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6 **HOUSE BILL No. 2289**

7  
8 By Committee on Economic Development

9  
10 2-11

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12 AN ACT concerning the Kansas development financing authority; relat-  
13 ing to funding of out-of-state or in-state projects; **[authorizing issu-**  
14 **ance of bonds for certain purposes;]** amending K.S.A. 74-8904 and  
15 74-8905 and repealing the existing sections.

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17 *Be it enacted by the Legislature of the State of Kansas:*

18 Section 1. K.S.A. 74-8904 is hereby amended to read as follows: 74-  
19 8904. Except as otherwise limited by this act, the authority shall have the  
20 following powers to:

- 21 (a) Sue and be sued;
- 22 (b) have a seal and alter such seal;
- 23 (c) make and alter bylaws for its organization and internal  
24 management;
- 25 (d) adopt such rules and regulations as may be necessary to carry out  
26 the purposes of this act;
- 27 (e) acquire, hold and dispose of real and personal property for its  
28 corporate purposes;
- 29 (f) appoint officers, agents and employees, prescribe their duties and  
30 qualifications and fix their compensation;
- 31 (g) borrow money and to issue notes, bonds and other obligations  
32 pursuant to K.S.A. 74-8905, and amendments thereto, whether or not the  
33 interest on which is subject to federal income taxation, and to provide for  
34 the rights of the lenders or holders thereof;
- 35 (h) purchase notes or participations in notes evidencing loans which  
36 are secured by mortgages or security interests and to enter into contracts  
37 in that regard;
- 38 (i) make secured or unsecured loans for any of the purposes for which  
39 bonds of the authority may be issued under this act or to low and mod-  
40 erate income multifamily rental housing projects participating in pro-  
41 grams established in section 42 of the federal internal revenue code, and  
42 provide financing for housing projects and programs in participation with  
43 programs established by the United States department of housing and

1 urban development or the Kansas department of commerce and housing;  
2 except as otherwise provided in this subsection, nothing in this act shall  
3 be construed to authorize the authority to make loans directly to individ-  
4 uals to finance housing developments;

5 (j) sell mortgages and security interests at public or private sale, to  
6 negotiate modifications or alterations in mortgage and security interests,  
7 to foreclose on any mortgage or security interest in default or commence  
8 any action to protect or enforce any right conferred upon it by any law,  
9 mortgage, security agreement, contract or other agreement, and to bid  
10 for and purchase property which was the subject of such mortgage or  
11 security interest at any foreclosure or at any other sale, to acquire or take  
12 possession of any such property, and to exercise any and all rights as  
13 provided by law for the benefit or protection of the authority or mortgage  
14 holders;

15 (k) collect fees and charges in connection with its loans, bond guar-  
16 antees, commitments and servicing, including, but not limited to, reim-  
17 bursement of costs of financing as the authority shall determine to be  
18 reasonable and as shall be approved by the authority;

19 (l) make and execute contracts for the servicing of mortgages ac-  
20 quired by the authority pursuant to this act, and to pay the reasonable  
21 value of services rendered to the authority pursuant to those contracts;

22 (m) enter into agreements with and accept gifts, grants, loans and  
23 other aid from the federal government, the state, any state agency, any  
24 political subdivision of the state, or any person or corporation, foundation  
25 or legal entity, and to agree to and comply with any conditions attached  
26 to federal and state financial assistance not inconsistent with the provi-  
27 sions of this act;

28 (n) invest moneys of the authority not required for immediate use,  
29 including proceeds from the sale of any bonds, in such manner as the  
30 board shall determine, subject to any agreement with bondholders stated  
31 in the authorizing resolution providing for the issuance of bonds;

32 (o) procure insurance against any loss in connection with its pro-  
33 grams, property and other assets;

34 (p) provide technical assistance and advice to the state or political  
35 subdivisions of the state and to enter into contracts with the state or  
36 political subdivisions of the state to provide such services. The state or  
37 political subdivisions of the state are hereby authorized to enter into con-  
38 tracts with the authority for such services and to pay for such services as  
39 may be provided them;

40 (q) establish accounts in one or more depositories;

41 (r) lease, acquire, construct, sell and otherwise deal in and contract  
42 concerning any facilities;

43 (s) have and exercise all of the powers granted to the public housing

1 authorities by the state, except that the authority shall not have the power  
2 of eminent domain;

3 (t) do any and all things necessary or convenient to carry out purposes  
4 of the authority and exercise the powers given and granted in this act;

5 (u) assist minority businesses in obtaining loans or other means of  
6 financial assistance. The terms and conditions of such loans or financial  
7 assistance, including the charges for interest and other services, will be  
8 consistent with the provisions of this act. In order to comply with this  
9 requirement, efforts must be made to solicit for review and analysis pro-  
10 posed minority business ventures. Basic loan underwriting standards will  
11 not be waived to inconsistently favor minority persons or businesses from  
12 the intent of the authority's lending practices; ~~and~~

13 (v) form one or more subsidiary corporations under K.S.A. 17-6001  
14 *et seq.*, and amendments thereto, in accordance with the procedures  
15 therein contained. Each subsidiary corporation shall be subject to the  
16 same restrictions and limitations as to the powers and purposes to which  
17 the authority is subject. The authority may delegate any of its powers,  
18 obligations and duties to any subsidiary corporation by inclusion of such  
19 powers, obligations and duties in the articles of incorporation of the sub-  
20 subsidiary corporation. Subsidiary corporations so formed shall constitute  
21 legal entities separate and distinct from each other, the authority and the  
22 state. The authority shall not be liable for the debts or obligations or for  
23 any actions or inactions of its subsidiary corporations unless the authority  
24 expressly agrees otherwise in writing. The authority may make loans or  
25 grants to a subsidiary corporation from time to time to enable the sub-  
26 subsidiary corporation to carry out its purposes. The members of the au-  
27 thority shall constitute all of the directors of each subsidiary corporation.

28 The state, any municipality or any state commission, public authority,  
29 agency, officer, department, board or division authorized and empowered  
30 to enter into agreements with, to grant, convey, lease or otherwise transfer  
31 any property to, or to otherwise transact business with the authority, shall  
32 have the same authorization and power to engage in these activities with  
33 each subsidiary corporation of the authority.

34 One or more such subsidiary corporation may be formed for purposes  
35 of establishing state tax credit equity funds to assist in the development  
36 of low-income and middle-income housing and obtain financing through  
37 participation in the program established in section 42 of the federal in-  
38 ternal revenue code.

39 Actions of the authority or any subsidiary corporation relating to hous-  
40 ing pursuant to this subsection (v) shall be carried out in accordance with  
41 any terms, conditions and limitations relating to policy issues regarding  
42 housing, as established by the secretary of commerce and housing.

43 One or more such subsidiary corporations may be formed for purposes

1 of acquiring or conveying on behalf of the state and pursuant to this act  
2 a project of statewide as well as local importance, issuing bonds on behalf  
3 of the state pursuant to this act to finance a project of statewide as well  
4 as local importance or otherwise financing on behalf of the state pursuant  
5 to this act a project of statewide as well as local importance. The Kansas  
6 statewide projects development corporation is hereby created in accord-  
7 ance with this section; and

8 *(w) assist, coordinate, administer and participate with out-of-state:*  
9 *Governmental authorities, bodies, issuers and other public and private*  
10 *entities; in connection with the issuance of bonds, notes or other evidence*  
11 *of indebtedness for the purpose of financing any facilities whether such*  
12 *facility is located within or outside of Kansas. In connection with such*  
13 *financings which include out-of-state issuers, the authority is designated*  
14 *as the only entity in Kansas which may conduct the public hearing of the*  
15 *applicable governmental unit required by section 147 (f) of the federal*  
16 *internal revenue code of 1986, as amended, and the governor of Kansas*  
17 *is designated as the only entity in Kansas who may be the applicable*  
18 *governmental unit pursuant to section 147 (f) of the federal internal rev-*  
19 *enue code of 1986, as amended. Following such hearing the authority*  
20 *shall determine whether such financing should proceed with respect to*  
21 *facilities located within Kansas by an out-of-state issuer. If the authority*  
22 *determines that the financing should not proceed, the financing shall not*  
23 *proceed relative to the Kansas facilities.*

24 Sec. 2. K.S.A. 74-8905 is hereby amended to read as follows: 74-  
25 8905. (a) The authority may issue bonds, either for a specific activity or  
26 on a pooled basis for a series of related or unrelated activities or projects  
27 duly authorized by a political subdivision or group of political subdivisions  
28 of the state in amounts determined by the authority for the purpose of  
29 financing projects of statewide as well as local importance as defined  
30 pursuant to K.S.A. ~~42-1744~~ 74-8902, and amendments thereto, capital  
31 improvement facilities, educational facilities, health care facilities and  
32 housing developments. Nothing in this act shall be construed to authorize  
33 the authority to issue bonds or use the proceeds thereof to:

34 (1) Purchase, condemn or otherwise acquire a utility plant or distri-  
35 bution system owned or operated by a regulated public utility;

36 (2) finance any capital improvement facilities; ~~or~~ educational facilities  
37 ~~or health care facilities~~ which ~~may be~~ **are being** financed by the issuance  
38 of general obligation or utility revenue bonds of a political subdivision,  
39 except that the acquisition by the authority of general obligation or utility  
40 revenue bonds issued by political subdivisions with the proceeds of pooled  
41 bonds shall not violate the provisions of the foregoing; or

42 (3) purchase, acquire, construct, reconstruct, improve, equip, fur-  
43 nish, repair, enlarge or remodel property for any swine production facility

1 on agricultural land which is owned, acquired, obtained or leased by a  
2 corporation, limited liability company, limited partnership, corporate  
3 partnership or trust.

4 Nothing in this subsection (a) shall prohibit the issuance of bonds by  
5 the authority when any statute specifically authorizes the issuance of  
6 bonds by the authority or approves any activity or project of a state agency  
7 for purposes of authorizing any such issuance of bonds in accordance with  
8 this section and provides an exemption from the provisions of this sub-  
9 section (a).

10 (b) The authority may issue bonds for activities and projects of state  
11 agencies as requested by the secretary of administration. No bonds may  
12 be issued pursuant to this act for any activity or project of a state agency  
13 unless the activity or project either has been approved by an appropriation  
14 or other act of the legislature or has been approved by the state finance  
15 council acting on this matter which is hereby characterized as a matter  
16 of legislative delegation and subject to the guidelines prescribed in sub-  
17 section (c) of K.S.A. 75-3711c, and amendments thereto. When requested  
18 to do so by the secretary of administration, the authority may issue bonds  
19 for the purpose of refunding, whether at maturity or in advance of ma-  
20 turity, any outstanding bonded indebtedness of any state agency. The  
21 revenues of any state agency which are pledged as security for any bonds  
22 of such state agency which are refunded by refunding bonds of the au-  
23 thority may be pledged to the authority as security for the refunding  
24 bonds.

25 (c) The authority may issue bonds for the purpose of financing in-  
26 dustrial enterprises, *transportation facilities*, agricultural business enter-  
27 prises, educational facilities, health care facilities and housing develop-  
28 ments, or any combination of such facilities, or any interest in facilities,  
29 including without limitation leasehold interests in and mortgages on such  
30 facilities, *whether located within or outside of Kansas*. No less than 30  
31 days prior to the issuance of any bonds authorized under this act with  
32 respect to any project or activity *within Kansas* which is to be undertaken  
33 for the direct benefit of any person or entity which is not a state agency  
34 or a political subdivision, written notice of the intention of the authority  
35 to provide financing and issue bonds therefor shall be given by the pres-  
36 ident of the authority to the governing body of the city in which the  
37 project or activity is to be located. If the project or activity is not proposed  
38 to be located within a city, such notice shall be given to the governing  
39 body of the county. No bonds for the financing of the project or activity  
40 shall be issued by the authority for a one-year period if, within 15 days  
41 after the giving of such notice, the governing body of the political sub-  
42 division in which the project or activity *within Kansas* is proposed to be  
43 located shall have adopted an ordinance or resolution stating express dis-

1 approval of the project or activity and shall have notified the president of  
2 the authority of such disapproval. *The authority shall not issue bonds for*  
3 *the purpose of financing a project or activity outside Kansas unless the*  
4 *authority has determined that the issuance of such bonds provides a ben-*  
5 *efit to Kansas or its people and that the owner or operator thereof or an*  
6 *affiliate has a presence or impact in Kansas. ~~Any such determination by~~*  
7 *~~the authority shall be conclusive as to the existence of any such benefit~~*  
8 *~~and presence or impact.~~*

9 (d) The authority may issue bonds for the purpose of establishing and  
10 funding one or more series of venture capital funds in such principal  
11 amounts, at such interest rates, in such maturities, with such security, and  
12 upon such other terms and in such manner as is approved by resolution  
13 of the authority. The proceeds of such bonds not placed in a venture  
14 capital fund or used to pay or reimburse organizational, offering and ad-  
15 ministrative expenses and fees necessary to the issuance and sale of such  
16 bonds shall be invested and reinvested in such securities and other in-  
17 struments as shall be provided in the resolution under which such bonds  
18 are issued. Moneys in a venture capital fund shall be used to make venture  
19 capital investments in new, expanding or developing businesses, includ-  
20 ing, but not limited to, equity and debt securities, warrants, options and  
21 other rights to acquire such securities, subject to the provisions of the  
22 resolution of the authority. The authority shall establish an investment  
23 policy with respect to the investment of the funds in a venture capital  
24 fund not inconsistent with the purposes of this act. The authority shall  
25 enter into an agreement with a management company experienced in  
26 venture capital investments to manage and administer each venture cap-  
27 ital fund upon terms not inconsistent with the purposes of this act and  
28 such investment policy. The authority may establish an advisory board to  
29 provide advice and consulting assistance to the authority and the man-  
30 agement company with respect to the management and administration of  
31 each venture capital fund and the establishment of its investment policy.  
32 All fees and expenses incurred in the management and administration of  
33 a venture capital fund not paid or reimbursed out of the proceeds of the  
34 bonds issued by the authority shall be paid or reimbursed out of such  
35 venture capital fund.

36 (e) The authority may issue bonds in one or more series for the pur-  
37 pose of financing a project of statewide as well as local importance in  
38 connection with a redevelopment plan that is approved by the authority  
39 in accordance with K.S.A. 74-8921 and 74-8922, and amendments  
40 thereto.

41 (f) After receiving and approving the feasibility study required pur-  
42 suant to K.S.A. 74-8936, and amendments thereto, the authority may  
43 issue bonds in one or more series for the purpose of financing a multi-

1 sport athletic project in accordance with K.S.A. 74-8936 through 74-8938,  
2 and amendments thereto. If the project is to be constructed in phases, a  
3 similar feasibility study shall be performed prior to issuing bonds for the  
4 purpose of financing each subsequent phase.

5 (g) The authority may issue bonds for the purpose of financing resort  
6 facilities, as defined in subsection (a) of K.S.A. 32-867, and amendments  
7 thereto, in an amount or amounts not to exceed \$30,000,000 for any one  
8 resort. The bonds and the interest thereon shall be payable solely from  
9 revenues of the resort and shall not be deemed to be an obligation or  
10 indebtedness of the state within the meaning of section 6 of article 11 of  
11 the constitution of the state of Kansas. The authority may contract with  
12 a subsidiary corporation formed pursuant to subsection (v) of K.S.A. 74-  
13 8904, and amendments thereto, or others to lease or operate such resort.  
14 The provisions of K.S.A. 32-867, 32-868, 32-870 through 32-873 and 32-  
15 874a through 32-874d, and amendments thereto, shall apply to resorts  
16 and bonds issued pursuant to this subsection.

17 (h) The authority may use the proceeds of any bond issues herein  
18 authorized, together with any other available funds, for venture capital  
19 investments or for purchasing, leasing, constructing, restoring, renovat-  
20 ing, altering or repairing facilities as herein authorized, for making loans,  
21 purchasing mortgages or security interests in loan participations and pay-  
22 ing all incidental expenses therewith, paying expenses of authorizing and  
23 issuing the bonds, paying interest on the bonds until revenues thereof are  
24 available in sufficient amounts, purchasing bond insurance or other credit  
25 enhancements on the bonds, and funding such reserves as the authority  
26 deems necessary and desirable. All moneys received by the authority,  
27 other than moneys received by virtue of an appropriation, are hereby  
28 specifically declared to be cash funds, restricted in their use and to be  
29 used solely as provided herein. No moneys of the authority other than  
30 moneys received by appropriation shall be deposited with the state  
31 treasurer.

32 **[(i) (1) The authority may issue bonds for the purpose of fi-**  
33 **ancing facilities for high speed digital service in cooperation with**  
34 **one or more political subdivisions or with one or more political**  
35 **subdivisions in partnership with the private sector. Bonds issued**  
36 **pursuant to this subsection shall be exempt from the provisions of**  
37 **clause (2) of subsection (a). Such financing shall be available on a**  
38 **technologically neutral basis and shall not be used for facilities**  
39 **where there is an existing provider of high speed digital service.**

40 **[(2) As used in this subsection (i), “high speed digital service”**  
41 **means service which provides upstream, from customer to pro-**  
42 **vider, and downstream, from provider to customer, transmission**  
43 **of digital signals at a rate of at least 200 kilobits per second.**

1 [(j) (1) As used in this subsection (j):

2 [(A) “Appurtenances” means all substations, towers, poles and  
3 other structures and equipment necessary for the bulk transfer of  
4 electricity.

5 [(B) “Electric transmission line” means any line or extension  
6 of a line which is at least five miles long and which is used for the  
7 bulk transfer of electricity.

8 [(2) The authority may issue revenue bonds in amounts suffi-  
9 cient to pay the following described costs of construction, upgrad-  
10 ing and acquisition, including any required interest on the bonds  
11 during such construction, upgrading and acquisition, plus all  
12 amounts required for the costs of bond issuance and any required  
13 reserves on the bonds: (A) Construction or upgrading of electric  
14 transmission lines and appurtenances to be used for the transfer  
15 of 69 kilovolts or more of electricity; (B) acquisition of the right-  
16 of-way on which transmission lines and appurtenances to be used  
17 for the transfer of 69 kilovolts or more of electricity are to be  
18 constructed; and (C) upgrading of electric transmission lines and  
19 appurtenances to be used for the transfer of 69 kilovolts or more  
20 of electricity. The bonds, and interest thereon, issued pursuant to  
21 this section shall be payable from revenues derived from use of  
22 the transmission lines.

23 [(3) The provisions of subsection (a) shall not prohibit the is-  
24 suance of bonds by the authority for the purposes of this subsection  
25 and any such issuance of bonds is exempt from the provisions of  
26 subsection (a) which would operate to preclude such issuance.]

27 ~~(k)~~ [(k)] Any time the authority is required to publish a notification  
28 pursuant to the tax equity and fiscal responsibility act of 1982, the au-  
29 thority shall further publish such notification in the Kansas register.

30 ~~(l)~~ [(l)] Any time the authority issues *private activity* bonds pursuant  
31 to this section, the authority shall publish notification of such issuance at  
32 least 14 days prior to any bond hearing in the official county newspaper  
33 of the county in which the project or activity financed by such bonds are  
34 located and in the Kansas register.

35 Sec. 3. K.S.A. 74-8904 and 74-8905 are hereby repealed.

36 Sec. 4. This act shall take effect and be in force from and after its  
37 publication in the statute book.

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