



# Lexington-Fayette Urban County Government

200 E. Main St  
Lexington, KY 40507

## Legislation Text

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**File #: 1331-15, Version: 1**

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A Resolution of the Lexington-Fayette Urban County Government authorizing the Kentucky Bond Development Corp. to issue bonds payable from TIF revenue to pay costs of development of the Summit Lexington Project. [Council Office, Maynard]

WHEREAS, public agencies in the Commonwealth of Kentucky have experienced and are continuing to experience difficulty in economically funding or financing various governmental purposes at reasonable costs; and

WHEREAS, public agencies, including Lexington-Fayette Urban County Government, have entered and will enter into an Interlocal Cooperation Agreement dated September 19, 2014, as authorized under Sections 65.210 through Section 65.300 (the "Interlocal Agreement"), inclusive, of the Kentucky Revised Statutes, as amended, which authorizes public agencies to cooperate and act jointly in exercising any and all powers, privileges and authority capable of exercise by such public agencies in their respective individual capacities; and

WHEREAS, in order to provide a vehicle for economically funding or financing various governmental and economic development purposes of public agencies in the Commonwealth of Kentucky, the Kentucky League of Cities Economic Development Finance Program (the "Program") has been established under the Interlocal Agreement and, under the Program, the Kentucky Bond Development Corporation (the "Issuer") has been established; and

WHEREAS, the Program will benefit the public health, safety and general welfare of the citizens of Lexington-Fayette Urban County Government; and

WHEREAS, Bayer Properties, LLC, a foreign limited liability company and its affiliates (the "Company"), the Lexington-Fayette Urban County Government's Department of Finance (the "Finance Agency") and the Lexington-Fayette Urban County Government have heretofore entered into a Master Development Agreement dated as of February 13, 2014, as amended by a First Amendment to Master Development Agreement dated as of November 20, 2014 (together, the "Development Agreement"), in accordance with the requirements of KRS 154.30-050 (the "TIF Act"), relating to the development of the Summit Lexington Project, as described in the Development Agreement (the "Project") in the Development Area, as defined in the Development Agreement; and

WHEREAS, the Finance Agency and the Kentucky Economic Development Finance Authority have heretofore entered into a Tax Incentive Agreement dated as of September 25, 2014 (the "Incentive Agreement") relating to the development of The Summit Lexington Mixed-Use Redevelopment Tax Increment Financing Project described in Exhibit A to the Incentive Agreement (the "Incentive Project") in the Development Area; and

WHEREAS, the Company has evidenced a desire to have the costs of the Incentive Project, including costs incident to the authorization, sale and issuance of the Bonds (as defined below) and other financing costs, financed with the proceeds of the issuance and sale by the Issuer of the Bonds in one or more series; and

WHEREAS, the Bonds will be payable solely from the Increments, as defined in the Incentive Agreement, and certain Incremental Revenues, as defined in the Development Agreement (collectively, the “Revenues”), and will not be payable from any other funds or assets of the Lexington-Fayette Urban County Government, the Finance Agency, or the Issuer; and

WHEREAS, the Lexington-Fayette Urban County Government and/or the Finance Agency anticipate that they will enter into, at the appropriate time, a financing agreement (the “Financing Agreement”) with the Issuer with respect to the Bonds under which (i) the Issuer will agree to issue the Bonds for the purposes described in this Resolution and (ii) the Finance Agency will apply the Revenues to the payment of principal of and premium, if any, and interest on the Bonds together with all trustee’s and paying agent’s fees in connection with the Bonds and any other related charges as the same come due and payable;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:**

Section 1. Purpose. The Council of the Lexington-Fayette Urban County Government hereby finds, determines and declares that all statements of fact set forth in the preambles to this Resolution are true and correct in all respects, and such preambles are incorporated into the body of this Resolution by reference as if set forth at length herein. The Lexington-Fayette Urban County Government further finds, determines and declares that the entering into or issuance by the Issuer of bonds in accordance with the Agreement will be in the best interest of the Lexington-Fayette Urban County Government and is in the furtherance of the public purposes and functions of the Lexington-Fayette Urban County Government in connection with facilitating the financing of the Incentive Project, which will be in the public interest.

Section 2. Authorization of Bonds. The Issuer, acting by authority of the Lexington-Fayette Urban County Government and the Agreement, is hereby requested to adopt such resolutions and take such actions as may be necessary for the formal authorization by the Issuer of up to \$31,400,000 principal amount of “Kentucky Bond Development Corporation Tax Increment Revenue Bonds (Summit Lexington Project)” (the “Bonds”) in one or more series, to be dated appropriately in accordance with their date of sale and delivery, with such series designation as may be deemed appropriate, to pay the costs of the Incentive Project, including costs incident to the authorization, sale and issuance of the Bonds, interest on the Bonds to be capitalized and to fund any required reserves for the payment of the Bonds. The maturity, security provisions, redemption provisions, form of Bonds, conditions of sale and all other terms and provisions incident to the Bonds shall be in accordance with the Program. This Resolution shall constitute an affirmative official action of the Lexington-Fayette Urban County Government toward the issuance of the Bonds as contemplated herein in accordance with the purposes of the laws of the Commonwealth of Kentucky and the Agreement.

Section 4. Authorization of Financing Agreement. A Financing Agreement providing for the payment of certain Revenues to the Issuer, to be applied to the payment of principal of and premium, if any, and interest on the Bonds together with all trustee’s and paying agent’s fees in connection with the Bonds and any other related charges as the same come due and payable, is hereby expressly approved to be finalized in the appropriate form to permit the issuance of the Bonds, and the same is hereby authorized to be negotiated and executed in the name and on behalf of the Lexington-Fayette Urban County Government and/or the Agency by the Mayor and Urban County Council Clerk and appropriate officers of the Agency, as applicable.

Section 5. Obligation Limited to Financing Agreement. Except for the Revenues to be payable to the Issuer under the Financing Agreement, no recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement

therein contained, under any rule of law or equity, statute or constitution, or by the enforcement of any assessment or penalty or otherwise, and all such liability shall be expressly waived and released by Issuer as a condition of and consideration for the adoption of this Resolution and the authorization of the Bonds. ANY BONDS ISSUED PURSUANT TO THIS RESOLUTION SHALL NOT CONSTITUTE AN INDEBTEDNESS OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT WITHIN THE MEANING OF THE CONSTITUTION OF THE COMMONWEALTH OF KENTUCKY. SUCH BONDS SHALL BE PAYABLE SOLELY FROM THE REVENUES AND SECURITY INTERESTS PLEDGED FOR THEIR PAYMENT AS PROVIDED IN THE BOND ISSUANCE, AND, EXCEPT FOR THE "REVENUES" TO BE APPLIED IN ACCORDANCE WITH THIS RESOLUTION, NEITHER MONEYS RAISED BY TAXATION NOR ANY OTHER GENERAL OR SPECIAL REVENUES OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT SHALL BE OBLIGATED OR PLEDGED FOR THE PAYMENT OF PRINCIPAL OF, PREMIUM (IF ANY) OR INTEREST ON THE BONDS.

Section 6. Open Meetings. That the Lexington-Fayette Urban County Government hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in open meetings of the Lexington-Fayette Urban County Government, and that all deliberations of the Lexington-Fayette Urban County Government and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with all applicable legal requirements.

Section 7. Repeal of Conflicting Actions. All ordinances, resolutions, orders or other legislative or administrative actions or parts thereof of this governing body in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

Section 8. Effective Date of Resolution. This Resolution shall become effective immediately upon the date of its passage.

**INTRODUCED AND GIVEN FIRST READING** at a duly convened meeting of Urban County Council of Lexington-Fayette Urban County Government on the 22nd day of October, 2015.

**INTRODUCED AND GIVEN FIRST AND SECOND READING, ENACTED AND ADOPTED** at a duly convened meeting of Urban County Council of Lexington-Fayette Urban County Government held on the 5<sup>th</sup> day of November, 2015, signed by the Mayor, attested under seal by the Clerk of Urban County Council, and ordered to be published, filed and indexed as provided by law.

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Jim Gray Mayor

**ATTEST:**

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Martha J. N. Allen Urban County Council Clerk

**CERTIFICATE**

I, the undersigned, Urban County Council Clerk of Lexington-Fayette Urban County Government, do hereby certify that the foregoing Resolution is a true and complete copy of a certain Resolution duly adopted by the Urban County Council of said Lexington-Fayette Urban County Government at a lawfully convened meeting of the Urban County Council of Lexington- Fayette Urban County Government held on November 5, 2015.

I do hereby further certify that said Resolution has not been amended, modified, superseded or repealed and that same remains in full force and effect as of the date of this Certificate.

**WITNESS** my hand as of this 5<sup>th</sup> day of November, 2015.

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Martha J. N. Allen Urban County Council Clerk

**CERTIFICATE**

I do hereby certify that the title to this enactment contains an accurate synopsis of the contents thereof and may be used to satisfy the reading and publication requirements of law.

**DINSMORE & SHOHL LLP**

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Roger L. Peterman