

HOUSE BILL No. 2169

AN ACT concerning the Kansas development finance authority; relating to energy conservation improvements and energy conservation measures; amending K.S.A. 75-37,114 and K.S.A. 2006 Supp. 74-8902 and 75-37,125 and repealing the existing sections.

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

Section 1. K.S.A. 2006 Supp. 74-8902 is hereby amended to read as follows: 74-8902. The following words or terms used in this act shall have the following meanings unless a different meaning clearly appears from the context:

- (a) "Act" means the Kansas development finance authority act.
- (b) "Authority" means the Kansas development finance authority created by K.S.A. 74-8903, and amendments thereto.
- (c) "Agricultural business enterprises" means facilities supporting or utilized in the operation of farms, ranches and other agricultural, aquacultural or silvicultural commodity producers and services provided in conjunction with the foregoing. "Agricultural business enterprise" shall not include a swine production facility on agricultural land which is owned, acquired, obtained or leased by a corporation, limited liability company, limited partnership, corporate partnership or trust.
- (d) "Agricultural land," "corporation," "corporate partnership," "limited liability company," "limited partnership," "swine production facility" and "trust" have the meanings ascribed pursuant to K.S.A. 17-5903, and amendments thereto.
- (e) "Board of directors" means the board of directors of the authority created by K.S.A. 74-8903, and amendments thereto.
- (f) "Bonds" means any bonds, notes, debentures, interim certificates, grant and revenue anticipation notes, interest in a lease, lease certificate of participation or other evidences of indebtedness, whether or not the interest on which is subject to federal income taxation, issued by the authority pursuant to this act.
- (g) "Capital improvements" means any physical public betterment or improvement or any preliminary plans, studies or surveys relative thereto; land or rights in land, including, without limitations, leases, air rights, easements, rights-of-way or licenses; and any furnishings, machinery, vehicles, apparatus or equipment for any public betterment or improvement.
- (h) "Construct" means to acquire or build, in whole or in part, in such manner and by such method as the authority shall determine to be in the public interest and necessary to accomplish the purposes of and authority set forth in this act.
- (i) "Loans" means loans made for the purposes of financing any of the activities authorized within this act, including loans made to financial institutions for funding or as security for loans made for accomplishing any of the purposes of this act and reserves and expenses appropriate or incidental thereto.
- (j) "Educational facilities" means real, personal and mixed property of any and every kind intended by an educational institution in furtherance of its educational program.
- (k) "Facilities" means any real property, personal property or mixed property of any and every kind.
- (l) "Health care facilities" means facilities for furnishing physical or mental health care.
- (m) "Housing development" means any work or undertaking, whether new construction or rehabilitation, which is designed and financed pursuant to the provisions of this act for the primary purpose of providing dwelling accommodations for elderly persons and families of low income in need of housing.
- (n) "Industrial enterprise" means facilities for manufacturing, producing, processing, assembling, repairing, extracting, warehousing, distributing, communications, computer services, transportation, corporate and management offices and services provided in connection with any of the foregoing, in isolation or in any combination, that involve the creation of new or additional employment or the retention of existing employment.
- (o) "Political subdivision" means political or taxing subdivisions of the state, including municipal and quasi-municipal corporations, boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups or administrative units thereof, receiving or expending and supported, in whole or in part, by public funds *and any municipality as defined in K.S.A. 75-1117, and amendments thereto.*

(p) “Pooled bonds” means bonds of the authority, the interest on which is subject to federal income taxation, which are issued for the purpose of acquiring bonds issued by two or more political subdivisions.

(q) “Research facilities” means facilities for use in research and development activities, whether conducted for profit or not for profit, of an agricultural business enterprise, industrial enterprise or any other commercial enterprise or educational institution or health care institution.

(r) “State” means the state of Kansas.

(s) “State agency” means any office, department, board, commission, bureau, division, public corporation, agency or instrumentality of this state.

(t) “Federal entity” means the government of the United States of America or any bureau, department, instrumentality or other agency of the federal government.

Sec. 2. K.S.A. 75-37,114 is hereby amended to read as follows: 75-37,114. The projects for energy conservation improvements for state facilities which are initiated by state agencies under this act are hereby approved for such state agencies for the purposes of subsection (b) of K.S.A. 74-8905 and amendments thereto. The total costs of the projects for energy conservation improvements under this act for any fiscal year, exclusive of financing costs, shall not exceed ~~\$5,000,000~~ *the amounts approved for such energy conservation improvements by the state corporation commission.*

Sec. 3. K.S.A. 2006 Supp. 75-37,125 is hereby amended to read as follows: 75-37,125. (a) As used in this act:

(1) ~~“Municipality” shall have the meaning ascribed thereto in K.S.A. 75-1117, and amendments thereto.~~ “Federal entity” means the government of the United States of America or any bureau, department, instrumentality or other agency of the federal government.

(2) “Political subdivision” shall have the meaning ascribed thereto in subsection (o) of K.S.A. 74-8902, and amendments thereto.

~~(2)~~ (3) “State agency” ~~shall have the meaning ascribed thereto in K.S.A. 75-3049, and amendments thereto~~ means any office, department, board, commission, bureau, division, public corporation, agency or instrumentality of this state.

~~(3)~~ (4) “Energy conservation measure” means an energy study, audit, improvement or equipment which is designed to provide energy and operational cost savings at least equivalent to the amount expended by a participating ~~municipality~~ *political subdivision* or state agency for such energy study, audit, improvement or equipment over a period of not more than ~~20~~ 30 years after the date such improvement or equipment is installed or becomes operational, as the case may be.

(b) Subject to the provisions of subsection (c), a ~~municipality~~ *political subdivision* or state agency, *which include the board of regents and a regent’s institution and a community or technical college,* may enter into a contract or lease-purchase agreement for an energy conservation measure which meets the criteria of this section. In addition to any other authority provided by law a ~~municipality~~ *political subdivision or state agency* may solicit proposals to contract for an energy conservation measure by advertising for proposals and qualifications in a newspaper of general circulation or the Kansas register, and by sending requests for proposals to at least three vendors and negotiating a lease-purchase agreement with one or more vendors submitting a proposal thereto. Negotiations entered into pursuant to this section with individual vendors shall not be subject to the provisions of the open meetings act. After an agreement has been executed, the agreement and all proposals from vendors shall be open records available for public inspection in accordance with the open records act. A state agency may utilize the procedures prescribed in K.S.A. 75-37,102, and amendments thereto, by the procurement negotiating committee to negotiate and contract for energy conservation measures. Each state agency shall provide copies of plans of the proposed energy conservation measure to the ~~secretary of administration, or such secretary’s designee,~~ *state corporation commission* for review. No state agency may enter into a contract for an energy conservation measure unless such measure has been approved by the ~~secretary of administration~~ *state corporation commission.* Plans submitted under this section shall be

retained and maintained by the ~~secretary of administration~~ *state corporation commission*.

(c) Before executing any contract or *finance, pledge, loan or lease-purchase agreement* under this section, the energy conservation contractor shall provide the ~~municipality~~ *political subdivision* or state agency with plans for the proposed energy conservation measures prepared by an engineer licensed to practice in Kansas. The energy conservation contractor shall also provide a report of the calculations showing the estimated energy and operational cost savings that would result from the proposed energy conservation measures. Notwithstanding any provision contained in K.S.A. 71-201 and 72-8225, and amendments thereto or other provisions of law, the board of education of any school district and the board of any community college or technical college may enter into a contract or *finance, pledge, loan or lease-purchase agreement* for an energy conservation measure for a period exceeding 10 years. ~~Municipalities~~ *Political subdivisions* and state agencies may include a provision in the contract with an entity providing the energy conservation measure requiring such entity to guarantee that the actual amount of savings of energy and operational costs attributable to the energy conservation measure be not less than the cost of the energy conservation measure over the time specified including financing costs.

(d) Within the limits of appropriations available therefor, the state corporation commission is authorized to provide grants for engineering studies and energy conservation measures for ~~municipalities~~ *political subdivisions* and state agencies.

(e) The ~~secretary of administration~~ *state corporation commission, or its designee*, may provide administrative support and resources available under the facility conservation improvement program under this section or K.S.A. 75-37,111 et seq., and amendments thereto, as requested by school districts, private and public colleges in Kansas, ~~municipalities and political subdivisions~~, *state agencies or federal entities* for purposes of this section. The ~~secretary of administration~~ *state corporation commission, or its designee*, may fix, charge and collect reasonable fees for any administrative support and resources or other services provided by the ~~secretary~~ *state corporation commission, or its designee*, under this subsection.

(f) The provisions of the cash basis law and K.S.A. 79-2925, and amendments thereto, shall not apply to any contract or lease-purchase agreement entered into pursuant to this section.

New Sec. 4. (a) The Kansas development finance authority is hereby authorized to issue revenue bonds in amounts sufficient to pay the costs of energy conservation measures, as defined in K.S.A. 75-37,125, and amendments thereto, for or on behalf of federal entities for facilities located in the state, and to contract with federal entities with respect to such energy conservation measures and such revenue bonds. The bonds, and interest thereon, issued pursuant to this section shall be payable from: (1) Revenues derived from the use, lease, occupation or operation of the facilities for which such energy conservation measures are undertaken; (2) any other revenues, appropriations, grants or moneys of a federal entity available therefore; or (3) any combination thereof.

(b) The energy conservation measures, as defined in K.S.A. 75-37,125, and amendments thereto, for political subdivisions or state agencies are hereby authorized to be financed by the Kansas development finance authority pursuant to subsection (a) of K.S.A. 74-8905, and amendments thereto. The energy conservation measures for state facilities which are initiated by state agencies under K.S.A. 75-37,125, and amendments thereto, are hereby approved for such state agencies for the purposes of subsection (b) of K.S.A. 74-8905, and amendments thereto. The total costs of energy conservation measures for state facilities initiated by state agencies under K.S.A. 75-37,125, and amendments thereto, for any fiscal year, exclusive of financing costs, shall not exceed the amounts approved for such energy conservation measures by the state corporation commission.

(c) Revenue bonds, including refunding revenue bonds, issued under this section shall not be an obligation of the state of Kansas and shall not constitute an indebtedness of the state of Kansas, nor shall they constitute indebtedness within the meaning of any constitutional or statutory provision limiting the incurring of indebtedness.

(d) Revenue bonds, including refunding revenue bonds, issued under this section and the income derived therefrom are and shall be exempt from all state, county and municipal taxation in the state of Kansas, except Kansas estate taxes.

(e) Any political subdivision, state agency or federal entity is authorized to contract or enter into a finance, pledge, loan or lease-purchase agreement with the Kansas development finance authority for an energy conservation measure, as defined in K.S.A. 75-37,125, and amendments thereto, in order to facilitate the financing thereof or to provide security for the repayment of bonds authorized under this section.

Sec. 5. K.S.A. 75-37,114 and K.S.A. 2006 Supp. 74-8902 and 75-37,125 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.