

CHAPTER 41**(SB 146)**

AN ACT relating to agriculture.

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

Section 1. KRS 41.600 is amended to read as follows:

As used in KRS 41.600 to 41.625, unless the context requires otherwise:

- (1) "Eligible small business" means any person that has all of the following characteristics:
 - (a) Is headquartered in this state;
 - (b) Maintains offices and operating facilities in this state and transacts business in this state;
 - (c) Employs fewer than the equivalent of fifty (50) full-time employees, the majority of whom are residents of Kentucky;
 - (d) Has gross earnings that do not exceed one million dollars (\$1,000,000) annually;
 - (e) Is organized for profit; and
 - (f) Holds no position as officer or director of an eligible lending institution.
- (2) "Eligible agribusiness" means any person that has all of the following characteristics:
 - (a) Is actively engaged in agricultural endeavors within the Commonwealth of Kentucky;
 - (b) Shows gross earnings not in excess of one million dollars (\$1,000,000) annually;
 - (c) Derives at least one-half (1/2) of annual gross income from farming; and
 - (d) Holds no position as officer or director of an eligible lending institution.
- (3) "Eligible lending institution" means a financial institution that is eligible to make commercial loans including an institution of the farm credit system organized under the Farm Credit Act of 1971, 12 U.S.C. sec. 2001 et seq., as amended, which chooses to participate in the linked deposit investment program, and which agrees to lend the value of the deposits to small businesses or agribusinesses at a reduced interest rate according to the provisions of KRS 41.610.
- (4) "Linked deposit investment" means a certificate of deposit, collateralized or uncollateralized, or a repurchase agreement placed by the State Investment Commission with an eligible lending institution at the rate designated according to the provisions of KRS 41.610 and where the maturity shall match the terms of the loan as approved by the ***Kentucky Agricultural Finance Corporation***~~[Department of Agriculture]~~ or the Cabinet for Economic Development.

Section 2. KRS 41.606 is amended to read as follows:

- (1) The State Investment Commission may invest in linked deposits as provided for in KRS 42.510. Investment moneys shall be derived from the state's unclaimed and abandoned property program set forth in KRS Chapter 393.
- (2) Investment moneys shall be in low interest loans for agricultural production or for small business expansion or development.

- (3) There is hereby created a "linked deposit investment program" in the ***Kentucky Agricultural Finance Corporation***~~[Department of Agriculture]~~ whose purpose is to monitor link deposit loans for eligible agribusinesses through approved state financial institutions in accordance with administrative regulations promulgated pursuant to subsection (7) of this section.
- (4) There is hereby created a "linked deposit investment program" in the Cabinet for Economic Development whose purpose is to monitor link deposit loans for eligible small businesses through approved state financial institutions in accordance with administrative regulations promulgated pursuant to subsection (7) of this section.
- (5) The State Investment Commission may accept or reject a linked investment, or any portion thereof, with the eligible lending institution. If it is determined by the ***Kentucky Agricultural Finance Corporation***~~[Department of Agriculture]~~ or the Cabinet for Economic Development that the lending institution has violated standards of the linked deposit investment program, the commission shall reject the linked investment.
- (6) The State Investment Commission, the ***Kentucky Agricultural Finance Corporation***~~[Department of Agriculture]~~, and the Cabinet for Economic Development, shall annually, by October 1 for the preceding state fiscal year, make a report on the Linked Deposit Investment Program to the Governor and to the leadership of the General Assembly who shall, in turn, transmit it to the appropriate legislative committees for consideration. The report shall include information regarding the nature, terms, and amounts of the loans upon which the linked investments were based, and the eligible small businesses and agribusinesses who received the loans. In order to comply with these provisions, participating institutions shall supply information as required by administrative regulation.
- (7) The ***Kentucky Agricultural Finance Corporation***~~[Department of Agriculture]~~ and the Cabinet for Economic Development, in consultation with the State Investment Commission, shall promulgate administrative regulations pursuant to KRS Chapter 13A setting forth the conditions for which small businesses and agribusinesses are eligible for loans made available through the Linked Deposit Investment Program.

Section 3. KRS 41.610 is amended to read as follows:

- (1) Qualified public depositories in Kentucky shall be eligible to participate in the Linked Deposit Investment Program.
- (2) An eligible lending institution choosing to participate in the Linked Deposit Investment Program shall enter into a linked deposit investment agreement with the State Investment Commission which shall include requirements necessary to carry out the purposes of the Linked Deposit Investment Program. A linked investment shall bear a minimum rate of two percent (2%) and a maximum rate fixed by the Wall Street Journal prime rate as published on the first business day of each month less four percent (4%).
- (3) The eligible lending institution that desires to receive a linked deposit investment shall agree to loan the funds to borrowers under the following terms:
 - (a) No loan shall exceed one hundred thousand dollars (\$100,000);
 - (b) Maturity dates of the loan shall be set as agreed to between the financial institution and the borrower with a maximum maturity of seven (7) years; and

- (c) The rate of interest for the term of the loan shall be fixed at the Wall Street Journal prime rate as published on the first business day of each month, with a minimum interest rate of five percent (5%).
- (4) An eligible lending institution that desires to receive a linked deposit shall accept and review applications for loans from eligible small businesses and agribusinesses. The lending institution shall assume all responsibility for credit underwriting and shall apply all usual lending standards to determine the creditworthiness of each applicant.
- (5) The eligible lending institution shall forward to the ***Kentucky Agricultural Finance Corporation***~~{Department of Agriculture}~~ or the Cabinet for Economic Development, as appropriate, a completed loan package for review to determine if the loan package is in accordance with the administrative regulations promulgated pursuant to KRS 41.606(7). If the loan package is found to be complete and in accordance with the administrative regulations, it shall be forwarded to the State Investment Commission for funding.
- (6) The eligible lending institution shall charge no penalty for early payback of the linked deposit loan. Principal repayments received by the lending institution shall be returned to the State Investment Commission annually on the anniversary date of the loan.
- (7) Applications for renewal of repurchase agreements shall be accompanied by a status report on linked deposit loans.
- (8) The Commonwealth, ***the Kentucky Agricultural Finance Corporation***~~{Department of Agriculture}~~, and the Cabinet for Economic Development, their agents and employees, and the State Investment Commission shall not be liable to any eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible small business or to an eligible small agribusiness. Any delay in payments or default on the part of a borrower shall not affect the deposit agreement between the eligible lending institution and the State.

Section 4. KRS 247.942 is amended to read as follows:

As used in KRS 247.940 to 247.978, the following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

- (1) "Agricultural loan" means a loan made by a lending institution to any person for the purpose of financing agricultural diversification, ***woodland product production***, and alternative crop production; land acquisition or improvement; soil conservation; irrigation; construction; renovation or expansion of buildings and facilities; purchase of farm fixtures, livestock, poultry, and fish of any kind; seeds; fertilizers; pesticides; feeds; machinery; equipment; containers or supplies or any other products employed in the production, cultivation, harvesting, storage, marketing, distribution, or export of agricultural products;
- (2) "Applicant" means any person~~[-, partnership, corporation, or any entity]~~ engaged in ***or proposing to be engaged in*** an agricultural endeavor or an agriculturally related business ***in Kentucky***~~[-. To be considered an "applicant" under this definition, it is necessary that either:~~
- (a) ~~The prospective applicant be a "first time farmer" as defined by the federal government who derives at least one half (1/2) of his annual gross income from said endeavor or business, for three (3) years after the loan is approved. Furthermore, under this definition the prospective applicant shall not derive more than one hundred thousand dollars (\$100,000) annual net income from all sources during the fiscal year preceding the year in which the loan application is made; or~~

- ~~(b) The prospective applicant be a Kentucky citizen currently engaged in an agricultural endeavor; derive at least three-fourths (3/4) of his annual gross income from farming or other agricultural endeavors; and shall not derive more than fifty thousand dollars (\$50,000) annual net income from all sources, including spousal income, in the tax year preceding application];~~
- (3) "Board" means the board of directors of the corporation;
- (4) "Bond resolution" or "resolution" means the formal document of the corporation authorizing its obligations;
- (5) "Bonds" or "notes" means the bonds or bond anticipation notes authorized to be issued by the corporation under KRS 247.940 to 247.978;
- (6) "Commissioner" means the Commissioner of Agriculture;
- (7) "Commonwealth" means the Commonwealth of Kentucky;
- (8) "Corporation" means the Kentucky Agricultural Finance Corporation created by KRS 247.944;
- ~~(9) "Department" means the Department of Agriculture;~~
- ~~(10)~~ "Governmental agency" means any city, county, or other political subdivision of the Commonwealth and any department, division, or public agency thereof, the federal government or any political subdivision of any other state and any nonprofit corporation or other entity legally empowered to act on behalf of any of the foregoing in the area of assistance to agriculture;
- ~~(11)~~~~(11)~~ "Issuing agency capacity" means the action of the corporation in authorizing revenue bonds for a qualified project in accordance with the provisions of KRS 103.210 to 103.285 in which the corporation's liability is limited primarily to fiduciary duties;
- ~~(12)~~~~(12)~~ "Lending agency capacity" means the action of the corporation in participating directly or indirectly in the making of loans to or the purchasing of loans of qualified applicants;
- ~~(13)~~~~(13)~~ "Lending institution" means any bank, bank or trust company, or institutions of the farm credit system organized under the Farm Credit Act of 1971, 12 U.S.C. secs. 2001 et seq., as amended, building and loan association, homestead, insurance company, investment banker, mortgage banker or company, pension or retirement fund, savings bank or savings and loan association, small business investment company, credit union, the federal government, or any other financial institution authorized to do business in the Commonwealth of Kentucky or operating under the supervision of any federal agency or any corporation organized or operating pursuant to Section 25 of the Federal Reserve Act.
- ~~(14)~~~~(14)~~ "Obligations" means any bonds or notes authorized to be issued by the corporation under the provisions of KRS 247.940 to 247.978;
- ~~(15)~~~~(15)~~ "Project" means any undertaking to provide for the financing of the acquisition, construction, renovation, or improvement of land, buildings, machinery, equipment, and livestock in the area of agricultural enterprise; including ***but not limited to agricultural endeavors such as*** growing, storing, processing, warehousing, marketing, and distribution facilities in respect thereof or to provide for refinancing existing agricultural facilities;

- (15)~~(16)~~ "Trust agreement" means an indenture by and between the corporation and the corporate trustee setting forth the rights and duties of each relating to the authorization, sale, issuance, delivery, and payment of the corporation's obligations; and
- (16)~~(17)~~ "Umbrella obligation" means bonds or notes issued by the corporation in its issuing agency capacity or its lending agency capacity under the provisions of KRS 247.940 to 247.978, the proceeds of which may be used in the financing of multiple projects for two (2) or more applicants.

Section 5. KRS 247.944 is amended to read as follows:

- (1) There is hereby created and established the Kentucky Agricultural Finance Corporation which shall be attached to the *Office of the Governor*~~Department of Agriculture~~ for administrative purposes only.
- (2) The corporation is created and established as a de jure municipal corporation and political subdivision of the Commonwealth to perform essential governmental and public functions and purposes in improving and otherwise promoting the health and general welfare of the people through the promotion of agriculture through the Commonwealth.
- (3) The corporation shall be governed by a board of directors consisting of twelve (12) members, *ten (10) of whom shall be* appointed by the Governor. *The other two (2) members shall be the Commissioner of the Department of Agriculture, who shall serve as chairperson, and the secretary of the Finance and Administration Cabinet. The commissioner may designate a representative to serve as chairperson in the commissioner's absence*~~, three (3) of whom may be ex officio members of the board as follows:~~
 - (a) ~~The Commissioner or his designee;~~
 - (b) ~~The secretary, Finance and Administration Cabinet, or his designee; and~~
 - (c) ~~The Lieutenant Governor or his designee.~~
- (4) The Governor *shall*~~may~~ appoint *ten (10)*~~eight (8)~~ private members of the board to take office and to exercise all powers *of the board*~~thereof~~ immediately. *The ten (10)*~~Of the eight (8)~~ directors of the corporation *shall be appointed using staggered terms*~~thus appointed, four (4) may continue in office for terms of one (1) year, two (2) for terms of two (2) years, one (1) for a term of three (3) years and one (1) for a term of four (4) years respectively, as the Governor may designate; at the expiration of said original terms and for all succeeding terms, the Governor may appoint a successor to the board for a term of four (4) years in each case~~. Of the *ten (10)*~~initial eight (8)~~ private members of the board appointed by the Governor, *two (2)*~~one (1)~~ may be *officers*~~an officer~~ from a commercial lending institution, one (1) may be an officer from a farm credit association, one (1) may be an agricultural economist, one (1) *shall*~~may~~ be a tobacco farmer, one (1) *shall*~~may~~ be a cash grain farmer, one (1) *shall*~~may~~ be a livestock farmer, one (1) *shall*~~may~~ be a dairy farmer, *one (1) shall be a horticultural farmer*, and one (1) *shall*~~may~~ be from the equine industry.~~After July 13, 1990, the Governor may appoint a horticultural farmer as an additional private member of the board for an initial four (4) year term.~~ *To promote efficient use of agricultural resources and coordination among agricultural leaders, the Governor shall appoint a member from the Agricultural Development Board, who meets the qualifications for one (1) of the positions set out in this subsection, to one (1) of the ten (10) board positions governing the Kentucky Agricultural Finance Corporation.*

- (5) Upon the expiration of the initial terms of the private members of the board, the Governor ~~shall~~~~may~~ appoint successors representing the same constituencies as the members succeeded for a term of four (4) years in each case. In the case of a vacancy, the Governor may appoint a successor to hold office during the remainder of the term.
- (6) **Staff services for the board shall be provided by the Office of the Governor. The executive director of the Agricultural Development Board shall serve as executive director for** the board~~[of directors shall annually elect one (1) of its members as chairman and one (1) of its members as vice chairman and shall also elect or appoint, and prescribe the duties of, such other officers as the board deems necessary or advisable, including, but not limited to, an executive director, secretary, and legal counsel, and shall fix the compensation therefor].~~
- (7) The executive director shall administer, manage, and direct the affairs and business of the corporation, subject to the policies, control, and direction of the board. The **executive director**~~secretary~~ shall keep a record of the proceedings of the corporation and shall be custodian of all books, documents, and papers filed with the corporation, the minute book or journal of the corporation, and its official seal. The **executive director**~~secretary~~ shall have authority to cause copies to be made of all minutes and other records and documents of the corporation and to give certificates under the official seal of the corporation to the effect that the copies are true copies, and all persons dealing with the corporation may rely on such certifications.
- (8) A majority of the board shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes, notwithstanding the existence of any vacancies; provided, however, that a majority of the board may elect from among its members an executive committee to act in its stead in the day to day conduct of the business of the corporation. Notwithstanding the foregoing, the full board shall hold at least one (1) meeting each calendar quarter in accordance with a schedule to be established by the board.
- (9) Action may be taken by the corporation upon a vote of a majority of the directors present at a meeting at which a quorum exists called upon three (3) days written notice or upon the concurrence of at least seven (7) directors or by the board's executive committee.
- (10) All members of the board shall be entitled to their reasonable and necessary expenses actually incurred in discharging their duties.~~[Each appointed member of the board shall be entitled to a fee of fifty dollars (\$50) for attendance at each meeting of the board or executive committee.]~~

Section 6. KRS 247.978 is amended to read as follows:

The total amount of principal which a qualified applicant may owe to the corporation at any one (1) time shall not exceed:

- (1) Two-hundred fifty thousand dollars (\$250,000) for **first time farmers as defined by the U.S. Department of Agriculture, Farm Service Agency**~~[applicants as defined in KRS 247.942(2)(a)]~~; or
- (2) **One million dollars (\$1,000,000)**~~[Fifty thousand dollars (\$50,000)]~~ for **other** applicants~~[as defined in KRS 247.942(2)(b)]~~.

Section 7. KRS 12.023 is amended to read as follows:

The following organizational units and administrative bodies shall be attached to the Office of the Governor:

- (1) Council on Postsecondary Education;
- (2) Department of Military Affairs;
- (3) Department for Local Government;
- (4) Kentucky Commission on Human Rights;
- (5) Kentucky Commission on Women;
- (6) Kentucky Commission on Military Affairs;
- (7) Kentucky Coal Council;
- (8) Governor's Office of Child Abuse and Domestic Violence Services;
- (9) Governor's Office for Technology;
- (10) Office of Coal Marketing and Export;
- (11) Agricultural Development Board;
- (12) Commission on Small Business Advocacy;
- (13) Office of Early Childhood Development;
- (14) Kentucky Agency for Substance Abuse Policy; ~~and~~
- (15) Education Professional Standards Board; *and*
- (16) *Kentucky Agricultural Finance Corporation.*

Approved April 2, 2004