

**58.180 Creation of nonprofit corporation to act as an instrumentality of governmental agency in the financing of public projects.**

- (1) (a) As used herein, the term "public project" shall have the same meaning as ascribed to such term by KRS 58.010, and the term "public project" shall include, inter alia, but not by way of limitation, public facilities such as sewers, sewage treatment works, water systems, streets, sidewalks and other public ways, both vehicular and pedestrian, parks and recreational and sports facilities, hospitals and health facilities, educational facilities, drainage and reclamation projects, jails, municipal buildings, public docks, wharves and port facilities, solid waste disposal facilities, pollution control systems, mass commuting and transport systems, industrial parks, courthouses and other public buildings, public parking and garage facilities, and other edifices, projects and like things and objects intended for governmental and public purposes.
- (b) As used herein, the term "governmental agency" shall mean any division of the Commonwealth which is a municipal corporation and political subdivision of the Commonwealth of Kentucky, or to which has been delegated the right to exercise part of the sovereign power of the Commonwealth.
- (2) Any governmental agency may create a nonprofit corporation pursuant to the provisions of KRS 273.161 to 273.390, inclusive, to act as the agency and instrumentality and the constituted authority of such governmental agency in the acquisition and financing of any public project which may be undertaken by such governmental agency pursuant to the provisions of Kentucky law and thus accomplish a public purpose of such governmental agency. Such corporation, upon direction of such governmental agency, shall be authorized to issue its bonds, notes or other obligations on behalf of such governmental agency for the acquisition and financing of one or more public projects on behalf of such governmental agency, and may pledge for the amortization of such bonds, notes or other obligations all revenues derived from the operation of such public project or public projects, including specifically all revenues derived from the leasing of such public project or public projects directly to the governmental agency upon whose behalf and upon whose direction such bonds, notes or other obligations are issued. Provided, however, that no bonds or other obligations shall be authorized under the provisions of this chapter for the construction or acquisition of telephone, gas, or electric facilities unless such electric facilities are constructed or maintained to provide service solely to the customers of the municipal utility.
- (3) It shall be provided in any such financing (i) that upon the retirement and discharge of the bonds, notes or other obligations issued by such corporation at the direction of and on behalf of such governmental agency, title to the public project or public projects so acquired shall vest in such governmental agency; (ii) that in the event of default with respect to such bonds, notes or other obligations, the governmental agency shall have the exclusive option to acquire the public project or public projects for the amount required to discharge such bonds, notes or other obligations, and is provided a reasonable time to exercise such option; (iii) that the issuance of

such bonds, notes or other obligations shall be directed by and approved by such governmental agency not more than sixty (60) days prior to the date of issue of such obligations; and (iv) that no bonds, notes or other obligations shall be issued by such corporation for and on behalf of such governmental agency except upon express direction of such governmental agency.

- (4) Any governmental agency creating a corporation pursuant to this section to act for and on behalf of, and as the agency and instrumentality of, such governmental agency in the acquisition and financing of a public project or public projects shall, at all times either (i) exercise organizational control over such corporation by creating the corporation pursuant to this section, and retain authority at any and all times to alter or change the structure, organization, programs or activities of the corporation, including the power to terminate existence of the corporation, subject to any limitation on the impairment of contracts entered into by such corporation, or shall (ii) exercise supervisory control over such corporation as may be deemed proper by the governmental agency in the administration of the corporation's activities as a constituted authority of such governmental agency, and as may be required from time to time by federal law in order to qualify the corporation to issue bonds, notes or other obligations on behalf of the governmental agency.
- (5) It shall be provided, inter alia, in the articles of incorporation of any such corporation and constituted authority created to act as the agency and instrumentality of a governmental agency and to finance public projects for such governmental agency on its behalf and thereby accomplish a public purpose of such governmental agency, (i) that any net revenues of such corporation beyond those necessary for retirement of indebtedness, or implementation of the public purpose or purposes of the corporation and the governmental agency shall not inure to the benefit of any person other than the governmental agency; (ii) that upon dissolution of the corporation, title to all property owned by such corporation shall vest in the governmental agency; and (iii) that the corporation shall be created and operated solely and only to accomplish one or more of the public purposes of the governmental agency and for the acquisition and financing of public projects for and on behalf of such governmental agency.
- (6) The governing body of such corporation shall consist solely and only of the following individuals:
  - (a) Public officials of the governmental agency as ex officio members; or
  - (b) Persons appointed by the governmental agency or by public officials of the governmental agency.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 146, sec. 1, effective June 20, 2005. -- Created 1976 Ky. Acts ch. 334, sec. 1.