

CHAPTER 300**(HB 381)**

AN ACT relating to economic development.

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

Section 1. KRS 42.4588 is amended to read as follows:

- (1) There is established within the Kentucky Economic Development Finance Authority a Local Government Economic Development Program to consist of a system of grants to counties to attract new industry.
- (2) Grants obtained under this program shall be used for:
 - (a) Industrial development projects if an industrial firm has agreed with the local government, to the satisfaction of the Kentucky Economic Development Finance Authority, to develop, in conjunction with the industrial development project, manufacturing, processing, assembling, or other facilities approved by the secretary of the Cabinet for Economic Development;
 - (b) Industrial development projects if the secretary of the Cabinet for Economic Development finds that the project is necessary for the creation of an environment for new industry in order to obtain an agreement from an industrial firm to develop manufacturing, processing, assembling, or other facilities approved by the secretary of the Cabinet for Economic Development; and
 - (c) Debt service for industrial development projects, as defined in subsection (2)(a) and (b) of this section, or for facilities approved by the secretary of the Cabinet for Economic Development under the provisions of subsection (3) of this section.
- (3) The secretary of the Cabinet for Economic Development may approve facilities, other than manufacturing, processing, or assembling facilities, for industrial development projects when the secretary finds that the facility will add value to a product. Value-added facilities shall include data processing, telecommunication, and distribution facilities, but shall not include retail facilities or coal mining, coal processing, or coal transportation facilities. The secretary may also approve privately-owned facilities for transient lodging and recreation where the secretary finds that the cost of the recreation component of the facility is equal to, or greater than, the cost of the lodging component of the facility. The criteria for approval of applications for grants provided for in paragraphs (a), (b), and (c) of subsection (9) of this section shall be paramount in the case of lodging and recreational facilities.
- (4) Applications for grants from funds provided for in KRS 42.4592(1)(a) and (b) shall be made by the legislative bodies of one (1) or more counties with accounts in the local government economic development fund. Applications for grants from funds provided for in KRS 42.4592(1)(c) shall be made by the legislative bodies of two (2) or more counties with accounts in the local government economic development fund. No grant shall be awarded without application for a grant.
- (5) A grant may be awarded for an industrial development project located in a county that does not have an account in the local government economic development fund, if the secretary of the Cabinet for Economic Development finds that the industrial development project may be

reasonably expected to create jobs for residents of the local unit or units of government applying for the grant. Application for the grant shall be made by the legislative bodies of one (1) or more counties with accounts in the local government economic development fund.

- (6) *An industrial development project may include legal, accounting, engineering, and marketing expenses for a regional industrial park, in addition to the activities set forth in subsection (11)(a) of this section.*
- (7) Grants awarded from funds provided for in KRS 42.4592(1)(a) and (b) shall not exceed the total balance of the accounts of the applicant counties at the time of the award of the grant.
- ~~(8)(7)~~ Grants awarded under the provisions of subsection (2)(c) of this section may be for a period not to exceed the current biennium of the Commonwealth, and shall be limited to an amount not to exceed the amount estimated to be allocated to the applicant county or counties for the current biennium under the provisions of KRS 42.4592(1)(a) and (b).
- ~~(9)(8)~~ Approval of grant applications shall be by the secretary of the Cabinet for Economic Development. Award of grants shall be by the Kentucky Economic Development Finance Authority.
- ~~(10)(9)~~ Criteria for approval of applications and the award of grants to be considered, if applicable, shall include:
 - (a) The number of jobs to be created or preserved, directly or indirectly, by the industrial development project;
 - (b) Payrolls, and the taxes generated, both at the state and local levels, by the industrial development project and taxes generated by the employment created or preserved by the industrial development project;
 - (c) The size, nature, and cost of the industrial development project, including the prospect of the industrial development project providing long-term jobs in enterprises consistent with the changing economies of the affected local units of government;
 - (d) The needs, and degree of needs, of the local units of government which will be affected by the industrial development project;
 - (e) The needs of any industrial firm benefiting from the industrial development project;
 - (f) The amount and kind of assistance, if any, available to an industrial firm from other government agencies through tax exemption or abatement, financing assistance through industrial development bonds, and otherwise, with respect to the industrial development project;
 - (g) The amount of capital made available to the facility by lenders and by the industrial firm; and
 - (h) The economic feasibility of the facility.

~~(11)(10)~~ For purposes of this section:

- (a) "Industrial development project" includes the acquisition of any real estate and the construction, acquisition, and installation thereon and with respect thereto of improvements and facilities necessary and useful for the improvement of the real estate for conveyance to or lease to industrial firms to be used for manufacturing, processing, or assembling purposes, including surveys; site tests and inspections; subsurface site

work; excavation, removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and provision of drainage; storm water retention; installation of utilities, such as water, sewer, sewage treatment, gas, electricity, communication, and other similar facilities; off-site construction of utility extensions to the boundaries of the real estate; construction and installation on the real estate of the industrial firm of buildings, including buildings to be used for worker training and education; rail facilities; roads; sidewalks; curbs;~~and~~ other improvements to the real estate necessary to its manufacturing, processing, assembling, or other approved use by industrial entities; workforce training; **and** job development incentive grants;

- (b) "Industrial firm" means any corporation, limited liability company, limited liability partnership, partnership, person, or other legal entity, whether domestic or foreign, which will itself or through its subsidiaries and affiliates construct and develop a manufacturing, processing, assembling, or other approved facility on the site of an industrial development project financed pursuant to this section;~~and~~
- (c) "Job development incentive grant" means an award to a county of funds from its account administered by the Kentucky Economic Development Finance Authority pursuant to KRS 42.4592(1)(a) and (b) for the use by the county to encourage job development for those industrial development projects located in that county which create at least twenty-five (25) new full-time jobs held by Kentucky residents who receive a minimum wage of at least one hundred thirty percent (130%) of the federal minimum wage. Each job development incentive grant is limited to five thousand dollars (\$5,000) for each job created which fulfills the requirements of this subsection. The industrial firm receiving the job development incentive grant shall pay its employees at the project site an average wage equal to or greater than one hundred fifty percent (150%) of the federal minimum wage and shall invest at least ten thousand dollars (\$10,000) per new job created. After a fiscal court has received authorization for the job development grant by the Kentucky Economic Development Finance Authority, the county, the industrial firm, and the ***Kentucky Economic Development Finance Authority***~~{Cabinet for Economic Development}~~ shall enter into an agreement committing the grant funds to be disbursed at such time as the industrial firm certifies the authenticity of the following information to be delivered to the county:
1. The industrial firm has made at least the minimum investment required;
 2. At least twenty-five (25) new full-time Kentucky jobs have been created at the project site by the industrial firm;
 3. No employee at the project site is paid a salary by the industrial firm which is less than one hundred thirty percent (130%) of the federal minimum wage;
 4. The employees at the project site are paid an average wage by the industrial firm at least equal to one hundred fifty percent (150%) of the federal minimum wage;
 5. Each employee hired for the project by the industrial firm shall have worked on a full-time basis at the minimum wages described in this section at least twelve (12) full consecutive months at the site prior to any grant funds disbursement; and
 6. No job created by the industrial firm after twenty-four (24) months from the date of the first eligible hire at the project site shall be considered for the grant.

If the county is satisfied the information provided is accurate and qualifies the industrial firm for the job development incentive grant as described in the agreement, it shall forward the certified information to the Cabinet for Economic Development which shall make the job development grant disbursement upon sufficient evidence that all terms of the agreement have been met; *and*

(d) "Regional industrial park" means an industrial development project authorized for a grant award by the Kentucky Economic Development Finance Authority for a minimum of three (3) counties eligible for grant funds provided for in KRS 42.4592(1)(c), which coalition may include a county as approved under subsection (5) of this section.

~~(12)~~~~(11)~~ Findings by the secretary of the Cabinet for Economic Development, provided for in subsections (2)(b), (3), and (5) of this section, shall be made in writing to the affected counties, the Governor, and the Legislative Research Commission.

~~(13)~~~~(12)~~ By October 1 of each odd-numbered year, the secretary of the Cabinet for Economic Development shall provide, in writing, to the Governor and the Legislative Research Commission a listing of all applications for grants received pursuant to this section subsequent to the last report, indicating which applications were approved or disapproved, with the reason for disapproval when the decision was to disapprove, and a listing of all grants awarded, with the amount of the award, the recipient county, and the related industrial development project.

Section 2. KRS 141.310 is amended to read as follows:

- (1) Every employer making payment of wages on or after January 1, 1971, shall deduct and withhold upon the wages a tax determined under KRS 141.315 or by the tables authorized by KRS 141.370.
- (2) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days, including Sundays and holidays, equal to the number of days in the period with respect to which the wages are paid.
- (3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days, including Sundays and holidays, which have elapsed since the date of the last payment of wages by the employer during the calendar year, or the date of commencement of employment with the employer during the year, or January 1 of the year, whichever is the later.
- (4) In determining the amount to be deducted and withheld under this section, the wages may, at the election of the employer, be computed to the nearest dollar.
- (5) The tables mentioned in subsection (1) of this section take into consideration the deductible federal income tax. If Congress changes substantially the federal income tax, the cabinet shall make the change in these tables necessary to compensate for any increase or decrease in the deductible federal income tax.
- (6) The cabinet may permit the use of accounting machines to calculate the proper amount to be deducted from wages when the calculation so permitted produces substantially the same result set forth in the tables authorized by KRS 141.370. Prior approval of the calculation

shall be secured from the cabinet at least thirty days before the first payroll period for which it is to be used.

- (7) The cabinet may, by regulations, authorize employers:
 - (a) To estimate the wages which will be paid to any employee in any quarter of the calendar year;
 - (b) To determine the amount to be deducted and withheld upon each payment of wages to the employee during the quarter as if the appropriate average of the wages estimated constituted the actual wages paid; and
 - (c) To deduct and withhold upon any payment of wages to the employee during the quarter the amount necessary to adjust the amount actually deducted and withheld upon the wages of the employee during the quarter to the amount that would be required to be deducted and withheld during the quarter if the payroll period of the employee was quarterly.
- (8) The cabinet may provide by regulation, under the conditions and to the extent it deems proper, for withholding in addition to that otherwise required under this section and KRS 141.315 in cases in which the employer and the employee agree to the additional withholding. The additional withholding shall for all purposes be considered tax required to be deducted and withheld under this chapter.
- (9) Effective January 1, 1992, any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job assessment fee provided in KRS 154.24-110 may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be fourfifths (4/5) of the amount of the assessment fee withheld from the employee **or the Commonwealth's contribution if subsection (3) of Section 20 of this Act applies**. ~~[- If the Kentucky income tax to be withheld from the employee under this section is greater than four-fifths (4/5) of the job assessment fee set forth above, the excess shall be withheld.]~~ If the **provisions in** ~~[agreement under]~~ KRS 154.24-150(3) **or (4) apply** ~~[is consummated]~~, the offset shall be one hundred percent (100%) of the assessment.
- (10) Any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job development assessment fee provided in KRS 154.22-070 **or KRS 154.28-110** may offset ~~[a portion of]~~ the fee against the Kentucky income tax required to be withheld from the employee under this section. ~~[The amount of the offset shall be equal to the amount of the assessment fee withheld from the employee.]~~
- (11) Effective January 1, 1992, any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job assessment fee provided in KRS 154.26-100 may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be twothirds (2/3) of the amount of the assessment fee withheld from the employee ~~[- If the Kentucky income tax to be withheld from the employee under this section is greater than two-thirds (2/3) of the job assessment fee set forth above,]~~ or four-fifths (4/5) if the agreement under KRS 154.26-090(1)(d)2.b. is consummated ~~[-, the excess shall be withheld.]~~

~~(12) Any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job development assessment fee provided in KRS 154.22-070 may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be equal to the amount of the assessment fee withheld from the employee.~~

~~(13)~~ Any employer required by this section to withhold Kentucky income tax may be required to post a bond with the cabinet. The bond shall be a corporate surety bond or cash. The amount of the bond shall be determined by the cabinet, but shall not exceed fifty thousand dollars (\$50,000).

~~(13)~~~~(14)~~ The Commonwealth may bring an action for a restraining order or a temporary or permanent injunction to restrain or enjoin the operation of an employer's business until the bond is posted or the tax required to be withheld is paid or both. The action may be brought in the Franklin Circuit Court or in the Circuit Court having jurisdiction of the defendant.

Section 3. KRS 141.350 is amended to read as follows:

The amount deducted and withheld as tax under KRS 141.310 and KRS 141.315 during any calendar year upon the wages of any individual and the amount of credit described in KRS 154.22-070(2), 154.24-110, **subsections (3) and (4) of Section 21 of this Act**; 154.26-100(2), or KRS ~~154.28-110~~~~[154.28-090]~~ shall be allowed as a credit to the recipient of the income against the tax imposed by KRS 141.020, for taxable years beginning in the calendar year. If more than one (1) taxable year begins in the calendar year, the amount shall be allowed as a credit against the tax for the last taxable year so beginning.

Section 4. KRS 141.405 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
 - (a) "Approved company" has the same meaning as set forth in KRS 154.12-2084; and
 - (b) "Skills training investment credit" has the same meaning as set forth in KRS 154.122084.
- (2) An approved company shall determine the income tax credit as provided in this section.
- (3)
 - (a) An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation subject to tax under KRS 141.040(1) shall compute the income tax due at the applicable tax rates as provided by KRS 141.020 or 141.040, on net income as defined by KRS 141.010(11), or taxable net income as defined by KRS 141.010(14);
 - (b) The amount of the skills training investment credit that the Bluegrass State Skills Corporation has given final approval for under KRS 154.12-2088(6) shall be applied against the amount of the tax computed under paragraph (a) of this subsection; and
 - (c) The skills training investment credit payment shall not exceed the amount of the final approval awarded by the Bluegrass State Skills Corporation under KRS 154.122088(6).
- (4)
 - (a) ***In the case of an approved company which is an S-corporation or partnership the amount of the tax credit awarded by the Bluegrass State Skills Corporation in subsection (6) of Section 8 of this Act shall be apportioned among the shareholders or partners thereof at the same ratio as the shareholders' or partners' distributive shares of income are determined for the tax year during which the final authorization resolution is adopted by***

the Bluegrass State Skills Corporation in subsection (6) of Section 8 of this Act~~[Notwithstanding any other provisions of this chapter, an approved company which is an S-corporation, partnership, limited liability partnership, or trust shall be subject to income tax on the net income attributable to the approved company's operations at the rates provided in KRS 141.020(2)];~~

- (b) The amount of the *tax credit apportioned to each shareholder or partner that may be claimed in any tax year of the shareholder or partner shall be determined in accordance with the provisions of Section 7 of this Act*~~[skills training investment credit shall be the same as the amount of the tax computed in this section or, upon the annual election of the approved company, in lieu of the skills training investment credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this subsection shall be in satisfaction of the tax liability of the shareholders, partners, or beneficiaries of the S-corporation, partnership, limited liability partnership, or trust, and shall be paid on behalf of the shareholders, partners, or beneficiaries;~~
 - (c) ~~The skills training investment credit or estimated payment shall not exceed the amount of the final approval awarded by the Bluegrass State Skills Corporation under KRS 154.12-2088(6);~~
 - (d) ~~If the tax computed in this section exceeds the credit, the excess shall be paid by the S-corporation, partnership, limited liability partnership, or trust at the times provided by KRS 141.160 for filing the returns; and~~
 - (e) ~~Any estimated tax payment made by the S-corporation, partnership, limited liability partnership, or trust in satisfaction of the tax liability of shareholders, partners, or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the shareholder, partner, or beneficiary].~~
- (5) (a) *In the case of an approved company that is a trust, the amount of the tax credit awarded by the Bluegrass State Skills Corporation in subsection (6) of Section 8 of this Act shall be apportioned to the trust and the beneficiaries on the basis of the income of the trust allocable to each for the tax year during which the final authorizing resolution is adopted by the Bluegrass State Skills Corporation in subsection (6) of Section 8 of this Act.*
- (b) *The amount of tax credit apportioned to each trust or beneficiary that may be claimed in any tax year of the trust or beneficiary shall be determined in accordance with the provisions of Section 7 of this Act.*~~[Notwithstanding any other provisions of this chapter, the net income subject to tax, the skills training investment credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each shareholder's, partner's, or beneficiary's distributive share of net income or credit of an S-corporation, partnership, limited liability partnership, or trust.~~
- (6) ~~Any limited liability company that is treated as a corporation for federal tax purposes shall determine the skills training investment credit as provided in subsection (3) of this section.~~
- (7) ~~Any limited liability company which is treated as a partnership for federal tax purposes shall determine the skills training investment credit as provided in subsection (4) of this section.~~

- (8) ~~¶The Revenue Cabinet may promulgate administrative regulations in accordance with KRS Chapter 13A ***adopting forms and procedures for the reporting of the credit allowed in*** and require the filing of forms designed by the Revenue Cabinet to reflect the intent of KRS 154.12-2084 to 154.12-2089 and the allowable skills training investment credits that an approved company may retain under~~ KRS 154.12-2084 to 154.12-2089.

Section 5. KRS 154.12-204 is amended to read as follows:

As used in KRS 154.12-205 to 154.12-208, unless the context requires otherwise:

- (1) "Applicant" means an educational institution,~~and~~ business, or industry that has made~~joint~~ application for a grant-in-aid as authorized by KRS 154.12-205 to 154.12-208;
- (2) "Board" means the board of directors of the Bluegrass State Skills Corporation;
- (3) "Business and industry" means a private corporation, limited liability company, registered limited liability partnership, institution, firm, person, group, or other entity or association of the same, concerned with commerce, trade, manufacturing, or the provision of services within the Commonwealth, or a public or nonprofit hospital licensed by the Commonwealth;
- (4) "Corporation" means the Bluegrass State Skills Corporation, or BSSC;
- (5) "Educational institution" means a public or nonpublic secondary or post-secondary institution or an independent institution within the Commonwealth authorized by law to provide a program of skills training or education beyond the secondary school level;
- (6) "Grant-in-aid" means funding that is provided to an educational institution and business and industry by the BSSC for the development or expansion of a program as provided in this chapter;
- (7) "Program" or "program of skills training or education consistent with employment needs" means a coordinated course of instruction which is designed to prepare individuals for employment in a specific trade, occupation, or profession. Such instruction may include:
 - (a) Classroom instruction;
 - (b) Classroom-related field, shop, factory, office, or laboratory work; and
 - (c) Entry level training, job upgrading, retraining, and advance training.
- (8) "Technical assistance" means professional and any other assistance provided by business and industry to an educational institution, which is reasonably calculated to support directly the development and expansion of a particular program as defined herein.

Section 6. KRS 154.12-207 is amended to read as follows:

- (1) The corporation may, subject to appropriation from the General Assembly or from funds made available to the corporation from any other public or private source, provide grants-in-aid to educational institutions, and business and industry, not in excess of two hundred thousand dollars (\$200,000) per grant-in-aid. Such grants-in-aid shall be used exclusively for programs which are consistent with the provisions of this chapter.
- (2) To qualify for a grant-in-aid ***in which an educational institution will provide training***, an educational institution and a business or industry shall submit a joint application to the corporation that contains a proposal for a program of skills training and education; a description of the program; the type of skills training or education to be provided; a statement of the total cost of the program and breakdown of the costs associated with equipment,

personnel, facilities, and materials; and with respect to educational institutions only, a statement of the technical assistance and financial support for the program received or pledged from business and industry. *To qualify for a grant-in-aid in which a provider*

other than an educational institution will provide training, the business or industry may independently submit a proposal to the corporation containing the same information as set forth in this subsection.

- (3) Approval of the grant-in-aid application by the board, shall be based upon the following criteria:
 - (a) The program must be within the scope of KRS 154.12-204 to 154.12-208;
 - (b) Participants in the program must be limited to citizens of the Commonwealth;
 - (c) The program must involve an area of skills training and education which is needed by business and industry and for which a shortage of qualified individuals exists within the Commonwealth;
 - (d) The grant-in-aid must be essential to the success of the program as the resources of the educational institution are inadequate to attract the technical assistance and financial support necessary from business and industry;
 - (e) The educational institution must have obtained a firm commitment from business and industry for the information, technical assistance and financial support which, together, with the grant-in-aid, the resources of the applicant, and support from any other source, is sufficient to ensure the success of the program. In addition, the commitment of financial support from business and industry shall be equal to or greater than the amount of the requested grant-in-aid; and
 - (f) The educational institution must have established adequate auditing procedures and reporting methods for the submission of information and data as required by the corporation.

Section 7. KRS 154.12-2086 is amended to read as follows:

- (1) The Bluegrass State Skills Corporation may, in accordance with KRS 154.12-2084 to 154.12-2089, award a credit against the Kentucky income tax imposed by KRS 141.020 or 141.040 to an approved company. The amount of the skills training investment credit awarded by the Bluegrass State Skills Corporation shall be an amount equal to fifty percent (50%) of the amount of approved costs incurred by the approved company in connection with its program of occupational upgrade training or skills upgrade training, the credit amount not to exceed five hundred dollars (\$500) per employee and, in the aggregate, not to exceed one hundred thousand dollars (\$100,000) for each approved company per biennium. The Bluegrass State Skills Corporation shall only approve one (1) application per biennium for each qualified company.
- (2) The skills training investment credit shall be credited *on the income tax return of the approved company filed* for the fiscal year *during*~~for~~ which the *final authorizing resolution is adopted by the Bluegrass State Skills Corporation in accordance with subsection (6) of Section 8 of this Act*~~tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042].~~ The skill training investment credits allowed under KRS 154.12-2084 to 154.12-2089 shall only be used by the approved company that has been awarded the credits in accordance with

KRS 154.12-2084 to 154.12-2089. The skills training investment credits provided for in this section shall be in addition to all other tax credits granted under the laws of the Commonwealth.

- (3) The skills training investment credits may be carried forward for three (3) successive fiscal years of the approved company if the amount allowable as credits exceeds the income tax liability of the approved company in ~~the~~^{that} tax year **during which the final authorizing resolution is adopted by the Bluegrass State Skills Corporation**; however, thereafter, if the amount allowable as credits exceeds the income tax liability of the approved company, the excess credits shall not be refundable or carried forward to any other fiscal year of the approved company for which a tax return of the approved company is to be filed.
- (4) A qualified company shall not be entitled to receive the skills training investment credits if the qualified company requires that the employee reimburse the employer or otherwise pay for any costs or expenses incurred in connection with the occupational upgrade training or skills upgrade training.
- (5) To the extent that any expenditures of a qualified company constitute approved costs and are the basis for the skills training investment credits under KRS 154.12-2084 to 154.12-2089, these expenditures shall not be eligible as the basis for grants-in-aid under Bluegrass State Skills Corporation provisions in KRS 154.12-204 to 154.12-208 or the Local Government Economic Development Program under the provisions of KRS 42.4588 to 42.4595.
- (6) Priority consideration for preliminary approval under KRS 154.12-2088 shall be given to qualified companies that the Bluegrass State Skills Corporation determines to be high performance companies. A minimum of thirty percent (30%) of the total skills training investment credits authorized by the Bluegrass State Skills Corporation during any fiscal year shall be awarded to qualified companies that have been designated as high performance companies by the Bluegrass State Skills Corporation. The Bluegrass State Skills Corporation shall establish guidelines and standards for the designation of high performance companies.
- (7) **By October 1 of each year**~~[Ninety (90) days after the filing of the tax return of the approved company]~~, the Revenue Cabinet shall certify to the Bluegrass State Skills Corporation the ~~the Kentucky income tax liability for the preceding fiscal year of the approved company for which the return was filed, and the~~ amount of any skills training investment credits taken pursuant to KRS 154.12-2084 to 154.12-2089 **on tax returns filed during the fiscal year ending June 30 of that year.**

Section 8. KRS 154.12-2088 is amended to read as follows:

- (1) The Bluegrass State Skills Corporation shall establish guidelines and standards for approving skills training investment credits for occupational upgrade training and skills upgrade training. The guidelines and standards may include, but are not limited to: required hours of classroom instruction; required courses; certification of teachers or instructors, whether independent contractors or employees of a qualified company; certification of providers; progressive levels of instruction; and standardized measures of employee evaluation to determine successful completion of a course of study.
- (2) To apply for skills training investment credits under KRS 154.12-2084 to 154.12-2089, a qualified company shall submit an application to the Bluegrass State Skills Corporation before commencing its program of occupational upgrade training or skills upgrade training. The

application submitted by the qualified company shall contain information the Bluegrass State Skills Corporation requires including, but not limited to:

- (a) A proposal for a program of occupational upgrade training or skills upgrade training;
 - (b) A description of each component of the proposed training program and the number of employee training hours requested;
 - (c) A ~~An itemized~~ statement of all anticipated costs and expenses of the training program, including ~~a breakdown of~~ the costs and expenses associated with employee wages, equipment, personnel, facilities, and materials; and
 - (d) Auditing procedures and reporting methods for the submission of information and data to the Bluegrass State Skills Corporation.
- (3) After a review of applications for skills training investment credits, the Bluegrass State Skills Corporation may designate the qualified company as a preliminarily approved company and preliminarily approve the amount of skills training investment credits that the qualified company shall be eligible to receive. The maximum amount of skills training investment credits preliminarily approved for all qualified companies by the Bluegrass State Skills Corporation for fiscal year 1998-1999 and fiscal year 1999-2000 shall not exceed one million dollars (\$1,000,000) and shall not exceed two million five hundred thousand dollars (\$2,500,000) for each fiscal year thereafter. Skills training investment credits shall be allocated to qualified companies in the same order preliminary approval is granted by the Bluegrass State Skills Corporation. Skills training investment credits that remain unallocated by the Bluegrass State Skills Corporation at the end of its fiscal year shall lapse and shall not be carried forward to a new fiscal year.
- (4) The preliminarily approved company shall complete all programs of occupational upgrade training or skills upgrade training within one (1) year from the date of the preliminary approval of the skills training investment credits by the Bluegrass State Skills Corporation and shall certify the completion of these programs to the Bluegrass State Skills Corporation.
- (5) The preliminarily approved company shall maintain in its employment the employees receiving occupational upgrade or skills upgrade training for a minimum of ninety (90) days following the completion of the program of occupational upgrade training or skills upgrade training and shall certify to the Bluegrass State Skills Corporation the number of employees who remained in the employment of the preliminarily approved company for the full ninety (90) day period.
- (6) If a qualified company concludes its training program within the prescribed one (1) year and receives the required certifications described in subsections (4) and (5) of this section, then the Bluegrass State Skills Corporation shall adopt a final authorizing resolution approving the amount of skills training investment credits awarded to the preliminarily approved company in accordance with KRS 154.12-2084 to 154.12-2089. The adoption of a final authorizing resolution shall be contingent upon the Bluegrass State Skills Corporation's approval of documentation submitted by the preliminarily approved company supporting all incurred approved costs. If one (1) or more of the employees of the preliminarily approved company failed to continue in the employment of the company for ninety (90) days following the completion of the prescribed one (1) year, then the amount of the skills training investment credits preliminarily approved for a qualified company shall be reduced on a pro rata basis for each employee who failed to continue employment with the preliminarily approved

company through the ninety (90) day period. The final amount of the skills training investment credits awarded to the approved company shall not exceed the amount of skills training investment credits that the approved company was preliminarily approved for by the Bluegrass State Skills Corporation prior to commencement of the training program.

Section 9. KRS 154.20-253 is amended to read as follows:

As used in KRS 154.20-250 to 154.20-284, unless the context clearly requires otherwise:

- (1) "Administrative expenses and fees" means expenses and fees incurred by the investment fund in connection with the management and administration of qualified investments;
- (2) "Agreement" means an investment fund agreement entered into pursuant to KRS 154.20257(2) by the authority and an investment fund manager on behalf of the investment fund, the investment fund manager, and any investor in the investment fund;
- (3) "Applicant" means any person or entity who has not received **approval**~~[certification]~~ from the authority as an investment fund manager, but who has or will submit an application to the authority for **approval**~~[certification]~~ as an investment fund manager;
- (4) "Authority" means the Kentucky Economic Development Finance Authority;
- (5) "Cash contribution" means an investment of money by an investor in an investment fund under the terms of KRS 154.20-250 to 154.20-284;
- (6) "Commonwealth" means the Commonwealth of Kentucky;
- (7) "Credit" means a credit against state income or license tax liability awarded by the authority pursuant to KRS 154.20-263 for cash contributions to investment funds;
- (8) "Entity" means any corporation, limited liability company, business development corporation, partnership, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;
- (9) "Financial institution" means any banking corporation or association, trust company, savings and loan association, savings bank, credit union, or other entity principally engaged in the business of lending money or receiving or soliciting money on deposit;
- (10) "Investment fund" means any entity that is organized by an investment fund manager in compliance with applicable state and federal securities laws and regulations, and is **approved**~~[certified]~~ by the authority to be capitalized with cash contributions pursuant to KRS 154.20-250 to 154.20-284;
- (11) "Investment fund manager" means any person or entity that is authorized to act in such capacity by any applicable securities regulator and that has been **approved**~~[certified]~~ by the authority to manage one (1) or more investment funds authorized under the provisions of KRS 154.20-250 to 154.20-284;
- (12) "Investor" means any person or entity, other than a financial institution or an insurance company that is subject to state tax liability and that makes a cash contribution to an investment fund in accordance with the provisions of KRS 154.20-250 to 154.20-284;
- (13) "Qualified activity" means any industrial, manufacturing, mining, mining reclamation for economic development, commercial, health care, agricultural enterprise, or agribusiness activity. A "qualified activity" does not include any activity principally engaged in by

financial institutions, commercial development companies, credit companies, financial or investment advisors, brokerage or financial firms, other investment funds or investment fund managers, charitable and religious institutions, oil and gas exploration companies, insurance companies, residential housing developers, retail establishments, or any other activity that the authority determines in its discretion to be against the public interest, against the purposes of KRS 154.20-250 to 154.20-284, or in violation of any law;

- (14) "Qualified investment" means a contribution of money to a small business by an investment fund, in compliance with applicable state and federal securities laws and regulations, seeking a financial return based upon that contribution and in consideration for which the investment fund acquires or receives any of the following:
- (a) 1. An equity interest in the small business, such as a general or limited partnership interest, common or preferred stock with or without voting rights and without regard to seniority position, forms of subordinate or convertible unsecured debt, or both, with warrants, rights, or other means of equity conversion attached; or
 - 2. An unsecured debt instrument the maturity date of which is longer than one (1) year and which is made or issued by the small business; or
 - (b) Any other debt instrument issued or made by the small business.

Excluding any investment of money that has not been **approved**~~certified~~ by the authority as a cash contribution under KRS 154.20-250 to 154.20-284, fifty percent (50%) or more of any investment fund shall be held in interests or debt instruments as specified in paragraph (a) of this subsection;

- (15) "Small business" means any entity which at the time a qualified investment is made by an investment fund:
- (a) Has net worth of three million dollars (\$3,000,000) or less and net income after federal income taxes for each of the two (2) preceding fiscal years of two million dollars (\$2,000,000) or less;
 - (b) Is actively and principally engaged in a qualified activity within the Commonwealth, or will be actively and principally engaged in a qualified activity within the Commonwealth after the making of a qualified investment by an investment fund;
 - (c) Has no more than one hundred (100) employees; and
 - (d) Has more than fifty percent (50%) of its assets, operations, and employees located in Kentucky.

The criteria set forth in paragraphs (a) and (c) of this subsection do not apply to any second or subsequent qualified investments.

Section 10. KRS 154.20-257 is amended to read as follows:

- (1) The authority may commence **approval**~~certification~~ of investment funds, cash contributions, and investment fund managers on or after July 1, 1999. No tax credit authorized by KRS 154.20-263 shall become effective until the investment fund to which the cash contribution is made and from which the credit accrues, has been implemented in compliance with applicable state and federal securities laws and regulations. Any investor whose cash contribution to an investment fund has been **approved**~~certified~~ by the authority shall be entitled to a credit equal to forty percent (40%) of that cash contribution as provided in KRS 154.20-263. Except

as otherwise provided in KRS 154.20-261(6), any investment of money made to an investment fund shall not be considered a part of the investment fund for purposes of KRS 154.20-250 to 154.20-284 and accordingly shall not be subject to the requirements of KRS 154.20-250 to 154.20-284 unless the investment of money has been **approved**~~[certified]~~ by the authority as a cash contribution under KRS 154.20-250 to 154.20-284. A person or entity seeking to be **approved**~~[certified]~~ as an investment fund manager for the operation of one (1) or more investment funds shall make written application to the authority pursuant to KRS 154.20-259, in addition to complying with applicable state and federal securities laws and regulations.

- (2) (a) **Subsequent to approval**~~[Concurrent with certification]~~ of the investment fund and the investment fund manager, the authority and the investment fund manager, on behalf of itself and any investors in the investment fund, shall enter into an agreement with respect to the investment fund. The terms and provisions of each agreement shall be determined by negotiations between the authority and the investment fund manager. If an investment fund manager or any investor in an investment fund fails to comply with their respective obligations under the agreement, the authority may, at its option do any one (1) or more of the following:
 1. Suspend the availability of the credits;
 2. Pursue any remedy provided under the agreement, including termination of the agreement; or
 3. Pursue any other remedy at law to which it may be entitled.
- (b) All remedies provided in this subsection are cumulative.
- (3) At least one million dollars (\$1,000,000) in cash contributions approved for tax credits shall be transferred into the investment fund within ninety (90) days from the effective date of the agreement between the authority and the investment fund manager. The effective date of the agreement shall be the date of **approval**~~[certification]~~ of the investment fund and the investment fund manager by the authority. All cash contributions in excess of one million dollars (\$1,000,000) that have been approved for tax credits as provided in KRS 154.20-250 to 154.20-284 in connection with the initial **approval**~~[certification]~~ of the investment fund shall be transferred into the investment fund within one (1) year of the effective date of the agreement.
- (4) An investment fund shall invest cash contributions in qualified investments according to the following schedule:
 - (a) On average during the second year after the effective date of the agreement, at least twenty-five percent (25%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall be invested in small businesses;
 - (b) On average during the third year after the effective date of the agreement, at least fifty percent (50%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall be invested in small businesses;
 - (c) On average during the fourth year after the effective date of the agreement, at least seventy-five percent (75%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall be invested in small businesses;

- (d) On average during the fifth year after the effective date of the agreement, at least ninety percent (90%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall be invested in small businesses;
- (e) On average during the sixth year after the effective date of the agreement, at least seventy-five percent (75%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall remain invested in small businesses;
- (f) On average during the seventh year after the effective date of the agreement, at least fifty percent (50%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall remain invested in small businesses; and
- (g) On average during the eighth year after the effective date of the agreement, at least twenty-five percent (25%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall remain invested in small businesses.

For purposes of determining the percentage invested in small businesses on average during any particular year pursuant to this section, the amount invested in small businesses shall be the average amount so invested at the end of each calendar month during the year, and the amount of the investment fund required to be invested shall be the aggregate amount of cash contributions ~~approved~~~~certified~~ by the authority.

- (5) No tax credits shall be awarded by the authority for cash contributions to investment funds after December 31, 2004. No investment funds or investment fund managers shall be ~~approved~~~~certified~~ by the authority after December 31, 2003.

Section 11. KRS 154.20-259 is amended to read as follows:

- (1) The ~~approval~~~~certification~~ of investment funds and investment fund managers shall be made pursuant to an application to the authority, upon compliance with any applicable state and federal securities laws and regulations or a statement by the investment fund and the investment fund manager that such compliance will be obtained either simultaneously with or prior to submission of such application to the authority. In the application, the applicant shall disclose to the authority the following information, all of which shall be considered by the authority in ~~approving~~~~certifying~~ investment funds and investment fund managers:
 - (a) The applicant's business plan, including the maximum amount of cash contributions to be solicited for the investment fund, and strategy for operation of the proposed investment fund;
 - (b) The total amount of commitments for cash contributions the applicant has received from potential investors, including receipt of not less than one million dollars (\$1,000,000) in cash contributions deposited in an escrow account established in accordance with KRS 154.20-261(6);
 - (c) The name, address, and tax identification or Social Security number of each potential investor and the amount of cash contributions each potential investor has committed to the proposed investment fund;
 - (d) The relevant experience of the applicant or the applicant's management, and their demonstrated ability to manage the proposed investment fund;

- (e) A process for disclosing to investors the tax credits available to investors pursuant to KRS 154.20-250 to 154.20-284, which shall include, but not be limited to, the disclosures described in KRS 154.20-261(7);
 - (f) The location and account number of an escrow account that has been established for investors for the period of time between receipt of cash contributions by the applicant and the **approval**~~certification~~ of the investment fund and the investment fund manager by the authority;
 - (g) The disclosure documents to be used in connection with the offering and investment in the investment fund;
 - (h) The exemption or registration provision that is being relied upon or intended to be relied upon by both the investment fund and the investment fund manager to permit this offering of securities and the activity of the investment fund manager in relation to such offering, in compliance with applicable state and federal securities laws and regulations; and
 - (i) Any additional information the authority deems necessary or appropriate. An investment fund manager seeking to have **approved**~~certified~~ additional cash contributions to **an approved**~~a certified~~ investment fund shall submit to the authority a written amendment to the application in a form acceptable to the authority.
- (2) The contents of applications submitted to the authority by applicants shall be treated as confidential by the Commonwealth and shall not be considered a public record under the Kentucky Open Records Act, KRS 61.870 to 61.884.
- (3) The authority shall have, in addition to its other powers provided in this chapter and as otherwise provided by law, all powers and authority, not explicitly prohibited by statute, that are necessary or convenient to carry out and effectuate the purposes, objectives, and provisions of KRS 154.20-250 to 154.20-284, including, but not limited to, power to:
- (a) Require consultation, advisory, and legal fees and other expenses the authority deems necessary or incident to the preparation, adoption, implementation, modification, or enforcement of the terms of any agreement or other document, or otherwise necessary or incident to any transaction;
 - (b) Require the investment fund manager to pay these fees and expenses directly to the person providing such consultation, advisory, legal, or other services on behalf of the authority; and
 - (c) Impose and collect fees and charges in connection with any transaction and provide for reasonable penalties for delinquent payment of fees or charges.

Any payments made by an investment fund manager pursuant to this subsection may be passed on to such investment fund manager's investment fund.

- (4) An investment fund's stated purpose shall be to encourage and assist in the creation, development, or expansion of small businesses located in Kentucky.
- (5) The criteria considered by the authority for the **approval**~~certification~~ of investment fund managers shall include, but not be limited to, compliance by those persons with applicable state and federal securities laws and regulations, a review of the applicant and its business plan, the investment strategy for the investment fund, the relevant experience of the applicant

or the applicant's management, and the applicant's demonstrated ability to manage the investment fund, and the receipt by the applicant of aggregate cash contributions from investors to the investment fund of not less than one million dollars (\$1,000,000).

- (6) Following ~~*approval*~~~~[certification]~~ of an investment fund and an investment fund manager and execution of the agreement by the authority and the investment fund manager, the authority shall provide each investor whose cash contribution has been ~~*approved*~~~~[certified]~~ by the authority with a certificate setting forth the amount of the tax credits the investor shall be entitled to receive under KRS 154.20-263. Following ~~*approval*~~~~[certification]~~ of any additional cash contributions to an investment fund after the initial ~~*approval*~~~~[certification]~~ of the investment fund, the authority shall provide each investor making an additional cash contribution with a certificate setting forth the amount of additional credits the investor shall be entitled to receive under KRS 154.20-263. Each investor shall file a copy of the certificate with the investor's state tax return~~[in accordance with KRS 154.20-269]~~.
- (7) The authority may establish additional procedures and standards as it deems necessary for the ~~*approval*~~~~[certification]~~ of investment funds and investment fund managers by the promulgation of administrative regulations in accordance with KRS Chapter 13A.

Section 12. KRS 154.20-261 is amended to read as follows:

- (1) An investment fund manager shall have a business office located within the Commonwealth. That office shall have a listed telephone number and shall be open to the public during normal business hours.
- (2) The initial capitalization of an investment fund with cash contributions from investors shall not be less than one million dollars (\$1,000,000). Any investment of moneys received by the investment fund in excess of the maximum amount of cash contributions proposed to be solicited in the application shall not be eligible for tax credits. In no event shall any investment of money received by the investment fund in excess of ten million dollars (\$10,000,000) be eligible for credits. Cash contributions for all investment funds shall be raised after July 15, 1998.
- (3) Total qualified investments made by an investment fund, including initial and subsequent investments made by an investment fund, in any single small business using ~~*approved*~~~~[certified]~~ cash contributions shall not exceed twenty-five percent (25%) of the cash contributions in the investment fund; provided that this restriction shall not apply to investments of money that have not been ~~*approved*~~~~[certified]~~ as cash contributions under KRS 154.20-250 to 154.20-284.
- (4) An investment fund manager may operate separate investment funds pursuant to separate applications submitted to and approved by the authority, and assuming this activity is in compliance with any applicable state and federal securities laws and regulations as evidenced by a written statement to the authority by an investment fund manager to that effect.
- (5) Following the initial ~~*approval*~~~~[certification]~~ of an investment fund, any additional cash contributions to that investment fund shall be ~~*approved*~~~~[certified]~~ by the authority.
- (6) An investment fund manager seeking to establish an investment fund, or to increase the amount of cash contributions to an existing investment fund, shall establish an escrow account with a financial institution located within the Commonwealth into which cash contributions shall be deposited and held for the period of time between their receipt by the investment fund

manager and either **approval**~~[certification]~~ by the authority of the investment fund, or the **approval**~~[certification]~~ by the authority of the increased cash contributions, whichever is later. No qualified investments shall be made using cash contributions until the new or expanded investment fund is **approved**~~[certified]~~ by the authority. If the authority denies **approval**~~[certification]~~ of the new or expanded investment fund, all cash contributions received by the applicant relating to the new or expanded investment fund shall be returned to investors within ten (10) calendar days.

- (7) An applicant soliciting cash contributions for the initial capitalization of an investment fund, or an investment fund manager soliciting additional cash contributions for an expanded investment fund, shall disclose in advance in writing to each investor, in addition to any other items required by law, that:
- (a) No tax credit will be available under the provisions of KRS 154.20-250 to 154.20-284 until the investment fund and the investment fund manager have complied with applicable state and federal securities laws and regulations, have been **approved**~~[certified]~~ by the authority, and an agreement between the authority and the investment fund manager on its behalf and on behalf of the investors has been executed, and the terms of that agreement have been disclosed in writing to each investor;
 - (b) No tax credit will be available under the provisions of KRS 154.20-250 to 154.20-284 until the investor's cash contribution to the investment fund has been **approved**~~[certified]~~ by the authority; and
 - (c) The Commonwealth shall be immune from liability for any losses or damages investors may incur in connection with any cash contributions made to an investment fund or any qualified investments made by an investment fund in small businesses.

Section 13. KRS 154.20-263 is amended to read as follows:

- (1) An investor shall be entitled to a nonrefundable credit against the income tax imposed by KRS 141.020 or 141.040, or the corporation license tax imposed by 136.070 in any tax year after December 31, 1998, during which a cash contribution to **an approved**~~[a certified]~~ investment fund is made. The aggregate tax credit amount available to any investor shall not exceed forty percent (40%) of the cash contribution made by the investor to an investment fund. The aggregate tax credit amount available to each investor shall be **approved**~~[certified]~~ by the authority as provided in KRS 154.20-259(6).
- (2) The tax credit amount that may be claimed by an investor in any tax year shall not exceed twenty-five percent (25%) of the initial aggregate credit amount **approved**~~[certified]~~ by the authority as available to the investor.
- (3) If the credit amount that may be claimed in any tax year, as determined under subsections (1) and (2) of this section exceeds the investor's combined income tax and corporate license tax liabilities for that year, the investor may carry the excess tax credit forward until the tax credit is used, provided that the carry forward of any excess tax credit shall not increase the twenty-five percent (25%) limitation established by subsection (2) of this section, and provided further that any tax credits not used within fifteen (15) years of the initial **approval**~~[certification]~~ by the authority of the aggregate tax credit amount available to the investor shall be lost.

- (4) The tax credits allowed by this section shall not apply to any liability an investor may have for interest, penalties, or any other additions to the investor's tax liability.
- (5) ***Except as set forth in this subsection, the tax credits allowed by this section are not transferable. If an individual investor dies, the estate or beneficiaries may withdraw the initial investment from the investment fund with no penalty from the investment fund and no requirement to repay the Revenue Cabinet any credits which the investor may have taken, provided the investor has complied with the provisions of KRS 154.20-250 to 154.20-284. If the investor is other than an individual and is a party to a merger, acquisition, consolidation, dissolution, liquidation, or similar corporate reorganization, the tax credits shall pass through to the investor's successor.***

Section 14. KRS 154.20-267 is amended to read as follows:

- (1) The total amount of credits ***approved***~~certified~~ by the authority for any single investment fund shall not exceed, in the aggregate, four million dollars (\$4,000,000) for all investors and all taxable years. If aggregate cash contributions to a single investment fund exceed ten million dollars (\$10,000,000) for all investors for all taxable years, the authority shall allocate credits to investors in the order that cash contributions are made by investors to the investment fund.
- (2) The total credits ***approved***~~certified~~ by the authority for all investors in all investment funds shall not exceed:
- (a) Five million dollars (\$5,000,000), in the aggregate, during the period from July 1, 1999, through June 30, 2000;
 - (b) Ten million dollars (\$10,000,000), in the aggregate, during the period from July 1, 2000, through June 30, 2001, including credits authorized by the authority in the prior year;
 - (c) Fifteen million dollars (\$15,000,000), in the aggregate, during the period from July 1, 2001, through June 30, 2002, including credits authorized by the authority in prior years; and
 - (d) Twenty million dollars (\$20,000,000), in the aggregate, from July 1, 2002, and thereafter, including credits authorized by the authority in prior years.

The authority shall approve the credits to investors in the order that investment funds and investment fund managers are ***approved***~~certified~~ by the authority.

Section 15. KRS 154.20-269 is amended to read as follows:

- (1) To receive the credit provided by KRS 154.20-263, an investor ***shall*** ~~must:~~
- ~~(a) —~~ claim the credit on the investor's annual state tax returns in the manner prescribed by the Revenue Cabinet;
 - ~~(b) —~~ file with the Revenue Cabinet and with the investor's annual state tax returns a copy of the disclosure form submitted by the investment fund manager under subsection (2) of this section; and
 - ~~(c) —~~ file with the Revenue Cabinet and with the investor's annual state tax returns a copy of the certification of the investor's credit, issued by the authority under KRS 154.20-259(6) at the time of certification of the investment fund and of the investment fund manager and at the time of certification of additional cash contributions, as applicable.

- (2) ~~Each investment fund manager shall complete disclosure forms promulgated by the Revenue Cabinet as administrative regulations under KRS Chapter 13A, detailing the following information with respect to each cash contribution:~~
- (a) ~~The name, address, and Social Security number or employer identification number, as applicable, of the investment fund manager and the investment fund;~~
 - (b) ~~The name, address, and Social Security number or employer identification number, as applicable, of each investor; and~~
 - (c) ~~The total amount of all cash contributions made by each investor.~~
- (3) ~~The disclosure forms required under subsection (2) of this section shall be filed by the investment fund manager with the Revenue Cabinet and the authority within thirty (30) days after receipt of certification from the authority. Copies of these forms shall be mailed to each investor by the investment fund manager on or before that same date.~~
- (4) ~~The contents of an investor's filings under subsection (1) of this section [and the disclosure form required under subsection (2) of this section] shall be treated by the authority and by the Revenue Cabinet as confidential and shall not be considered public records under the Kentucky Open Records Act, KRS 61.870 to 61.884.~~

Section 16. KRS 154.20-271 is amended to read as follows:

- (1) Subject to KRS 154.20-257(4), if a cash contribution which is the basis for a credit under the provisions of KRS 154.20-250 to 154.20-284 is redeemed by the investment fund, or if the investment fund allows the cash contribution to be withdrawn by the investor within five (5) years after the date of **approval**~~[certification]~~ of the cash contributions by the authority, the credit provided by KRS 154.20-263 for that cash contribution shall be disallowed, and the investor shall pay to the State Treasurer an amount equal to the amount of credits previously claimed with respect to those cash contributions, plus interest at the rate of two percent (2%) per month, compounded monthly from the date credits were taken by the investor. This payment shall be included with the investor's state tax return or returns for the period in which the redemption or withdrawal occurred. When payments are made to the State Treasurer under this section, the amount remitted shall be handled in the same manner as if no credit had been allowed.
- (2) An investment fund that fails to make or maintain investments in small businesses pursuant to KRS 154.20-250 to 154.20-284, or that otherwise violates the provisions of KRS 154.20-250 to 154.20-284, shall pay to the State Treasurer a penalty in an amount equal to the amount of all credits claimed by the investors making cash contributions to the investment fund, plus interest at the rate of two percent (2%) per month, compounded monthly, from the date the cash contributions were **approved**~~[certified]~~ by the authority. If the investment fund fails to pay the penalty and interest in full as required by the Revenue Cabinet, each investor shall be personally liable to the Revenue Cabinet for that investor's pro rata share of the unpaid penalty and the investment fund manager shall be liable to the Revenue Cabinet for all such interest. Any payment of unpaid penalty by an investor shall be included with the investor's state tax return for the period in which the failure or violation occurred. An investor's pro rata share shall be determined by dividing the total amount of cash contributions made by the investor in the investment fund, by the total amount of cash contributions made by all investors in the investment fund. The secretary of the Revenue Cabinet shall give notice in writing to the authority, the investment fund manager, and the investors of any penalties

imposed. The secretary of the Revenue Cabinet may abate any imposed penalty upon written request, if the investment fund manager establishes reasonable cause for the failure to make qualified investments in small businesses under the provisions of KRS 154.20-250 to 154.20-284, or to otherwise comply with the provisions of

KRS 154.20-250 to 154.20-284. The State Treasurer shall deposit any amounts received pursuant to this section in the Commonwealth's general fund.

- (3) The administration of this section shall be the responsibility of the Revenue Cabinet.

Section 17. KRS 154.20-273 is amended to read as follows:

- (1) Each investment fund manager shall file semiannual reports with the secretary of the Revenue Cabinet and with the authority, on or before the sixtieth day, and the two-hundredfortieth day, of each fiscal year of the investment fund. These reports shall include information that the authority prescribes from time to time, including, but not limited to, the following:
- (a) For each small business in which qualified investments are made by the investment fund during the reporting period, the name and address of the small business, the amount of qualified investments made by the investment fund in the small business during the reporting period, and the job creation anticipated and achieved by the small business during the reporting period;
 - (b) An affidavit from each small business in which a qualified investment was made during the reporting period, prepared by any authorized officer, partner, trustee, member, or manager of the small business, which sets forth:
 1. That the small business qualifies as a small business under KRS 154.20-250 to 154.20-284; and
 2. A brief description of the activities of the small business;
 - (c) An affidavit prepared by the investment fund manager or, if the investment fund is an entity, by an authorized officer, partner, trustee, member, or manager of the investment fund manager pertaining to:
 1. Each small business in which a qualified investment has been made, including, without limitation, qualified investments made prior to the reporting period, that sets forth:
 - a. That each small business is or continues to be, as applicable, actively and principally engaged in a qualified activity; and
 - b. That each small business qualifies as a small business under the provisions of KRS 154.20-250 to 154.20-284;
 2. The amount of each distribution to an investor and redemption of cash contributions made by the investment fund during the reporting period and in the aggregate since the date of ~~approval~~~~certification~~ of the investment fund;
 3. The name and address of each investor, and the amount and date of the cash contribution to the investment fund of each investor who is entitled to the credit; and
 4. The continued compliance by the investment fund and the investment fund manager with all applicable state and federal securities laws and regulations; and

- (d) A statement from the investment fund manager as to the securities exemption or registration provision relied upon by the small business with respect to the qualified investment by the investment fund in the small business.
- (2) The authority shall provide quarterly written status reports to the standing Appropriations and Revenue Committee of each house or to the Interim Joint Committee on Appropriations and Revenue, as appropriate, concerning the activities of the Kentucky Investment Fund for each three (3) month period beginning July 1, 1999. On or before November 1 of each year, the authority shall make an annual report for the fiscal year ending the preceding June 30 to the Governor and the Legislative Research Commission. The quarterly status report and the annual report shall include, but not be limited to, the following information:
 - (a) The total number of investors and the aggregate amount of cash contributions to all investment funds, categorized by the types of entities through which investors conduct business, amounts of cash contributions, and geographical distribution of investors, including area development districts; and
 - (b) The total number and amounts of qualified investments made by each investment fund, categorized by type of businesses, amount of investment, job creation anticipated and achieved, geographical distribution, including area development districts, and new products and technologies developed.
- (3) The contents of the semiannual reports from investment fund managers to the authority described in subsection (1) of this section shall be treated by the authority as confidential, and shall not be considered a public record under the Kentucky Open Records Act, KRS 61.870 to 61.884.
- (4) The authority may charge a fee in connection with the administration and processing of semiannual reports made by investment fund managers. Section 18. KRS 154.22-050 is amended to read as follows:

The authority may enter into, with any approved company, a financing agreement with respect to its economic development project, ***upon adoption of a resolution authorizing the financing agreement***. Subject to the inclusion of the mandatory provisions set forth below, the terms and provisions of each financing agreement shall be determined by negotiations between the authority and the approved company.

- (1) If an eligible company, at the time of submission of its application to the authority to become an approved company, requests the authority in writing to issue bonds on its behalf, then each financing agreement used in connection with the issuance of bonds by the authority shall include the following provisions:
 - (a) The term of a financing agreement shall not be less than the last maturity of the bonds issued with respect to the economic development project, except that the financing agreement may terminate upon the earlier redemption of all of the bonds issued with respect to the economic development project and, if the authority owns the economic development project, the authority may grant to the approved company or its affiliate an option to purchase, for the consideration the authority may approve, the economic development project from the authority upon the termination of the financing agreement. Nothing in this subsection shall limit the extension of the term of a financing agreement if there is a refunding of the correlative bonds or otherwise.

- (b) All proceeds of any bonds incurred in connection with the economic development project shall be expended by the approved company within three (3) years from the date of the financing agreement. In the event that all proceeds of bonds incurred in connection with the economic development project are not fully expended within the three (3) year period, the amount of the authorized inducements shall automatically be reduced to and shall not be greater than the amount of proceeds actually expended by the approved company within the three (3) year period.
- (c) The financing agreement shall specify that the annual obligations of the approved company pursuant to KRS 154.22-010 to 154.22-080 shall equal in each year the annual debt service for that year on the bonds issued with respect to the economic development project; and the approved company shall pay such obligation of the financing agreement to the trustee for bonds issued for the benefit of the approved company, at such time and in such amounts sufficient to amortize such bonds.
- (d) 1. In consideration for financing agreement payment, the approved company may be permitted the following during the period of time not to exceed fifteen (15) years from the activation date in which the financing agreement is in effect, which period of time shall commence for purposes of the following upon the date of the financing agreement.
- a. A one hundred percent (100%) credit against the Kentucky income tax that otherwise would be owed in the year, as determined under KRS 141.347, to the Commonwealth by the approved company on the income of the approved company generated by or arising out of the economic development project, the credit not to exceed the total debt service paid under the respective financing agreement; plus
 - b. The aggregate assessment withheld by the approved company in each year.
2. The income tax credited to the approved company referred to herein shall be credited for the fiscal year for which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042.
- (e) 1. The financing agreement shall provide that the assessments, when added to the credit for the Kentucky income tax herein granted, shall not exceed the total financing agreement annual payment by the approved company in any year; however, to the extent that financing agreement annual payments exceed credits received and assessments collected in any year, the excess payment may be recouped from excess credits or assessment collections in succeeding years.
2. If in any fiscal year of the approved company during which the financing agreement is in effect the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the employees equals the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, and the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year.

3. If in any fiscal year of the approved company during which the financing agreement is in effect, the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the employees exceeds the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the approved company shall pay the excess to the Commonwealth as income tax.
 4. If in any fiscal year of the approved company during which the financing agreement is in effect the assessment collected from the wages of the employees exceeds the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees' wages next succeeding the first date when the approved company collected excess assessments.
- (f) The financing agreement shall provide in substance that:
1. It may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to such effect; and
 2. Upon default by the approved company in any obligations under the financing agreement or other documents evidencing, securing, or related to the approved company's obligations, the authority, or any of its assignees, shall have the right, at its option, to declare the financing agreement or other such documents in default; and
 - a. Accelerate and declare the total of all such payments due by the approved company and sell the economic development project at public, private, or judicial sale;
 - b. Pursue any remedy provided under the financing agreement or other such documents;
 - c. Pursue all other remedies available to it under the Kentucky Uniform Commercial Code;
 - d. Be entitled to the appointment of a receiver by the Circuit Court wherein any part of the economic development project is located; and
 - e. Pursue any other remedy at law to which it appears entitled.
 3. All remedies provided in subsection (1)(f)2. of this section shall be deemed cumulative.
- (2) If an eligible company, at the time of submission of its application to the authority to become an approved company, does not request the authority in writing to issue bonds on its behalf,

then each financing agreement used in connection with loans or other financing (other than bonds issued by the authority for which subsection (1) of this section shall be used) shall include the following provisions:

- (a) The term of a financing agreement, which shall commence on the date of the financing agreement, shall not be longer than:
 1. The maturity of any loan or other financing incurred in connection with the economic development project, except that the financing agreement may terminate upon the earlier prepayment of all loans or other financing incurred in connection with the economic development project; or
 2. Fifteen (15) years from the activation date.
 3. Nothing in this subsection shall limit the extension of the term of a financing agreement if there is a refinancing of the loans or other financing. The authority shall not own an economic development project that is the subject of this form of financing agreement.
- (b) All proceeds of any loan or other financing incurred in connection with the economic development project shall be expended by the approved company within three (3) years from the date of the financing agreement. In the event that all proceeds of any loan or other financing incurred in connection with the economic development project are not fully expended within the three (3) year period, the authorized inducements shall automatically be reduced to and shall not be greater than the amount of proceeds actually expended by the approved company within the three (3) year period.
- (c)
 1. The approved company may be permitted the following during the term of the financing agreement:
 - a. A one-hundred percent (100%) credit against the Kentucky income tax that otherwise would be owed in the year, as determined under KRS 141.347, to the Commonwealth by the approved company on the income of the approved company generated by or arising out of the economic development project, such credit not to exceed the total debt service paid with respect to the loans or other financing incurred in connection with the economic development project; plus
 - b. The aggregate assessment withheld by the approved company in each year.
 2. The income tax credited to the approved company shall be credited for the fiscal year for which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042.
- (d)
 1. The financing agreement shall provide that the assessments, when added to the credit for the Kentucky income tax as provided in KRS 154.22-060, shall not exceed the total annual debt service payments of the approved company with respect to the loans or other financing incurred in connection with the economic development project in any year; however, to the extent that such annual debt service payments exceed credits received and assessments collected in any year, the excess payment may be recouped from excess credits or assessment collections in succeeding years.

2. If, in any fiscal year of the approved company during which the financing agreement is in effect, the total of the income tax credit granted to the approved company, plus the assessment collected from the wages of the employees, equals the annual debt service payments with respect to the loans or other financing incurred in connection with the economic development project, and if all excess payments with respect to the loans or other financing incurred in connection with the economic development project accumulated in prior years have been recouped, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company and the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year.
 3. If in any fiscal year of the approved company during which the financing agreement is in effect the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the employees exceeds the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the approved company shall pay the excess to the Commonwealth as income tax.
 4. If in any fiscal year of the approved company during which the financing agreement is in effect the assessment collected from the wages of the employees exceeds the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees wages next succeeding the first date when the approved company collected excess assessments.
- (e) The financing agreement shall provide in substance that it may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.
 - (f) The financing agreement shall provide that an approved company shall require of any lender to the approved company funding the loans or other financing incurred in connection with the economic development project written evidence to be provided to the authority of payments of all annual debt service to such lender. Such evidence shall be provided to the authority within forty-five (45) days after the end of each fiscal year of the financing agreement.
 - (g) The financing agreement shall provide that if an approved company fails to comply with its respective obligations under the financing agreement, or that the lender to an approved company fails to comply with its requirements set forth in subsection (2)(f) of this section, or is declared in default under the loans or other financing incurred in

connection with the economic development project, then the authority, or any of its assignees, shall have the right, at its option, to:

1. Suspend the availability of the income tax credits and job development assessment fees to the approved company;
 2. Pursue any remedy provided under the financing agreement, including termination thereof; and
 3. Pursue any other remedy at law to which it appears entitled.
- (3) All remedies provided in subsection (2)(g) of this section shall be deemed cumulative.
- (4) Pursuant to this section, the activation date shall be established by the approved company in the financing agreement at any time in a two (2) year period after the date of final approval of the financing agreement by the authority. To implement the activation date, the approved company shall notify the authority, the Revenue Cabinet, and the approved company's employees of the activation date when the implementation of the inducements authorized in the financing agreement shall occur. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.22-040(3) by the activation date, the approved company shall not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies the requirements; however, the fifteen (15) year period for the term of the financing agreement shall begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.22040(3) within two (2) years from the date of final approval of the financing agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.

Section 19. KRS 154.22-060 is amended to read as follows:

- (1) The approved company shall be entitled to a credit against the Kentucky income tax liability mandated by KRS Chapter 141, on any income that may result from the operation of the approved economic development project; the credit shall be equal to the total amount of the tax liability, and together with the aggregate assessments not to exceed the total debt service paid:
 - (a) Under the financing agreement in connection with the economic development project financed by bonds as described in KRS 154.22-050(1); or
 - (b) On loans or other financing, as described in KRS 154.22-050(2), incurred in connection with the economic development project, as described in KRS 154.22050(2).
- (2) ***By October 1 of each year*** ~~[Ninety (90) days after the filing of the tax return of the approved company]~~, the Revenue Cabinet of the Commonwealth shall certify to the authority ***in the form of an annual report, aggregate income tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year, and assessments taken by approved companies with respect to their economic development projects during the prior calendar year under this subchapter, and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state income tax return, when an approved company has taken income tax credits equal to its total inducements*** ~~[the Kentucky income tax liability for the preceding fiscal year of the approved company for which the return was filed with respect to an economic development project financed through the issuance of bonds, loans or other~~

~~financing incurred in connection with the economic development project and the amounts of any tax credits and job development assessment fees taken pursuant to KRS 154.22-010 to 154.22-080}.~~

Section 20. KRS 154.24-110 is amended to read as follows:

- (1) The approved company shall be entitled to an income tax credit equal to one hundred percent (100%) of the income tax that would otherwise be due to the Commonwealth by the approved company attributable to the economic development project, as limited by the provisions of this section and KRS 154.24-130. The amount of the approved company's income that is attributable to the economic development project shall be determined under KRS 141.407.
 - (a) The income tax credit allowed to the approved company shall be subtracted from the approved cost balance in the fiscal year of the approved company for which the tax return of the approved company is filed; and
 - (b) ***By October 1 of each year***~~[Ninety (90) days after the filing of the income tax return of the approved company]~~, the Revenue Cabinet ***of the Commonwealth*** shall certify to the authority, ***in the form of an annual report, aggregate income tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year, and assessments taken by approved companies with respect to their economic development projects during the prior calendar year under this subchapter, and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state income tax return, when an approved company has taken income tax credits and assessments equal to its total inducements***~~[the Kentucky income tax liability of the approved company with respect to an economic development project for the preceding fiscal year of the approved company for which the return was filed, and the amounts of any tax credit allowed pursuant to KRS 141.407 and service and technology job development assessment fees taken pursuant to KRS 154.24-010, 154.24-090, 154.24-100, 154.24-120, 154.24-140, and 154.24-150, and this section]~~.
- (2) The approved company may require each employee, subject to state tax imposed by KRS 141.020, as a condition of employment, to agree to pay a service and technology job creation assessment fee up to five percent (5%) of the gross wages exclusive of any noncash benefits provided to an employee for each employee whose job has been deemed by the authority to be created as a result of the economic development project, provided that the service and technology job creation assessment fee shall not exceed the amount determined in accordance with KRS 154.24-150(5) if the circumstances in that subsection apply. Where a person is already employed by the approved company at a site other than the site of the economic development project and where that employee is subject to state tax imposed by KRS 141.020, the employee's job shall be deemed to have been created when the employee is transferred to the site of the economic development project, provided that the employee's existing job is filled with a new employee.
 - (a) Each employee paying the assessment shall be entitled to a credit against his Kentucky income tax required to be withheld under KRS 141.310 equal to four-fifths (4/5) of the assessment;
 - (b) If the assessment has been approved by the local jurisdiction as provided in KRS 154.24-150, each employee paying the assessment also shall be entitled, in the local jurisdiction in which the economic development project is located, to a credit against his local

occupational license fee in the form of a simultaneous adjustment of his local occupational license fee withholding equal to one-fifth (1/5) of the assessment. If more than one (1) local tax is incurred, the one-fifth (1/5) assessment shall be prorated proportionately among the taxes unless one (1) local jurisdiction agrees to forego the receipt of these taxes in an amount equal to the one-fifth (1/5) assessment, in which case no proration need be made;

- (c) If an approved company elects to impose the assessment as a condition of employment, it shall be authorized to deduct the assessment from each payment of wages to the employee;
 - (d) No credit, or portion thereof, shall be allowed against any occupational license fee imposed by or dedicated solely to the board of education in a local jurisdiction;
 - (e) The approved company collecting an assessment shall make its payroll, books, and records available to the authority when the authority shall request, and shall file with the authority documentation pertaining to the assessment as the authority may require; and
 - (f) Any assessment of the wages of employees of an approved company in connection with their employment at an economic development project shall permanently cease at the expiration of the agreement.
- (3) ***Notwithstanding subsection (2) of this section, if a local government in which the project is located has a local occupational license fee that is less than one percent (1%) and agrees to forego all of its local occupational license fee, then the assessment shall be four percent (4%), all of which shall be contributed by the Commonwealth, plus the percentage of the local occupational license fee that the local government has agreed to forego. Each employee paying the assessment under this subsection shall be entitled to a credit against Kentucky income tax, under KRS 141.350, equal to four percent (4%) and a credit against the local occupational license fee equal to the local occupational license fee that the local jurisdiction has agreed to forego.***

Section 21. KRS 154.24-150 is amended to read as follows:

- (1) Before any agreement as prescribed in KRS 154.24-120 shall become effective, the legislative body of any local jurisdiction which may lose revenue as a result of the inducements offered pursuant to KRS 154.24-010 to 154.24-150 and which assesses a local occupational license fee shall approve by official action the granting of inducements to the approved company. If a local jurisdiction which satisfies the requirements of the previous sentence of this subsection does not approve the granting of the inducements or does not elect to provide in lieu of credits as described in subsection (2) of this section, then an approved company shall not be permitted to impose assessments against the wages of its employees.
- (2) Subject to the prior written approval of the authority of any proposed in lieu of credits, the local government may elect, by vote of its legislative body, to provide for in lieu of credits for the approved company and its economic development project.
- (3) If the local government elects to provide in lieu of credits as described in subsection (2) of this section, the assessment authorized by KRS 154.24-110 shall be four percent (4%), one hundred percent (100%) of which shall be permitted as a credit against Kentucky income tax withheld pursuant to KRS 141.350.

- (4) If a local jurisdiction in which the economic development project is to be located does not assess a local occupational license fee and does not elect to provide in lieu of credits as described in subsection (2) of this section, the assessment authorized by KRS 154.24-110 shall be four percent (4%), one hundred percent (100%) of which shall be permitted as a credit against Kentucky income tax withheld pursuant to KRS to KRS 141.350.
- (5) If a local jurisdiction in which the economic development project is to be located, approves the inducements in accordance with subsection (1) of this section, assesses less than a one percent (1%) local occupational license fee, and does not elect to provide in lieu of credits as described in subsection (2) of this section, then the approved company may require that each employee subject to state tax imposed by KRS 141.020, as a condition of employment, agree to pay a service and technology job creation assessment fee~~[in an amount determined by the percentage local occupational license fee, which shall be one-fifth (1/5) of the total service and technology assessment fee, but in no event to exceed five percent (5%) of the gross wages]~~ as prescribed in KRS 154.24-110(2) *or (3), as applicable*, provided that each employee paying the assessment shall only be entitled to credits against his Kentucky income tax as prescribed in subsection (2)(a) *or (3) of Section 20 of this Act, as applicable*~~[of KRS 154.24-110]~~ and to credits against his local occupational license fee to the extent of the local occupational license fee collected by the local jurisdiction.
- (6) If a local jurisdiction in which the economic development project is to be located does not assess a local occupational license fee and elects to provide in lieu of credits as described in subsection (2) of this section, then the assessment shall be in accordance with subsection (3) of this section.
- (7) Subsection (4) of this section shall apply only to those approved companies which enter into service and technology agreements with the authority after July 15, 1996.

Section 22. KRS 154.26-100 is amended to read as follows:

- (1) The approved company may require that each employee subject to the income tax imposed by KRS 141.020, whose job was preserved or created as a result of the project, as a condition of employment or the retention of employment, agree to pay an assessment, not to exceed, during any fiscal year of the approved company, six percent (6%) of the gross wages of each employee subject to the income tax imposed by KRS 141.020 whose job was retained or created as a result of the project. However, if the appropriation agreement is consummated, the assessment shall be five percent (5%) of each employee's gross wages subject to the income tax imposed by KRS 141.020.
- (2) Each assessed employee shall be entitled to a credit against his Kentucky income tax required to be withheld under KRS 141.310 equal to two-thirds (2/3) of the assessment; or if the appropriation agreement is consummated, the credit shall be equal to four-fifths (4/5) of the assessment.
- (3) Each assessed employee also shall be entitled to a credit against his local occupational license fee in the form of a simultaneous adjustment of his local occupational license fee withholding equal to one-sixth (1/6) of the assessment, unless the appropriation agreement is consummated.
- (4) If an approved company shall elect to impose the assessment as a condition of employment or the retention of employment, it shall deduct the assessment from each paycheck of each employee subject to subsections (2) and (3) of this section.

- (5) Any approved company collecting an assessment as provided in subsection (1) of this section shall make its payroll books and records available to the authority at such reasonable times as the authority shall request, and shall file with the authority the documentation respecting the assessment the authority may require.
- (6) Any assessment of the wages of the employees of an approved company pursuant to subsection (1) of this section shall permanently lapse upon expiration or termination of the agreement.
- (7) ***By October 1 of each year*** ~~Ninety (90) days after the filing of the tax return of the approved company~~, the Revenue Cabinet ***of the Commonwealth*** shall certify to the authority, ***in the form of an annual report, aggregate income tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year and job revitalization assessment fees taken during the prior calendar year by approved companies with respect to their economic revitalization projects under this subchapter, and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state income tax return, when an approved company has taken income tax credits equal to its total inducements*** ~~the Kentucky income tax liability for the preceding fiscal year of the approved company for which the return was filed of each approved company with respect to an economic development project financed through the issuance of bonds, loans, or other financing incurred in connection with the economic development project and the amounts of any tax credits and job revitalization assessment fees taken pursuant to KRS 154.26-010, 154.26-080, 154.26-090, and this section~~.

Section 23. KRS 154.28-090 is amended to read as follows:

- (1) The authority, upon adoption of an authorizing resolution, may enter into, with any approved company, a financing agreement with respect to its economic development project. The terms and provisions of each agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:
- (a) The term of an agreement, which shall commence on the date of the agreement, shall not be longer than the earlier of the following:
1. The maturity of loans or other financing incurred in connection with the economic development project, except that the agreement may be terminated upon the earlier prepayment of loans or other financing incurred in connection with the economic development project; or
 2. Ten (10) years from the activation date of the original agreement.
- (b) All proceeds of any loan or other financing incurred in connection with the economic development project shall be expended by the approved company within three (3) years from the date of the financing agreement. In the event that all proceeds of any loan or other financing incurred in connection with the economic development project are not fully expended within the three (3) year period, the authorized inducements shall automatically be reduced to and shall not be greater than the amount of proceeds actually expended by the approved company within the three (3) year period.
- (c) In consideration for the execution and during the term of the agreement, the approved company shall be permitted either of the following during the term of the agreement:

1. A credit against Kentucky income tax imposed by KRS 141.020 or 141.040 on the income of the approved company generated by or arising out of the economic development project as determined by KRS 141.400; or
 2. The aggregate assessment withheld by the approved company in each year.
- (2) The agreement shall provide that:
- (a)
 1. The assessments, if applicable, shall not exceed the annual payments of the total financing agreement by the approved company in any year; however, to the extent that the financing agreement annual payments exceed assessments collected in any year, the excess payment may be recouped from assessment collections in succeeding years.
 2. If in any fiscal year of the approved company during which the financing agreement is in effect the total assessments collected from the wages of the employees equals the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessments collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, and the approved company shall resume normal personal income tax withholdings from employees' wages for the remainder of that fiscal year.
 - (b) The Kentucky income tax credit, in any fiscal year of the approved company, shall not exceed the total debt service paid during the same fiscal year with respect to the loans or other financing incurred in connection with the economic development project; however, to the extent that annual debt service payments exceed the annual income tax credits in any year, the excess debt service payments may be recouped from excess tax credits in succeeding years.
 - (c) The income tax credited to the approved company shall be credited for the fiscal year for which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed under KRS 141.042.
 - (d) The agreement may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.
 - (e) An approved company shall require of any lender to an approved company funding the loans or other financing incurred in connection with the economic development project, written evidence of all annual debt service to the lender, which evidence shall be provided in writing to the authority within forty-five (45) days following the close of each fiscal year of the financing agreement.
 - (f) If an approved company fails to comply with its respective obligations under the financing agreement, the lender to an approved company fails to comply with the provisions of subsection (2)(e) of this section, or an approved company is declared in default under the loans or other financing incurred in connection with the economic development project, the authority, or any of its assignees, may, at its option:
 1. Suspend the availability of the income tax credits or job development assessment fees, as applicable;
 2. Pursue any remedy provided under the financing agreement, including termination of the agreement; and

3. Pursue any other remedy at law to which it may appear entitled.
- (3) All remedies provided in subsection (2)(f) of this section shall be deemed cumulative.
- (4) Pursuant to this section, the activation date shall be established by the approved company in the financing agreement which shall be at any time in a two (2) year period after the date of final approval of the financing agreement by the authority. To implement the activation date, the approved company shall notify the authority, the Kentucky Revenue Cabinet, and the approved company's employees of the activation date on which implementation of the inducements authorized in the financing agreement shall occur. The activation date shall be the time when the maximum dollar value of equipment that constitutes a portion of an economic development project under KRS 154.28-010(9) shall be determined. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.28-080(3) by the activation date, the approved company will not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies these requirements; however, the ten (10) year period for the term of the financing agreement shall begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.28-080(3) within two (2) years from the date of final approval of the financing agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.
- (5) ***By October 1 of each year***~~[Ninety (90) days after the filing of the tax return of the approved company]~~, the Revenue Cabinet shall certify to the authority, ***in the form of an annual report, aggregate income tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year and assessments taken during the prior calendar year by approved companies with respect to their economic revitalization projects under this subchapter, and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state income tax return, when an approved company has taken income tax credits and assessments equal to its total inducements***~~[the income tax liability, for the preceding fiscal year of the approved company for which the return was filed, of the approved company with respect to an economic development project receiving inducements under the provisions of KRS 154.28-010 to 154.28-090 and KRS 141.400, and the amount of any income tax credits taken pursuant to KRS 154.28-010 to 154.28-090 and KRS 141.400]~~.

Section 24. KRS 154.29-050 is amended to read as follows:

- (1) The authority, upon adoption of its final approval, may enter into with any approved company an agreement with respect to its tourism attraction project. The terms and provisions of each agreement shall include, but not be limited to:
- (a) The amount of approved costs, which shall be determined by negotiations between the authority and the approved company;
- (b) A date certain by which the approved company shall have completed the tourism attraction project. Within three (3) months of the completion date, the approved company shall document the actual cost of the project through a certification of the costs to be provided by an independent certified public accountant acceptable to the authority; and
- (c) The following provisions:

1. The term shall be ten (10) years from the later of:
 - a. The date of the final approval of the project; or
 - b. The completion date specified in the agreement, if this completion date is within two (2) years of the date of the final approval of the project;
 2. Within forty-five (45) days after the end~~[-of each half]~~ of each fiscal year of the approved company, *during the term of the agreement*, the approved company shall supply the authority with such reports and certifications as the authority may request demonstrating to the satisfaction of the authority that the approved company is in compliance with the provisions of KRS 139.536 and KRS 154.29010 to 154.29-060. Based upon a review of these materials and other documents that may be made available, the authority shall then certify to the Revenue Cabinet that the approved company is in compliance with this section; and
 3. The approved company shall not receive a sales tax refund as prescribed by KRS 139.536 with respect to any fiscal year if:
 - a. In any year following the fourth year of the agreement, the tourism attraction project fails to attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth; or
 - b. In any year following the first year of the agreement, the tourism attraction project is not operating and open to the public for at least one hundred (100) days.
- (2) The agreement shall not be transferable or assignable by the approved company without the written consent of the authority.
- (3) In consideration of the execution of the agreement as defined in KRS 154.29-010 and notwithstanding any provision of KRS 139.770 to the contrary, the approved company as defined in KRS 154.29-010, excluding its lessees, may be granted a sales tax refund under KRS 139.536 from the Kentucky sales tax imposed by KRS 139.200 on the sales generated by or arising at the tourism attraction project as defined in KRS 154.29-010.

Section 25. The following KRS section is repealed:

154.22-055 Financing agreement -- Adoption -- Publication.

Section 26. Subsections (4) and (5) of Section 4 and subsections (2) and (3) of Section 7 of this Act shall apply to taxable years beginning after December 31, 1999.

Approved April 3, 2000