

66.400 Municipalities may go into bankruptcy -- Approval of state local debt officer and state local finance officer required for county -- Municipality may not file if delinquent in contributions to retirement system -- Liens on bonds or leases -- Public property exempt from seizure -- Judgments against local government -- Exceptions. (Effective April 1, 2021)

- (1) As used in this section:
 - (a) "Bond" has the same meaning as in KRS 66.011 and is issued according to the provisions of KRS 66.011 to 66.191;
 - (b) "Lease" has the same meaning as in KRS 65.940 and is entered into under the provisions of KRS 65.940 to 65.956; and
 - (c) "Local government" has the same meaning as in KRS 44.001.
- (2)
 - (a) Except as otherwise provided by this section, any municipality as defined in the United States Bankruptcy Code, 11 U.S.C. secs. 101 et seq., and acts amendatory and supplementary thereto or acts extending the date of expiration thereof, as the same may be amended or extended from time to time, may file a petition for the composition of its debts and to do all things necessary to comply with the provisions of the United States Bankruptcy Code.
 - (b) No county shall file a petition as provided in the United States Bankruptcy Code unless the proposed plan is first approved by the state local debt officer and the state local finance officer, as defined in KRS 68.001. No changes or modifications shall be made in the plan of composition after the filing of the petition without the approval of the state local debt officer and the state local finance officer. The state local debt officer and the state local finance officer shall approve or disapprove the proposed plan of composition or any changes or modifications thereof under the same procedure and for the same reasons as bonds are approved or disapproved under KRS 66.280 to 66.390.
 - (c) No municipality may file for bankruptcy protection under the United States Bankruptcy Code if it is in default or is delinquent in the payment of contributions due under KRS 78.510 to 78.852.
- (3)
 - (a) The revenues of a tax adopted:
 1. According to KRS 66.111(1) for the payment of bonds shall be deemed pledged for the payment of the principal of and the premium and interest on the bonds; and
 2. According to KRS 65.942(2) for the payment of a lease shall be deemed pledged for the payment of the principal and interest portions of a lease payment and any prepayment penalties on a lease;
whether or not the pledge is stated in the bonds, the lease, or in the proceedings authorizing the bonds or the lease.
 - (b) The holders of all bonds issued and leases entered into shall have a first lien on those tax revenues.
 - (c) There shall be a statutory lien on the tax revenues pledged in favor of the holders of all bonds issued and leases entered into, effective by operation of

law, that shall apply to all outstanding bonds payable from taxes adopted according to KRS 66.111(1) and leases payable from taxes adopted according to KRS 65.942(2), without priority of one (1) bond or lease over another bond or lease, regardless of when the bonds were issued or the lease was entered into.

- (d) No filing need be made under the Uniform Commercial Code or otherwise to perfect the lien on the tax revenues.
 - (e) The pledge of the tax shall constitute a sufficient appropriation, and the tax revenues shall be applied as required by the pledge, without the requirement for further appropriation.
- (4) Amounts appropriated for the payment of any obligation that is subject to annual renewal, including but not limited to leases entered into under the provisions of KRS 58.010 to 58.205 or KRS 65.940 to 65.956, shall be deemed pledged for payment according to subsection (3)(a) of this section, and the holders of all bonds issued or leases entered into shall have a first lien on those appropriations commencing on the date of the appropriation.
- (5) (a) The public property of any local government, of every character and description, used for government or public purposes, is exempt from seizure by attachment, execution, or other legal process, except as provided in subsections (7) and (8) of this section.
- (b) A local government's funds in the hands of its treasurer or a depository shall not be subject to garnishment or other legal process, except as provided in subsections (6), (7), and (8) of this section.
- (6) (a) Except for judgments covered under KRS 65.2004, any local government against which final judgment has been rendered for a claim that is not fully covered by insurance may make a motion to the Circuit Court to enter an order for the payment of money damages, in whole or in part, through a periodic payment schedule for a period of time not to exceed ten (10) years.
- (b) A court entering an order in response to a motion made by a local government under paragraph (a) of this subsection shall consider the ability of the local government to pay the judgment without a substantial disruption to the essential public services provided by the local government. The court shall consider the following factors in evaluating the motion and in setting a periodic payment schedule:
1. The funds available in the local government's current fiscal year and other funds available to the local government to pay the damages in the remainder of the local government's fiscal year during which the final judgment was entered;
 2. The total revenues reasonably expected to be collected by the local government in subsequent fiscal years based upon the historical collections in previous fiscal years;
 3. The total expenses of the local government in subsequent years for the costs associated with the provision of essential public services, the

payment of debt service for the existing obligations of the local government, and any other expenses reasonably necessary for the efficient administration of the local government, including personnel, operation, and maintenance costs associated with existing infrastructure, and new costs which may be reasonably anticipated for the local government; and

4. If the award for damages is an amount that exceeds twenty-five percent (25%) of the total revenues collected by the local government in the immediately preceding fiscal year, the court may also consider any revenue or debt financing options that are reasonably available to the local government that could be employed to help satisfy the judgment.
- (c) An order entered by the court establishing a periodic payment schedule shall specify the total amount awarded, the amount of each payment, the interval between payments, and the number of payments to be paid under the order.
 - (d) Any judgment paid pursuant to the periodic payment schedule established under this subsection shall bear interest accruing from the date final judgment is entered at one-half (1/2) the interest rate provided by KRS 360.040.
 - (e) Upon petition to the court, the court may modify a periodic payment schedule established in this subsection for good cause shown by the local government. The modification may include changes to the amount of payments, the number of payments, and the period of payments, but in no case shall an adjustment pursuant to this paragraph alter the total amount of damages to be paid, exclusive of interest, in the original order.
- (7) Subject to the provisions of subsection (6) of this section, a court may enter an order providing for the attachment, execution, garnishment, or seizure by other legal process of public property, including moneys, of a local government only upon a finding that:
 - (a) The local government has failed to comply with an order, modified order, or judgment entered by the court as provided by subsection (6) of this section or KRS 65.2004;
 - (b) After a period of twenty-four (24) months, the local government did not petition the court to enter an order for the payment of money damages, in whole or in part, through a periodic payment schedule as provided by subsection (6) of this section or KRS 65.2004 and has not paid in full the total damages awarded under the judgment; or
 - (c) The judgment for damages was not of the type that permitted the court to enter an award of periodic damages, and the local government has failed to pay the damages due in full after the passage of twenty-four (24) months from the entry of a final judgment.
- (8) (a) Any order providing for the attachment, execution, garnishment, or seizure by other legal process of public property, including moneys, of a local government shall not impair the ability of the local government to continue to provide essential services to the public, including the payment of key

personnel needed for the provision of those services and those employees necessary for the collection of revenues on behalf of the local government.

- (b) In making a determination as to the appropriate extent of an order under this subsection, a court shall consider but shall not be limited to the factors provided in subsection (6)(b) of this section.
- (9) Nothing in this section shall:
- (a) Bar the pursuit of any other remedies that exist to enforce a judgment under state law; or
 - (b) Prohibit a local government and a judgment creditor from entering into an agreement for the payment of damages under terms and conditions that differ from the remedies and process established under this section.

Effective: April 1, 2021

History: Amended 2020 Ky. Acts ch. 79, sec. 18, effective April 1, 2021. -- Amended 2019 Ky. Acts ch. 35, sec. 9, effective June 27, 2019. -- Amended 1994 Ky. Acts ch. 508, sec. 38, effective July 15, 1994. -- Created 1942 Ky. Acts ch. 146, sec. 1.