and the board of adjustment member shall be subject to removal according to the provisions of KRS 100.217.

(8) No city, county, urban-county, charter county, consolidated local government, planning commission, board of adjustment, or any entity performing local planning under KRS Chapter 100, shall employ a planning professional, zoning administrator, administrative official, or a planning professional's deputy or assistant, who fails to complete the requisite number of hours of orientation and continuing education required by subsections (1) and (2) of this section in the capacity of a planning professional, zoning administrator, administrative official, or planning professional's deputy or assistant.

Appendix B

Sample Forms

KRS 147A.027

Continuing Education Credits

For planning commissioners, board of adjustment members,

planning professionals, zoning officials and planning assistants

Conference/Seminar Sponsor_____

Location_____

Date_____

House Bill 55, **KRS 147 A**, requires continuing education for each planning commissioner, board of adjustment member, planning professional, zoning official and other planning assistants. Sessions from the conference/seminar listed above may be used as credits toward this requirement, with approval from the participant's planning commission. **Please indicate on the back of this sheet the session(s) attended and the total hours awarded and file this with the secretary of your planning commission.**

Name of Participant

Title and Organization

Street Address

City/State/Zip

I hereby apply for the number of continuing education hours indicated on the back of this sheet, in order to meet the requirements of KRS 147 A (HB 55), and certify that the information provided is correct.

Signature:_____

Date _____

I hereby certify that these continuing education hours are acceptable to the duly authorized planning commission and that they are acknowledged as credited hours toward the satisfaction of KRS 147 A (HB55).

Signature of Planning Commission Official:_____

Title

Date_____

09/2001

Appendix C

KAPA Training Resources and Opportunities

TRAINING MATERIALS

The following is a list of items that the Kentucky Chapter of APA (KAPA) has available to be checked out for training. Unless noted all materials are VHS tapes.

NOTE: You can also check for training opportunities at the KAPA website: www.kapa.org.

- Training Made Easy
- Zoning Enforcement Techniques
- Negotiating & Mediating Land-Use Disputes
- Meeting Management
- Ethical Dilemma's in Planning
- The Best of Planning for Zoning Administrators (3 Tapes in Series)
- NKAPC Planning Commissioners Workshop (with Michael Chandler) 6 Tapes - 6 Sessions
- Conserving Rural Character and Open Space Through Innovative Land Use Techniques (with Randall Arendt)