

CHAPTER 103**(SB 238)**

AN ACT relating to construction and declaring an emergency.

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

➔Section 1. KRS 56.813 is amended to read as follows:

- (1) An agency may request that the Finance and Administration Cabinet provide additional space in a building in which space is already leased by the state. If the cabinet determines there is need for more space, the current lease may be amended, with agreement of the lessor, to increase the leased space. However, the rental rate paid for the additional space shall not exceed the square foot rental rate fixed by the original lease. A lease may also be modified with agreement of the lessor to decrease the number of square feet leased and the rent shall be appropriately reduced.
 - (2) (a)
 1. When an agency occupying leased premises desires improvements in the premises, the agency shall obtain the cabinet secretary's approval for the improvements at an estimated cost before the lessor makes the improvements.
 2. If the improvements cost more than ten thousand dollars (\$10,000), the agency shall obtain the cabinet secretary's approval for the rent increase necessary to amortize the cost of the improvements in full over the life of the lease. No other financing method shall be used.
 3.
 - a. If the improvements cost ten thousand dollars (\$10,000) or less, the agency shall obtain the cabinet secretary's approval for the dollar amount necessary to pay for the cost of the improvements at direct state expense or the rent increase necessary to amortize the cost of the improvements in full over a period of time which shall run no longer than the life of the lease. No other financing method shall be used. No improvement shall be artificially divided so as to qualify under the provisions of this subparagraph.
 - b. Any improvements approved under this subparagraph with a cost between one thousand dollars (\$1,000) and ten thousand dollars (\$10,000) shall be reported semiannually by the Finance and Administration Cabinet to the Capital Projects and Bond Oversight Committee established by KRS 45.790. The report shall include, for each project, the agency for which the improvement was made, the cost, a description of the work performed, and the property identification number.
 - (b) Any rent increase necessary to amortize a cost pursuant to paragraph (a) of this subsection shall not extend beyond the period required to accomplish the agreed amortization.
 - (c) The cabinet secretary shall amend a lease to reflect a rent increase necessary to amortize a cost pursuant to paragraphs (a) and (b) of this subsection, and the amendment shall state that the rent increase is for the purpose of amortizing this cost.
 - (d) ***For any building leased by a state agency that the state will own upon termination of the lease or expiration of the lease term, and for which no modification of the lease may be made to amortize improvements to the property, the cabinet may use funds provided by state agencies to improve, renovate, or refit the building to better satisfy the needs of the agencies occupying the leased property up to six hundred thousand dollars (\$600,000) without additional approval of the General Assembly.***
- (3) Any modification to an existing lease which is required because of an emergency as described at KRS 56.805(3) shall be made pursuant to KRS 56.805(3) and (4) and this section.
- (4) The Division of Real Properties, within the Department for Facilities and Support Services, shall maintain a register of all proposed lease modifications which, if approved, will result in the payment of a square foot rate for the leased space which is greater than the square foot rate contained in the original lease. All such proposed modifications shall be filed and kept in the register for public inspection and comment for thirty (30) calendar days. Comments received from the public during the period shall be considered before the lease modification is executed by the parties and becomes binding against the Commonwealth. After receiving comments, if the secretary determines that the proposed modifications are not in the interest of the Commonwealth, he or she may require the agency to continue operation in its present space or cancel the lease and seek more suitable

space. The lessor, under any lease proposed to be modified as contemplated therein, shall be advised of the requirements of this subsection and cautioned that the Commonwealth shall have no liability for any action undertaken by the lessor in anticipation of, but prior to execution of, the modifications of the lease.

➔Section 2. KRS 56.823 is amended to read as follows:

- (1) The Finance and Administration Cabinet shall report information on leases and lease modifications awarded pursuant to KRS 43.050, 48.111, and 56.800 to 56.823 to the Capital Projects and Bond Oversight Committee as required by this section.
- (2) Any lease awarded pursuant to KRS 56.803, including all lease renewals except automatic renewals permitted under KRS 56.806(1), for which the annual rental cost will exceed one hundred thousand dollars (\$100,000) shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution. The report shall include:
 - (a) The name of the agency that will occupy the premises;
 - (b) The name of the lessor;
 - (c) The terms of the lease;
 - (d) The reason for the lease;
 - (e) A copy of the writing required by KRS 56.803(17);
 - (f) A statement as to whether the Finance and Administration Cabinet complied with the requirements established in KRS 43.050, 48.111, and 56.800 to 56.823. If the cabinet has not complied with any requirement, the cabinet shall explain why;
 - (g) An explanation of why the Finance and Administration Cabinet chose this lessor over his competition; and
 - (h) A cost comparison between the cost per square foot of the leased space and the average cost per square foot of comparable space the state leases in the same county. If there are factors which make the comparison misleading, the cabinet shall inform the committee of these factors.
- (3) Any lease that incorporates a lease-purchase pursuant to KRS 56.806(5) shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution.
 - (a) If a lease is awarded pursuant to KRS 56.803, the report shall include the:
 1. Fair market value of the property as of the time the lessor and the Commonwealth entered into the lease;
 2. Name and qualifications of each of the two (2) real estate appraisers who determined the fair market value;
 3. Appraisal technique each appraiser employed; and
 4. Information required by subsection (2) of this section.
 - (b)
 1. Except as provided in subparagraph 2. of this paragraph, if a lease is awarded pursuant to KRS 56.805(2), the report shall include the:
 - a. Fair market value of the property at the time the lessor and the Commonwealth entered into the lease;
 - b. Name and qualifications of each of the two (2) real estate appraisers who determined the fair market value;
 - c. Appraisal technique each appraiser employed;
 - d. Information required by paragraphs (a), (b), (c), (d), (f), (g), and (h) of subsection (2) of this section; and
 - e. Procedure the department followed to obtain the lease.
 2. If the federal government is the lessor, the report shall include the substance of the lease-purchase.

- (4) Any lease awarded pursuant to KRS 56.805(2), including all lease renewals except automatic renewals permitted under KRS 56.806(1), for which the annual rental cost will exceed one hundred thousand dollars (\$100,000) shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution. The report shall state the information required by paragraphs (a), (b), (c), (d), (f), (g), and (h) of subsection (2) of this section and the procedure the department followed to obtain the lease. The report shall also include a copy of the writing required by KRS 56.805(2).
- (5) Any lease awarded as the result of an emergency described at KRS 56.805(3) shall be reported to the Capital Projects and Bond Oversight Committee within thirty (30) days after execution. The report shall include a copy of the certificate or the certificate and the Governor's authorization, as appropriate, kept on file pursuant to KRS 56.805(4) and shall further state:
- (a) The information required by paragraphs (a), (b), (f), (g), and (h) of subsection (2) of this section;
 - (b) The terms of lease before and after the emergency; and
 - (c) The procedure the department followed after the emergency to obtain a lease.
- (6) Any built-to-suit lease awarded pursuant to KRS 56.8169 shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution. The report shall state the information required by paragraphs (a), (b), (c), (d), (f), (g), and (h) of subsection (2) of this section. The report shall also include:
- (a) The written finding and Governor's approval required by KRS 56.8161;
 - (b) The selection committee's ranking of firms required by KRS 56.8169(15)(a);
 - (c) The written reason for requesting best-and-final offers, if best-and-final offers are requested, made pursuant to KRS 56.8169(16)(b);
 - (d) The selection committee's selection of the best best-and-final offer, if best-and-final offers are requested, made pursuant to KRS 56.8169(16)(d);
 - (e) The certificates signed pursuant to KRS 56.8171(2); and
 - (f) The report prepared by the employee of the Auditor of Public Accounts pursuant to KRS 56.8171(3).
- (7) If the Finance and Administration Cabinet decides to exercise an option to purchase pursuant to KRS 56.806(4), the cabinet shall report to the Capital Projects and Bond Oversight Committee after the decision is reached but before the purchase occurs. The report shall include the:
- (a) Fair market value of the property;
 - (b) Option price;
 - (c) Name and qualifications of each of the two (2) real estate appraisers who set the fair market value;
 - (d) Appraisal technique each appraiser employed; and
 - (e) Rent paid by the Commonwealth prior to the exercise of the option.
- (8) (a) When, pursuant to KRS 56.806(5)(a), the Finance and Administration Cabinet attempts to complete a lease-purchase through lease payments totally amortizing the fair market value of the leased property as of the time the lessor and the Commonwealth entered into the lease, the cabinet shall report to the Capital Projects and Bond Oversight Committee no more than ninety (90) days before the final lease payment. The report shall include the:
- 1. Fair market value of the property at the time the lessor and the Commonwealth entered into the lease;
 - 2. Name and qualifications of each of the two (2) real estate appraisers who set the fair market value;
 - 3. Appraisal technique each appraiser employed; and
 - 4. Rent paid by the Commonwealth toward the purchase.
- (b) When, pursuant to KRS 56.806(5)(b), the Finance and Administration Cabinet attempts to complete a lease-purchase, the cabinet shall report to the Capital Projects and Bond Oversight Committee no more

- than ninety (90) days before the final lease payment. The report shall include the terms of the lease purchase.
- (9) When, pursuant to KRS 56.806(5), the Finance and Administration Cabinet decides to attempt to complete a lease-purchase prior to the total amortization, through lease payments, of the fair market value of the leased property as of the time the lessor and the Commonwealth entered into the lease, the cabinet shall report to the Capital Projects and Bond Oversight Committee after the decision is reached but before the purchase occurs. The report shall state the information required by paragraph (a) or (b) of subsection (8) of this section as appropriate. The report shall also include the sum of money that must be paid in addition to rent paid, in order to complete the purchase.
- (10) If the Finance and Administration Cabinet, pursuant to KRS 56.806(5), includes in a lease the lease-purchase of the leased property and thereafter becomes aware that a purchase will not be achieved, within thirty (30) days after the cabinet becomes aware, it shall notify the Capital Projects and Bond Oversight Committee of the circumstances preventing the purchase.
- (11) (a) Except in the case of an emergency as provided in paragraph (b) of this subsection, any modification to an existing lease, made pursuant to KRS 56.813, that is less than fifty thousand dollars (\$50,000) shall be reported to the Capital Projects and Bond Oversight Committee within thirty (30) days after execution, and any modification to an existing lease, made pursuant to KRS 56.813, that is fifty thousand dollars (\$50,000) or more shall be reported to the Capital Projects and Bond Oversight Committee before execution. In either case, the report shall consist of:
1. The terms of the lease before and after modification;
 2. The reason for the modification;
 3. The name of the lessor;
 4. Any comments received from the public pursuant to KRS 56.813(4); and
 5. A statement as to whether the Finance and Administration Cabinet complied with the requirements in KRS 56.813. If the cabinet has not complied with any requirement, the cabinet shall explain why.
- (b) Any modification to an existing lease which is required because of an emergency as described at KRS 56.805(3) shall be reported to the Capital Projects and Bond Oversight Committee within thirty (30) days after execution. The report shall include a copy of the certificate or the certificate and the Governor's authorization, as appropriate, kept on file pursuant to KRS 56.805(4) and shall further state:
1. The terms of the lease before and after modification;
 2. The name of the lessor;
 3. Any comments received from the public pursuant to KRS 56.813(4); and
 4. A statement that the Finance and Administration Cabinet complied with the requirements in KRS 56.805(3) and (4) and in KRS 56.813. If the cabinet has not complied with any requirement, the cabinet shall explain why.
- (12) ***Before beginning work on any improvements, renovations, or refitting of a leased building under the provisions of paragraph (d) of subsection (2) of Section 1 of this Act, the cabinet shall report to the Capital Projects and Bond Oversight Committee:***
- (a) ***A description of the project;***
 - (b) ***Identification of the agency or agencies for which the improvements, renovations, or refitting are being performed;***
 - (c) ***An estimate of the total cost of the project;***
 - (d) ***The source of funds for the project; and***
 - (e) ***All the information required by KRS 45.793.***

➔Section 3. The Department for Facilities and Support Services within the Finance and Administration Cabinet is authorized to enter into a public-private partnership, built-to-suit, or lease-purchase for the renewal of the Capital Plaza in downtown Frankfort, Kentucky. This authorization includes the authorization under KRS 45.763.

➔Section 4. Whereas, the Capital Plaza Tower in Frankfort, Kentucky, is unsafe and will cost the Commonwealth up to \$800,000 per year when vacant, and issuing an immediate request for proposal will save money and remove the security and vandalism risks for the state, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor March 21, 2017.