

**CHAPTER 371****(SB 115)**

AN ACT relating to economic development.

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

Section 1. KRS 154.20-030 is amended to read as follows:

It shall be the purpose of the Kentucky Economic Development Finance Authority to develop and expand existing and alternative sources of energy and the conservation of energy, to assist business enterprise in obtaining additional sources of financing to aid this state in achieving the goal of long-term economic growth and full employment, to meet the growing competition for business enterprises, to preserve existing jobs, to create new jobs, to reduce the cost of business and production, to reduce the costs and liabilities by encouraging and financing efforts to reduce and avoid the generation of hazardous waste and toxic by-products, to foster export activity, to foster economic development on surface mining land, and to alleviate and prevent unemployment through the retention, promotion, and development of agriculture and agricultural facilities, agribusiness, forestry and forestry facilities, commerce and commercial facilities, health care and health related facilities, export markets and export activities, industry and industrial buildings and facilities, ***riverport facilities***, tourism and tourist facilities, including the sites therefor, and agricultural, forestry, commercial, and industrial machinery and equipment, water and air pollution control equipment, and solid waste disposal facilities with respect thereto or for use by individuals for private sector employment. Such purposes shall be public purposes for which public money may be spent.

Section 2. KRS 154.20-035 is amended to read as follows:

- (1) The authority may, upon approval of the board, borrow money and issue bonds or notes in accordance with KRS 154.10-035 and other provisions of this chapter appertaining, subject to KRS 42.420, for the following purposes:
  - (a) To provide sufficient funds for achieving the authority's purposes and objectives, including but not limited to, amounts necessary to pay the costs of acquiring projects or any part thereof; ***to make loans for the maintenance, operation, expansion, or development of riverport facilities that are under the authority of a developmental riverport authority established under KRS 65.520***; to make loans for the cost of a project or any part thereof; to make loans pursuant to KRS 154.10-030(11) for an export-related transaction; to make grants; to provide money to guarantee or insure loans, leases, bonds, notes, or other indebtedness; to make working capital loans; for all other expenditures of the authority incident to and necessary or convenient to carry out the authority's purposes, objectives, and powers; or for any combination of the foregoing;
  - (b) To refund bonds or notes of the authority issued under this chapter, by the issuance of new bonds, whether or not the bonds or notes to be refunded have matured or are subject to prior redemption or are to be paid, redeemed, or surrendered at the time of issuance of the refunding bonds or notes; and to issue bonds or notes partly to refund such bonds or notes and partly for any other purpose provided for by this section; or
  - (c) To pay the costs of issuance of bonds or notes under this chapter; to pay interest on bonds or notes becoming payable prior to the receipt of the first revenues available for payment thereof as determined by the board; and to establish, in full or in part, a reserve

for the payment of the principal and interest on the bonds or notes in such amount as shall be determined by the board.

- (2) The bonds and notes, including, but not limited to, commercial paper, shall be authorized by resolution adopted by the authority, shall bear the date or dates, and shall mature at the time or times, not exceeding fifty (50) years from the date of issuance, as the resolution provides. The bonds and notes shall bear interest at the rate or rates set, reset, or calculated from time to time as provided in the resolution. The bonds and notes shall be in the denominations; be in the form, either coupon or registered; carry the registration privileges; be transferable; be executed in the manner; be payable in the medium of payment, at the place or places; and be subject to the terms of prior redemption at the option of the authority or the holders thereof as the resolution or resolutions provide. The bonds and notes of the authority may be sold at public or private, negotiated sale, at the price or prices the authority determines. Bonds and notes may be sold at a discount.
- (3) Bonds or notes may be:
  - (a) Made the subject of a put or agreement to repurchase by the authority or others;
  - (b) Secured by a letter of credit or by any other collateral which the resolution may authorize;
  - (c) Resold by the authority, once acquired by the authority, pursuant to any put or repurchase agreement without the acquisition being considered the extinguishment of the bond or note.
- (4) The authority may authorize its chairman or other officer to, by order:
  - (a) Sell and deliver, and receive payment for notes or bonds;
  - (b) Refund notes or bonds by the delivery of new notes or bonds, whether or not the notes or bonds to be refunded have matured, are subject to prior redemption, or are to be paid, redeemed, or surrendered at the time of the issuance of refunding bonds or notes;
  - (c) Deliver notes or bonds, partly to refund notes or bonds and partly for any other authorized purposes;
  - (d) Buy notes or bonds so issued at not more than the face value of the notes or bonds; or
  - (e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights at the option of the authority or the holder, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.
- (5) Except as provided by the authority, every issue of its notes or bonds shall be general obligations of the authority payable out of revenues, properties, or money of the authority, subject only to agreements with the holders of particular notes or bonds pledging particular receipts, revenues, properties, or money as security therefor.
- (6) The notes or bonds of the authority shall be and are hereby made negotiable instruments within the meaning of and for all purposes of the Uniform Commercial Code, subject only to the provisions of the notes or bonds for registration.
- (7) A resolution authorizing notes or bonds may contain any or all of the following covenants which shall be a part of the contract with the holders thereof:

- (a) A pledge of all or a part of the fees, charges, and revenues made or received by the authority, or all or a part of the money received in payment of lease rentals, or loans and interest thereon, and other money received or to be received to secure the payment of the notes or bonds or an issue thereof, subject to agreements with bondholders or noteholders as may then exist;
- (b) A pledge of all or a part of the assets of the authority, including leases, or notes or mortgages and obligations securing the same to secure the payment of the notes or bonds or of an issue of notes or bonds, subject to agreements with noteholders or bondholders as may then exist;
- (c) A pledge of a loan, grant, or contribution from the federal, state, or municipality, or source in aid of a project as provided for in this chapter;
- (d) A provision as to the use and disposition of the revenues and income from leases, or from loans, notes, and mortgages owned by the authority;
- (e) A provision as to the establishment and setting aside of reserves or sinking funds and the regulation and disposition thereof subject to this chapter;
- (f) Limitations on the purpose to which the proceeds of sale of the notes or bonds may be applied and limitations on pledging those proceeds to secure the payment of other bonds or notes;
- (g) Authority for and limitations on the issuance of additional notes or bonds for the purposes provided for in the resolution and the terms upon which additional notes or bonds may be issued and secured;
- (h) A provision for the procedure, if any, by which the terms of a contract with noteholders or bondholders may be amended or abrogated, the number of noteholders or bondholders who are required to consent thereto, and the manner in which the consent may be given;
- (i) Vesting in a trustee, or a secured party, such property, income, revenues, receipts, rights, remedies, powers, and duties in trust or otherwise as the authority may determine necessary to appropriate to adequately secure and protect noteholders and bondholders or to limit or abrogate the rights of the noteholders and bondholders. A trust agreement may be executed by the authority with any trustee who may be located inside or outside this state to accomplish any of the foregoing;
- (j) Providing for the payment of maintenance and repair costs of a project;
- (k) Establishing the insurance to be carried on a project and the use and disposition of insurance money and condemnation awards;
- (l) Establishing the terms, conditions, and agreements upon which the holder of the bonds, or a portion thereof, shall be entitled to the appointment of a receiver by the Circuit Court. A receiver may enter and take possession of the project and maintain it or lease or sell it for cash or on an installment sales contract and prescribe rentals and payments therefor and collect, receive, and apply all income and revenues thereafter arising in the same manner and to the same extent as the authority; and
- (m) Providing for any other matters, of like or different character, which in any way affect the security or protection of the notes or bonds.

- (8) A pledge made by the authority shall be valid and binding from the time the pledge is made. The money or property pledged and received by the authority shall immediately be subject to the lien of the pledge without a physical delivery or further act. The lien of the pledge shall be valid and binding as against parties having claims of any kind in tort, contract, or otherwise against the authority and shall be valid and binding against the transfer of the money or property pledged, irrespective of whether the parties have notice. It shall not be necessary to record the resolution, the trust agreement, or any other instrument by which a pledge is created.
- (9) Neither the members of the authority nor any person executing the notes or bonds shall be liable personally on the notes or bonds or be subject to personal liability or accountability by reason of the issuance thereof.
- (10) The state shall not be liable for any financial obligations of the authority nor shall any such obligations or bonds be considered a debt of the state. The obligations shall contain on the face thereof a statement indicating this fact.
- (11) The notes and bonds of the authority shall be securities in which the public officers and bodies of this state and municipalities and municipal subdivisions, insurance companies, associations, and other persons carrying on an insurance business, banks, trust companies, savings banks and savings associations, savings and loan associations, investment companies, and administrators, guardians, executors, trustees, and other fiduciaries, and all other persons who are authorized to invest in bonds or other obligations of the state, may properly and legally invest funds.
- (12) The property of the authority and its income and operation shall be exempt from all taxation by this state or any of its political subdivisions. All bonds and notes of the authority, the interest thereon, and their transfer shall be exempt from all taxation by this state or any of its political subdivisions, except for estate, gift, and inheritance taxes, notwithstanding that interest on bonds or notes of the authority may be or become subject to federal income taxation as a result of legislative action by the federal government. The state covenants with the purchasers and all subsequent holders and transferees of notes and bonds issued by the authority under this chapter, in consideration of the acceptance of and payment for the notes and bonds, that the notes and bonds of the authority, issued pursuant to this chapter, the interest thereon, the transfer thereof, and all its fees, charges, gifts, grants, revenues, receipts, and other money received or to be received and pledged to pay or secure the payment of the notes or bonds shall at all times be free and exempt from all state or local taxation provided by the laws of this state, except for estate, gift, and inheritance taxes.

Section 3. KRS 154.20-060 is amended to read as follows:

- (1) Insurance, guarantees, or letters of credit provided or procured pursuant to KRS 154.20-040 and 154.20-045 shall be provided or procured only for projects within this state which are consistent with the purposes and objectives of the authority and this chapter.
- (2) The authority shall give paramount priority in providing or procuring insurance, guarantees, and letters of credit to projects which have the greatest potential for creating new jobs or retaining current jobs within this state.
- (3) ***Notwithstanding the provisions of subsection (2) of this section, when considering project applications from a riverport facility established under KRS 65.520, the authority shall not***

*give priority to regulatory criteria pertaining to direct employment at these facilities and shall instead give priority to the indirect employment maintained or created.*

**Approved April 7, 2000**