

**CHAPTER 134****(HB 550)**

AN ACT relating to the provision of broadband service.

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

Section 1. 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, and 224A.112, 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 Environmental and Public Protection 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) "Environmental and Public Protection Cabinet" means the Kentucky Environmental and Public 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.
- (12) "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.
- (13) "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.
- (14) "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.
- (15) "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.
- (16) "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 Environmental and Public Protection Cabinet, Public Service Commission, or other agency; solid waste projects; dams; storm water control and treatment systems; gas or electric utility; ***broadband deployment project***; or any other public utility or public service project which the authority finds would assist in carrying out the purposes set out in KRS 224A.300.
- (17) "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.

- (18) "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.
- (19) "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.
- (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 Environmental and Public Protection 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 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. ***The evaluation by the authority of infrastructure for broadband deployment projects shall be undertaken with consideration given to input from Area Development Districts, telecommunications businesses, information services, technology industries, governmental entities, and Kentucky-based nonprofit organizations, including ConnectKentucky.***
- (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.
- (42) ***"Broadband deployment project" means the construction, provision, development, operation, maintenance, leasing, or improvement of broadband infrastructure, broadband services, or technologies that constitute a part of, or are related to, broadband infrastructure or broadband services, to provide for broadband service in unserved areas of the Commonwealth.***
- (43) ***"Unserved area" means any place where broadband service is not available.***

Section 2. 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 KRS 96.540, 224A.306, 224A.308, and 224A.310, 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. ***The fund shall contain an account called the broadband deployment account which shall be managed by the authority and for the purposes set forth in Section 3 of this Act.***

- (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.
- (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.
- (6) The authority shall advise governmental agencies of the availability of the infrastructure revolving fund and how moneys may be obtained from the fund.
- (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 KRS 224A.300.

SECTION 3. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO READ AS FOLLOWS:

- (1) ***The purpose of the broadband deployment account set forth in Section 2 of this Act shall be to assist governments and private sector entities to construct infrastructure for the deployment of broadband service to unserved areas of the Commonwealth. The authority shall manage the account and may accept and receive appropriations from the General Assembly or other funds or gifts from both public and private sources, including, but not limited to, local governments and federal agencies.***
- (2) ***The authority shall establish an incentive program that allocates funds from the broadband deployment account in accordance with the provisions of this section. Incentives may be used by government or private sector entities for broadband deployment projects.***
- (3) ***The incentive program shall be developed to give highest funding priority to those projects which most effectively provide broadband service to the greatest number of unserved Kentucky citizens and at the lowest cost. Funding shall not be used for projects with an intent to deploy broadband service to areas where broadband service already exists; however, the authority may consider funding for projects that, in providing broadband service for an unserved area, create an overlap in existing broadband coverage for less than twenty percent (20%) of households in the proposed coverage area.***
- (4) ***The authority shall develop funding criteria and prioritization schedules for broadband deployment projects in accordance with this section and with consideration given to recommendations submitted by Area Development Districts, telecommunications businesses, information services, technology industries, governmental entities, and by Kentucky-based nonprofit organizations, including ConnectKentucky.***
- (5) ***To carry out the purposes of this section, the authority shall promulgate administration regulations in accordance with the provisions of KRS Chapter 13A.***

- (6) *Projects receiving funding as provided by this section shall be completed within twelve (12) months of receiving the funds.*

**Approved April 4, 2006.**