

CHAPTER 155

(HB 225)

AN ACT relating to gas.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 14 of this Act, unless the context requires otherwise:

- (1) *"Agreement" means a written contract between the authority and any person or persons, firm, corporation, local government, or public entity providing for or relating to the financing of the construction, reconstruction, improvement, or repair of one (1) or more projects of the authority;*
- (2) *"Authority" means the Kentucky Gas Pipeline Authority created by Section 2 of this Act;*
- (3) *"Bonds" mean revenue bonds, notes, or other obligations issued under the provisions of Section 4, 5, or 10 of this Act;*
- (4) *"Cost" means the expenditures for construction, acquisition, financing charges, interest prior to and during construction, principal and interest on any bonds or notes or obligations issued by the authority, engineering and legal expenses, plans, specifications, cost and revenue estimates, other expenses necessary or incidental to determining the feasibility or practicability of constructing any project, administrative expenses, and such other expenses necessary or incident to the construction of and placing into operation a project, the financing of the construction, and the acquisition of the project;*
- (5) *"Project" means the construction, reconstruction, improvement, or repair of any gas pipeline or appurtenant facilities, together with all property, rights, easements, and interests which may be acquired by the authority to facilitate the construction, reconstruction, improvement, or repair of any gas pipeline or appurtenant facilities. Except for projects involving repair or replacement, projects shall be limited to areas where no gas pipelines exist or where existing lines have insufficient capacity to transport Kentucky gases to market; and*
- (6) *"Gas" means natural gas, coalbed or other methane gas, or any elements of natural gas or other gas.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

- (1) *There is created and established within the Finance and Administration Cabinet a Kentucky Gas Pipeline Authority composed of the following nine (9) members:*
 - (a) *The secretary of the Finance and Administration Cabinet or his or her designee;*
 - (b) *The secretary of the Tourism Development Cabinet or his or her designee;*
 - (c) *The secretary of the Natural Resources and Environmental Protection Cabinet or his or her designee;*
 - (d) *A member designated by the Kentucky Oil and Gas Association;*
 - (e) *A member designated by the Kentucky Society of Professional Engineers who shall have experience in oil and gas pipeline construction;*

- (f) A member designated by the Kentucky Gas Association representing a natural gas distribution company with a minimum annual throughput of ten billion (10,000,000,000) cubic feet;*
 - (g) A citizen member appointed by the Governor; and*
 - (h) Two (2) nonvoting legislator members, one (1) appointed by the President of the Senate and one (1) by the Speaker of the House of Representatives.*
- (2) Members described in paragraphs (d), (e), (f), and (g) of subsection (1) of this section shall begin their terms on August 1, 2005. The initial terms of the members described in paragraphs (d) and (e) shall be two (2) years. The initial terms of the members described in paragraphs (f) and (g) shall be three (3) years and four (4) years, respectively. All subsequent terms for those members shall be four (4) years.*
 - (3) Vacancies occurring during the term of any member shall be filled in the same manner as the original appointment.*
 - (4) The nine (9) members of the authority and their successors shall be a body corporate and politic, with perpetual succession, constituting a public corporation and a governmental agency and instrumentality of the Commonwealth. The authority shall have the power, in its corporate name, to contract and be contracted with, acquire and convey property, sue and be sued, have and use a corporate seal, and exercise all of the usual powers of corporations not inconsistent with the authority's specifically enumerated powers.*
 - (5) The members of the authority shall receive no compensation for their services, but shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their duties under Sections 1 to 14 of this Act.*
 - (6) The secretary of the Finance and Administration Cabinet shall serve as chair, and the members of the authority shall elect a vice chair from their membership and appoint a secretary.*
 - (7) The secretary of the Finance and Administration Cabinet shall designate an employee of his or her cabinet to serve as treasurer of the authority. The treasurer shall give bond to the authority for a faithful accounting for all funds coming into his or her custody, in the amount the authority may prescribe, drawn upon a surety company qualified to do business in the Commonwealth. The premium shall be paid by the Commonwealth.*
 - (8) The authority shall establish and maintain an office and keep accurate and complete records of the authority's actions and proceedings, which shall be available for public inspection in accordance with KRS 61.870 to 61.884. The Finance and Administration Cabinet shall provide the funds, staff, facilities, and materials required by the authority in the conduct of its duties and functions.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

- (1) If any officers of the authority whose signature, or a facsimile thereof, appears on any bonds of the authority or on any other instruments or documents pertaining to the functions of the authority ceases to be an officer before delivery of the bonds, or before the effective date or occasion of the instruments or documents, the signature or facsimile shall nevertheless be valid for all purposes the same as if the officer had remained in office until the delivery or effective date or occasion.*
- (2) Any four (4) voting members of the authority shall constitute a quorum.*

- (3) *The authority shall meet not less than every twelve (12) months beginning no later than ninety (90) days after the effective date of this Act, and at such other times as it may be called as provided in this section. Special meetings of the authority may be called by the chair and, upon written request of two (2) members, the chair shall call a special meeting of the authority to be held not later than twenty (20) days following receipt of the written request. The chair shall give notice through the secretary by any means agreed upon by the membership, at least ten (10) days prior to the time of any meeting. The offices of the authority shall be located in Frankfort, Kentucky.*
- (4) *The authority may adopt bylaws relating to its organization and internal management and alter them at will. Through its bylaws, or by resolution, it shall establish stated times and places for regular meetings and may provide for meetings at other times or in different places. If a quorum is present at any special meeting and it appears from the minutes that reasonable notice was given to or waived by absent members, or if the minutes are subsequently consented to by absent members, any business transacted or action taken at the meeting shall be official and as valid in all respects as if transacted or taken at a regular meeting.*
- (5) *The authority shall promulgate administrative regulations for the conducting of its business and affairs including criteria for project eligibility, in accordance with the provisions of KRS Chapter 13A.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

The primary purpose of the authority shall be to provide a financing mechanism for projects, as defined in subsection (5) of Section 1 of this Act, that will increase severance tax revenue for Kentucky, create jobs for Kentuckians, and create a competitive advantage in environmentally responsible energy development. In doing so, the authority may:

- (1) *Determine the number and location of projects, in order to prevent duplication of effort and unnecessary costs, and study the needs within the natural gas, coalbed methane gas, and other gas product industries regarding storage, gathering, and transportation;*
- (2) *Facilitate the construction, reconstruction, improvement or repair of any gas transmission pipeline and appurtenant facilities in this state;*
- (3) *Acquire and convey real estate and any improvements, buildings, and facilities located thereon for which a project is undertaken, in the manner and under the terms as may be set forth in the agreement;*
- (4) *Issue revenue bonds, and revenue bond anticipation notes of the authority payable solely from the revenues, rentals, and other funds pledged for their payment, for the purpose of paying any part of the cost of any one (1) or more projects and refunding any bonds;*
- (5) *Grant, convey, assign, or lease any easement or rights of way that are acquired, owned, or leased by the authority and related to a project;*
- (6) *Employ consulting engineers, attorneys, accountants, construction and financial experts, managers, and other employees and agents who, in the judgment of the authority, are necessary and fix their compensation;*
- (7) *Enter into contracts with parties that are necessary and incidental to the performance of its duties and execution of its powers under Sections 1 to 14 of this Act;*

- (8) *Establish and enforce rules and specifications regarding any project undertaken by the authority, except during any period when the powers are assigned to a lessee pursuant to a lease agreement. The rules and specifications shall be consistent with federal and state laws and regulations pertaining to gas pipelines;*
- (9) *Receive, accept, and expend funds or other contributions from any source, both public and private, for or in aid of any project undertaken by the authority;*
- (10) *Create and establish a debt service reserve pursuant to proceedings and trust indenture of the authority; and*
- (11) *Do all things and perform all acts desirable, necessary, and proper to carry out the powers expressly granted to the authority by Sections 1 to 14 of this Act, including recommending the promulgation of administrative regulations and enactment of legislation.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

- (1) *The authority may provide for the issuance of revenue bonds to pay any part of the cost of any projects undertaken pursuant to an agreement. The principal and interest on these bonds shall be payable solely from the funds provided for such payment. Any issue may be in one (1) or more series and any series may enjoy equal or subordinate status with respect to the pledge of funds from which they are payable, shall be dated, shall bear interest at such rate or rates as established by the authority, shall mature at a time or times not exceeding twenty (20) years from their date or dates, all as may be provided by the authority, and may be made redeemable before maturity, at the option of the authority, at the price or prices and under the terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form of the bonds and fix the denomination of the bonds and the place or places for payment of principal and interest, which may be at any bank or trust company within or without this Commonwealth or at the office of the Finance and Administration Cabinet. The bonds shall be signed by the facsimile signature of the chair or secretary of the authority, and the seal of the authority or a facsimile thereof shall be affixed thereto and attested by the manual or facsimile signature of the secretary or chair of the authority. All bonds issued under the provisions of Sections 1 to 14 of this Act shall have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code, KRS Chapter 355. The authority may sell bonds at public or private sale.*
- (2) *The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project or projects for which the bonds are issued, and shall be disbursed in the manner and under any restrictions as the authority may provide in the proceedings authorizing the issuance of the bonds or in the trust indenture securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, is less than the cost, additional bonds may be issued in like manner to provide the amount of the deficit and, unless otherwise provided in the proceedings authorizing the issuance of the bonds or in the trust indenture securing the same, shall be deemed to be of the same issue and entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue exceed the cost, the surplus shall be deposited to the credit of the sinking fund or funds for these bonds or any account or accounts therein as the authority shall provide in the proceedings or trust indenture authorizing and securing the bonds.*

- (3) *Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue notes or temporary bonds that shall be exchangeable for definitive bonds when the definitive bonds are executed and available for delivery.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

Bonds issued by the authority under Sections 1 to 14 of this Act shall not constitute a debt of this Commonwealth or any political subdivision thereof or a pledge of the faith and credit of the Commonwealth or any political subdivision. The bonds shall be payable solely from the funds and security provided for payment under Sections 1 to 14 of this Act, and each bond shall contain a statement to that effect on its face.

SECTION 7. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

In the discretion of the authority, any bonds issued under Sections 1 to 14 of this Act may be secured by a trust indenture or trust indentures by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company in or outside of Kentucky. The trust indenture or the proceedings providing for the issuance of the bonds may:

- (1) *Pledge or assign the rents and other revenues to be received from a particular series of bonds as it relates to a trust indenture;*
- (2) *Contain provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition or sale of property and the construction, improvement, maintenance, repair, and insurance of the project or projects in connection with which the bonds are authorized; the rates or rental charges; and the custody, safeguarding, and application of all moneys;*
- (3) *Restrict the individual right of action by bondholders; and*
- (4) *Contain any other provisions as the authority may deem reasonable and proper for the security of the bondholders.*

It is lawful for any bank or trust company which may act as depository of the proceeds of bonds or of revenues to furnish indemnifying bonds or pledge securities as may be required by the rights and remedies of the bondholders and of the trustee. All expenses incurred in carrying out the provisions of the trust indenture or proceedings may be treated as a part of the cost of the project or projects.

SECTION 8. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

Any holder of bonds issued under Sections 1 to 14 of this Act and the trustee under any trust indenture, except to the extent that rights may be restricted by the trust indenture, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights arising under the laws of this Commonwealth, a trust indenture, or a proceeding authorizing the issuance of bonds; and may enforce and compel the performance of duties required under Sections 1 to 14 of this Act, including the fixing, charging, and collecting of rents.

SECTION 9. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

Bonds issued by the authority are securities in which all public officers and public bodies, agencies, and instrumentalities of this Commonwealth and its political subdivisions, insurance companies, trust companies, bank associations, investment companies, executors, administrators, trustees and other fiduciaries, and other persons who are authorized to invest in bonds or similar obligations may invest funds. The bonds are securities which may be deposited with any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or other obligations of the Commonwealth is authorized by law.

SECTION 10. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

- (1) *The authority may provide for the issuance of revenue refunding bonds for the purpose of refunding any outstanding bonds that have been issued under Sections 1 to 14 of this Act, including the payment of any redemption premium thereon and any interest accrued to the date of redemption of the bonds, and, if the authority determines, for the purpose of constructing improvements, extensions, or enlargements of the project or projects in connection with which the bonds to be refunded have been issued. The authority may also provide for the issuance of its revenue bonds for the combined purpose of:
 - (a) *Refunding any outstanding bonds that are issued under Sections 1 to 14 of this Act, including the payment of any redemption premium and any interest accrued to the date of redemption of the bonds; and*
 - (b) *Paying any part of the cost of any additional project or projects.**
- (2) *The issuance of such bonds, maturities and other details, for rights of the bondholders, and the rights, duties, and obligations of the authority, shall be governed by Sections 1 to 14 of this Act where applicable.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

All moneys received under Sections 1 to 14 of this Act, either from the sale of bonds or as revenues, shall be held and applied solely as provided in Sections 1 to 14 of this Act. The proceedings or the trust indenture shall provide that any officer with whom, or any bank or trust company with which, these moneys are deposited shall act as trustee of the moneys and shall hold and apply them for the purposes stated, subject to any regulation that Sections 1 to 14 of this Act, proceedings thereunder, or the trust indenture may provide.

SECTION 12. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

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.

SECTION 13. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

Nothing in KRS 45A.045 shall be construed to apply to any project undertaken by the authority pursuant to Sections 1 to 14 of this Act.

SECTION 14. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

By January 1 each year, the authority shall make an annual report of its activities for the preceding fiscal year to the Office of the State Budget Director and to the Interim Joint Committee on Appropriations and Revenue. Each such report shall set forth a complete operating and financial statement covering its operations during the year. The authority shall provide for an audit of its books and accounts to be made within ninety (90) days after the close of each fiscal year by certified public accountants and the cost thereof may be treated as a part of the cost of construction of the project. Audits under this section shall be public records within the meaning of KRS 61.870 to 61.884.

Approved March 18, 2005.