

AN ACT relating to postsecondary educational institution capital projects to be financed with university restricted funds.

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

➔SECTION 1. A NEW SECTION OF KRS 164A.550 TO 164A.630 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Capital project" means a capital project as defined in subsection (1)(f) of Section 2 of this Act; and

(b) "Committee" means the Capital Projects and Bond Oversight Committee of the Legislative Research Commission.

(2) Notwithstanding KRS 164A.600, a capital project that will be managed and owned by an institution may be considered authorized even though it is not specifically listed in any branch budget bill, subject to the following conditions and procedures:

(a) One hundred percent (100%) of the actual cost, whether financed through the issuance of bonds or another form of debt, or the expenditure of cash, shall be funded by the institution's restricted funds, agency funds, or a combination of restricted funds, agency funds, federal funds, and private funds;

(b) The governing board of the institution and the Council on Postsecondary Education have formally approved the capital project and both have communicated their approval to the committee;

(c) The governing board of the institution certifies as part of its submission to the committee that:

1. Moneys specifically budgeted and appropriated by the General Assembly for another purpose will not be allotted or reallocated for expenditure on the capital project;

2. Moneys utilized for the capital project shall not jeopardize any existing program and shall not require the use of any current general fund appropriations specifically dedicated to existing programs; and
3. Additional general fund appropriations will not be requested for maintenance and operation of the proposed capital project in subsequent fiscal years; and
- (d) The governing board or its representative shall submit the capital project to the committee at least fourteen (14) days prior to the committee meeting for action thereon.
- (3) If the committee does not approve the proposed capital project, the capital project shall not be undertaken unless the governing board of the institution:
- (a) Revises the capital project to comply with the objections of the committee;
- or
- (b) Notifies the committee in writing that it intends to proceed with the project as proposed, despite the objections of the committee.
- (4) The decision made by the governing board under subsection (3) of this section shall be communicated to the committee in writing within thirty (30) days of the committee's refusal to approve the proposed capital project.
- (5) The purchase of a major item of equipment that meets the requirements of KRS 45.760(5) may be purchased following the requirements set forth in that section rather than the requirements set forth in this section, at the option of the institution making the purchase.

➔ Section 2. KRS 45.750 is amended to read as follows:

- (1) As used in KRS 45.760 to 45.810:
- (a) "Committee" means the Capital Projects and Bond Oversight Committee.
- (b) "Capital construction item" means:
1. The construction, reconstruction, acquisition, and structural maintenance

- of buildings;
2. The installation of utility services, including roads and sewers;
 3. The acquisition or improvement of real property;
 4. The purchase and installation initially or during major renovation of equipment, facilities, and furnishings of a permanent nature for buildings;
 5. The acquisition of any building to be occupied by any:
 - a. Subdivision of state government as defined in KRS 12.010 or enumerated in KRS 12.020;
 - b. Municipal corporation which exercises its authority on a statewide basis including, but not limited to, the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky Lottery Corporation, Kentucky Housing Corporation, or any entity with a governing body whose membership is substantially similar to the membership of the governing body of a municipal corporation which exercises its authority on a statewide basis; and
 - c. Institution of higher education.
- (c) "Lease" means any lease, lease-purchase, or lease with an option to purchase of any real property space occupied by:
1. Any entity listed in paragraph (b)5. of this subsection;
 2. The legislative branch; or
 3. The judicial branch when leased from a private sector landlord.
- (d) "Equipment" means:
1. Any major item of equipment, including aircraft;
 2. Any movable furnishing, appurtenance, or other equipment, necessary to

- make a building operable; and
3. Equipment purchased or otherwise acquired, or equipment to be purchased or otherwise to be acquired, under a lease or lease-purchase contract or agreement or an arrangement equivalent to a lease or lease-purchase contract or agreement.
- (e) "Information technology system" means any related computer or telecommunications components that provide a functional system for a specific business purpose and contain one (1) or more of the following:
1. Hardware;
 2. Software, including application software, systems management software, utility software, or communications software;
 3. Professional services for requirements analysis, system integration, installation, implementation, or data conversion services; or
 4. Digital data products, including acquisition and quality control.
- (f) "Capital projects" means, regardless of the source of cash or other consideration:
1. Any capital construction item, or any combination of capital construction items necessary to make a building or utility installation complete, estimated to cost six hundred thousand dollars (\$600,000) or more in cash or other consideration;
 2. Any lease of real property space with an annual rental cost exceeding two hundred thousand dollars (\$200,000);
 3. The use allowance paid by the judicial branch for a real property space pursuant to KRS 26A.090(2) and 26A.115 when the use allowance for the space exceeds two hundred thousand dollars (\$200,000) on an annual basis;
 4. Any item of equipment estimated to cost two hundred thousand dollars

- (\$200,000) or more in cash or other consideration;
5. Any lease of an item of movable equipment if the annual cost of the lease is two hundred thousand dollars (\$200,000) or more or if the total cost of the lease-purchase or lease with an option to purchase is two hundred thousand dollars (\$200,000) or more; and
 6. Any new acquisition, upgrade, or replacement of an information technology system estimated to cost six hundred thousand dollars (\$600,000) or more in cash or other consideration.
- (g) "Emergency repair, maintenance, or replacement project" means the maintenance, repair, or reconstruction of a capital construction project or the maintenance, repair, or replacement of a major item of equipment that is:
1. Necessitated by injury or damage resulting from a disaster;
 2. Necessary to maintain government operations or to prevent or minimize injury or damage that could reasonably be expected to result from an impending disaster; or
 3. Necessitated by an unforeseen mechanical breakdown, electrical breakdown, or structural defect that must be corrected to make a facility or item of equipment usable.
- (h) "Disaster" means a fire, flood, tornado, other natural disaster, riot, enemy attack, sabotage, explosion, power failure, energy shortage, transportation emergency, or other man-caused disaster.
- (i) "Capital construction funds" means any funds used for capital construction, including, but not limited to, appropriated capital construction funds, agency funds, federal funds, private funds, or funds from any source held by an agency for management or investment purposes.
- (j) "Entity head" means the Chief Justice of the Supreme Court, the President of the Senate and the Speaker of the House of Representatives, the secretary of

the Finance and Administration Cabinet, the president of any university which complies with KRS 164A.585, 164A.595, and 164A.600, the board of trustees of the Kentucky Employees Retirement System, the board of trustees of the Teachers' Retirement System of the State of Kentucky, the board of directors of the Kentucky Higher Education Student Loan Corporation, the board of directors of the Kentucky Lottery Corporation, or the board of directors of the Kentucky Housing Corporation.

- (2) Except as provided in subsection (3) of this section, KRS 45.760 to 45.810 shall apply to capital projects and bonds for use by:
- (a) The state government;
 - (b) One of its departments or agencies, as defined in KRS 12.010 or enumerated in KRS 12.020;
 - (c) A municipal corporation which exercises its authority on a statewide basis, including but not limited to the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky Lottery Corporation, and Kentucky Housing Corporation; and
 - (d) Institutions of higher education, *except as provided in Section 1 of this Act.*
- (3) KRS 45.760 to 45.810 shall not apply to:
- (a) Capital projects or bonds used directly in or for the construction or maintenance of roads, including but not limited to bulldozers, graders, earth movers, and real estate purchased for rights-of-way; and
 - (b) Political subdivisions, except for those defined in KRS 12.010, enumerated in KRS 12.020, or created as a municipal corporation which exercises its authority on a statewide basis including, but not limited to, the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky

Lottery Corporation, Kentucky Housing Corporation, or any entity with a governing body whose membership is substantially similar to the membership of the governing body of a municipal corporation which exercises its authority on a statewide basis. However, the provisions of KRS 45.750 to 45.810 shall not apply to acquisition or maintenance of any building or land which is purchased as a legal investment by any of the state retirement systems, which is not to be occupied by the retirement system, and which is financed solely with those assets of the retirement system used for investment purposes.

➔Section 3. KRS 45.763 is amended to read as follows:

- (1) Notwithstanding any statutory provisions to the contrary, any state agency as defined in KRS 7A.010~~[, institution of higher education defined as an institution in KRS 164A.550, or affiliated corporation as defined in KRS 164A.550,]~~ shall obtain authorization from the General Assembly prior to entering into an agreement identified in subsection (2) of this section. The General Assembly authorization shall occur only when the General Assembly enacts legislation specifically authorizing the agreement.
- (2) General Assembly authorization shall be required for an agreement for the use, purchase, or acceptance of real property of any value, or equipment with a value in excess of four hundred thousand dollars (\$400,000), if:
 - (a) The agreement provides that the state or~~[,]~~ a state agency~~[, institution of higher education, or affiliated corporation]~~ will become the owner of the real property or equipment at any time; and
 - (b) All or any portion of the purchase price of the real property or equipment is funded through the issuance of a financial instrument which requires payment of principal and interest over time, including, but not limited to, notes, bonds, securities, and certificates of participation, regardless of the identity of the issuer.