

## CHAPTER 344

## (SB 13)

AN ACT relating to the promotion of Kentucky's agricultural economy and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

*As used in this section and Sections 7, 8, and 9 of this Act:*

- (1) *"Agricultural product" means any unprocessed farm product raised or produced as a result of being in the business of "agriculture", as defined by KRS 246.010. "Agricultural product" does not include tobacco; and*
- (2) *"Kentucky-grown agricultural product" means any agricultural product raised or produced in Kentucky.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

*The Commissioner of Agriculture shall identify opportunities in the state procurement process for the Commonwealth to use its purchasing power to support and encourage the growth of Kentucky's agricultural economy. Those opportunities shall include the sale of Kentucky-grown agricultural products, as defined in Section 1 of this Act, to any public purchasing unit, as defined in KRS 45A.295(3), including, but not limited to, the Department of Parks, the Department of Corrections, public universities, school districts, and local governments across the Commonwealth. The Commissioner shall report those opportunities to the Governor, the secretary of the Finance and Administration Cabinet, and the Legislative Research Commission by October 1, 2002. The report shall also include recommended changes in the procurement system that may accommodate the sale of more Kentucky-grown agricultural products to state agencies.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

*The Department of Parks shall establish a pilot project within the Department of Parks to promote the sale of Kentucky-grown agricultural products, as defined in Section 1 of this Act, in state resort park restaurants and gift shops. The promotion program shall operate in conjunction with the Kentucky logo or labeling statement program pursuant to KRS 260.015. The commissioner of the Department of Parks shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the promotion program no later than October 1, 2002.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

*The Department of Parks shall establish a pilot project within the Department of Parks to require that if purchasing catfish or horticultural products, state parks purchase Kentucky farm-raised catfish and Kentucky horticultural products if the purchasing officer determines that they are available, can be priced on the menu to encourage their sale, and meet the quality standards set by the Department of Parks. As used in this section, "horticultural product" means fruit, nuts, vegetables, and herbs. The commissioner of the Department of Parks shall*

*promulgate administrative regulations in accordance with KRS Chapter 13A to implement the purchasing requirement as set forth in this section as soon as possible after the effective date of this section.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

- (1) *The Department of Parks shall establish a steering committee which shall consist of:*
  - (a) *The secretary of the Finance and Administration Cabinet, or a designee;*
  - (b) *The Commissioner of Agriculture, or a designee;*
  - (c) *The commissioner of the Department of Parks, or a designee;*
  - (d) *The director of the Agriculture Development Board, or a designee;*
  - (e) *The coordinator of the Kentucky State University Aquaculture Program, or a designee;*
  - (f) *The chairperson of the horticulture department at the University of Kentucky, or a designee; and*
  - (g) *Two (2) members of organizations and associations representing the Kentucky farming community, appointed by the Commissioner of Agriculture.*
- (2) *The steering committee shall plan and assist in the implementation of the promotion program identified in Section 3 of this Act.*
- (3) *The steering committee shall recommend by September 1, 2002, the structure and objectives of the promotion program identified in Section 3 of this Act.*
- (4) *Upon implementation of the pilot projects identified in Sections 3 and 4 of this Act, the steering committee shall evaluate the pilot projects and submit an initial report to the Governor, the secretary of the Finance and Administration Cabinet, and the Legislative Research Commission no later than October 1, 2003, and a second report no later than October 1, 2004.*
- (5) *The steering committee shall terminate on December 31, 2004.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

*By January 1, 2003, the secretary of the Finance and Administration Cabinet shall issue guidelines to the various agencies identified by the Commissioner of Agriculture in Section 2 of this Act directing the manner in which those agencies shall employ the state's procurement process to support and encourage the growth of Kentucky's agricultural economy. Notwithstanding the provisions of KRS Chapter 45A, the secretary of the Finance and Administration Cabinet shall make necessary changes to administrative regulations and cabinet policy in accordance with this section and Sections 2, 7, 8, and 9 of this Act.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

- (1) *If purchasing agricultural products, state agencies, as defined by KRS 45A.505, are encouraged to purchase Kentucky-grown agricultural products, if available.*
- (2) (a) *Prospective vendors of Kentucky-grown agricultural products may apply to the Kentucky Department of Agriculture for marketing assistance for the purchase of*

*Kentucky-grown logos or labeling statements to be used on Kentucky-grown agricultural products under KRS 260.015, the Kentucky logo or labeling program.*

- (b) *Before a state agency may purchase Kentucky-grown agricultural products, the vendor shall be required to participate in the logo or labeling program established by KRS 260.015, and shall provide to the purchasing officer written certification that the agricultural products under consideration for purchase meet the definition of Kentucky-grown agricultural product.*
- (3) *If a contract is awarded to a vendor that supplies agricultural products that are raised or produced outside the United States or its territories, the vendor shall be required to identify the country in which the agricultural product was raised or produced if the vendor is the producer or packager of the product or, if the vendor is not the producer or packager, provided the information is available to the vendor from the producer or packager of the product. The producer or packager shall clearly label that information on any containers or packages holding the product.*

Section 8. KRS 45A.035 is amended to read as follows:

- (1) The secretary of the Finance and Administration Cabinet shall have power and authority over, and may, except as otherwise expressly provided in this code, adopt regulations pursuant to KRS Chapter 13A and consistent with this code governing the purchasing, management, and control of any and all supplies, services, and construction, and other items required to be purchased by the Commonwealth. The secretary shall consider and decide matters of policy with regard to state procurement. The secretary shall have the power of review with respect to the implementation of regulations and policy determinations.
- (2) Regulations shall be adopted governing the following:
- (a) Conditions and procedures for delegations of purchasing authority;
  - (b) Prequalification, suspension, debarment, and reinstatement of prospective bidders;
  - (c) Small purchase procedures;
  - (d) Conditions and procedures for the purchase of ~~perishables and~~ items for resale;
  - (e) ***Conditions and procedures for the purchase of agricultural products in accordance with Section 7 of this Act;***
  - (f) Conditions and procedures for the use of source selection methods authorized by this code, including emergency purchases;
  - (g)~~(f)~~ Opening and rejection of bids or offers, consideration of alternate bids, and waiver of informalities in offers;
  - (h)~~(g)~~ Confidentiality of technical data and trade secrets information submitted by actual or prospective bidders or offerors;
  - (i)~~(h)~~ Partial, progressive, and multiple awards;
  - (j)~~(i)~~ Supervision of storerooms and inventories, including determination of appropriate stock levels and the management, transfer, sale, or other disposal of state-owned property;
  - (k)~~(j)~~ Definitions and classes of contractual services and procedures for acquiring them.

The secretary may adopt such other regulations as deemed advisable to carry out the purposes of this code.

Section 9. KRS 45A.095 is amended to read as follows:

- (1) A contract may be made by noncompetitive negotiation only for sole source purchases, or when competition is not feasible, as determined by the purchasing officer in writing prior to award, under administrative regulations promulgated by the secretary of the Finance and Administration Cabinet or the governing boards of universities operating under KRS Chapter 164A, or when emergency conditions exist. Sole source is a situation in which there is only one (1) known capable supplier of a commodity or service, occasioned by the unique nature of the requirement, the supplier, or market conditions. Insofar as it is practical, no less than three (3) suppliers shall be solicited to submit written or oral quotations whenever it is determined that competitive sealed bidding is not feasible. Award shall be made to the supplier offering the best value. The names of the suppliers submitting quotations and the date and amount of each quotation shall be placed in the procurement file and maintained as a public record. Competitive bids may not be required:
  - (a) For contractual services where no competition exists, such as telephone service, electrical energy, and other public utility services;
  - (b) Where rates are fixed by law or ordinance;
  - (c) For library books;
  - (d) For commercial items that are purchased for resale;
  - (e) For interests in real property;
  - (f) For visiting speakers, professors, expert witnesses, and performing artists;~~and~~
  - (g) For personal service contracts executed pursuant to KRS 45A.690 to 45A.725; **and**
  - (h) For agricultural products in accordance with Section 7 of this Act.**
- (2) The chief procurement officer, the head of a using agency, or a person authorized in writing as the designee of either officer may make or authorize others to make emergency procurements when an emergency condition exists.
- (3) An emergency condition is a situation which creates a threat or impending threat to public health, welfare, or safety such as may arise by reason of fires, floods, tornadoes, other natural or man-caused disasters, epidemics, riots, enemy attack, sabotage, explosion, power failure, energy shortages, transportation emergencies, equipment failures, state or federal legislative mandates, or similar events. The existence of the emergency condition creates an immediate and serious need for services, construction, or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten the functioning of government, the preservation or protection of property, or the health or safety of any person.
- (4) The Finance and Administration Cabinet may negotiate directly for the purchase of contractual services, supplies, materials, or equipment in bona fide emergencies regardless of estimated costs. The existence of the emergency shall be fully explained, in writing, by the head of the agency for which the purchase is to be made. The explanation shall be approved by the secretary of the Finance and Administration Cabinet and shall include the name of the vendor receiving the contract along with any other price quotations and a

written determination for selection of the vendor receiving the contract. This information shall be filed with the record of all such purchases and made available to the public. Where practical, standard specifications shall be followed in making emergency purchases. In any event, every effort should be made to effect a competitively established price for purchases made by the state.

SECTION 10. A NEW SECTION OF KRS 363.900 TO 363.908 IS CREATED TO READ AS FOLLOWS:

*The General Assembly finds that the fuel additive methyl tertiary butyl ether, known as MTBE, as a result of leaks in underground storage tanks, has contaminated groundwater in California and other states to such an extent that it has been banned in those states. The legislature further finds that, because Kentuckians rely on groundwater to a great extent both for drinking water and for industrial and agricultural purposes, the continued use of MTBE poses an unacceptable threat to public health.*

SECTION 11. A NEW SECTION OF KRS 363.900 TO 363.908 IS CREATED TO READ AS FOLLOWS:

- (1) *Beginning on January 1, 2006, the use of methyl tertiary butyl ether, known as MTBE, as a fuel additive shall be illegal in the Commonwealth of Kentucky. Importation, sale, or storage of fuel containing MTBE shall be unlawful after that date.*
- (2) *Beginning on January 1, 2004, the General Assembly strongly encourages that all reformulated gasoline sold or offered for sale in the Commonwealth utilize domestically produced ethanol in place of MTBE or other gasoline additives.*
- (3) *In order to allow for an orderly transition, trace amounts of MTBE, not to exceed one-half of one percent (0.5%) by volume, will be allowed in gasoline.*

SECTION 12. A NEW SECTION OF KRS 363.900 TO 363.908 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "biodiesel fuel" means a biodegradable, combustible liquid fuel derived from renewable fats and vegetable oils that meets ASTM specification PS 121-99 and is suitable for blending with petroleum-based diesel fuel for use in diesel engines.*
- (2) *The General Assembly strongly encourages, that beginning on January 1, 2006, all diesel fuel sold or offered for sale in the Commonwealth and reformulated to achieve federally mandated sulfur reduction requirements use biodiesel in a blend not less than two percent (2%) by volume to meet those requirements.*
- (3) *By August 31, 2003, and at least annually thereafter until the 2006 Regular Session of the General Assembly, the Interim Joint Committee on Agriculture and Natural Resources shall receive a report on the petroleum refining industry's progress toward achieving the federally mandated diesel fuel sulfur reductions. The report shall include information on the use of biodiesel to help meet the reductions. The committee shall request report information from relevant sources, including but not limited to, the American Petroleum Institute and petroleum refiners that produce diesel fuel for state, national, or international sale.*

Section 13. Whereas the immediate survival and growth of Kentucky's catfish industry and horticultural industry are in the interest of the Commonwealth, and whereas it is not necessary for the steering committee to assist in the implementation of Section 4 of this Act, an emergency is

declared to exist, and Section 4 of this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved April 23, 2002**