

CHAPTER 528 (SB 225)

AN ACT relating to opportunity zone development.

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

SECTION 1. SUBCHAPTER 23 OF KRS CHAPTER 154 IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

The General Assembly hereby finds and declares as follows:

- (1) That the general welfare and material well-being of the citizens of the Commonwealth, particularly those residing in qualified zones, depends in large measure upon development and growth of manufacturing and service or technology industries in the Commonwealth;*
- (2) It is in the best interest of the Commonwealth to create new sources of tax revenues for the support of public services, to induce the location and expansion of manufacturing and service or technology industries within qualified zones, and to advance the public purposes of relieving unemployment and providing employment opportunities that would not exist but for the inducements offered by the authority to eligible companies; and*
- (3) That the authority granted by Sections 1 to 16 of this Act and purposes to be accomplished under Sections 1 to 16 of this Act are proper governmental and public purposes for which public moneys may be expended, and the inducements for the location and expansion of manufacturing and service or technology industries within qualified zones is of paramount importance, for which Sections 1 to 16 of this Act shall be liberally construed and applied to advance public purposes.*

SECTION 2. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 16 of this Act, unless the context clearly indicates otherwise:

- (1) "Approved company" means an eligible company that locates an economic development project in a qualified zone, as provided for in Section 6 of this Act;*
- (2) "Approved costs" means:*
 - (a) For an approved company that establishes a new manufacturing facility or expands an existing manufacturing facility, the following obligations incurred in its economic development project, including rent under leases subject to subsection (6)(b)4. of this section:*
 - 1. The cost of labor, contractors, subcontractors, builders, and material workers in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;*
 - 2. The cost of acquiring real estate or rights in land and any cost incidental thereto, including recording fees;*
 - 3. The cost of contract bonds and insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of an economic development project that is not paid by the contractor or contractors or otherwise provided for;*
 - 4. The cost of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, and*

supervision of construction, as well as for the performance of all duties required by or consequent to the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;

5. *All costs required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and*
 6. *All other costs of a nature comparable to those described above; or*
- (b) *For an approved company that establishes a new service or technology business or expands existing service or technology operations, up to a maximum of fifty percent (50%) of the total start-up costs during the term of the service and technology agreement, plus up to a maximum of fifty percent (50%) of the annual rent for each elapsed year of the service and technology agreement;*
- (3) *"Assessment" means the job development assessment fee authorized by Section 11 of this Act;*
- (4) *"Authority" means the Kentucky Economic Development Finance Authority, as created in KRS 154.20-010;*
- (5) *"Commonwealth" means the Commonwealth of Kentucky;*
- (6) *"Economic development project" or "project" means:*
- (a) *A service or technology activity conducted by an approved company; or*
 - (b) *Any of the following activities of an approved company engaged in manufacturing:*
 1. *The acquisition of or present ownership in any real estate in a qualified zone for the purposes described in Sections 1 to 16 of this Act, which ownership shall include only fee simple ownership of real estate and possession of real estate according to a capital lease as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976;*
 2. *The acquisition or present ownership of improvements or facilities on land that is possessed or is to be possessed by the approved company in a ground lease having a term of sixty (60) years or more; provided, however, that this project shall not include lease payments made under a ground lease for purposes of calculating the tax credits offered under Sections 1 to 16 of this Act;*
 3. *The construction, installation, equipping, and rehabilitation of improvements, fixtures, equipment, and facilities necessary or desirable for improvement of the real estate owned, used, or occupied by the approved company for manufacturing purposes. Construction activities include surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and providing drainage and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electric, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the*
real estate; or similar activities as the authority may determine necessary for construction; and

4. *The leasing of real estate and the buildings and fixtures thereon acquired, constructed, and installed with funds from grants under Section 12 of this Act;*
- (7) *"Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other legal entity engaged in manufacturing, or service or technology; however, any company whose primary purpose is retail sales shall not be an eligible company;*
- (8) *"Final approval" means action taken by the authority that authorizes the eligible company to receive inducements in connection with a project under Sections 1 to 16 of this Act;*
- (9) *"Financing agreement" means any agreement entered into, under Section 7 of this Act, on behalf of the authority or other lenders, or both, and an approved company engaged in manufacturing with respect to an economic development project;*
- (10) *"Inducements" means the assessment and the income tax credits allowed to an approved company under Sections 10 and 11 of this Act;*
- (11) *"Local government" means a city, county, or urban-county government;*
- (12) *"Manufacturing" means to make, assemble, process, produce, or perform any other activity that changes the form or conditions of raw materials and other property, and shall include any ancillary activity to the manufacturing process, such as storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, the extraction of minerals or coal, or processing of these resources;*
- (13) *"Preliminary approval" means action taken by the authority that conditions final approval of an eligible company and its economic development project upon satisfaction by the eligible company of the applicable requirements under Sections 1 to 16 of this Act;*
- (14) *"Qualified employee" means an individual subject to Kentucky income tax who has resided in the qualified zone where the project exists for at least twelve (12) consecutive months preceding full-time employment by an approved company;*
- (15) *"Qualified statewide employee" means an individual subject to Kentucky income tax who has resided in any census tract or county in the Commonwealth that meets the criteria in Section 3 of this Act, regardless of whether the tract or county is in a qualified zone, for at least twelve (12) consecutive months preceding full-time employment by an approved company;*
- (16) *"Qualified zone" means any census tract or county certified as such by the authority in Sections 3 and 4 of this Act;*
- (17) *"Relocation costs" mean identified expenditures by an eligible company for moving costs, separation costs, and any other expenditures substantiated by the eligible company that are directly related to a move from an existing location outside of a qualified zone to a qualified zone location;*
- (18) *"Rent" means:*
- (a) *The actual annual rent or leasing fee paid by an approved company to a bona fide entity negotiated at arms length for the use of a building by the approved company to conduct the approved project for which the inducement has been granted; or*

(b)

The fair rental value on an annual basis in a building owned by the approved company of the space used by the approved company to conduct the approved project for which the inducement has been granted as determined by the authority using criteria that are customary in the real estate industry for the type of building being used. The fair rental value shall include an analysis of the cost of amortizing the cost of land and building over the period of time customary in the real estate industry for the type of building and for the land being utilized; and

(c) *Rent shall include the customary cost of occupancy that includes, but is not limited to, property taxes, heating and air conditioning, electricity, sewer, and insurance;*

(19) *“Service and technology agreement” means any agreement entered into, under Section 8 of this Act, on behalf of the authority, an approved company engaged in service or technology, and third-party lessors, if applicable, with respect to an economic development project;*

(20) *“Service or technology” means any activity involving the performance of work not otherwise classified by division, including successor divisions of agriculture, forestry and fishing, mining, construction, and manufacturing, in accordance with the “Standard Industrial Classification Manual,” as revised by the United States Office of Management and Budget from time to time, or any successor publication; and*

(21) *“Start-up costs” mean the cost of furnishing and equipping a building for ordinary business functions, including computers, nonrecurring costs of fixed telecommunication equipment, furnishings, office equipment, and relocation costs as verified and approved by the authority in accordance with Section 8 of this Act.*

SECTION 3. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) *Upon written application by a county, urban-county government, or city of the first class, the authority shall certify one (1) to five (5) contiguous census tracts or a county certified by the authority in accordance with KRS 154.22-040 as a qualified zone. In the case of certification based on one (1) to five (5) contiguous census tracts, each census tract shall independently meet each of the following criteria, as verified by the Department for Employment Services within the Cabinet for Workforce Development:*

(a) *A minimum total poverty rate of one hundred fifty percent (150%) of the United States poverty rate as determined by the most recent decennial census;*

(b) *An unemployment rate that exceeds the statewide unemployment rate as determined on the basis of the most recent decennial census; and*

(c) *A minimum population density of two hundred percent (200%) of the average Kentucky census tract population density as determined by the most recent decennial census.*

(2) *Census tract information shall be based upon United States census data as set forth in the most recent edition of Census of Population and Housing: Population and Housing Characteristics for Census Tracts and Block Numbering Areas published by the United States Bureau of the Census.*

- (3) *The authority shall certify no more than one (1) qualified zone within each county of the Commonwealth, except in the case of a county certified under KRS 154.22-040, the entire county shall constitute the qualified zone.*
- (4) *A qualified zone shall commence on the date of certification by the authority and continue thereafter, except that at the time new decennial census data becomes available, the authority shall decertify any census tract that no longer meets the criteria of subsection (1) of this section for qualified zone status. The authority shall not give preliminary approval to any project in a decertified census tract. An approved company whose project is located in a decertified census tract shall not be eligible for the inducements offered by Sections 1 to 16 of this Act, unless the financing agreement or service and technology agreement is entered into by all parties prior to July 1 of the year following the calendar year in which the authority decertified that tract.*
- (5) *Decertification of a census tract by the authority under subsection (4) of this section shall not be construed to split a qualified zone, change the boundary of the initial qualified zone, or create more than one (1) qualified zone per county.*
- (6) *A county, urban-county government, or city of the first class shall have no authority to request decertification of a census tract, and any addition of a census tract requested by a county, urban-county government, or city of the first class under Section 4 of this Act shall be contiguous to a census tract that continues to meet the criteria under this section.*
- (7) *The authority shall pay its costs of counsel relating to zone certification.*

SECTION 4. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *When new decennial census data becomes available, a county, urban-county government, or city of the first class may apply in writing to the authority for amendment to the boundary of an existing qualified zone. A boundary change to an existing qualified zone shall not become effective until written approval has been granted by the authority.*
- (2) *A county, urban-county government, or city of the first class that applies to the authority to amend the boundary of an existing qualified zone shall certify in writing to the authority the following information:*
 - (a) *Any census tract proposed for amendment is contiguous to the existing qualified zone;*
 - (b) *The census tract proposed for amendment independently meets the population density, unemployment, and poverty requirements set forth in Section 3 of this Act based on decennial census figures; and*
 - (c) *The addition of the census tract or tracts proposed shall not enlarge the qualified zone to more than five (5) census tracts.*

SECTION 5. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *Relevant standards for approval of eligible companies and economic development projects shall include, but are not limited to, creditworthiness of the eligible company, the number of new jobs to be provided by a project to Kentucky residents, and the likelihood that the project will be an economic success.*

- (b)
- (2) *An eligible company shall certify to the authority by written application that it makes the following commitments in an economic development project:*
- (a) *A minimum investment of one hundred thousand dollars (\$100,000) in the project; Creation of a minimum of ten (10) new full-time jobs at the project site for qualified employees;*
 - (c) *A statement that no significant number of existing jobs in the Commonwealth will be lost or adversely affected due to approval of the eligible company and its economic development project; and*
 - (d) *A statement that the economic development project could reasonably and efficiently locate outside the qualified zone and, without the inducements offered by the authority, the eligible company would likely locate outside the zone.*
- (3) (a) *No project that will result in the replacement of an existing manufacturing or service or technology facility existing in the Commonwealth shall be approved by the authority; however, the authority may approve a project if the project:*
- 1. *Rehabilitates a manufacturing or service or technology facility that has not been in operation, or the title to which is vested in one other than the eligible company and that is sold or transferred under a foreclosure ordered by a court of competent jurisdiction or by order of bankruptcy court;*
 - 2. *Replaces a manufacturing or service or technology facility existing in the Commonwealth that been damaged or destroyed by fire, or the title to which shall have been taken under the exercise of the power of eminent domain or is the subject of a nonappealable judgment that grants the power of eminent domain to the authority, in any of these events to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or*
 - 3. *Replaces an existing manufacturing or service or technology facility located in the same qualified zone that cannot be expanded due to the lack of available real estate at or adjacent to the manufacturing or service or technology facility to be replaced. Any economic development project satisfying the requirements of this paragraph of this subsection shall only be eligible for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the manufacturing or service or technology facility to be replaced.*
- (b) *No economic development project otherwise satisfying the requirements of paragraph (a) of this subsection shall be approved by the authority that results in a lease abandonment or lease termination by the approved company without the consent of the lessor.*

SECTION 6. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *With respect to each eligible company that applies to the authority for inducements, and with respect to the project described in its application, the authority shall request materials and make all inquiries concerning the application the authority deems necessary. Upon review of the application and requested materials, and completion of initial inquiries, the authority may, by resolution of the board of directors, grant preliminary approval to the*

eligible company. The authority shall approve a report describing the economic development project, that shall set out as follows:

- (a) The name, qualified zone location, business, and standard industrial classification of the eligible company;*
 - (b) The nature of the economic development project;*
 - (c) The use and projected amounts of the inducements to be available to the eligible company by year; and*
 - (d) Other information as the authority may require.*
- (2) After preliminary approval, completion of its loan, other financing or leasing as permitted by subsection (6)(b)4. of Section 2 of this Act by an eligible company engaged in manufacturing activities with respect to its economic development project, and review thereof by the authority, the authority may, by resolution of its board of directors, designate an eligible company to be an approved company, and execute a financing agreement among the eligible company, the authority, lenders, if applicable, and lessor, if applicable.*
 - (3) Within a one (1) year period following preliminary approval of an eligible company engaged in service or technology activities with respect to its economic development project, the authority may designate the eligible company as an approved company and execute a service and technology agreement among the eligible company, the authority, and lessors, if applicable. If final approval of an eligible company does not occur within the one (1) year period as provided in this subsection, then the eligible company's request for designation and project authorization shall be considered denied.*
 - (4) The decision to grant an eligible company the status of an approved company shall be solely that of the authority, which shall base its decision upon consideration of all information provided.*

SECTION 7. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) The authority, upon adoption of an authorizing resolution, may enter into a financing agreement with any approved company engaged in manufacturing activities with respect to its economic development project, other lenders, if applicable, and lessor, if applicable. The terms and provisions of each financing agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, subject to the inclusion of the following mandatory provisions:*
 - (a) The term of a financing agreement, that shall commence on the date of the financing agreement, and shall not be longer than the earliest of:*
 - 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;*
 - 2. The termination of any lease under subsection (6)(b)4. of Section 2 of this Act; or*
 - 3. Ten (10) years from the activation date of the original financing agreement.*

- (b)
4. *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, or the financing of the balance of the purchase price of an economic development project originally leased in accordance with subsection (6)(b)4. of Section 2 of this Act.*

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) *The approved company may be permitted the following inducements during the term of the financing agreement:*
1. *An income tax credit of up to one hundred percent (100%) of the Kentucky income tax liability imposed by KRS 141.020 or 141.040 that would otherwise be due, determined under Section 17 of this Act, on the income of the approved company generated by or arising out of the economic development project, as limited by the provisions of this section and Section 9 of this Act, and*
 2. *The assessment, if applicable, withheld by the approved company in each year;*
- (d) *The income tax credit for 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;*
- (e) *The assessments, if applicable, when added to the credit for the Kentucky income tax as provided in Section 10 of this Act, shall not exceed the total annual payment made under the financing agreement in connection with the project in any year; however, to the extent that this annual payment exceeds credits received and assessments collected in any year, this excess payment may be recouped from excess credits or assessment collections in succeeding years;*
- (f) *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 assessments collected from the wages of the qualified statewide employees equals the annual payment in the financing agreement, and if all excess payments in the financing agreement accumulated in prior years have been recouped, the assessments collected from the wages of the qualified statewide employees shall cease for the remainder of that fiscal year, and the approved company shall resume normal personal income tax and occupational license fee withholdings from the qualified statewide employees' wages for the remainder of that fiscal year;*
- (g) *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 qualified statewide employees exceeds*

the annual payment in the financing agreement, and if all excess payments in the financing agreement accumulated in prior years have been recouped, the approved company shall pay the excess to the Commonwealth as income tax;

- (h) If, in any fiscal year of the approved company during which the financing agreement is in effect, the assessment collected from the wages of qualified statewide employees exceeds the annual payment in the financing agreement, and if all excess payments in the financing agreement accumulated in prior years have been recouped, the assessment collected from the wages of the qualified statewide employees shall cease for the remainder of that fiscal year, the approved company shall resume normal personal income tax and occupational license fee withholdings from the qualified statewide 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 qualified statewide employees' wages next succeeding the first date when the approved company collected excess assessments;*
- (i) The financing agreement may be assigned by the approved company only upon the prior written consent of the authority;*
- (j) An approved company shall require any lender to the approved company funding loans or other financing incurred in connection with the economic development project to provide written evidence to the authority of payments of all annual debt service to the lender. An approved company shall require any lessor under a lease subject to subsection (6)(b)4. of Section 2 of this Act to provide written evidence to the authority of payment of rent to the lessor. This evidence shall be provided to the authority within forty-five (45) days after the end of each fiscal year during the term of the financing agreement;*
- (k) If the total number of qualified employees at the site of the economic development project is less than ten (10), the authorized inducements shall be suspended until at least ten (10) full-time qualified employees are employed by the approved company at the project site;*
- (l) If an approved company fails to comply with its respective obligations under the financing agreement or is declared in default under the loans or other financing incurred in connection with the economic development project or the lease under subsection (6)(b)4. of Section 2 of this Act, or if the lender to an approved company or the lessor, as applicable, fails to comply with its requirements set forth in subsection (1)(j) of this section, 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 assessments 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; and*
- (m) The approved company shall pay all costs of counsel to the authority resulting from approval of its economic development project.*

(b)

- (2) All remedies provided in subsection (1)(l) of this section shall be deemed cumulative.*
- (3) Under this section, the activation date shall be established by the approved company in the financing agreement, which shall be at any time within 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, the approved company's qualified statewide employees, and the affected local jurisdictions, if any, of the activation date when 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 Section 5 of this Act by the activation date, then the approved company shall not be entitled to receive inducements under Sections 1 to 16 of this Act until the approved company satisfies the requirements; in any event, 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 Section 5 of this Act 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 Sections 1 to 16 of this Act.

SECTION 8. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) Before any approved company engaged in service or technology activity is granted inducements under Sections 1 to 16 of this Act, a service and technology agreement with respect to the approved company's economic development project shall be entered into between the authority and the approved company. The terms and provisions of the service and technology agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, subject to inclusion of the following mandatory provisions:*
- (a) The term of the service and technology agreement shall not be longer than ten (10) years from the activation date established by the approved company. The activation date shall be any time within a one (1) year time period after the date of final approval of the service and technology agreement by the authority. In order to implement the activation date, the approved company shall notify the authority, the Kentucky Revenue Cabinet, the qualified statewide employees, and the affected local jurisdictions, if any, of the activation date on which implementation of the inducements authorized in the service and technology agreement shall occur;*
 - (b) The approved company may be permitted the following inducements during the term of the service and technology agreement:*
 - 1. An income tax credit of up to one hundred percent (100%) of the Kentucky income tax liability imposed by KRS 141.020 or 141.040 that would otherwise be due, determined under Section 17 of this Act, on the income of the approved company generated by or arising out of the economic development project, as limited by the provisions of this section and Section 9 of this Act; and*
 - 2. The assessment, if applicable, withheld by the approved company in each year;*
 - (c) The inducements 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;*
 - (d) If the total number of qualified employees at the site of the economic development project is less than ten (10), the authorized inducements shall be suspended until at*

least ten (10) full-time qualified employees are employed by the approved company at the project site;

- (e) The service and technology agreement may be assigned by the approved company only upon the prior written consent of the authority; and*
 - (f) The approved company shall pay all costs of counsel to the authority resulting from approval of its economic development project.*
- (4) Before the end of the first year following the activation date, the authority shall, using data supplied by the approved company, verify and determine the total start-up costs for the approved company's economic development project. The initial approved costs shall be up to a maximum of fifty percent (50%) of the start-up costs.*
 - (5) Each year, during the ten (10) year term of the service and technology agreement, up to fifty percent (50%) of the annualized rent shall be added to the unrecouped balance of approved costs, and the inducements earned shall be subtracted from the approved costs.*
 - (6) If, in any fiscal year of the approved company during which the service and technology agreement is in effect, the accumulated inducements equal the unrecouped remaining balance of the approved costs then expended, 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 and occupational license fee withholdings from the qualified statewide employees' wages for the remainder of that fiscal year.*
 - (7) If, in any fiscal year of the approved company during which the service and technology 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 qualified statewide employees exceeds the remaining balance of the approved costs then expended, the approved company shall pay the excess to the Commonwealth as income tax.*
 - (8) If, in any fiscal year of the approved company during which the service and technology agreement is in effect, the assessment collected from the wages of the qualified statewide employees exceeds the unrecouped remaining balance of the approved costs then expended, the assessment collected from the wages of the qualified statewide 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 qualified statewide employees 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 qualified statewide employees' wages next succeeding the first date when the approved company collected excess assessments.*

SECTION 9. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) If an eligible company operates an existing business in a qualified zone, and wishes to expand that business within the zone, the eligible company may submit an application to the authority to become an approved company under Section 5 of this Act.*
- (2) If the eligible company under subsection (1) of this section becomes an approved company, the authority shall determine a base level of employment in the Commonwealth, a base level*

of state income tax liability, and a base level of manufacturing or service or technology activity, as applicable, of the approved company for determining eligible credits for the approved company's project during the term of a financing agreement or service and technology agreement. The base level shall be determined by taking into consideration any seasonal fluctuations or aberrations of employment levels during the preceding three (3) years. Notwithstanding the determination of a base level of employment in the Commonwealth, no qualified statewide employee who is an employee of this business prior to the date of the preliminary approval by the authority as prescribed in Section 6 of this Act shall be subject to assessment.

- (3) The authority shall identify, by name, all of the existing qualified statewide employees employed by the eligible company prior to preliminary approval, and these employees shall be exempt from the assessment. If any of these employees cease working in the activity, then another qualified statewide employee shall be added to the base level of employment, based on the earliest date of entry into the work force, and this employee shall be exempt from the assessment. The authority may negotiate with the approved company a different method of determining the base level of employment that would yield a more equitable result for the approved company, the Commonwealth, local jurisdictions, and the qualified statewide employees.*
- (4) To become eligible for inducements, the approved company shall create and maintain above the base level of employment in the Commonwealth, an increase at the site of the project of at least ten (10) new full-time qualified employees.*
- (5) The approved company shall continue to pay to the Commonwealth, on an annualized basis during the term of the financing agreement or service and technology agreement, as applicable, the base level of income tax, adjusted on an annual basis to reflect changes in the consumer price index. The excess income tax owed may be offset by the income tax credit provided in Section 10 of this Act.*
- (6) If any approved company expands in a qualified zone because of an increase in business or because of the commencement of a new line of business, it may be eligible, at the discretion of the authority, to negotiate a separate, additional financing agreement or service and technology agreement to cover the expanded business under the same conditions as authorized for an expansion in this section.*

SECTION 10. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) An approved company engaged in manufacturing or in service or technology activities shall be entitled to an income tax credit equal to one hundred percent (100%) of the income tax liability that would otherwise be due to the Commonwealth from the approved company attributable to its economic development project, as limited by the provisions of Section 9 of this Act.*
- (2) The Revenue Cabinet of the Commonwealth shall initiate contact and fully cooperate with the authority in the collection of information to determine the fiscal impact of qualified zone inducements on state revenues. The Revenue Cabinet shall certify to the authority, in the form of an annual report, aggregate income tax credits and assessments taken by approved companies with respect to their economic development projects under Sections 1*

to 16 of this Act, and certify to the authority when an approved company has taken income tax credits and assessments equal to its total inducements. The Revenue

Cabinet shall certify to the authority, upon written request of the authority, the aggregate income tax credits and assessments taken by an approved company with respect to its economic development project under Sections 1 to 16 of this Act.

SECTION 11. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) If the local jurisdiction in which the economic development project is to be located, approves the assessment in accordance with subsection (8) of this section, then an approved company engaged in either manufacturing or service or technology activities may require each qualified statewide employee, as a condition to employment, to agree to pay a job development assessment fee in an amount determined by the percentage of the local occupational license fee, which shall be one-fifth (1/5) of the total job development assessment fee, plus the Commonwealth's contribution of four-fifths (4/5) of the total job development assessment fee, but in no event to exceed five percent (5%) of the qualified statewide employee's gross wages exclusive of any noncash benefits; provided that each qualified statewide employee paying the assessment shall be entitled to credits against Kentucky income tax as prescribed in subsection (4) of this section and to credits against the local occupational license fee to the extent of the local occupational license fee collected by the local jurisdiction. This assessment shall be deducted by the approved company from wages it pays to qualified statewide employees.*
- (2) Notwithstanding subsection (1) of this section, if no local occupational license fee is assessed by any local government in which the project is located, the assessment shall be four percent (4%), all of which shall be contributed by the Commonwealth.*
- (3) Notwithstanding subsection (1) of this section, if a project is located in only one (1) local government and that local government has a local occupational license fee that is less than one percent (1%) and the local government agrees to forego all of its local occupational license fee or if a project is located in multiple local governments and the local governments have in the aggregate local occupational license fees that are less than one percent (1%) and the local governments agree to forego all of their local occupational license fees, 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 or fees, as applicable, that the local government or local governments, as applicable, has or have agreed to forego.*
- (4) Each qualified statewide employee required to pay this assessment shall be entitled to certain credits, as follows:*

 - (a) Credit against the required Kentucky income tax withheld from gross wages under Section 18 of this Act equal to the Commonwealth's contribution, but in no event to exceed four percent (4%) of these wages; and*
 - (b) Credit against the local occupational license fee imposed by any local government in which the project is located in the form of a simultaneous adjustment of the local occupational license fee withheld from gross wages excluding noncash benefits not to exceed one percent (1%) of these wages.*

- (5) *If more than one (1) local government jurisdiction imposes a local occupational license fee and all jurisdictions approve the assessment, then the assessment and employee credit therefor shall be prorated against the local occupational license fees imposed, unless a single local government jurisdiction agrees to forego receipt of its local occupational license fees in an amount equal to one percent (1%) of the qualified statewide employees' wages excluding noncash benefits, in which case no proration need be made.*
- (6) *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.*
- (7) *An approved company that collects an assessment shall make its payroll, books, and records available to the authority at its request, and shall provide all documentation pertaining to the assessment as the authority may require.*
- (8) *Before any financing agreement or service and technology agreement becomes effective with respect to an assessment, the legislative body of any local government that assesses a local occupational license fee and shall lose revenue as a result of the assessment described in this section shall, by official action, approve the assessment for the benefit of an approved company. However, if a local government does not approve the assessment, then the approved company shall not be permitted to impose the assessment and the qualified statewide employees shall not be permitted to claim credits.*
- (9) *Any assessment of the wages of qualified statewide employees of an approved company engaged in manufacturing activities in connection with their employment at an economic development project in subsection (1) of this section shall permanently lapse as of the date any loans or other financing, as described in Section 7 of this Act, incurred in connection with the economic development project mature or are prepaid in full for an approved company engaged in manufacturing activities or as of any date any lease under subsection (6)(b)4. of Section 2 of this Act terminates.*
- (10) *Any assessment of the wages of qualified statewide employees of an approved company engaged in service or technology activities in connection with their employment at an economic development project shall permanently cease at the expiration of the service and technology agreement.*

SECTION 12. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *Any county, urban-county government, or city of the first class for which the authority has certified a qualified zone may also apply for grant funds to be used for acquisition of and infrastructure improvements to real estate for economic development purposes and construction and installation for industry of buildings and fixtures.*
- (2) *In addition to the inducements taken, an approved company may apply the amount of the inducements taken towards the purchase price of real estate, infrastructure improvements, buildings, and fixtures purchased, as set forth in subsection (1) of this section, by any county, urban-county government, or city of the first class. For these inducements taken to apply to the purchase price, the approved company shall have taken inducements equal to a minimum of fifty percent (50%) of the original cost of this real estate, infrastructure improvements, buildings, and fixtures.*

SECTION 13. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *Approved companies under Sections 1 to 16 of this Act that hire and employ Kentucky Transitional Assistance Program (K-TAP) recipients on a full-time basis shall be eligible, to the extent funds are available, to receive wage subsidies from the Kentucky Cabinet for Families and Children in KRS Chapter 205, Title IV-A of the Federal Social Security Act (Subchapter 4 of Chapter 7 of Title 42, United States Code), and the administrative regulations of the Cabinet for Families and Children that address standards and eligibility requirements for K-TAP and subsidized employment.*
- (2) *The wage subsidy for a K-TAP recipient shall be equal to a proportionate amount of the prevailing wage paid by the approved company to all other employees in the same job classification as the K-TAP recipient for one (1) year as follows:*
 - (a) *A seventy-five percent (75%) subsidy for the first four (4) months of employment;*
 - (b) *A fifty percent (50%) subsidy for the next four (4) months of employment; and*
 - (c) *A twenty-five percent (25%) subsidy for the next four (4) months of employment.*
- (3) *During the period of the wage subsidy, the Cabinet for Families and Children shall reimburse the employer contribution for FICA and Unemployment Insurance made on behalf of K-TAP recipients.*
- (4) *The Cabinet for Families and Children shall collect information to determine the eligibility of recipients and the availability of this subsidy for approved companies.*

SECTION 14. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

The authority shall establish the procedures and standards for certification of qualified zones, and determination and approval of eligible companies and their projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A.

SECTION 15. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

No director or officer of the authority shall be subject to any personal liability or accountability by reason of the execution of any financing agreement or service and technology agreement on behalf of the authority.

SECTION 16. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 16 of this Act shall be known as the Kentucky Economic Opportunity Zone Act.

SECTION 17. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, unless the context requires otherwise:*
 - (a) *"Approved company" shall have the same meaning as set forth in Section 2 of this Act;*
 - (b) *"Economic development project" shall have the same meaning as set forth in Section 2 of this Act; and*
 - (c) *"Tax credit" means the "tax credit" allowed under Sections 1 to 16 of this Act.*
- (2) *An approved company shall determine the income tax credit as provided in this section.*

- (3) *An approved company that is an individual sole proprietorship subject to tax under KRS 141.020, a corporation subject to tax under KRS 141.040(1), or a limited liability company treated as a corporation for federal income tax purposes shall:*
- (a) *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), including income from an economic development project; and*
 - (b) *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), excluding net income attributable to an economic development project.*
 - (c) *The tax credit shall be the amount by which the tax computed under paragraph (a) of this subsection exceeds the tax computed under paragraph (b) of this subsection; however, the credit shall not exceed the limits set forth in Sections 1 to 16 of this Act.*
- (4) *Notwithstanding any other provisions of this chapter, an approved company that is an S-corporation, partnership, registered limited liability partnership, limited liability company treated as a partnership for federal income tax purposes, or trust shall be subject to income tax on the net income attributable to an economic development project at the rates provided in KRS 141.020(2), as follows:*
- (a) *The amount of the tax credit shall be the same as the amount of the tax computed in this subsection or, upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made in this paragraph shall be in satisfaction of the tax liability of the shareholders, partners, members, or beneficiaries of the S-corporation, partnership, registered limited liability partnership, limited liability company, or trust, and shall be paid on behalf of the shareholders, partners, members, or beneficiaries.*
 - (b) *The tax credit or estimated payment shall not exceed the limits set forth in Sections 1 to 16 of this Act.*
 - (c) *If the tax computed in this section exceeds the credit, the excess shall be paid by the S-corporation, partnership, registered limited liability partnership, limited liability company, or trust at the times provided by KRS 141.160 for filing the returns.*
 - (d) *Any estimated tax payment made by the S-corporation, partnership, registered limited liability partnership, limited liability company, or trust in satisfaction of the tax liability of shareholders, partners, members, or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the shareholder, partner, member, or beneficiary.*
- (5) *Notwithstanding any other provisions of this chapter, the net income subject to tax, the tax credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each shareholder's, partner's, member's, or beneficiary's distributive share of net income or credit of an S-corporation, partnership, registered limited liability partnership, limited liability company, or trust.*

- (6) *If the economic development project is a totally separate facility, net income attributable to the project for the purposes of subsections (3), (4), and (5) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under this chapter directly attributable to the facility and overhead expenses apportioned to the facility.*
- (7) *If the economic development project is an expansion to a previously existing facility, net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under this chapter directly attributable to the facility, and the net income attributable to the economic development project for the purposes of subsections (3), (4), and (5) of this section shall be determined by apportioning the separate accounting net income of the entire facility to the economic development project by a formula approved by the Revenue Cabinet.*
- (8) *If an approved company can show to the satisfaction of the Revenue Cabinet that the nature of the operations and activities of the approved company are such that it is not practical to use the separate accounting method to determine the net income from the facility at which the economic development project is located, the approved company shall determine net income from the economic development project using an alternative method approved by the Revenue Cabinet.*
- (9) *The Revenue Cabinet may issue administrative regulations and require the filing of forms designed by the Revenue Cabinet to reflect the intent of Sections 1 to 16 of this Act and the allowable income tax credit that an approved company may retain under Sections 1 to 16 of this Act.*

Section 18. 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 four-fifths (4/5) 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 four-fifths (4/5) of the job assessment fee set forth above, the excess shall be withheld. If the agreement under KRS 154.24-150 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 two-thirds (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 offset shall be four-fifths (4/5) of the assessment fee** ~~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 *Section 11 of this Act*~~[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 *Commonwealth's contribution as determined by subsections (1) to (3) of Section 11 of this Act*~~[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).
- (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 19. 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, 154.26-100(2), *KRS 154.28-110 or Section 11 of this Act*~~for KRS 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.

Approved April 26, 2000