

154.10-035 Issuance of economic development revenue bonds and anticipation notes -- Uses -- Treatment.

- (1) Notwithstanding any other provisions of the Kentucky Revised Statutes, the board is authorized to exercise the following power:
 - (a) The board may provide for the issuance of economic development revenue bonds by the cabinet, for the purpose of providing funds and moneys to enable the cabinet to exercise and fulfill the powers and authority set forth in KRS 154.10-030, to enter into agreements with governmental agencies and private companies, corporations, partnerships, and other such entities, acquire and lease projects to governmental agencies and private companies, corporations, cabinets, and other such entities, purchase obligations of governmental agencies issued for economic development projects, and make loans or grants for economic development projects, and to enable the cabinet generally to carry out and effectuate its proper purposes under this chapter. In anticipation of the issuance of the revenue bonds, the board may provide for the issuance at one (1) time, or from time to time, of revenue bond anticipation notes pursuant to the general laws of the state. The principal of and the interest on the revenue bonds or notes shall be payable solely from revenues made available to the cabinet for bond purposes. Any such notes may be made payable from the proceeds of bonds or renewal notes, or in the event bond or renewal note proceeds are not available, or should the board deem it financially practicable to pay the notes directly from revenues made available to the cabinet for bond purposes, the notes may be paid from any revenues made available to the cabinet for bond purposes. Prior to the issuance of the bonds or notes, the cabinet shall submit any proposed issue to the Capital Projects and Bond Oversight Committee for its review and determination in accordance with provisions of KRS 45.810.
 - (b) The revenue bonds or notes of the cabinet shall be dated and may be redeemable prior to maturity at the option of the board at prices and under terms and conditions determined by the board. Any bonds or notes shall bear interest at the rate or rates, shall be payable annually or at shorter intervals, and may bear conversion privileges determined by the board. Notes shall mature at the time or times not exceeding five (5) years from their date or dates, and revenue bonds shall mature at the time or times not exceeding forty (40) years from their date or dates as may be determined by the board. The board shall determine the form and manner of execution of the bonds or notes, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the state. In case any officer of the board whose signature or facsimile of whose signature shall appear on any revenue bonds or notes shall cease to be such officer before the delivery thereof, the signature of the facsimile shall be valid and sufficient for all purposes, the same as if the officer had remained in office until the delivery. At the time of issuance of variable rate revenue bonds, the board may designate individuals or institutions which, in the sole judgment of the board, have financial market

expertise to serve as agent for the board for establishing and changing from time to time, while the variable rate revenue bonds remain outstanding, the rate of interest to be borne by and the price to be paid for the revenue bonds. The rate-setting procedures and authority of each 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 board at the time of issuance of the revenue bonds. At the time of the issuance of the revenue bonds, the board shall establish the maximum interest rate to be borne by the revenue bonds. The board shall retain the right to remove or replace any agent at any time and for any reason. The board may provide that said bonds or notes may be executed only with the facsimile signatures of its officers, but said bonds or notes shall be executed with the manual signature of a bank or trust company designated by the board as registrar and paying agent.

- (c) All revenue bonds or notes issued under the provisions of this chapter shall have and are hereby declared to possess all of the qualities and incidents of negotiable instruments under the laws of the state. The board may sell the revenue bonds or notes in the manner, either at public or private negotiated sale, and for the price, as it may determine will best effect the purpose of this chapter. If revenue bonds are sold at public, competitive sale, the revenue bonds shall be sold after newspaper advertising conforming to the requirements of KRS Chapter 424 and competitive bids for the sale of the revenue bonds shall be opened and read publicly by the board at a designated place, day and hour, all of which shall be announced in the advertising made relative thereto.
- (d) In its proceedings authorizing the issuance of revenue bonds or notes, the board shall fix and determine contractual provisions with the bondholders relating to the receipt, allocation, pledging, and disbursement of revenues made available to the cabinet for bond purposes, and may enact and determine terms, conditions, and restrictions pursuant to which additional revenue bonds of the cabinet may be authorized and issued from time to time. The proceedings, determinations, and enactments of the board shall specify that the payment of principal of and interest on all cabinet revenue bonds and notes shall constitute a first charge and lien against all revenues made available to the cabinet for bond purposes before any such revenues are used, applied, and disbursed for any other valid purposes of the cabinet, including the payment of operation and maintenance costs incident to the operation of the cabinet.
- (e) The proceeds of all revenue bonds or notes shall be used solely for the purpose of enabling the cabinet to enter into agreements or interim financing agreements with governmental agencies and private companies, corporations, partnerships, and other entities, to acquire and lease projects to governmental agencies, private companies, corporations, partnerships and other entities, to purchase obligations of governmental agencies issued for economic development projects, to make loans or grants to governmental agencies, private companies, corporations, partnerships, and other such entities for economic development projects, or for any purpose authorized in this chapter.

Revenue bond or note proceeds may also be used and applied for the payment of ordinary and necessary expenses in connection with issuance of the revenue bonds or notes, including, but not by way of limitation, a sum equal to any discount in the sale thereof, if discount bids are authorized and permitted by the board, administrative expenses, including the preparation of revenue bonds or notes, publication of notices, printing and other costs, attorneys' fees, and other ordinary and necessary costs of financing, including the payment of fees to fiscal agents for advice and assistance in the preparation and marketing of revenue bonds or notes.

- (f) Prior to the preparation of definitive revenue bonds or notes, the board may, under like restrictions, issue interim receipts or temporary bonds, exchangeable for definitive revenue bonds or notes when the revenue bonds or notes shall have been executed, and are available for delivery. The board shall also provide for the replacement of any revenue bonds or notes that shall have become mutilated or shall have been destroyed or lost. Revenue bonds or notes may be issued under the provisions of this chapter directly by the board without obtaining the consent or acquiescence of any cabinet, division, commission, board, department, or agency of the state other than the Finance and Administration Cabinet, and as provided in KRS 42.420, and without any other proceedings or the happening of any other conditions or things except as specifically required by this chapter and the provisions of the resolution or resolutions of the board authorizing the issuance of the revenue bonds or notes.
- (2) The board shall assume all bond issuance and refunding authority, power, duties, and obligations as existed on July 14, 1992, for the Kentucky Development Finance Authority, and the Kentucky Rural Economic Development Authority; the ability of any of the foregoing organizations to issue industrial revenue bonds under KRS Chapter 103; and the ability of any of the foregoing authorities to issue economic development revenue bonds as provided in this chapter. The board shall also have the authority and power to issue revenue bonds for any other economic development activity as set forth in this chapter.
- (3) The board shall for purposes of the Kentucky Revised Statutes be deemed to be the successor issuer for all of the currently issued and outstanding bond issues by the organizations set forth in subsection (2) of this section. The board shall have the authority and the power to reaffirm all existing bond obligations of the organizations in subsection (2) of this section and shall perform all duties, obligations, and requirements as may be necessary and required under the bond documents relating to each and every such issue. The board shall also, in regard to each and every such issue, exercise its authority and power as set forth in this chapter.
- (4) In the discretion of the board, any revenue bonds or notes issued under the provisions of this chapter may be secured by a trust indenture by and between the cabinet and corporate trustee which may be any trust company or bank having the powers of a trust company within or without the Commonwealth. A trust indenture, or the resolution of the board providing for the issuance of revenue bonds or notes, may pledge or assign for the security of the revenue bonds or notes, all or any part of the totality of revenues made available to the

cabinet for bond purposes received and to be received. The trust indenture or resolution of the board may contain provisions for protecting and enforcing the rights and remedies of the bondholders which may be reasonable and proper, and not in violation of law, including, but not limited to, covenants and provisions setting forth the duties of the cabinet in relation to the purposes to which revenue bonds and note proceeds may be applied; the disposition or pledging of assets and revenues made available to the cabinet for bond purposes; and the custody, safeguarding, and application of all such revenues. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth which may act as depository of the proceeds of revenue bonds, notes, or revenues made available to the cabinet for bond purposes, to furnish such indemnifying bonds, or to pledge such securities as may be required by a trust indenture or resolution of the board. Any trust indenture or board resolution may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders, where a trust indenture has been entered into. In addition to the foregoing, any trust indenture or board resolution may contain other provisions which the board determines to be reasonable and proper for the further security of the holders of any revenue bonds or notes. All expenses incurred in carrying out the provisions of a trust indenture or bond proceedings may be treated as a part of the cost of operating the cabinet, and may be paid from revenues pledged or assigned to the payment of the principal of and the interest on revenue bonds or notes, or from any other funds properly available to the cabinet for bond purposes. However, the payment of operational costs from revenues made available to the cabinet for bond purposes shall, as provided in subsection (1) of this section, be subordinate to the payment of principal of and interest on cabinet revenue bonds or notes from revenues made available to the cabinet for bond purposes, it being intended that these principal and interest requirements shall be secured by a prior and paramount lien on gross revenues made available to the cabinet for bond purposes.

- (5) Notwithstanding any other provision to the contrary, any trust indenture or board resolution shall provide that, except to the extent the rights afforded to bondholders by this section shall be enforceable and enforced by a trustee under a trust indenture rather than by the bondholders, any holder of revenue bonds or notes issued by the cabinet or any of the coupons appurtenant thereto, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights generally arising under the laws of the Commonwealth, or granted under this chapter, or under a trust indenture, or by the resolution of the board authorizing the issuance of revenue bonds or notes, and may specifically enforce and compel by mandamus the performance of all duties required by this chapter, or by trust indenture, or board resolution, to be performed by the cabinet or by any officer or employee thereof, including, but not limited to, the prompt and full enforcement of the terms and conditions of all assistance agreements to which the cabinet is a party.
- (6) The cabinet is hereby authorized to provide for the issuance of refunding revenue bonds or notes for the purpose of refunding any revenue bonds or notes then outstanding, whether issued by the cabinet under the provisions of

this chapter or one (1) of the agencies, authorities or organizations referenced in subsections (2) and (3) of this section, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of these revenue bonds or notes, and, if determined advisable by the board, for the additional purpose of providing further funds for the carrying out of the proper public and governmental purposes of the cabinet. The issuance and sale of the refunding revenue bonds or notes, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the cabinet in respect of the same, shall be governed by the provisions of this chapter which relate to the issuance of revenue bonds or notes, insofar as these provisions may be applicable.

- (7) Refunding revenue bonds or notes may be sold or exchanged directly for outstanding revenue bonds or notes of the cabinet, and if sold, the proceeds thereof shall be applied, in addition to any other authorized purposes, to the purchase, redemption, or payment of these outstanding revenue bonds or notes. Pending the application of the proceeds of any refunding revenue bonds, with any other available funds, to the payment of the principal, accrued interest, and any redemption premium on the revenue bonds or notes being refunded (and if so provided or permitted in the board resolution authorizing the issuance of the refunding revenue bonds or notes, or in the trust indenture securing the same, to the payment of any interest on the refunding revenue bonds or notes and any expenses in connection with the refunding), the proceeds may be invested in direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America which shall mature or which shall be subject to redemption by the holders thereof at the option of such holders not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended.
- (8) Revenue bonds and notes issued by the cabinet under the provisions of this chapter are hereby declared and deemed to be securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. These obligations of the cabinet are hereby declared and determined to be securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth, for the purpose for which the deposit of bonds, notes, or obligations of the Commonwealth is now, or may hereafter be, authorized by law.
- (9) Revenue bonds or notes issued by the cabinet under the provisions of this chapter shall not be deemed to constitute a debt of the Commonwealth or of any political subdivision thereof, or a pledge of the faith and credit of the Commonwealth or of any political subdivision thereof; but the bonds shall be payable as to principal and interest solely from revenues made available to the cabinet for bond purposes provided therefor under the provisions of this chapter. All such revenue bonds or notes shall contain on the face thereof a statement to the effect that neither the Commonwealth nor the cabinet shall be

obligated to pay the same, or the interest thereon, except from revenues made available to the cabinet for bond purposes, as defined in this chapter; and that neither the faith and credit, nor the taxing power of the Commonwealth or any political subdivision thereof is pledged to the payment of the principal of and interest on such revenue bonds or notes.

- (10) The Commonwealth, for the specific use and benefit of the cabinet, may cause to be submitted to the voters of the state in a manner provided by Sections 49 and 50 of the Constitution of Kentucky, from time to time, propositions for the incurring of state indebtedness represented by general obligation bonds of the Commonwealth, the proceeds of which are to be made available to the cabinet and used and employed by the cabinet for all proper purposes.
- (11) Subject to the provisions of KRS 56.870 to 56.873, the State Property and Buildings Commission or the Kentucky Turnpike Authority may issue bonds for which debt service originates with an appropriation of the General Assembly, and may make the proceeds available to the cabinet for all proper purposes.
- (12) Funds appropriated to the cabinet by the General Assembly, including but not limited to repayments of revolving funds established with appropriations of the General Assembly or established with bond issues for which the debt service, issuance costs, reserve fund requirements, insurance premiums or any other expenditures associated with bond issuance are appropriated by the General Assembly, shall not be commingled with other funds made available to the cabinet and shall only be expended for the purposes specified by the General Assembly when the appropriation is made or as approved in subsequent actions of the General Assembly.

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