AN ACT relating to the disposition of postsecondary institution property.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 164A.575 is amended to read as follows:

(1) The governing boards of each institution may elect to purchase interest in real property, contractual services, rentals of all types, supplies, materials, equipment, printing, and services, except that competitive bids may not be required for:

(a) Contractual services where no competition exists;

(b) Food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies;

(c) Instructional materials available from only one (1) source;

(d) Where rates are fixed by law or ordinance;

(e) Library books;

(f) Commercial items that are purchased for resale;

(g) Professional, technical, scientific, or artistic services, but contracts shall be submitted in accordance with KRS 45A.690 to 45A.725;

(h) All other commodities, equipment, and services which, in the reasonable discretion of the board, are available from only one (1) source; and

(i) Interests in real property.

(2) Nothing in this section shall deprive the boards from negotiating with vendors who maintain a General Services Administration price agreement with the United States of America or any agency thereof, provided, however, that no contract executed under this provision shall authorize a price higher than is contained in the contract between General Services Administration and the vendor affected.

(3) The governing board shall require the institution to take and maintain inventories of plant and equipment.

(4) The governing board shall establish procedures to identify items of common general usage among all departments to foster volume purchasing. It shall establish and

enforce schedules for purchasing supplies, materials, and equipment.

(5) The governing board shall have power to salvage, to exchange, and to condemn supplies, equipment, and real property.

(6) Upon the approval of the secretary of the Finance and Administration Cabinet, the governing board may purchase or otherwise acquire all real property determined to be needed for the institution's use. The amount paid shall not exceed the fair market value as determined by a qualified appraiser or the value set by the eminent domain procedure. Any real property acquired under this section shall be in name of the Commonwealth for the use and benefit of the institution.

(7) (a) Notwithstanding KRS 56.806, the governing board may renegotiate the cost of a lease after the expiration of the lease term and any renewal terms provided in the lease prior to any renewal not provided for in the terms of the lease.

(b) Except when a lease incorporates a lease-purchase under KRS 56.806, the governing board shall reserve the right to cancel a lease upon at least thirty (30) days' written notice.

(c) Notwithstanding KRS 56.823(2) and (3), any lease renewals, except automatic renewals permitted under KRS 56.803, 56.805(2), and 56.806(1), for which the annual rental cost will exceed two hundred thousand dollars ($200,000) shall be reported to the Capital Projects and Bond Oversight Committee in the same format as set out in KRS 56.823(2).

(d) Notwithstanding KRS 56.813, a public college or university may pay for improvements to leased property costing in excess of ten thousand dollars ($10,000) but less than one million dollars ($1,000,000) in a lump sum upon approval of its board using non-general fund appropriations and without incurring debt.

(8) ***Notwithstanding KRS 45.777,*** the governing board ***may elect to sell or dispose of personal property, real property, or major items of equipment. The sale or***

disposal shall be subject to review by the Council on Postsecondary Education, and approval shall be on a basis consistent with the strategic agenda and the mission of the postsecondary institution. After the Council on Postsecondary Education's approval of the sale, the president of the postsecondary institution, or designee, shall submit the proposed sale to the Capital Projects and Bond Oversight Committee at least fourteen (14) days prior to the committee meeting for review and recommendation. The Capital Projects and Bond Oversight Committee shall require justification for the equipment or property sale, the appraised value of the equipment or property to be sold, and the funding source for acquisition of the equipment or property to be sold. Upon recommendation by the Capital Projects and Bond Oversight Committee and approval by the secretary of the Finance and Administration Cabinet, proceeds from the sale shall be designated to the funding sources, on a proportionate basis, used for acquisition of the equipment or property to be sold~~[shall sell or otherwise dispose of all real or personal property of the institution which is not needed or has become unsuitable for public use, or would be more suitable consistent with the public interest for some other use, as determined by the board. The determination of the board shall be set forth in an order, and shall be reached only after review of a written request by the institution desiring to dispose of the property. Such request shall describe the property and state the reasons why the institution believes disposal should be effected]~~. All instruments required by law to be recorded which convey any interest in any such real property so disposed of shall be executed and signed by the appropriate officer of the board. Unless the board deems it in the best interest of the institution to proceed otherwise ***and receives the approval of the Council on Postsecondary Education and secretary of the Finance and Administration Cabinet to do so***, all such real or personal property shall be sold either by invitation of sealed bids or by public auction; provided, however, that the selling price of any interest in real property shall not be less than the fair market value thereof as determined by the Finance and Administration Cabinet or the Transportation Cabinet for such requirements of that department.

(9) Real property or any interest therein may, subject to the provisions of KRS Chapter 45A, be purchased, leased, or otherwise acquired from any officer or employee of any board of the institution, based upon a written application by the grantor or lessor approved by the board, that the employee has not either himself or through any other person influenced or attempted to influence either the board requesting the purchase of the property. In any case in which such an acquisition is consummated, the said request and finding shall be recorded and kept by the Secretary of State along with the other documents recorded pursuant to the provisions of KRS Chapter 56.

(10) (a) As used in this section, "construction manager-agency," "construction management-at-risk," "design-bid-build," "design-build," and "construction manager-general contractor" shall have the same meaning as in KRS 45A.030.

(b) For capital construction projects, the procurement may be on a total design-bid-build basis, a design-build basis, construction manager-general contractor basis, or construction management-at-risk basis, whichever in the judgment of the board offers the best value to the taxpayer. Best value shall be determined in accordance with KRS 45A.070. Proposals shall be reviewed by the institution's engineering staff to assure quality and value, and compliance with procurement procedures. All specifications shall be written to promote competition. Services for projects delivered on the design-build basis, construction manager-general contractor basis, or construction management-at-risk basis shall be procured in accordance with KRS 45A.180, KRS 45A.183, and the regulations promulgated in accordance with KRS 45A.180. Nothing in this section shall prohibit the procurement of construction manager-agency services.

(c) Notwithstanding KRS 45A.185, for all capital construction projects, bidder security for competitive sealed bidding for construction contracts shall only be required when the price is estimated to exceed one million dollars ($1,000,000).

(11) The governing board shall attempt in every practicable way to insure the institution's supplying its real needs at the lowest possible cost. To accomplish this the board may enter into cooperative agreements with other public or private institutions of education or health care.

(12) The governing board shall have control and supervision over all purchases of energy consuming equipment, supplies, and related equipment purchased or acquired by the institution, and shall designate by regulation the manner in which an energy consuming item will be purchased so as to promote energy conservation and acquisition of energy efficient products.

(13) The governing board may negotiate directly for the purchase of contractual services, supplies, materials, or equipment in bona fide emergencies regardless of estimated costs. The existence of the emergency must be fully explained, in writing, by the vice president responsible for business affairs and such explanation must be approved by the institution president. The letter and approval shall be filed with the record of all such purchases. Where practical, standard specifications shall be followed in making emergency purchases. A good faith effort shall be made to effect a competitively established price for emergency purchases.

(14) (a) All governing boards that purchase agricultural products, as defined by KRS 45A.630, shall, on or before January 1 of each year, provide a report to the Legislative Research Commission and to the Department of Agriculture describing the types, quantities, and costs of each product purchased. The report shall be completed on a form provided by the department.

(b) If purchasing agricultural products, a governing board shall encourage the purchase of Kentucky-grown agricultural products in accordance with KRS 45A.645. If a governing board purchases agricultural products through a contract with a vendor or food service provider, the contract shall require that if Kentucky-grown agricultural products are purchased, the products shall be purchased in accordance with KRS 45A.645. Only contracts entered into or renewed after July 15, 2008, shall be required to comply with the provisions of this subsection.

(c) All governing boards that purchase Kentucky-grown agricultural products shall, on or before January 1 of each year, provide a report to the Legislative Research Commission and to the Department of Agriculture describing the types, quantities, and costs of each product purchased. The report shall be completed on a form provided by the department.

(15) Notwithstanding KRS 45.760, the governing board may authorize a capital construction project or a major item of equipment even though it is not specifically listed in any branch budget bill, subject to the following conditions and procedures:

(a) The full cost shall be funded solely by non-general fund appropriations;

(b) Moneys specifically budgeted and appropriated by the General Assembly for another purpose shall not be allotted or reallotted for expenditure on the project or major item of equipment. Moneys utilized shall not jeopardize any existing program and shall not require the use of any current general funds specifically dedicated to existing programs; and

(c) The institution's president, or designee, shall submit the project or major item of equipment to the Capital Projects and Bond Oversight Committee for review as provided by KRS 45.800.

(16) Governing boards shall apply the reciprocal resident bidder preference described in KRS 45A.494 prior to the award of any contract.

(17) Governing boards may authorize the use of reverse auctions as defined in KRS 45A.070 for the procurement of goods and leases.

(18) (a) Notwithstanding KRS 56.070, the governing board may obtain private insurance to cover any state property in the institution's possession against loss by fire and other hazards. The level of private insurance coverage shall be commensurate with or greater than the insurance coverage provided through the state fire and tornado insurance fund. An institution whose governing board elects to obtain private insurance shall notify the secretary of the Finance and Administration Cabinet at least six (6) months before terminating the institution's insurance coverage through the state fire and tornado insurance fund.

(b) No later than January 1 of each year, an institution whose governing board elects to obtain private insurance instead of insurance coverage provided through the state fire and tornado insurance fund shall certify, in writing, to the secretary of the Finance and Administration Cabinet that the property is insured in accordance with paragraph (a) of this subsection and shall attach a copy of the private insurance policy.