

CHAPTER 131**(SB 153)**

AN ACT relating to energy efficiency.

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

➔Section 1. KRS 224.46-330 is amended to read as follows:

- (1) There is established the pollution prevention fund, to be administered by the center under the direction of the board. The fund shall consist of money received from the hazardous waste management fund created by KRS 224.46-580 and any state or federal appropriations, donations, or agency receipts.
- (2) The fund shall be used~~solely~~ to finance the pollution prevention programs authorized and approved by the board *or to match federal funds for the limited purposes of providing energy efficiency technical assistance*.
- (3) Funds unexpended at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year or biennium. Those funds shall be included in the budget reviewed and approved by the board.
- (4) The university shall execute the budget approved by the board and expend funds accordingly. The Finance and Administration Cabinet shall issue warrants upon request of the university.

➔Section 2. KRS 103.200 is amended to read as follows:

~~{(1)—}~~As used in KRS *103.200*~~{103.210}~~ to 103.285:~~{,}~~

- (1) "Building" or "industrial building" means any land and building or buildings (including office space related and subordinate to any of the facilities enumerated below), any facility or other improvement thereon, and all real and personal properties, including operating equipment and machinery deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for the following or any combination thereof:
 - (a) Any activity, business, or industry for the manufacturing, processing or assembling of any commercial product, including agricultural, mining, or manufactured products, together with storage, warehousing, and distribution facilities in respect thereof;
 - (b) Any undertaking involving the construction, reconstruction, and use of airports, mass commuting facilities, ship canals, ports or port facilities, docks or wharf facilities or harbor facilities, off-street parking facilities or of railroads, monorails, or tramways, railway or airline terminals, cable television, mass communication facilities, and related facilities;
 - (c) Any buildings, structures, and facilities, including the site thereof and machinery, equipment, and furnishings suitable for use as health-care or related facilities, including without limitation hospitals, clinics, nursing homes, research facilities, extended or long-term care facilities, including housing for the aged or the infirm and all buildings, structures, and facilities deemed necessary or useful in connection therewith;
 - (d) Any nonprofit educational institution in any manner related to or in furtherance of the educational purposes of such institution, including but not limited to classroom, laboratory, housing, administrative, physical educational, and medical research and treatment facilities;
 - (e) Any facilities for any recreation or amusement park, public park, or theme park, including specifically facilities for the use of nonprofit entities in making recreational and cultural benefits available to the public;
 - (f) Any facilities involving manufacturing and service industries which process raw agricultural products, including timber, provide value-added functions, or supply ingredients used for production of basic agricultural crops and products;
 - (g) Any facilities incident to the development of industrial sites, including land costs and the costs of site improvements thereon, such as grading, streets, drainage, storm and sanitary sewers, and other facilities and structures incidental to the use of such site or sites for industrial use;
 - (h) Any facilities for the furnishing of water, if available on reasonable demand to members of the general public;

- (i) Any facilities for the extraction, production, grading, separating, washing, drying, preparing, sorting, loading, and distribution of mineral resources, together with related facilities;
 - (j) Any convention or trade show facilities, together with all related and subordinate facilities necessary to the development and proper utilization thereof;
 - (k) Any facilities designed and constructed to be used as hotels and/or motels, together with all related and subordinate facilities necessary to the operation thereof, including site preparation and similar facilities;
 - (l) Any activity designed for the preservation of residential neighborhoods, provided that such activity receives approval of the heritage division and insures the preservation of not fewer than four (4) family units;
 - (m) Any activity designed for the preservation of commercial or residential buildings which are on the National Register of Historic Places or within an area designated as a national historic district or approved by the heritage division; and
 - (n) Any activity, including new construction, designed for revitalization or redevelopment of downtown business districts as designated by the issuer.
- (2) ~~As used in KRS 103.210 to 103.285,~~ "Bonds" or "negotiable bonds" means bonds, notes, variable rate bonds, commercial paper bonds, bond anticipation notes, or any other obligations for the payment of money issued by a city, county, or other authority pursuant to KRS 103.210 to 103.285.
- (3) ~~As used in KRS 103.210 to 103.285,~~ "Substantiating documentation" means an independent finding, study, report, or assessment of the economic and financial impact of a project, which shall include a review of customary business practices, terms, and conditions for similar types of projects, both taxable and tax-exempt, in the current market environment.

➔Section 3. KRS 103.210 is amended to read as follows:

- (1) In order to promote the economic development of the Commonwealth, ~~promote reconversion to peacetime economy,~~ to relieve conditions of unemployment, ~~to aid in the rehabilitation of returning veterans,~~ to encourage the increase of industry in this state, and to aid in the retention of existing industry through **improved energy efficiency in manufacturing facilities,** ~~the control of pollution~~ or through conversion of energy facilities to more readily available fuels, any city or county may borrow money and issue negotiable bonds for the purpose of defraying the cost of acquiring any industrial building or pollution control facility, either by purchase or construction, but only after an ordinance or resolution has been adopted by the legislative body of the city or the fiscal court of the county, or **by** the ~~governing body of~~ Kentucky Economic Development Finance Authority, if requested by the legislative body of the city or the fiscal court of the county, as the case may be, specifying the proposed undertaking, the maximum amount of bonds to be outstanding at any one (1) time, and the maximum rate of interest the bonds are to bear. This section shall not be deemed to require, however, that such ordinance or resolution be adopted prior to interim financing of the project, if such interim financing was undertaken by the proposed lessee corporation upon the basis of discussions between the corporation and responsible officials of the issuer which were later formally ratified by the appropriate governing body of the issuer.
- (2) The ordinance or resolution shall further provide that the industrial building or the pollution control facility is to be acquired pursuant to the provisions of KRS 103.200 to 103.285. Each such bond-authorizing ordinance or resolution shall be effective only after publication, in a newspaper authorized to publish official advertisements for the issuer, of the title to said ordinance or resolution, together with a statement signed by the clerk of the issuer setting forth the maximum amount of bonds to be outstanding at any one (1) time, the name of the lessee corporation, and the fact that the bonds are to be retired from the proceeds of either the lease payments as set forth in KRS 103.200 to 103.285, inclusive, or the loan payments or sale payments in the event the industrial building financing transaction is carried out pursuant to a loan agreement, sale agreement, or other tax incentive agreement. No publication of the complete ordinance or resolution shall be required, but said ordinance or resolution shall be entered upon the records of the issuer and shall be available for public inspection.
- (3) Any industrial buildings financed by bonds pursuant to KRS 103.200 to 103.285 and leased in connection with the bond financing from a tax-exempt governmental unit, or tax-exempt statutory authority, shall require the prior approval by the Kentucky Economic Development Finance Authority of the reduced ad valorem tax for industrial buildings under KRS 132.020, the standards for which the Kentucky Economic Development Finance Authority shall establish through its operating procedures or by the promulgation of administrative

regulations in accordance with KRS Chapter 13A. The authority shall consider, along with other indicators, when establishing standards, the number of jobs to be created, the amount of capital to be invested, and the wages and benefits to be paid.

~~(4)(2)~~ *The* Kentucky Economic Development Finance Authority, any air board established pursuant to KRS 183.132, and any riverport authority established as provided in KRS 65.510 to 65.650, inclusive, shall have and possess all power and authority granted to cities and counties by the provisions of KRS 103.200 to 103.285, excluding condemnation powers under KRS 103.245, for the financing of industrial buildings. For such purposes, the terms "city," "county," and "issuer" as used in KRS 103.200 to 103.285, inclusive, shall also mean and refer to *the* Kentucky Economic Development Finance Authority, any air board established pursuant to KRS 183.132, and any riverport authority established as provided in KRS 65.510 to 65.650. The power and authority granted to *the* Kentucky Economic Development Finance Authority, any air board, and any riverport authority shall be and constitute an additional and alternative grant of power and authority to such governmental agencies, and shall not be construed as being in derogation of any other powers vested in each of such governmental agencies.

➔Section 4. KRS 103.220 is amended to read as follows:

- (1) The bonds may be issued to bear interest at any rate or rates, either fixed or variable, in accordance with such method as shall be set by the governing body of the issuer, payable either annually or at shorter intervals, may be of such terms and maturities, may bear such conversion privileges, may be executed by the manual or facsimile signatures of such officers of the issuer and shall be executed in such manner and at such time or times or from time to time and be payable at such times not exceeding thirty (30) years from the date thereof, or if commercial paper, from the date of issuance thereof, and at such place or places as the governing body of the issuer determines.
- (2) The bonds may provide that they or any of them may be called for redemption prior to maturity under conditions set by the governing body of the issuer before issuing the bonds.
- (3)
 - (a) Any bonds issued and outstanding hereunder may, at any time on or after the earliest redemption date provided therefor at the time of their issuance, be refunded by the issuer or any other city, county or authority, with the consent of the lessee, industrial concern or utility company, in such amount as the governing body may deem necessary to refund the principal of the bonds to be refunded, together with any unpaid interest thereon, to create any necessary debt service reserve fund, and to pay the costs of any improvements or additions to the project, and of any premiums, expenses and commissions required to be paid in connection therewith. Any refunding bonds issued under the authority of this section shall be payable from the revenues out of which the bonds to be refunded were payable.
 - (b) At the time of the initial issuance of the bonds, the issuer may designate individual officials of its governing body as agent for purposes of approving the principal amount, the interest rate, the discount, if any, and the maturity date of bonds being issued later to refund the maturing bonds; provided, however, that, at the time of the initial issuance of such bonds, the governing body of the issuer shall set the maximum principal amount, the maximum interest rate, and the maximum discount, if any, of the refunding bonds plus the final maturity date of the last issue of such refunding bonds; and provided further that the issuer shall retain the right to revoke any such agent's authority at any time and for any reason whatsoever. Individual issues of commercial paper, issued as part of a continuing financing program, may be refunded by the approvals of such agent of the issuer and separate proceedings of the issuer pursuant to KRS 103.210~~(4)~~ shall not be required.
 - (c) At the time of issuance of bonds which bear interest at a variable rate or rates, the governing body of the issuer may designate individuals or institutions who in the sole judgment of such governing body have financial market expertise to serve as agent for the issuer for establishing and changing from time to time while such bonds remain outstanding the rate of interest to be borne by and the price to be paid for the bonds; provided, however, that the rate-setting procedures and authority of each such agent shall be set forth in writing, and may include a formula or an index or indices based upon market factors, and shall be established by the issuer at the time of issuance of such bonds; and provided further that at the time of the issuance of the bonds, the governing body of the issuer shall establish the maximum interest rate to be borne by the bonds; and provided further that the issuer shall retain the right to remove or replace any such agent at any time and for any reason whatsoever.

- (4) Any bonds issued and outstanding hereunder and the coupons appertaining to such bonds shall prior to the maturity or redemption date thereof be deemed to have been paid to the same extent as if they had actually been paid in cash and retired, if:
- (a) In case any of such bonds are to be redeemed on any date prior to their maturity, the issuer of such bonds shall have given a trustee appointed for the holders of such bonds in connection with their issuance, in form satisfactory to such trustee and in conformity with the requirements of the ordinance or resolution authorizing their issuance, irrevocable instructions to give notice of redemption of such bonds to the holders thereof by publication or by other method which is satisfactory to such trustee;
 - (b) There shall have been deposited with the trustee either money in an amount which shall be sufficient, or direct obligations of or obligations guaranteed by the United States of America, the principal of and the interest on which, when due, will provide money which, together with the money, if any, deposited with the trustee at the same time, shall be sufficient to pay when due the principal and the interest due and to become due on such bonds on and prior to redemption date or maturity date thereof, as the case may be; and
 - (c) In the event that such bonds are not to be redeemed within the next succeeding sixty (60) days, the issuer shall have given the trustee in form satisfactory to it irrevocable instructions to give, as soon as practicable, in a manner satisfactory to it, a notice to the holders of such bonds and coupons that the deposit required by paragraph (b) of this subsection has been made with the trustee, that such bonds and coupons are deemed to have been paid in accordance with the provisions hereof and stating such maturity or redemption date upon which money is to be available for the payment of the principal of and interest on such bonds. Any deposits made under paragraph (b) of this subsection, to the extent not secured by the Federal Deposit Insurance Corporation, shall be secured by the pledging of direct obligations of or obligations guaranteed by the United States of America.
- (5) It is hereby declared and determined that the issuance of any and all refunding bonds as provided herein will be for a public purpose if the legislative body of the issuer authorizing such bonds so declares in the proceedings authorizing same, it being hereby declared and determined that the ability of any domestic or foreign corporation renting or leasing any facilities financed by the bonds to cause refunding bonds to be issued will be an inducement for such domestic or foreign corporation to establish in Kentucky the facilities provided for in KRS 103.210 and will tend to further the purposes of KRS ~~103.200 to 103.285~~~~103.210 through 103.280~~.
- (6) No bonds shall be issued hereunder in violation of federal statutes or regulations prohibiting arbitrage profits.

➔Section 5. KRS 103.240 is amended to read as follows:

All money received from the sale of the bonds shall be applied solely for:

- (1) The acquisition of the industrial building and:
 - (a) Any utilities;~~or~~
 - (b) Pollution control structures or equipment;
 - (c) ***Equipment or technologies employed to increase the energy efficiency of manufacturing facilities; or***
 - (d) ***Other equipment*** requisite to the use ***of these assets***~~thereof~~;
- (2) The acquisition of pollution control facilities and the structures or equipment requisite to the use thereof;
- (3) The necessary expense of preparing, printing and selling said bonds;
- (4) The refunding of any issued and outstanding bonds whether matured or otherwise;
- (5) Providing a debt service reserve fund or any other reserve funds, if necessary; or
- (6) To advance the payment of interest on the bonds during any portion of the first three (3) years following the date of the bonds.

➔Section 6. KRS 103.286 is amended to read as follows:

- (1) The Kentucky Private Activity Bond Allocation Committee is established. The purpose of the committee shall be to ensure compliance by the Commonwealth, its political subdivisions, and other authorized issuers within the Commonwealth of Kentucky, of private activity bonds, as defined in the Internal Revenue Code of the United States, with the state ceiling on the issuance of the bonds imposed by the Tax Reform Act of 1986, 26

U.S.C. sec. 146. The committee shall be attached to the Finance and Administration Cabinet for administrative purposes and staff services. The committee shall be composed of the secretary of the Finance and Administration Cabinet, who shall be chairman of the committee; the secretary of the Cabinet for Economic Development; the state budget director; the state controller, Finance and Administration Cabinet; and the secretary of the Governor's Cabinet, or their respective designees.

- (2) The committee shall attempt to allocate the state ceiling of Kentucky in order to best effectuate the issuance of private activity bonds, foster economic development within the Commonwealth, and promote the general welfare of its citizens and the public purposes of the Commonwealth.
 - (a) For each calendar year, during the period in which the issuance of private activity bonds is authorized by the federal government, the first fifty percent (50%) of the term shall be designated as a period in which the committee shall provide that no less than:
 1. Sixty percent (60%) of the private activity cap be reserved for state bond issuance authorities; *and*
 2. *Ten percent (10%) of the private activity cap be reserved for manufacturing facility energy efficiency bonds issued by any issuer pursuant to Section 7 of this Act.*
 - (b) For each calendar year, during the period in which the issuance of private activity bonds is authorized by the federal government, the last fifty percent (50%) of the term shall be designated by the committee as the period in which the remaining unallocated cap shall revert to a single pool to be allocated in accordance with subsection (3) of this section.
- (3) The secretary of the Finance and Administration Cabinet shall promulgate regulations in accordance with KRS Chapter 13A, to provide for the allocation of the state ceiling on private activity bonds among all issuers of the bonds within the Commonwealth of Kentucky.
- (4) No bonds governed by this section shall be issued that are not in compliance with the state ceiling, subsections (2)(a) and (b) of this section, or with the allocation, application, or review procedures established by the secretary of the Finance and Administration Cabinet.

➔SECTION 7. A NEW SECTION OF KRS 103.200 TO 103.285 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*
 - (a) *"Energy service company" means an entity in the business of providing evaluation, design, implementation, installation, measurement and verification, and other related services under guaranteed energy savings contracts;*
 - (b) *"Guaranteed energy savings contract" means a contract for the evaluation and recommendation of energy, water, and wastewater conservation measures and for implementation of one (1) or more of those measures. The contract may provide that payments, except obligations on termination of the contract before its expiration, are to be made over time and shall provide that the savings are guaranteed to the extent necessary to make payments for the cost of the design, installation, and maintenance of energy, water, and wastewater conservation measures; and*
 - (c) *"Small or medium-sized manufacturer" means any existing business entity organized for profit that is operating an industrial building used as a manufacturing facility in the Commonwealth, and that has three hundred (300) or fewer full-time employees located at that manufacturing facility at the time bonds are to be issued pursuant to this section.*
- (2) *In order to further the purposes stated in Section 3 of this Act and to advance the Commonwealth's goals of achieving a greater proportion of its energy needs through increased efficiency and conservation in the private sector, bonds may be issued by any city, county, air board, riverport authority, or the Kentucky Economic Development Finance Authority to assist a small or medium-sized manufacturer with developing or improving its manufacturing facilities through the use of a guaranteed energy savings contract to increase the energy efficiency thereof.*
- (3) *Bonds shall only be issued pursuant to this section if:*
 - (a) *The energy efficiency project being undertaken through the guaranteed energy savings contract is to be performed by a qualified provider as defined in KRS 45A.345; and*

- (b) *The energy service company provides a guarantee that the project will achieve a reduction in energy consumption:*
1. *That is measurable and verifiable; and*
 2. *Which will result in cost savings that are equal to or greater than the cost of the project within a seven (7) year payback period.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 147A IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "department" means the Department for Local Government.*
- (2) *The department may, to the extent resources are available, establish an industrial revenue bond information clearinghouse to serve as a central statewide point of contact for the dissemination of information and guidance relating to the issuance and use of industrial revenue bonds by units of local government.*
- (3) *The clearinghouse shall collect and disseminate information and guidance that may be adopted by units of local government seeking to issue industrial revenue bonds, including:*
 - (a) *Identification of best practices;*
 - (b) *Model ordinances and resolutions;*
 - (c) *Proper issuance procedures;*
 - (d) *Examples of possible uses of industrial revenue bond proceeds; and*
 - (e) *Other model guidelines.*
- (4) *Information provided through the clearinghouse shall be published on a Web site that is accessible to the general public to assist private sector businesses, nonprofit organizations, and others that may benefit from the issuance of industrial revenue bonds.*
- (5) *The Finance and Administration Cabinet, the Cabinet for Economic Development, and the Energy and Environment Cabinet shall assist the department, as needed, in the development of the clearinghouse, to ensure the most complete, accurate, and current information relating to the issuance and possible uses of industrial revenue bonds is available on the Web site.*
- (6) *After the initial development of the clearinghouse is complete, and for as long as it is available, a link to the Web site shall be made available on the one-stop business portal established in KRS 14.250.*

Signed by Governor April 25, 2014.