

## CHAPTER 529

(SB 409)

AN ACT relating to infrastructure projects.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO READ AS FOLLOWS:

- (1) The General Assembly finds that the work of the Water Resource Development Commission, created by executive order of the Governor and confirmed by the General Assembly in KRS 147A.011, established the necessity of encouraging regionalization, consolidation, and partnerships among governmental agencies, and private parties when appropriate, with the goal of making potable water and wastewater treatment available to all Kentuckians through the maximization of financial resources and the conservation of natural resources of the Commonwealth. Based on these findings, the General Assembly declares that the Kentucky Infrastructure Authority shall implement a program for the provision of water services as authorized in the budget and directed by the General Assembly.*
- (2) On the effective date of this Act, responsibility for the management and operation of the Water Resource Information System shall be transferred from the Water Resource Development Commission to the authority. The authority shall maintain and, at least annually, update the information contained in this system to ensure its accuracy.*
- (3) The authority may request all branches of state and local government, including special districts and water districts, to provide information relating to the status of existing plants, the financial condition of existing systems, and the existing regulatory authority held by agencies of government regarding the issue of water resource development and management. All branches of state and local government shall, to the extent reasonable and appropriate, comply with such requests for information.*
- (4) The authority shall promulgate administrative regulations that require a water supply and distribution system receiving or seeking funding to provide current information regarding the financial, managerial, and technical aspects of its system and, thereafter, to furnish updates to the information so provided.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO READ AS FOLLOWS:

*Within twelve (12) months of the effective date of this Act, each area development district shall establish 2020 water management areas. The entire area within the area development district shall be included in one (1) or more 2020 water management areas. The area development district may determine the boundaries of water management areas by considering geographical or topographical conditions and the potential integration of existing water systems. Where water management areas may lie within more than one (1) area development district, the area development districts shall share planning and plan implementation responsibilities. The area development districts shall develop maps of uniform scale to show, accurately and clearly, the boundaries of the 2020 water management areas.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

- (1) *2020 water management planning councils shall be established for each county with the assistance of the appropriate area development district. Two (2) or more counties may form a multicounty 2020 water management planning council. The planning councils shall, as a minimum, be comprised of the following:*
  - (a) *Each county judge-executive or mayor of an urban-county government, or his or her authorized representative;*
  - (b) *One (1) representative selected by each community public water system, as defined in 401 KAR 8:010 sec. 1(71)(a), that provides water to persons in the county;*
  - (c) *One (1) representative selected by a local health department in the county; and*
  - (d) *One (1) representative selected by each first, second, third, or fourth class city that is not a water supplier or distributor, unless that city chooses to be represented by another member of the planning council.*
- (2) *If, after the 2020 water management planning council appointments have been made, a county judge/executive or mayor of an urban-county government determines that any areas of the county or urban county government remain unrepresented on the planning council, the county judge/executive or mayor of the urban-county government may appoint an individual to represent that area.*
- (3) *The county judge/executive or mayor of an urban-county government or the county judge/executive or the mayor's designated representative shall serve as the chair of the 2020 water management planning council of which either the county judge/executive or the mayor is a member.*
- (4) *Members of the 2020 water management planning councils shall serve without pay, but may be reimbursed by counties or appointing agencies for reasonable expenses incurred to carry out the work of the councils.*
- (5) *The area development districts shall develop a forum for the chairpersons of the 2020 water management planning councils or multicounty planning councils to meet on at least a quarterly basis for the purpose of developing regional service strategies consistent with the findings and purpose set out in Section 1 of this Act.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

- (1) *Each 2020 water management planning council shall by July 1, 2001, develop a plan consistent with the county long-range water supply plan developed under KRS 151.114 and the water supply planning process set out in KRS Chapter 151 and administrative regulations of the cabinet and the purposes set out in Section 1 of this Act. The plan shall include a water needs forecast for the county for dates five (5), ten (10), fifteen (15), and twenty (20) years after the year 2000. The plan shall include a strategy for delivering potable water as needed into the underserved and unserved areas of the county, and shall encourage the merger and consolidation of water systems. The authority may disapprove and direct redevelopment of a plan under this subsection for inconsistencies with the purposes set out in Section 1 of this Act.*
- (2) *The 2020 water management planning councils or multicounty planning councils shall assume the role and function of the planning units established to implement the water*

*supply planning process set out in KRS 151.114 and administrative regulations of the cabinet.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

- (1) *The 2020 water management planning councils, or multicounty planning councils may employ a water service coordinator. Planning councils may jointly employ a water service coordinator. The water service coordinator shall assume the role and function of the county long-range planning representative appointed under KRS 151.114 and the water supply planning process set out in KRS Chapter 151 and administrative regulations of the cabinet. In addition, water service coordinators shall assist the 2020 water planning councils or multicounty planning councils in developing the plans required under Section 4 of this Act.*
- (2) *The Kentucky Infrastructure Authority may establish by administrative regulations a program to provide or supplement funding for a multicounty planning council water service coordinator for a period of three (3) years from the effective date of this Act. There shall be no more than one (1) position funded per area development district.*
- (3) *All state agencies shall cooperate with and assist the 2020 water management planning councils as appropriate to accomplish the purposes set out in Section 1 of this Act.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

- (1) *After July 1, 2001, and annually thereafter, each area development district shall review and prioritize the planning councils' plans for underserved and unserved areas within the 2020 water management area for that district. The review and prioritization shall be conducted with the assistance and input of the authority and the water management councils for the counties or multicounty areas within a 2020 water management area. These prioritization plans shall be submitted to the authority for review and approval. The authority may suggest changes necessary for the purpose of qualifying for financial assistance from the 2020 water service account of the Kentucky Infrastructure Authority.*
- (2) *Factors to be considered in prioritizing the plans for underserved and unserved areas within a 2020 water management area include:*
  - (a) *The current and potential customer base that would benefit from water service;*
  - (b) *The adequacy, cost-effectiveness, and dependability of water sources, water treatment capacity, and distribution lines that may be used to provide water service; and*
  - (c) *The potential to eliminate or prevent duplication of water distribution lines and facilities that may be used to provide the service.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO READ AS FOLLOWS:

*A 2020 water service account is established within the infrastructure revolving fund. The purpose of the account shall be to assist in making potable water available to all Kentuckians by the year 2020. The authority shall manage the account as funding is authorized by the General Assembly and in a manner to achieve the purposes set out in Section 1 of this Act.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO READ AS FOLLOWS:

- (1) *The authority shall require the following as conditions for receiving assistance from any fund administered by the authority for infrastructure projects related to water service:*
  - (a) *Establishment and use of a financial accounting system that accounts for the operations of water treatment and distribution separately from all other operations of the applicant;*
  - (b) *Establishment of service rates based upon the cost of providing the service; and*
  - (c) *An agreement that the authority may require an audit to be conducted of the applicant at least once every two (2) years.*
- (2) *The authority shall require all applicants within a class to use the same accounting system. The authority may accept present accounting systems in use and applied uniformly to all applicants within a class, for example, the uniform system of accounts established by the National Association of Regulatory Utility Commissioners.*
- (3) *The authority may assist water providers to establish accounting systems that meet the requirements of this section. The authority may provide assistance by paying for third party private contractors or assistance from the Kentucky Auditor of Public Accounts.*
- (4) *The authority may pay for costs related to establishing a new uniform accounting system for the use of governmental agencies that merge or consolidate their water services if:*
  - (a) *The merging or consolidating entities use different accounting systems;*
  - (b) *The merger or consolidation is consistent with a 2020 water management planning council plan as reviewed and prioritized under Section 6 of this Act; and*
  - (c) *At least one (1) governmental agency water system is a partner in the merger or consolidation.*
- (5) *The authority may fund the requirements of this section from the 2020 water service account.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO READ AS FOLLOWS:

- (1) *The authority shall establish a program to assist governmental agencies in detecting water loss from distribution lines. The program may include contracting with third parties to conduct water loss audits and leak detection. The program may include giving low interest loans, on a priority basis established by the authority consistent with the findings and purposes set out in Section 1 of this Act, for the repair or replacement of distribution facilities, deemed reasonable by the authority, undertaken as a result of the water loss audit.*
- (2) *The authority may forgive any amount of a distribution facility repair or replacement loan from the authority remaining unpaid if:*
  - (a) *Within five (5) years of entering into the loan agreement the governmental agency merges with or consolidates with at least one (1) other public or private water supplier; and*
  - (b) *The merger or consolidation is consistent with a 2020 water management planning council plan as reviewed and prioritized under Section 6 of this Act.*
- (3) *The authority may fund the requirements of this section from the 2020 water service account.*

Section 10. KRS 106.200 is amended to read as follows:

No city of the second, third, fourth, fifth or sixth class which owns a waterworks system shall sell, convey, rent, or lease ~~the~~~~[said]~~ system without the assent of a majority of ***the legislative body for the city or of*** those voting at an election held for that purpose after notice of the election has been published pursuant to KRS Chapter 424. This section shall not apply to the issuance of revenue bonds provided for under the provisions of this chapter.

Section 11. KRS 96.540 is amended to read as follows:

- (1) Except as provided in KRS 96.171 to 96.188, inclusive, and in KRS 96.5405, no city of the second, third, fourth, fifth, or sixth class that owns a ~~waterworks system or~~ lighting system by gas or electricity, shall sell, convey, lease, or encumber the system or the income therefrom without the assent of a majority of the total number of legal voters of the city voting at an election held for that purpose, after notice of the election has been published pursuant to KRS Chapter 424.
- (2) In the case of a city of the fourth, fifth, or sixth class, the election shall be ordered and the election officers shall be selected by the city legislative body, the city clerk shall prepare the question for presentation to the voters, and a tabulation of the vote shall be done by the city legislative body in the presence of the mayor; in all other respects the election shall be conducted under the regular election laws.
- (3) ***Except as provided in KRS 96.171 to 96.188, inclusive, and in KRS 96.5405, no city of the second, third, fourth, fifth, or sixth class that owns a waterworks system, shall sell, convey, lease, or encumber the system or the income therefrom without the assent of a majority of the legislative body for the city or of a majority of the total number of legal voters of the city voting at an election held for that purpose, after notice of the election has been published pursuant to KRS Chapter 424.***
- (4) This section shall not apply to the issuance of revenue bonds under the provisions of KRS 96.350 to 96.520.

SECTION 12. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO READ AS FOLLOWS:

- (1) ***The authority shall establish an incentive program that allocates funds from the 2020 water service account in a manner that encourages the regionalization, merger, and consolidation of water systems and elimination of structural and administrative duplication. The incentive funds may be used by government owned and private systems.***
- (2) ***The incentive program shall target water systems that have high debt, inadequate operational and maintenance resources, high maintenance costs, old and inadequately maintained treatment works, a history of violations of the Division of Water's statutes and administrative regulations due to inadequate operational and maintenance resources, or insufficient financial resources to extend system service to unserved or underserved areas.***
- (3) ***In developing the incentives to encourage governmental agencies to merge, regionalize, consolidate, and partner with target systems, the authority shall give the highest funding priority to those projects which have been identified in a 2020 water management planning council plan prioritized under Section 6 of this Act and meet the funding priorities established by the authority.***

SECTION 13. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO READ AS FOLLOWS:

- (1) *The authority shall develop an incentive program that allocates funds from the 2020 water service account to encourage new infrastructure projects to provide service to unserved areas and improve service to underserved areas of the state. The incentives may be used by government owned and private systems.*
- (2) *The incentives shall be developed to give the highest funding priority to those projects that have been identified in a 2020 water management planning council plan prioritized under Section 6 of this Act and meet the funding priorities established by the authority.*

SECTION 14. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO READ AS FOLLOWS:

*The authority may enter into a contract with the Kentucky Geological Survey for the purpose of continuing and expanding the identification and study of the water resource potential of underground coal mines and high yield water wells. The authority may fund the study from the 2020 water service account.*

Section 15. KRS 224A.011 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Administrative fee" means a fee assessed and collected by the authority from borrowers under assistance agreements, to be used for operational expenses of the authority.
- (2) "Applicable interest rate" means the rate of interest which shall be used as part of the repayment criteria for an assistance agreement between a governmental agency and the authority, and shall be determined by the authority pertinent to the source of funds from which the assistance agreement is funded.
- (3) "Assistance agreement" means the agreement to be made and entered into by and between a governmental agency and the authority, as authorized by this chapter, providing for a lease, loan, services, or grant to the governmental agency or for the purchase of obligations issued by the governmental agency, and for the repayment thereof to the authority by the governmental agency.
- (4) "Authority" means the Kentucky Infrastructure Authority, which is created by this chapter.
- (5) "Authority revenues" means the totality of all:
  - (a) Service charges;
  - (b) Utility tax receipts, to the extent not otherwise committed and budgeted by the authority during any fiscal period of the authority;
  - (c) Any gifts, grants, or loans received, to the extent not otherwise required to be applied;
  - (d) Any and all appropriations made to the authority by the General Assembly of the Commonwealth of Kentucky, to the extent not otherwise required to be applied;
  - (e) All moneys received in repayment of and for interest on any loans made by the authority to a governmental agency, except as provided in KRS 224A.111, 224A.1115, 224A.112, and 224A.270, or as principal of and interest on any obligations issued by a

governmental agency and purchased by the authority, or as receipts under any assistance agreement;

- (f) The proceeds of bonds or long-term debt obligations of governmental agencies pledged to the payment of bond anticipation notes issued by the authority on behalf of the said governmental agency to provide interim construction financing; and
  - (g) Payments under agreements with any agencies of the state and federal government.
- (6) "Borrower or borrowing entity" means any agency of the state or its political subdivisions, any city, or any special district created under the laws of the state acting individually or jointly under interagency or interlocal cooperative agreements to enter into assistance agreements with the authority.
- (7) "Community flood damage abatement project" means any structural or nonstructural study, plan, design, construction, development, improvement, or other activity to provide for flood control.
- (8) "Construction" means and includes, but is not limited to:
- (a) Preliminary planning to determine the economic and engineering feasibility of infrastructure projects, the engineering, architectural, legal, fiscal, and economic investigations, and studies necessary thereto, and surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary to the construction of infrastructure or solid waste projects;
  - (b) The erection, building, acquisition, alteration, remodeling, improvement, or extension of infrastructure or solid waste projects; and
  - (c) The inspection and supervision of the construction of infrastructure or solid waste projects and all costs incidental to the acquisition and financing of same. This term shall also relate to and mean any other physical devices or appurtenances in connection with, or reasonably attendant to, infrastructure or solid waste projects.
- (9) "Dams" means any artificial barrier, including appurtenant works, which does or can impound or divert water, and which either:
- (a) Is or will be twenty-five (25) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the natural resources cabinet; or
  - (b) Has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre feet or more.
- (10) "Distribution facilities" means all or any part of any facilities, devices, and systems used and useful in obtaining, pumping, storing, treating, and distributing water for agricultural, industrial, commercial, recreational, public, and domestic use.
- (11) "Federal act" means the Federal Clean Water Act (33 U.S.C. secs. 1251 et seq.) as said federal act may be amended from time to time in the future, or any other enactment of the United States Congress providing funds that may assist in carrying out the purposes of the authority.
- (12) "Federally assisted wastewater revolving fund" means that fund which will receive federal and state funds or the proceeds from the sale of revenue bonds of the authority for the purpose of providing loans to finance construction of publicly owned treatment works as defined in

Section 212 of the federal act and for the implementation of a management program established under Section 319 of the federal act and for the development and implementation of a conservation and management plan under Section 320 of the federal act.

- (13) "Governmental agency" means any incorporated city or municipal corporation, or other agency, or unit of government within or a department or a cabinet of the Commonwealth of Kentucky, now having or hereafter granted, the authority and power to finance, acquire, construct, or operate infrastructure or solid waste projects. This definition shall specifically apply, but not by way of limitation, to incorporated cities; counties, including any counties containing a metropolitan sewer district; sanitation districts; water districts; water associations if these associations are permitted to issue interest-bearing obligations which interest would be excludable from gross income under Section 103 of the Internal Revenue Code of 1986 as amended; sewer construction districts; metropolitan sewer districts; sanitation taxing districts; and any other agencies, commissions, districts, or authorities (either acting alone, or in combination with one another in accordance with any regional or area compact, or intergovernmental cooperative agreements), now or hereafter established in accordance with the laws of the Commonwealth of Kentucky having and possessing the described powers described in this subsection.
- (14) "Industrial waste" means any liquid, gaseous, or solid waste substances resulting from any process of industry, manufacture, trade, or business, or from the mining or taking, development, processing, or recovery of any natural resources, including heat and radioactivity, together with any sewage as is present therein, which pollutes the waters of the state, and specifically, but not by way of limitation, means heat or thermal differentials created in the waters of the state by any industrial processing, generating, or manufacturing processes.
- (15) "Infrastructure project" means any construction or acquisition of treatment works, distribution facilities, or water resources projects instituted by a governmental agency *or an investor-owned water utility* which is approved by the authority and, if required, by the natural resources cabinet, Public Service Commission, or other agency; solid waste projects; dams; storm water control and treatment systems; gas or electric utility; or any other public utility or public service project which the authority finds would *assist in carrying out the purposes set out in Section 1 of this Act*~~[enhance economic development opportunities in a governmental agency]~~.
- (16) "Infrastructure revolving fund" means that fund which will receive state funds, the proceeds from the sale of revenue bonds of the authority or other moneys earmarked for that fund for the purpose of providing loans or grants to finance construction or acquisition of infrastructure projects as defined in this section.
- (17) "Loan or grant" means moneys to be made available to governmental agencies by the authority for the purpose of defraying all or any part of the total costs incidental to construction or acquisition of any infrastructure project.
- (18) "Market interest rate" means the interest rate determined by the authority under existing market conditions at the time the authority shall provide financial assistance to a governmental agency.
- (19) "Natural resources cabinet" means the Kentucky Natural Resources and Environmental Protection Cabinet, or its successor, said term being meant to relate specifically to the state

agency which is designated as the water pollution agency for the Commonwealth of Kentucky, for purposes of the federal act.

- (20) "Obligation of a governmental agency" means a revenue bond, bond anticipation note, revenue anticipation note, lease or other obligation issued by a governmental agency under KRS 58.010 et seq. or other applicable statutes.
- (21) "Person" means any individual, firm, partnership, association, corporation, or governmental agency.
- (22) "Pollution" means the placing of any noxious or deleterious substances ("pollutants"), including sewage and industrial wastes, in any waters of the state or affecting the properties of any waters of the state in a manner which renders the waters harmful or inimical to the public health or to animal or aquatic life, or to the use, present or future, of these waters for domestic water supply, industrial or agricultural purposes, or recreational purposes.
- (23) "Prioritization schedules" means the list of wastewater treatment works, distribution facilities and water resources projects which the natural resources cabinet has evaluated and determined to be of priority for receiving financial assistance from the federally assisted wastewater revolving fund **and the federally assisted drinking water revolving fund**, or the list of infrastructure projects which the **authority**~~{Department for Local Government}~~ has evaluated and determined to be of priority for receiving financial aid from the infrastructure revolving fund. ***The evaluation by the authority of infrastructure projects for water systems shall be undertaken with input from the appropriate area development district.***
- (24) "Solid waste project" means construction, renovation, or acquisition of a solid waste facility which shall be instituted and owned by a governmental agency.
- (25) "Recovered material" means those materials which have known current use, reuse, or recycling potential, which can be feasibly used, reused, or recycled, and which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing but does not include materials diverted or removed for purposes of energy recovery or combustion except refuse-derived fuel (RDF), which shall be credited as a recovered material in an amount equal to that percentage of the municipal solid waste received on a daily basis at the processing facility and processed into RDF; but not to exceed fifteen percent (15%) of the total amount of the municipal solid waste received at the processing facility on a daily basis.
- (26) "Recovered material processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered material but does not mean a solid waste facility if solid waste generated by a recovered material processing facility is managed in accordance with KRS Chapter 224 and administrative regulations adopted by the cabinet.
- (27) "Revenue bonds" means special obligation bonds issued by the authority as provided by the provisions of this chapter, which are not direct or general obligations of the state, and which are payable only from a pledge of, and lien upon, authority revenues as provided in the resolution authorizing the issuance of the bonds, and shall include revenue bond anticipation notes.
- (28) "Service charge" means any monthly, quarterly, semiannual, or annual charge to be imposed by a governmental agency, or by the authority, for any infrastructure project financed by the

authority, which service charge arises by reason of the existence of, and requirements of, any assistance agreement.

- (29) "Sewage" means any of the waste products or excrements, or other discharges from the bodies of human beings or animals, which pollute the waters of the state.
- (30) "Solid waste" means "solid waste" as defined by KRS 224.01-010(31)(a).
- (31) "Solid waste facility" means any facility for collection, handling, storage, transportation, transfer, processing, treatment, or disposal of solid waste, whether the facility is associated with facilities generating the waste or otherwise, but does not include a container located on property where the waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility.
- (32) "Solid waste revolving fund" means that fund which shall receive state funds, the proceeds from the sale of revenue bonds of the authority, or other moneys earmarked for the purpose of providing loans or grants to finance solid waste projects defined in this section.
- (33) "State" means the Commonwealth of Kentucky.
- (34) "System" means the system owned and operated by a governmental agency with respect to solid waste projects, treatment works, or infrastructure projects financed as provided by the assistance agreement between the governmental agency and the authority.
- (35) "Treatment works" or "wastewater treatment works" means all or any part of any facilities, devices, and systems used and useful in the storage, treatment, recycling, and reclamation of wastewater or the abatement of pollution, including facilities for the treatment, neutralization, disposal of, stabilization, collecting, segregating, or holding of wastewater, including without limiting the generality of the foregoing, intercepting sewers, outfall sewers, pumping power stations, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof, and any wastewater treatment works, including site acquisition of the land that will be an integral part of the wastewater treatment process, or is used for ultimate disposal of residues resulting from wastewater treatment, together with any other facilities which are deemed to be treatment works in accordance with the federal act.
- (36) "Variable rate revenue bonds" means revenue bonds the rate of interest on which fluctuates either automatically by reference to a predetermined formula or index or in accordance with the standards set forth in KRS 224A.120.
- (37) "Wastewater" means any water or liquid substance containing sewage, industrial waste, or other pollutants or contaminants derived from the prior use of these waters.
- (38) "Water resources" means all waters of the state occurring on the surface, in natural or artificial channels, lakes, reservoirs, or impoundments, and in subsurface aquifers, which are available, or which may be made available to agricultural, industrial, commercial, recreational, public, and domestic users.
- (39) "Water resources project" means any structural or nonstructural study, plan, design, construction, development, improvement, or any other activity including programs for management, intended to conserve and develop the water resources of the state and shall

include all aspects of water supply, flood damage abatement, navigation, water-related recreation, and land conservation facilities and measures.

- (40) "Waters of the state" means all streams, lakes, watercourses, waterways, ponds, marshes, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural, surface, or underground waters.
- (41) "Utility tax" means the tax which may be imposed by the authority on every purchase of water or sewer service in the Commonwealth of Kentucky. Section 16. KRS 224A.030 is amended to read as follows:
- (1) There is hereby created the Kentucky Infrastructure Authority, which authority shall be a body corporate and politic, constituting a public corporation and a governmental agency and instrumentality of the state. All powers, duties, and obligations of the Kentucky Pollution Abatement and Water Resources Finance Authority shall be transferred March 31, 1988, to the Kentucky Infrastructure Authority. The affairs of the authority shall be managed and carried out by a board consisting of *nine (9)*~~eight (8)~~ members. The secretaries of the Economic Development, Finance and Administration~~+~~ and Natural Resources and Environmental Protection Cabinets, *the executive director of the Public Service Commission*~~the vice chairman of the Kentucky Economic Development Partnership or the vice chairman's designee selected from the membership of the Kentucky Economic Development Partnership or the Kentucky Economic Development Finance Authority,~~ and the commissioner of the Department for Local Government shall serve as ex officio members of the authority. *The secretaries, the executive director, and the commissioner may designate alternates.* On or before August 1, ~~2000~~~~1992~~, the Governor shall additionally appoint *five (5)*~~three (3)~~ at large members. *One (1) member shall be selected from a list of three (3) nominees submitted by the Kentucky Association of Counties, one (1) member selected from a list of three (3) nominees submitted by the Kentucky League of Cities, one (1) member selected from a list of three (3) nominees submitted by the Kentucky Rural Water Association, one (1) member representing for-profit private water companies, and one (1) member selected from a list of three (3) nominees submitted by the Kentucky section of the American Water Works Association. The at-large members*~~who~~ shall serve as follows: *two (2)*~~one (1)~~ shall serve a term ending June 30, ~~2004~~~~1996~~; *two (2)*~~one (1)~~ shall serve a term ending June 30, ~~2003~~~~1995~~; and one (1) shall serve a term ending June 30, ~~2002~~~~1994~~. As the terms of the at large members expire, the Governor shall appoint successors for terms of four (4) years and until their successors are appointed. The members shall constitute the Kentucky Infrastructure Authority, with power in that name to contract and be contracted with, sue and be sued, have and use a corporate seal, and exercise, in addition to the powers and functions specifically stated in this chapter, all of the usual powers of private corporations to the extent that the same are not inconsistent with specifically enumerated powers of the authority. In the carrying out of its purposes and the exercise by it of the powers conferred by this chapter, the authority is deemed and declared to be performing essential governmental functions and public purposes of the state.
- (2) The members of the authority shall receive no compensation for their services in said capacity, but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and functions as such members.

- (3) Five (5) members of the authority shall constitute a quorum for the transaction of business, and in the absence of a quorum, one (1) or more members may adjourn from time to time until a quorum is convened. ~~[-The secretary of the Finance and Administration Cabinet shall serve as chairperson.]~~ The members of the authority shall choose from their ranks a ***chair and a vice chair*** ~~[-chairman-]~~. The authority shall elect a secretary and a treasurer who shall not be members of the authority, each of whom shall serve at the pleasure of the authority and shall receive compensation as may be determined by the authority.
- (4) The authority shall, for administrative purposes, be attached to the ***Office of the Governor*** ~~[-Finance and Administration Cabinet-]~~, and shall establish and maintain offices in premises which shall be provided for that purpose by the Finance and Administration Cabinet; and the secretary of the authority shall at all times maintain therein complete records of all of the authority's actions and proceedings which shall constitute public records open to inspection at all reasonable times.

Section 17. KRS 224A.070 is amended to read as follows:

The authority may carry out and perform the following essential governmental functions of statewide import and concern:

- (1) To promulgate administrative regulations and adopt bylaws for the regulation of its affairs and the conduct of its business, which shall define with specificity conditions precedent under which applications for loans or grants may be made and the order of priority upon which applications shall be acted upon;
- (2) To retain an executive director, who shall be experienced and knowledgeable in the fields in which the authority may act, together with other employees, ***including for example only, engineers, accountants, and attorneys***, necessary and appropriate to enable the authority to fulfill its duties, functions and responsibilities;
- (3) To adopt a corporate seal;
- (4) To sue and be sued in its own name and to have the right, power, and authority to enforce its obligations and covenants made pursuant to the provisions of this chapter;
- (5) To levy a tax on every purchase of water service and sewer service in the state, such tax to be equal to not more than two percent (2%) of the gross amount of the bill for water services rendered;
- (6) To approve or reject applications made to the authority for loans or grants;
- (7) To lease an infrastructure project or make loans or grants to or purchase or refinance obligations of any governmental agency for the purpose of assisting the governmental agency in the construction of an infrastructure project. A lease, loan, or grant shall be in accordance with the terms and conditions of an assistance agreement by and between the authority and the governmental agency, which shall include the provisions and conditions specified in KRS 224A.100, and such other reasonable terms and conditions as the authority shall determine;
- (8) Without reference to the provisions of KRS Chapter 56, to acquire and hold in the name of the authority, by the exercise of the power of eminent domain pursuant to the Eminent Domain Act of Kentucky, the real property or rights therein, including rights-of-way, easements and licenses, and the personal property reasonably deemed necessary to effectuate the development, implementation, financing, and construction or acquisition of any infrastructure

project, and to make the properties available to a governmental agency in connection with an infrastructure project;

- (9) To receive service charges from governmental agencies which have entered into assistance agreements with the authority, in accordance with the terms and conditions of the assistance agreements, and to use and employ the service charges in accordance with the provisions of this chapter, the service charges to constitute authority revenues;
- (10) To enter into and enforce assistance agreements made and entered into with governmental agencies by suit, action, mandamus or other proceedings, including the obtaining by judicial decree of the appointment of a receiver to administer infrastructure projects financed by leases, loans or grants which have been undertaken by governmental agencies;
- (11) To enter into any necessary or required agreement with federal or state agencies or persons to carry out the provisions of this chapter;
- (12) To bid at a competitive public sale of obligations of a governmental agency or negotiate the purchase or sale of obligations of a governmental agency, notwithstanding any other law to the contrary;
- (13) To borrow money and issue negotiable bonds and notes pursuant to this chapter;
- (14) To lend money to governmental agencies or to advance moneys from the infrastructure revolving fund to the federally assisted wastewater revolving fund in order to match federal moneys that may become available;
- (15) To contract with the federal government as to any infrastructure project;
- (16) To participate with the federal government or any of its agencies, the state government or any of its agencies or political subdivisions, or any other person in the construction or repair of any infrastructure project; and
- (17) To have, possess, and exercise all other powers reasonably incident to the carrying out of the duties and responsibilities of the authority.

Section 18. KRS 224A.100 is amended to read as follows:

The authority may enter into assistance agreements with governmental agencies, and governmental agencies may enter into assistance agreements with the authority in connection with infrastructure projects. Each assistance agreement shall be subject to review by the Capital Projects and Bond Oversight Committee of the Legislative Research Commission ~~and before approval by the Finance and Administration Cabinet and the Cabinet for Economic Development,~~ may contain and include such provisions as may be agreed upon by the parties thereto, and shall include and prescribe the following provisions:

- (1) An estimate of the reasonable cost of the infrastructure project, as determined by the authority;
- (2) The amount of the total rentals under any lease of an infrastructure project, loans or grants to be made to the governmental agency, financing payments or obligations of the governmental agency to be purchased by the authority;
- (3) The time or times at which the rentals, loans or grants, financing payments or the purchase price of a governmental agency shall become payable by or to the governmental agency;

- (4) The specific purpose or purposes for which the leased infrastructure project will be used or the proceeds of the purchase of obligations of the governmental agency or loan or grant made pursuant to the assistance agreement shall be expended;
- (5) The conditions under which the leased infrastructure project will be used or the proceeds of the purchase of obligations of the governmental agency or loan or grant may be expended on account of the infrastructure project by the governmental agency;
- (6) An agreement by the governmental agency:
  - (a) To proceed expeditiously with and promptly complete the infrastructure project or cause same to be completed in accordance with plans and specifications approved by federal and state regulatory agencies;
  - (b) To commence or cause to be commenced operation of the infrastructure project on completion of construction, and not to discontinue operations or dispose of such infrastructure project without the approval of the authority;
  - (c) To operate and maintain or cause to be operated and maintained the infrastructure project in accordance with the applicable provisions of federal and state law;
  - (d) To disclose fully to the authority all applications for or award of grants or loans for financial assistance, if any;
  - (e) To provide for the payment of the governmental agency's share of the cost of the infrastructure project, if the entire infrastructure project is not financed by assistance from the authority and describe with specificity the manner in which the governmental agency proposes to finance its share of such cost, if any;
- (7) A provision that, if assistance which was not included in the calculation of the loan or grant payable pursuant to subsection (2) of this section becomes available to the governmental agency, the amount of the assistance from the authority shall be recalculated with the inclusion of the additional assistance, and the governmental agency shall pay to the authority the amount, if any, by which the loan or grant actually made, exceeds the loan or grant as determined by the recalculation;
- (8) The extent to which the assistance from the authority shall be repaid to the authority, which shall not be less than the sum of the following, except as provided under KRS 224A.111, 224A.112, 224A.270, and KRS 224A.1115:
  - (a) The aggregate principal amount of the loan; and
  - (b) Interest on the aggregate balance of the principal amount of the loan from time to time remaining unpaid, computed at the applicable interest rate, plus not to exceed onequarter of one percent (1/4 of 1%), except as provided for in KRS 224A.111, 224A.112, 224A.270, and KRS 224A.1115;
- (9) The time or times and amounts when the repayments required by subsection (8) of this section shall be made by the governmental agency to the authority;
- (10) The extent to which a service charge shall be imposed by the governmental agency. Any service charge shall be calculated to produce amounts sufficient to meet the repayment schedule prescribed by subsection (8) of this section; and

- (11) An agreement between the governmental agency and the authority that upon any failure of the governmental agency to make payment to the authority in accordance with the time schedule and repayment schedule fixed by the assistance agreement of the amounts prescribed by said schedules, that in such event the authority may, without further action, require the State Treasurer to pay to the authority such amount of other state revenues, tax sharing, or other state aid, with the exception of funds in aid to education and funds derived from motor fuel taxes or vehicle license taxes pursuant to Section 230 of the Constitution of Kentucky, as the governmental agency may thereafter become entitled to receive from the state, until all delinquent payments pursuant to the repayment schedule, plus interest thereon, from the date of each delinquency at the applicable interest rate per annum, shall have been paid.

Section 19. KRS 224A.112 is amended to read as follows:

- (1) The infrastructure revolving fund shall be established in the State Treasury and shall be administered by the authority.
- (2) The fund shall be a dedicated fund and all moneys in the fund shall be dedicated solely to providing financial assistance to governmental agencies, *and investor-owned water systems as provided for in Sections 8, 9, 11, and 12 of this Act*, for the construction or acquisition of infrastructure projects. *The fund shall contain an account called the 2020 water service account. The 2020 water service account shall be managed by the authority as set out in this chapter*~~{when a governmental agency is unable to finance the entire infrastructure project for which it is seeking moneys from its own resources, through commercial credit at reasonable rates and under reasonable terms or through other public grant or loan programs, including the federally assisted wastewater revolving fund}~~.
- (3) The financial assistance which may be provided to governmental agencies by the revolving fund shall be limited to:
  - (a) Making loans, on the condition that the loans are made at or below market interest rates, including interest free loans, at terms not to exceed thirty (30) years and that the fund will be credited with all payments of principal and interest on all loans;
  - (b) Purchasing or guaranteeing, or purchasing insurance for, local or state obligations when the action would improve credit market access or reduce interest rates;
  - (c) Providing a source of revenue or security for the payment of principal and interest on bonds or notes issued by the authority or other agencies of the state if the proceeds of the sale of the bonds will be deposited in the fund;
  - (d) Providing moneys with which to carry out the requirements of assistance agreements; and
  - (e) Making grants as funds specifically appropriated for grants or proceeds from the sale of the authority's revenue bonds are available~~{when the authority finds that both a hardship and an extreme health hazard exist}~~.
- (4) The revolving fund shall be established, maintained and credited with repayments and the fund balance shall be available in perpetuity for its stated purposes.
- (5) The authority may provide financial assistance from the fund to supplement assistance provided from the federally assisted wastewater revolving fund as created in KRS 224A.111~~{~~

or for any infrastructure projects on the prioritization schedule prepared by the Department for Local Government].

- (6) The **authority**[Department for Local Government] shall advise governmental agencies of the availability of the infrastructure revolving fund and how moneys may be obtained from the fund.[In establishing its prioritization schedule, the Department for Local Government shall consult the Cabinet for Economic Development regarding economic development project criteria, shall give funding consideration to economic development projects recommended by the Cabinet for Economic Development, and shall consider the following factors:
- (a) Local employment;
  - (b) The relationship of the infrastructure project to the governmental agency's capital investment plan;
  - (c) The relationship of the infrastructure project to the governmental agency's economic development;
  - (d) The reasonableness of the proposed costs;
  - (e) The probable effectiveness of the infrastructure project as proposed; and
  - (f) Any other criteria that the Department for Local Government considers advisable.]
- (7) The authority may enter into any necessary or required agreement with federal or state agencies or persons to carry out the provisions of this section. ***All state agencies shall cooperate with the authority and share information with the authority as appropriate to accomplish the purposes set out in Section 1 of this Act.*** Section 20. KRS 224A.113 is amended to read as follows:

The authority[, the Natural Resources Cabinet or the Department for Local Government] may promulgate administrative regulations to implement KRS 224A.111, 224A.1115, and 224A.112.

Section 21. The following KRS section is repealed:

224A.055 Funding consideration of infrastructure projects.

**Approved April 26, 2000**