

**CHAPTER 159****(HB 690)**

AN ACT relating to natural gas acquisition and supply.

*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:

- (1) *Sections 1 to 6 of this Act may be cited as the "Natural Gas Acquisition Authority Act."*
- (2) *The Kentucky General Assembly hereby recognizes that the availability of reliable and economical supplies of natural gas is vital to the health, welfare, and economic well-being of the citizens and residents of the Commonwealth. In order to promote the ability of municipal utilities to obtain natural gas on terms that will promote the availability of reliable and economic supplies of energy to consumers, it is the intent of the General Assembly to authorize the creation of natural gas acquisition authorities to:*
  - (a) *Acquire supplies of natural gas for the purpose of providing the supply requirements of municipal utilities;*
  - (b) *Contract for the sale of natural gas to municipal utilities; and*
  - (c) *Exercise all powers necessary to enable them to accomplish such purposes.*
- (3) *Sections 1 to 6 of this Act shall be liberally construed in conformity with such intent, it being hereby determined and declared that the means provided by this chapter are necessary to provide for the continued availability to industrial, commercial, and residential customers served by municipal utilities in the Commonwealth of reliable supplies of natural gas at economic rates. But, Sections 1 to 6 of this Act shall not be construed or applied to increase the power of eminent domain of public agencies.*

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

*As used in Sections 1 to 6 of this Act, unless the context requires otherwise:*

- (1) *"Gas Acquisition Authority" or "authority" means a natural gas acquisition authority created pursuant to this section;*
- (2) *"Bond" means any bond, note, or other evidence of indebtedness issued by an Authority;*
- (3) *"Gas" or "natural gas" means natural gas or any substitute for natural gas, including synthetic natural gas, liquefied natural gas, coal gas, or other substance usable in lieu of natural gas;*
- (4) *"Municipal utility" means any public agency that:*
  - (a) *Provides gas or electric service to retail customers within a municipal service area; or*
  - (b) *Provides wholesale natural gas supply services to public agencies described in paragraph (a) of this subsection.*
- (5) *"Project" means any plant, works, system, facility, other real or personal property and interests therein, including drilling rights, operating rights, royalties, overriding royalties and other rights, titles and interests, production payments, gas purchase contracts, prepaid gas purchase contracts and other contractual rights and interests necessary or convenient for the acquisition, transportation, storage, or management of natural gas for the purpose of providing the supply requirements of municipal utilities; and*
- (6) *"Public agency" has the same meaning as specified in KRS 65.230.*

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

- (1) *Any two (2) or more municipal utilities may enter into an agreement pursuant to KRS 65.240 for the creation of a gas acquisition authority to accomplish their joint and cooperative action in the acquisition, transportation, storage, and management of natural gas and in related services and functions which are necessary or desirable to provide adequate, dependable, and economical supplies of natural gas. The agreement shall:*
  - (a) *Specify the matters required by KRS 65.250(1);*

- (b) *Be approved by resolution by the governing body of each municipal utility that is a party to the agreement;*
  - (c) *Prior to and as a condition precedent to its entry into force, be submitted to the appropriate state agency, which shall determine whether the agreement is in proper form and compatible with the laws of the Commonwealth, including this chapter, in the manner specified in KRS 65.260(2); and*
  - (d) *Be filed as provided in KRS 65.290.*
- (2) *An agreement creating a gas acquisition authority or an amendment to an agreement previously entered into under the Interlocal Cooperation Act, KRS 65.210 to 300:*
- (a) *Shall establish the governing body of the authority and authorize it to adopt bylaws and establish committees for the conduct of its business;*
  - (b) *May provide for one (1) or more classes of members of the authority and that additional municipal utilities may become members of the authority; and*
  - (c) *Shall provide that the authority shall remain in existence until the later of fifty (50) years from the date of the agreement or amendment, or one year after the authority has fully paid and discharged all of its indebtedness and has fully performed all of its contractual obligations.*
- (3) *A gas acquisition authority shall constitute an agency and instrumentality for accomplishing essential government functions of the municipal utilities creating and establishing it, shall be a political subdivision and a public body corporate of the Commonwealth, and shall be a public agency within the meaning of KRS 65.230. A gas acquisition authority is subject to the open meeting laws of KRS 61.800 to 61.850, and the public record laws of KRS 61.870 to 61.884, provided that the bylaws of the authority may specify that committees of its governing body may conduct meetings through telephone conference under standards and procedures consistent with video teleconferences under KRS 61.826.*
- (4) *Any separate legal entity previously created pursuant to KRS 65.240 of the Interlocal Cooperation Act to provide supplies of natural gas to two or more municipal utilities in the Commonwealth may elect to become a gas acquisition authority upon:*
- (a) *The adoption of approving resolutions by its governing body and the governing body of the municipal utilities; and*
  - (b) *The filing of the resolutions in their official records and with the Secretary of State.*

*An election under this subsection shall not modify, limit, or affect the validity or enforceability of any contract, bond, or obligation previously executed or incurred by the separate legal entity.*

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

- (1) *In addition to the powers delegated to it under the agreement described in subsection (1) of Section 3 of this Act, a gas acquisition authority shall have all powers necessary or convenient to accomplish the purposes for which it was created, including but not limited to the power to:*
- (a) *Exercise all of the powers of private corporations organized under the laws of the Commonwealth, as enumerated in KRS 271B.3-020, to accomplish the purpose and intent of this section, in order to acquire, purchase, secure and finance supplies of natural gas for sale to municipal utilities; provided, however, that a gas acquisition authority shall not have the power to provide gas supply services to retail consumers served by any public utility, cooperative utility or municipal utility;*
  - (b) *Develop, undertake, acquire, construct, own, manage and operate, or contract for the management and operation of, one (1) or more projects, in order to obtain, secure and provide supplies of natural gas to municipal utilities;*
  - (c) *Contract for the purchase of natural gas from any natural gas producer or other seller, whether within or outside the Commonwealth, containing such terms and conditions and being for such period as shall be agreed to by the authority;*
  - (d) *Contract for the sale of natural gas to the municipal utilities that created the authority and to or for the benefit of other municipal utilities, whether within or outside the Commonwealth, containing such terms and provisions and being for such period as shall be agreed to by the authority;*

- (e) *Provide to any municipal utility natural gas management, transportation, storage, and related services and technical, financial, informational, promotional, engineering and educational services;*
  - (f) *Enter into all other contracts necessary or convenient in connection with any project undertaken by the authority or the services it provides to municipal utilities, including but not limited to contracts for the transportation, storage, exchange, resale or remarketing of gas and commodity price exchange, swap, cap, floor or collar agreements, containing such terms and provisions and being for such period as shall be agreed to by the authority;*
  - (g) *Include in any contract provision for the indemnification of the parties upon early termination or default thereunder, for the rights and remedies of the parties to the contract to be governed by the laws of another state and consenting to the jurisdiction of the courts of the United States or another state over any action brought in connection with such contract; and*
  - (h) *Issue bonds to finance the cost of any project or any of the authority's purposes and, as security for the payment thereof and for the performance by the authority of its contractual obligations in connection with any project, grant liens or mortgages upon or otherwise pledge, assign, or encumber any or all of its property, assets, contractual rights and interests and all or any part of the revenues and receipts therefrom, whether then owned or thereafter acquired.*
- (2) *A gas acquisition authority may undertake, acquire, or construct a project with capacity or service greater than the requirements of the municipal utilities that created the authority in order to achieve economies of scale or other benefits determined by the authority, provided that any surplus or additional capacity or service shall be sold by the authority to other municipal utilities upon terms reasonably determined to provide for the full recovery of its costs.*

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

- (1) *Bonds shall be issued by a gas acquisition authority pursuant to KRS 65.270 and this section, provided that, notwithstanding the provisions of KRS 65.270 or any other provision of law, the authority:*
- (a) *May issue notes in anticipation of the issuance of bonds, issue bonds for one or more projects and purposes, and issue bonds to refund bonds previously issued;*
  - (b) *May issue bonds in one or more series that mature not more than forty (40) years from their date and are subject to redemption or tender for purchase by the owners thereof at such times, upon such terms and at such prices as are set forth in the proceedings authorizing their issuance;*
  - (c) *May issue and secure its bonds pursuant to a bond resolution, trust indenture, or other security instrument approved by its governing body, establish and fund from bond proceeds or its revenues and reserves as it shall deem necessary or desirable, and enter into such covenants and agreements with the owners of the bonds as shall be necessary to secure the same;*
  - (d) *May sell its bonds at public or private sale in such manner, at such price, and upon such terms as shall be determined by its governing body;*
  - (e) *May in connection with its bonds, enter into contracts for bond insurance, surety bonds, bond ratings, letters of credit, and other forms of credit enhancement, lines of credit, trustee and paying agent services, standby bond purchase agreements and other liquidity facilities, and bond remarketing agreements, reimbursement agreements, interest rate swap, exchange, cap or collar contracts, forward delivery contracts, all as approved by its governing body; and*
  - (f) *Shall take all actions necessary to authorize, issue, and secure its bonds, and no actions shall be required to be taken under KRS 65.270 by the municipal utilities that created the authority.*
- (2) *Bonds issued by a gas acquisition authority shall be fully negotiable for all purposes. Any lien, pledge, or other security interest created by an authority to secure its obligations is valid, binding, perfected, and enforceable on and after the effective date of the bond resolution, trust indenture, or other security instrument under which it is created, and no physical delivery, filing, or recording shall be required to perfect the same under the Uniform Commercial Code or otherwise. An authority may, but shall not be required to, publish any of its proceedings in connection with the issuance of bonds.*
- (3) *Bonds issued by a gas acquisition authority shall constitute an obligation of only the authority, shall be payable solely from the property, revenue, and income pledged for their payment, and shall not constitute*

*an indebtedness, liability, or obligation of the municipal utilities that created the authority, the Commonwealth, or any political subdivision thereof other than the authority.*

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

- (1) *Contracts for the sale of gas from projects or undertakings of a gas acquisition authority shall contain such terms and provisions as the authority determines necessary to provide revenues sufficient to enable the authority to pay its operation, maintenance, and debt service costs. Any municipal utility of the Commonwealth that owns or operates a municipal utility system is hereby authorized to contract to purchase gas from a gas acquisition authority upon such terms as the parties may agree, including full or partial requirements contracts, contracts for the purchase of specified quantities of gas, and contracts requiring minimum payments, regardless of whether gas is made available by the authority or taken by the municipal utility.*
- (2) *Any gas sale contract between a gas acquisition authority and a municipal utility of the Commonwealth shall provide that the municipal utility shall be made obligated to make payments solely from the available revenues and income from the operation of a designated municipal utility, or other revenues when applicable, as an operation and maintenance expense and a cost of purchased natural gas. Neither the full faith and credit nor the taxing power of the municipal utility shall be pledged for the payment of any obligation under any such contract. A municipal utility shall establish, charge, and collect rates and charges for the services provided by its utility facilities sufficient to provide revenues sufficient to meet its obligations under any gas sale contract with an authority, and to pay its obligations payable from or constituting a charge against such revenues.*
- (3) *No municipal utility that purchases gas from a gas acquisition authority shall in any event be liable for the payment of bonds issued by the authority or for the performance by the authority of its contractual obligations in connection with any project.*

Signed by Governor April 24, 2008.