

103.246 Financing pollution control facilities for industrial concerns and utility companies by cities and counties.

- (1) (a) The term "pollution control facilities" means any land, building, structure, machinery, equipment, device, system or facility functionally related thereto designed for the control, containment, reduction, prevention or abatement of atmospheric pollutants or contaminants, solid waste, noise, radiation, or water pollution produced by industrial concerns and utility companies, including, but not by way of limitation, any such facilities used in whole or in part to control, contain, reduce, prevent or abate atmospheric, solid waste, noise, radiation, or water pollution by removing, altering, containing, disposing or storing pollutants, contaminants, wastes, whether gaseous, solid or liquid, thermal or radioactive. Said term includes all pollution control facilities whenever constructed, reconstructed, purchased, leased or otherwise acquired and placed in use, which may legally be financed by issuance of bonds determined to be tax-exempt pursuant to the provisions of Section 103(b) of the Internal Revenue Code of 1954, as amended, and regulations promulgated thereunder. Pollution control facilities may be constructed as part of, and may include, facilities also designed for the recovery of chemicals or other by-products or to serve other purposes which also contribute to the control of or abatement of atmospheric, solid waste and water pollution.
- (b) The term "industrial concern" means any domestic or foreign corporation, company, partnership, association, rural electric cooperative corporation, or any other legal entity.
- (2) It is hereby determined and declared that the acquisition and financing of pollution control facilities for utilization by industrial concerns and utility companies by the issuance of bonds of cities and counties amortized by payments made by such industrial concerns and utility companies inures to the public interest, and constitutes the performance of a proper governmental purpose. It is the intent of this section to afford to cities and counties alternative methods of financing pollution control facilities to the end that atmospheric, solid waste and water pollution in the Commonwealth may be abated and controlled to the maximum possible extent.
- (3) As an alternative to the procedure set forth in KRS 103.200 to 103.285, inclusive, any city or county, for the purpose of financing the acquisition of pollution control facilities for any industrial concern or utility company, may issue negotiable bonds pursuant to KRS 103.200 to 103.285, inclusive, and either (a) loan the proceeds from the sale of such bonds to an industrial concern or utility company to finance the acquisition of such pollution control facilities, (b) sell such pollution control facilities to an industrial concern or utility company pursuant to agreement, or (c) lease such pollution control facilities from an industrial concern or utility company and sublease same to such industrial concern or utility company. In the event of use of such alternative financing procedure, such bonds shall not constitute an indebtedness of such city or county within the meaning of the Constitution of Kentucky, but shall be payable as to principal and interest solely from the revenues derived from payments, repayments, or sublease payments made by such industrial

concern or utility company to such city or county in respect of such loan, sale or sublease.

- (4) In the event that an alternate procedure authorized by this section is to be utilized in the financing of pollution control facilities, (i) the provisions of KRS 103.200 to 103.285, inclusive, shall apply, except that the proceedings and procedures therein described shall contemplate and authorize a transaction in the form of (a) a loan of the proceeds from the sale of such bonds by such city or county to an industrial concern or utility company for the acquisition of such pollution control facilities, (b) a sale of such pollution control facilities to an industrial concern or utility company pursuant to agreement, or (c) a lease of such pollution control facilities from an industrial concern or utility company and sublease of same to such industrial concern or utility company; and (ii) the loan, sale, lease and sublease and any agreement or contract with respect thereto may include such provisions as such city or county shall deem appropriate to effect the securing of the financing undertaken in respect of such pollution control facilities, including, but not by way of limitation, (a) the pledge of the general credit of any such industrial concern or utility company, (b) the making of guarantees to an indenture trustee or to such city or county in respect of amortization of such bonds by any such industrial concern or utility company, (c) the creation of liens of security interests on any property or portion thereof of any such industrial concern or utility company, either senior or junior to, or ranking equally with, any other lien, security interest or rights of others, including any party or parties to any agreement in connection with such financing and/or its or their respective security holders and indenture trustees or mortgage trustees, and (d) the pledge of other direct securities of such industrial concern or utility company in respect of such bonds.
- (5) In the event any city or county shall finance pollution control facilities pursuant to the express authority contained in this section, title to such pollution control facilities shall not be acquired by such city or county in the case of a loan or lease transaction, and, in the case of a sale transaction, title may pass at any time, and the statutory mortgage lien for which provision is made in KRS 103.250 shall not apply to any such pollution control facilities.
- (6) Bonds issued by cities and counties pursuant to the authority contained in this section may be caused to mature as to principal in term or serial maturities not to exceed forty (40) years from date of issue.

Effective: July 15, 2020

History: Amended 2020 Ky. Acts ch. 76, sec. 6, effective July 15, 2020. -- Created 1974 Ky. Acts ch. 342, sec. 1.

Legislative Research Commission Note (1982). A technical correction has been made in this section by the Reviser of Statutes pursuant to KRS 7.136.