

CHAPTER 181  
SENATE BILL No. 480

AN ACT relating to the Kansas development finance authority; concerning bonds for research facilities; funding of out-of-state projects; amending K.S.A. 2003 Supp. 74-8902, 74-8904 and 74-8905 and repealing the existing sections.

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

Section 1. K.S.A. 2003 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.

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

Sec. 2. K.S.A. 2003 Supp. 74-8904 is hereby amended to read as follows: 74-8904. Except as otherwise limited by this act, the authority shall have the following powers to:

(a) Sue and be sued;

(b) have a seal and alter such seal;

(c) make and alter bylaws for its organization and internal management;

(d) adopt such rules and regulations as may be necessary to carry out the purposes of this act;

(e) acquire, hold and dispose of real and personal property for its corporate purposes;

(f) appoint officers, agents and employees, prescribe their duties and qualifications and fix their compensation;

(g) borrow money and to issue notes, bonds and other obligations pursuant to K.S.A. 74-8905, and amendments thereto, whether or not the interest on which is subject to federal income taxation, and to provide for the rights of the lenders or holders thereof;

(h) purchase notes or participations in notes evidencing loans which are secured by mortgages or security interests and to enter into contracts in that regard;

(i) make secured or unsecured loans for any of the purposes for which bonds of the authority may be issued under this act or to low and moderate income multifamily rental housing projects participating in programs established in section 42 of the federal internal revenue code, and provide financing for housing projects and programs in participation with programs established by the United States department of housing and urban development or the division of housing in the Kansas development finance authority; except as otherwise provided in this subsection, nothing in this act shall be construed to authorize the authority to make loans directly to individuals to finance housing developments;

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

(k) collect fees and charges in connection with its loans, bond guarantees, commitments and servicing, including, but not limited to, reimbursement of costs of financing as the authority shall determine to be reasonable and as shall be approved by the authority;

(l) make and execute contracts for the servicing of mortgages acquired by the authority pursuant to this act, and to pay the reasonable value of services rendered to the authority pursuant to those contracts;

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

(n) invest moneys of the authority not required for immediate use, including proceeds from the sale of any bonds, in such manner as the board shall determine, subject to any agreement with bondholders stated

in the authorizing resolution providing for the issuance of bonds;

(o) procure insurance against any loss in connection with its programs, property and other assets;

(p) provide technical assistance and advice to the state or political subdivisions of the state and to enter into contracts with the state or political subdivisions of the state to provide such services. The state or political subdivisions of the state are hereby authorized to enter into contracts with the authority for such services and to pay for such services as may be provided them;

(q) establish accounts in one or more depositories;

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

(s) have and exercise all of the powers granted to the public housing authorities by the state, except that the authority shall not have the power of eminent domain;

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

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

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

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

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

Actions of the authority or any subsidiary corporation relating to housing pursuant to this subsection (v) shall be carried out in accordance with any terms, conditions and limitations relating to policy issues regarding housing, as established by the director of housing in the Kansas development finance authority.

One or more such subsidiary corporations may be formed for purposes of acquiring or conveying on behalf of the state and pursuant to this act a project of statewide as well as local importance, issuing bonds on behalf of the state pursuant to this act to finance a project of statewide as well as local importance or otherwise financing on behalf of the state pursuant to this act a project of statewide as well as local importance. The Kansas statewide projects development corporation is hereby created in accordance with this section; *and*

(w) *assist, coordinate, administer and participate with out-of-state: Governmental authorities, bodies, issuers and other public and private entities; in connection with the issuance of bonds, notes or other evidence of indebtedness for the purpose of financing any facilities whether such facility is located within or outside of Kansas. In connection with such*

*financings which include out-of-state issuers, the authority is designated as the only entity in Kansas which may conduct the public hearing of the applicable governmental unit required by section 147 (f) of the federal internal revenue code of 1986, as amended, and the governor of Kansas is designated as the only entity in Kansas who may be the applicable governmental unit pursuant to section 147 (f) of the federal internal revenue code of 1986, as amended. Following such hearing the authority shall determine whether such financing should proceed with respect to facilities located within Kansas by an out-of-state issuer. If the authority determines that the financing should not proceed, the financing shall not proceed relative to the Kansas facilities.*

Sec. 3. K.S.A. 2003 Supp. 74-8905 is hereby amended to read as follows: 74-8905. (a) The authority may issue bonds, either for a specific activity or on a pooled basis for a series of related or unrelated activities or projects duly authorized by a political subdivision or group of political subdivisions of the state in amounts determined by the authority for the purpose of financing projects of statewide as well as local importance ~~as defined pursuant to K.S.A. 12-1744, and amendments thereto~~, capital improvement facilities, educational facilities, health care facilities and housing developments. Nothing in this act shall be construed to authorize the authority to issue bonds or use the proceeds thereof to:

- (1) Purchase, condemn or otherwise acquire a utility plant or distribution system owned or operated by a regulated public utility;
- (2) finance any capital improvement facilities; *or* educational facilities ~~or health care facilities~~ which ~~may be~~ *are being* financed by the issuance of general obligation or utility revenue bonds of a political subdivision, except that the acquisition by the authority of general obligation or utility revenue bonds issued by political subdivisions with the proceeds of pooled bonds shall not violate the provisions of the foregoing; *or*
- (3) purchase, acquire, construct, reconstruct, improve, equip, furnish, repair, enlarge or remodel property for any 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.

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

(b) The authority may issue bonds for activities and projects of state agencies as requested by the secretary of administration. *Research facilities of state educational institutions shall be subject to the provisions of this subsection (b).* No bonds may be issued pursuant to this act for any activity or project of a state agency unless the activity or project either has been approved by an appropriation or other act of the legislature or has been approved by the state finance council acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, and amendments thereto. When requested to do so by the secretary of administration, the authority may issue bonds for the purpose of refunding, whether at maturity or in advance of maturity, any outstanding bonded indebtedness of any state agency. The revenues of any state agency which are pledged as security for any bonds of such state agency which are refunded by refunding bonds of the authority may be pledged to the authority as security for the refunding bonds.

(c) The authority may issue bonds for the purpose of financing industrial enterprises, *transportation facilities*, agricultural business enterprises, educational facilities, health care facilities ~~and~~ housing developments, or any combination of such facilities *and research facilities*, or any interest in facilities, including without limitation leasehold interests in and mortgages on such facilities, *whether located within or outside of Kansas*. No less than 30 days prior to the issuance of any bonds authorized under this act with respect to any project or activity *within Kansas* which is to be undertaken for the direct benefit of any person or entity which is not a state agency or a political subdivision, written notice of the intention of the authority to provide financing and issue bonds therefor shall be given by the president of the authority to the governing body of the city in which the project or activity is to be located. If the project or activity is

not proposed to be located within a city, such notice shall be given to the governing body of the county. No bonds for the financing of the project or activity shall be issued by the authority for a one-year period if, within 15 days after the giving of such notice, the governing body of the political subdivision in which the project or activity *within Kansas* is proposed to be located shall have adopted an ordinance or resolution stating express disapproval of the project or activity and shall have notified the president of the authority of such disapproval. *The authority shall not issue bonds for the purpose of financing a project or activity outside Kansas unless the authority has determined that the issuance of such bonds provides a benefit to Kansas or its people and that the owner or operator thereof or an affiliate has a presence or impact in Kansas.*

(d) The authority may issue bonds for the purpose of establishing and funding one or more series of venture capital funds in such principal amounts, at such interest rates, in such maturities, with such security, and upon such other terms and in such manner as is approved by resolution of the authority. The proceeds of such bonds not placed in a venture capital fund or used to pay or reimburse organizational, offering and administrative expenses and fees necessary to the issuance and sale of such bonds shall be invested and reinvested in such securities and other instruments as shall be provided in the resolution under which such bonds are issued. Moneys in a venture capital fund shall be used to make venture capital investments in new, expanding or developing businesses, including, but not limited to, equity and debt securities, warrants, options and other rights to acquire such securities, subject to the provisions of the resolution of the authority. The authority shall establish an investment policy with respect to the investment of the funds in a venture capital fund not inconsistent with the purposes of this act. The authority shall enter into an agreement with a management company experienced in venture capital investments to manage and administer each venture capital fund upon terms not inconsistent with the purposes of this act and such investment policy. The authority may establish an advisory board to provide advice and consulting assistance to the authority and the management company with respect to the management and administration of each venture capital fund and the establishment of its investment policy. All fees and expenses incurred in the management and administration of a venture capital fund not paid or reimbursed out of the proceeds of the bonds issued by the authority shall be paid or reimbursed out of such venture capital fund.

(e) The authority may issue bonds in one or more series for the purpose of financing a redevelopment plan project that is approved by the authority in accordance with K.S.A. 74-8921 and 74-8922, and amendments thereto, or by Johnson or Labette county in accordance with the provisions of this act.

(f) After receiving and approving the feasibility study required pursuant to K.S.A. 74-8936, and amendments thereto, the authority may issue bonds in one or more series for the purpose of financing a multi-sport athletic project in accordance with K.S.A. 74-8936 through 74-8938, and amendments thereto. If the project is to be constructed in phases, a similar feasibility study shall be performed prior to issuing bonds for the purpose of financing each subsequent phase.

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

(h) The authority may use the proceeds of any bond issues herein authorized, together with any other available funds, for venture capital investments or for purchasing, leasing, constructing, restoring, renovating, altering or repairing facilities as herein authorized, for making loans, purchasing mortgages or security interests in loan participations and paying all incidental expenses therewith, paying expenses of authorizing and

issuing the bonds, paying interest on the bonds until revenues thereof are available in sufficient amounts, purchasing bond insurance or other credit enhancements on the bonds, and funding such reserves as the authority deems necessary and desirable. All moneys received by the authority, other than moneys received by virtue of an appropriation, are hereby specifically declared to be cash funds, restricted in their use and to be used solely as provided herein. No moneys of the authority other than moneys received by appropriation shall be deposited with the state treasurer.

(i) Any time the authority is required to publish a notification pursuant to the tax equity and fiscal responsibility act of 1982, the authority shall further publish such notification in the Kansas register *and on the Kansas development finance authority website*.

(j) Any time the authority issues *private activity* bonds, *as defined in K.S.A. 74-5059, and amendments thereto*, pursuant to this section, the authority shall publish notification of such issuance at least 14 days prior to any bond hearing in the official county newspaper of the county in which the project or activity financed by such bonds are located and in the Kansas register.

Sec. 4. K.S.A. 2003 Supp. 74-8902, 74-8904 and 74-8905 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 24, 2004.

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