

CHAPTER 126**(HB 727)**

AN ACT relating to school district buildings.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 162 IS CREATED TO READ AS FOLLOWS:

For the purpose of defraying the cost of constructing or acquiring any school buildings and appurtenances for common school purposes, any school district may issue a bond sold directly to banks, private investors, and financial institutions.

➔Section 2. KRS 157.611 is amended to read as follows:

- (1) By establishing the School Facilities Construction Commission, the General Assembly expresses its commitment to help local districts meet the school construction needs and the education technology needs of the state in a manner which will insure an equitable distribution of funds based on unmet facilities need and the total implementation of the Kentucky Education Technology System.
- (2) The commission is empowered to act on behalf of school districts to issue bonds in the name of the commission and to enter into lease agreements with local boards of education to finance construction of new facilities, major renovation of existing school facilities. The commission is also empowered to enter into agreements which may provide for a percentage discount, on a biennially renewable basis, of annual lease agreements due the commission for those districts which participate. The commission is also empowered to enter into lease agreements with the Department of Education to build state-owned facilities operated by the Department of Education or to purchase or lease education technology equipment and related software identified in the technology master plan for those facilities or the Department of Education.
- (3) The commission shall assist local school boards meet their education technology needs by distributing state funds appropriated for this purpose and by assisting school boards to design efficient finance plans for the bonding, purchase or lease of education technology equipment and related software identified in the technology master plan.
- (4) The commission shall administer two (2) separate programs: the school construction funding program and the education technology funding program. Funds appropriated for each program shall be maintained, administered, and audited separately.
- (5) Nothing in KRS 157.611 to 157.640 shall prohibit a school district from issuing bonds, *including general obligation bonds*, in accordance with KRS Chapter *66 or 162*.

➔Section 3. KRS 160.160 is amended to read as follows:

- (1) Each school district shall be under the management and control of a board of education consisting of five (5) members, except in counties containing a city of the first class wherein a merger pursuant to KRS 160.041 shall have been accomplished which shall have seven (7) members elected from the divisions and in the manner prescribed by KRS 160.210(5), to be known as the "Board of Education of ..., Kentucky." Each board of education shall be a body politic and corporate with perpetual succession. It may sue and be sued; make contracts; expend funds necessary for liability insurance premiums and for the defense of any civil action brought against an individual board member in his official or individual capacity, or both, on account of an act made in the scope and course of his performance of legal duties as a board member; purchase, receive, hold, and sell property; issue its bonds to build and construct improvements; and do all things necessary to accomplish the purposes for which it is created. Each board of education shall elect a chairman and vice chairman from its membership in a manner and for a term prescribed by the board not to exceed two (2) years.
- (2) No board of education shall participate in any financing of school buildings, school improvements, appurtenances thereto, or furnishing and equipment, including education technology equipment without:
 - (a) First establishing the cost of the project in advance of financing, based on the receipt of advertised, public, and competitive bids for such project, in accordance with KRS Chapter 424; and
 - (b) Establishing the cost of financing in advance of the sale of any bonds, certificates of participation in any leases, or other evidences of financial commitments issued by or on behalf of such board. Any bonds,

leases, participations, or other financial arrangements shall not involve a final commitment of the board until the purchaser or lender involved shall have been determined by public advertising in accordance with KRS Chapter 424.

- (3) No board of education shall make a mortgage, lien, or other encumbrance upon any school building owned by the board, or transfer title to any such school building as part of any financing arrangement, without the specific approval of the Department of Education, and without the transaction being entered into pursuant to a detailed plan or procedure specifically authorized by Kentucky statute.
- (4) Without the approval of the Department of Education, no board may lease, as lessee, a building or public facility that has been or is to be financed at the request of the board or on its behalf through the issuance of bonds by another public body or by a nonprofit corporation serving as an agency and instrumentality of the board, or by a leasing corporation. Any lease, participation, or other financial arrangement shall not involve a final commitment of the board unless and until the purchaser or lender involved in same shall have been determined by public advertising in accordance with KRS Chapter 424. No transaction shall be entered into by the board except upon the basis of public advertising and competitive bidding in accordance with KRS Chapter 424.
- (5) *A school district may issue general obligation bonds in accordance with KRS Chapter 66.*
- (6) Rental payments due by a board under a lease approved by the Department of Education in accordance with subsection (4) of this section, **and debt service payments under a general obligation bond issued in accordance with this section**, shall be due and payable not less than ten (10) days prior to the interest due date for the bonds, notes, or other debt obligations issued to finance the building or public facility. If a board fails to make a rental payment when due under a lease **or a debt service payment when due for a general obligation bond issue**, upon notification to the Department of Education by the paying agent, bond registrar, or trustee for the bonds not less than three (3) days prior to the interest due date, the Department of Education shall withhold or intercept any funds then due the board to the extent of the amount of the required payment on the bonds and remit the amount to the paying agent, bond registrar, or trustee as appropriate. Thereafter, the Department of Education shall resolve the matter with the board and adjust remittances to the board to the extent of the amount paid by the Department of Education on the board's behalf.
- ~~(7)(6)~~ Bonds, notes or leases negotiated to provide education technology shall not be sold for longer than seven (7) years or the useful life of the equipment as established by the state technology master plan, whichever is less.
- ~~(8)(7)~~ Notwithstanding any requirements of public advertising, competitive bidding, or approval by the Department of Education, or any administrative regulation promulgated pursuant to KRS 156.160(1)(o), a local board may authorize the transfer or sale of the district's real or personal property to another governmental or quasi-governmental agency in exchange for money or a similar type of property that equals or exceeds the fair market value of the district property as determined by an independent appraisal conducted by:
 - (a) An individual or organization not affiliated with the district or its officers or employees, using a generally accepted national or professional standard; or
 - (b) A district's officers or employees using a nationally published valuation of property based on the most recent edition of the publication.

➔Section 4. KRS 157.627 is amended to read as follows:

In connection with each bond issue of the commission as defined in KRS 157.615(3), it shall be the duty of the commission:

- (1) To require the district board of education to insure the project to its full insurable value, or to the amount of the bonds outstanding from time to time, whichever is the less, against the hazards covered by the standard fire insurance policy with standard endorsement of "extended coverage," and to require that a copy of each policy be delivered to the commission for inspection and for its records;
- (2) To require periodic accounting from all depositories of funds, the same to be submitted on forms prepared and supplied by the commission;
- (3) To furnish to the certified public accountant auditing the district, summary identification and description of each issue, and to request that the financial records of the board of education relating thereto be audited as a part of the annual audit of the board of education, and that a separate statement or report thereof be filed with the commission;

- (4) To send to each board of education at least thirty (30) days before the due date of any *debt service or* rental payment a notice of the amount of *debt service or* rental to become due and the date thereof, and to require acknowledgment thereof; and
- (5) To receive from the board of education, satisfactory evidence that sufficient funds have been transmitted to the commission or its agent, or will be so transmitted, in the event of the board's failure to pay debt service and administrative costs when due, as provided in the *bond or* lease, to notify and request that the department withhold from the board of education a sufficient portion of any undisbursed funds then held or set aside or allocated to it, and to request that the department transfer the required amount thereof to the commission for the account of the board of education.

➔Section 5. KRS 304.48-250 is amended to read as follows:

- (1) If the assets of a liability self-insurance group are at any time insufficient to enable the group to discharge its legal liabilities, other obligations, and to maintain the required reserves under this subtitle, the group shall immediately levy an assessment upon its members for the amount necessary to make up the deficiency.
- (2) If there is a deficiency in any fund year, the deficiency shall be made up immediately, from the following:
 - (a) Surplus from a fund year other than the current fund year after prior notice of the transfer has been given to the commissioner;
 - (b) Administrative funds;
 - (c) Assessment of membership; or
 - (d) Alternate methods as the commissioner may direct or approve.
- (3) If a liability self-insurance group fails to assess its members within thirty (30) days to make up a deficit, the commissioner shall order it to do so. This subsection shall not apply to liability self-insurance groups formed by governmental entities which do not have joint and several liability.
- (4) If a liability self-insurance group fails to make the required assessment of its members within thirty (30) days after the commissioner orders it to do so, or if the deficiency is not fully made up within sixty (60) days after the date on which the assessment is made, or within a longer period of time as may be permitted by the commissioner, the group shall be determined to be insolvent and may be placed in delinquency proceedings as an insurer pursuant to Subtitle 33 of this chapter.
- (5) (a) Governmental entities that:
 1. Participate or have participated in a liability self-insurance group authorized by this subtitle; and
 2. Are assessed by the liability self-insurance group to cover an accrued deficit;
 may finance the payment of the assessment over a period not to exceed twenty (20) years.
 - (b) Financing obtained pursuant to paragraph (a) of this subsection may be accomplished by:
 1. The issuance of bonds, notes, or other obligations; or
 2. A lease, installment payment agreement, or other similar agreement.
 - (c) If the governmental entity fails to make a scheduled payment on the financing obtained pursuant to paragraph (a) of this subsection, any payments due to that governmental entity shall be withheld or intercepted using the process established in KRS 160.160(6){(5)}.
- (6) Except as provided in subsection (5) of this section, all other provisions of the Kentucky Revised Statutes applying to any financing obtained by a governmental entity shall apply.

➔Section 6. KRS 304.50-055 is amended to read as follows:

- (1) As used in this section, "nationally recognized statistical rating organization" or "NRSRO" means a credit rating agency approved by the United States Securities and Exchange Commission to provide assessments of the creditworthiness of financial instruments.
- (2) A workers' compensation self-insured group shall establish plans for premium payment, determination and collection of assessments, and for declaration and payment of dividends or other disbursements, which shall be filed for prior approval with the commissioner. Any change in the plans for premium payment, assessments, or

dividends shall be filed for prior approval with the commissioner. Approval of plans for assessments and dividends does not constitute approval of any particular assessment or dividend by the commissioner.

- (3) Prior to the inception of each group member's self-insurance year, the trustees shall collect from that member at least twenty-five percent (25%) of the estimated premium for the ensuing year, except that in the case of a self-insured group formed by governmental entities twenty-five percent (25%) of the estimated premium for the ensuing year shall be collected no later than thirty (30) days after the beginning of the self-insured group's self-insurance year. The balance of the estimated premium shall be collected in either quarterly or monthly installments as set forth in the enabling documents described in KRS 304.50-030(2)(b) or 304.50-060(2)(b). Each group member's payroll shall be audited annually and an adjustment to premium shall be made accordingly.
- (4) A disbursement from a workers' compensation self-insured group fund shall be for a purpose related to the self-insured group. A dividend shall not be approved or paid until at least thirty-six (36) months after the expiration of the self-insurance year and shall be paid from surplus funds not required for payment of claims or other liabilities. The dividends shall be paid or credited to members according to the reasonable classifications the trustees may establish. A dividend shall not be paid which unfairly discriminates between members of the same classifications. A dividend plan shall specify whether past group members are eligible for the dividend. Payment of a dividend under a dividend plan shall not be made unless the self-insured group has notified the commissioner of its intent to make a dividend payment at least thirty (30) days prior to the payment, and the commissioner has not disapproved the payment within that time.
- (5) The formula to be used for collection of assessments shall be determined by the trustees and approved by the commissioner. Assessments shall be fair and equitable and shall not unfairly discriminate between members of the same classification.
- (6) A trustee, fiscal agent, or service organization shall not utilize an asset of the self-insured group for a purpose unrelated to workers' compensation. The trustees shall maintain cash or cash equivalent accounts as may be prudently necessary to pay expenses without having to liquidate long-term investments.
- (7) The trustees may invest funds in:
 - (a) United States Government bonds, United States Treasury notes, Treasury bills, or other direct obligations guaranteed by the full faith and credit of the United States Government or its agencies;
 - (b) Tax exempt and taxable obligations issued by any state or any of its agencies, counties, cities, municipalities, districts, political subdivisions, or other legal authorities within the United States of America with a minimum rating of "BBB" by any NRSRO, except that no less than fifty percent (50%) of the investments made under this paragraph shall be in obligations issued by the Commonwealth, its agencies, or a county, city district, municipality, political subdivision, or other legal authority within the Commonwealth;
 - (c) Investment share accounts in a savings and loan association in the Commonwealth whose deposits are insured by a federal agency;
 - (d) Certificates of deposit if issued by a duly chartered commercial bank;
 - (e)
 1. At the time of purchase, equity securities actively traded on the New York or NASDAQ Stock Exchanges or other registered national securities exchanges with no individual equity holding comprising greater than ten percent (10%) of the equity portion of the portfolio reflected on the most recent quarterly or annual statement of financial condition on file with the commissioner.
 2. An investment in an individual equity holding shall not represent at the time of purchase more than five percent (5%) of the total market value of the security.
 3. At the time of purchase, investments in equity securities shall not exceed twenty percent (20%) of the total market value of the investment portfolio of the self-insured group reflected on the most recent quarterly or annual statement of financial condition on file with the commissioner;
 - (f) Corporate bonds if:
 1. The bond is issued, assumed, or guaranteed by a solvent institution created or existing under the laws of the United States, or a state, province, district, or territory;

2. At the time of purchase, the corporate bond investments do not exceed twenty-five percent (25%) of the total market value of the investment portfolio reflected on the most recent quarterly or annual statement of financial condition on file with the commissioner; and
3. The bond has a minimum rating of "BBB" by any NRSRO;
- (g) At the time of purchase, mutual funds and exchange traded funds if the investments do not exceed twenty percent (20%) of the total market value of the investment portfolio reflected on the most recent quarterly or annual statement of financial condition on file with the commissioner; and
- (h) Asset-backed securities if:
 1. The bond is issued, assumed, or guaranteed by a solvent institution created or existing under the laws of the United States, or a state, province, district, or territory;
 2. The asset-backed security investments do not exceed ten percent (10%) of the total market value of the investment portfolio reflected on the most recent quarterly or annual statement of financial condition on file with the commissioner; and
 3. The bond has a minimum rating of "BBB" by any NRSRO.
- (8) Of the aggregate investments made by the trustees of the self-insured group under this section:
 - (a) Not less than fifty percent (50%) of the total market value of the entire investment portfolio shall be held in cash, cash equivalents, or securities as described in subsection (7)(a) to (d) of this section; and
 - (b) A minimum of five percent (5%) of the total investment portfolio value shall be maintained in cash or cash equivalent accounts or United States Treasury and Federal Agency Securities with a remaining maturity of one (1) year or less.
- (9) In the event that any security investment authorized by subsection (7) of this section is downgraded below "BBB," the workers' compensation self-insurance group shall divest itself of that investment as prudently as possible without incurring unnecessary losses.
- (10) The commissioner may permit variation from the requirements of this section for good cause.
- (11) (a) Governmental entities that:
 1. Participate or have participated in a workers' compensation self-insured group authorized by this subtitle; and
 2. Are assessed by the workers' compensation self-insured group to cover an accrued deficit; may finance the payment of the assessment over a period not to exceed twenty (20) years.
- (b) Financing obtained pursuant to paragraph (a) of this subsection may be accomplished by:
 1. The issuance of bonds, notes, or other obligations; or
 2. A lease, installment payment agreement, or other similar agreement.
- (c) If the governmental entity fails to make a scheduled payment on the financing obtained pursuant to paragraph (a) of this subsection, any payments due to that governmental entity shall be withheld or intercepted using the process established in KRS 160.160(6)(~~5~~).
- (12) Except as provided in subsection (11) of this section, all other provisions of the Kentucky Revised Statutes applying to any financing obtained by a governmental entity shall apply.

➔Section 7. KRS 66.011 is amended to read as follows:

As used in this chapter, unless otherwise expressly provided:

- (1) "Bonds" means bonds, notes, commercial paper, and other instruments in writing, authorized by or issued pursuant to or in accordance with this chapter, to evidence an obligation to repay or guarantee the repayment of money borrowed, or to pay interest by, or to pay at any future time other money obligations.
- (2) "Capitalized interest" means all or a portion of the interest payable on bonds from their date to a date stated or provided for in the proceedings, which interest is to be paid from the proceeds of the bonds.

- (3) "Credit enhancement facilities" means letters of credit; lines of credit; stand-by, contingent, or firm bond purchase agreements; insurance, or surety arrangements; guarantees, and other arrangements that provide for direct or contingent payment of bonds; interest or redemption premium on bonds, for security or additional security in the event of nonpayment or default in respect of bonds, or for making payment of bonds; interest or redemption premium on bonds to and at the option and on demand of the holders of bonds or at the option of the issuer or upon certain conditions occurring under put or similar arrangements, or for otherwise supporting the credit or liquidity of bonds; and includes credit, reimbursement, marketing, remarketing, indexing, carrying, interest rate hedge, and subrogation agreements, and other agreements and arrangements for payment and reimbursement of the person providing the credit enhancement facilities and the security for that payment and reimbursement.
- (4) "Debt charges" means the principal, including any mandatory sinking fund deposits, interest, and any redemption premium, payable on bonds as the payments come due and are payable and any charges related to credit enhancement facilities. The use of "debt charges" for this purpose does not imply that any particular obligations constitute debt within the meaning of the Kentucky Constitution or other laws.
- (5) "Financing costs" means all costs and expenses relating to the issuance and carrying costs of bonds including charges related to credit enhancement facilities which are not debt charges.
- (6) "Floating indebtedness" means the amount by which the total of all expenditures by an issuer in any fiscal year exceeds the total of all funds and receipts of the issuer for that fiscal year which are available to the issuer for the purpose of funding those expenditures, but only to the extent that the governing body of the issuer made good-faith estimates of expenditures and funds and receipts available to fund those expenditures and the short-fall in available funds and receipts was due to unforeseeable circumstances or events.
- (7) "Fully-registered bonds" means bonds in certificated or uncertificated form, registered as to both principal and interest in the name of the owner.
- (8) "Interest" or "interest equivalent" means those payments or portions of payments, however denominated, that constitute or represent consideration for forbearing the collection of money, or for deferring the receipt or payment of money to a future time.
- (9) "Issuer" means a county, city, urban-county, charter county, or other taxing district, and for purposes of making any determinations required under this chapter, may include an authorized representative of the issuer.
- (10) "Governing body" means the legislative authority of the issuer.
- (11) "Legislation" means an ordinance or resolution passed by a governing body.
- (12) "Mandatory sinking fund redemption requirements" means amounts required by proceedings to be deposited in a sinking fund for the purpose of paying, by mandatory redemption prior to stated maturity, the principal of bonds that is due and payable in a subsequent year or fiscal year.
- (13) "Net indebtedness" means the principal amount of outstanding bonds of an issuer as determined in accordance with KRS 66.031.
- (14) "Notes" means bonds that mature no later than five (5) years from the date they are issued.
- (15) "Obligation" means instruments in writing, which are not bonds within the meaning of this chapter, that evidence an obligation to repay money borrowed, or to pay interest by, or to pay at any future time other money obligations, including, without limitation, installment sale, lease, lease purchase, or similar agreements, which obligations bear interest or an interest equivalent.
- (16) "Outstanding," referring to bonds, means bonds that have been issued, delivered, and paid for, except any of the following:
 - (a) Bonds canceled upon surrender, exchange, or transfer, or upon payment or redemption;
 - (b) Bonds in replacement of which or in exchange for which other bonds have been issued; or
 - (c) Bonds for the payment, or redemption or purchase for cancellation prior to maturity, of which sufficient moneys or investments, in accordance with the applicable legislation or other proceedings or any applicable law, by mandatory sinking fund redemption requirements, or otherwise, have been deposited, and credited in a sinking fund or with a trustee or paying or escrow agent, whether at or prior to their maturity or redemption, and, in the case of bonds to be redeemed prior to their stated maturity, notice of redemption has been given or satisfactory arrangements have been made for giving notice of that

redemption, or waiver of that notice by or on behalf of the affected bond holders has been filed with the issuer or its agent.

- (17) "Public project" means any property, asset, or improvement certified by the governing body, which certification is conclusive, as being for a public purpose and having an estimated life or period of usefulness of one (1) year or more, and includes, but is not limited to, real estate, buildings, and personal property, equipment, furnishings, and site improvements, and reconstruction, rehabilitation, renovation, installation, improvement, enlargement, and extension of property, assets, or improvements so certified as having an estimated life or period of usefulness of one (1) year or more and is to be used for a public purpose.
- (18) "Person" or "persons" means political and corporate entities, societies, communities, the public generally, individuals, partnerships, and joint stock companies.
- (19) "Proceedings" means the legislation, certifications, notices, orders, sale proceedings, trust agreements or indentures, mortgages, leases, lease-purchase agreements, assignments, credit enhancement facility agreements, and other agreements, instruments, and documents, as amended and supplemented, providing for the terms and conditions applicable to, or providing for the security or sale or award of, bonds, and includes the provisions set forth or incorporated in those bonds and proceedings.
- (20) "Refund" means to provide for the payment of debt charges and expenses related to that payment at or prior to retirement by purchase, call for redemption, payment at maturity, or otherwise, outstanding obligations of an issuer or its instrumentality, including, without limitation, bonds.
- (21) "Register" means the books kept and maintained for registration, exchange, and transfer of registered bonds.
- (22) "Self-supporting obligations" means obligations issued for the purpose of paying costs of public projects to the extent that receipts of the issuer, other than the proceeds of taxes levied by that issuer, derived from or with respect to that public project or the operation of the public project being financed, or the enterprise, system, or category of public project of which the public project being financed is part, are estimated by the governing body or a representative of the governing body to be sufficient to pay the current expenses of that operation or of that public project, enterprise, or system and the debt charges payable from those receipts on obligations issued for that public project.
- (23) "Sinking fund" means a fund established for the management of moneys to be used for the retirement of outstanding bonds.
- (24) "State local debt officer" as used in this chapter and other provisions of law, means the commissioner, Department for Local Government or the commissioner's agent designated in writing.
- (25) "Taxing district" means an issuer, other than a county, city, urban-county, or charter county authorized to levy ad valorem taxes within the meaning of Section 157 of the Constitution of Kentucky ~~which is not a school district~~.
- (26) "Tax-supported lease" means a lease entered into under KRS 65.942 to 65.956 in which the lessee has agreed to levy and collect taxes to make lease payments.

➔Section 8. Until June 30, 2027, a local board of education of a district may provide for and commence the funding, financing, design, construction, renovation, or modification of the district's facilities in accordance with the provisions and restrictions established in statute and administrative regulation notwithstanding the requirements for prior approval for the district's plans and specifications from the chief state school officer under KRS 162.060, for the use of the district's capital outlay funds for projects from the commissioner of education under KRS 157.420, and for the district's transactions by the Kentucky Department of Education under KRS 160.160(3) and (4), and notwithstanding any administrative regulation that requires any of those entities to provide prior approval for the funding, financing, design, construction, renovation, or modification of school facilities. A local board that elects to conduct its projects under this section shall adopt a resolution by majority vote and submit the resolution to the Kentucky Department of Education as notice. Such a local board shall still submit BG-1 Project Application forms as appropriate to the Kentucky Department of Education for recordkeeping and data collection. The provisions of KRS 160.160(5) shall remain in full effect and shall be applicable to leases and bonds authorized by a local board without the prior approval of department. Notwithstanding the provisions of KRS 160.160(2) to the contrary, a local board under this section may use the estimates of architects or engineers who prepared the plans or specifications as an alternative to the receipt of advertised, public, and competitive bids for the project to estimate the cost of the project in advance of financing.

➔Section 9. Until June 30, 2027, notwithstanding 702 KAR 4:180, 702 KAR 4:050, and 702 KAR 4:090, or any other similar administrative regulation to the contrary, a local board of education that submits a request for approval of a complete district facility plan, a request for acquisition of property, or a request for disposal of surplus property shall submit the request to the commissioner of education or designee who shall approve or disapprove the request within 30 business days. An approved request shall be reported to the Kentucky Board of Education. A denied request may be appealed to the board.

➔Section 10. Until June 30, 2027, the Kentucky Department of Education shall provide assistance and guidance to local boards upon request regarding facilities funding, financing, design, construction, renovation, and modification, district facilities plans, and the acquisition and disposal of property.

➔Section 11. Sections 8 to 10 of this Act shall also be applicable to submissions and requests that have been made by local boards prior to the effective date of this Act, but have not yet received approval from the appropriate board or official.

➔Section 12. The facilities in Sections 8 to 10 of this Act may include extracurricular facilities which may be in any priority in a district facility plan notwithstanding 702 KAR 4:180 or any statute or other administrative regulation to the contrary.

➔Section 13. Nothing in Sections 8 to 13 of this Act shall be deemed to waive prior approval for the use of federal Elementary and Secondary School Emergency Relief Fund moneys or other funds that federal law requires approval from state officials prior to use.

Signed by Governor April 9, 2024.