

CHAPTER 133

(SB 47)

AN ACT relating to economic development.

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

Section 1. KRS 154.20-170 is amended to read as follows:

Industrial entities, agricultural business entities, business enterprises, or private sector firms which are members of a business network within the meaning of KRS 154.01-010 in a targeted industrial sector as set forth in the state strategic plan for economic development as prescribed in KRS 154.10-120, ***and businesses that compose the secondary wood products industry as defined in KRS 154.47-005(10)***, shall be given priority consideration under state economic development loan, grant, and incentive programs administered by the Kentucky Economic Development Finance Authority.

SECTION 2. A NEW SECTION OF KRS 65.680 TO 65.699 IS CREATED TO READ AS FOLLOWS:

- (1) ***Any governing body establishing a development area may impose a job development assessment fee on each person employed in the development area whose job was newly created as a result of an economic development project begun on or after January 1, 2002, and as determined by the policies and procedures established by the governing body, subject to the conditions in subsection (6) of this section, and who is subject to the state tax imposed by KRS 141.020. A job shall not be deemed to be newly created under this section if it occurs due to the relocation of jobs from another location within the Commonwealth.***
- (2) ***The total assessment levied by all the governing bodies within the development area shall not exceed an amount equal to three percent (3%) of the gross wages of the employee.***
- (3) ***Each person so assessed shall be entitled to credits against Kentucky income tax equal to the assessment fee withheld from wages during the year as provided by KRS 141.310 and 141.350 so long as the amount does not exceed the amount of the assessment itself. The approved company shall determine the applicable tax credit for each of its employees using the methods set forth in KRS 141.347.***
- (4) ***Subsequent to the establishment of a development area by one (1) governing body, no other governing body may levy an assessment in any portion of the development area that would cause the total assessment in any portion of the development area to exceed three percent (3%) of the gross wages of the employee. If more than one (1) governing body jointly establishes a development area, the governing bodies that establish the development area shall agree upon the amount of the assessment and the manner by which the assessment is to be prorated among the governing bodies establishing the development area.***
- (5) ***Any assessment of employees in connection with their employment at an economic development project levied under this section shall permanently lapse on the date:***
 - (a) ***Any bonds issued in connection with acquiring or developing the infrastructure of a development area or a qualified development area, in accordance with KRS 65.680 to 65.699, are retired; or***

- (b) Any loans or other financing incurred in connection with the establishment of a development area or a qualified development area mature or are prepaid in full.*
- (6) For the purposes of this section:*
 - (a) The development area shall be a previously undeveloped tract of land;*
 - (b) No more than five hundred (500) acres may be approved in any twelve (12) month period in any county;*
 - (c) Acceptable developments shall be limited to manufacturing, and technical developments as approved by the Commissioner of the New Economy;*
 - (d) Each proposed development shall be evaluated by the Kentucky Economic Development Finance Authority in consultation with the Governor's Office of Economic Analysis for fiscal viability; and*
 - (e) The amount of the total assessment for each company locating within the development area shall be subject to approval by the Office of the State Budget Director, the Finance and Administration Cabinet, and the Revenue Cabinet. Approval shall not be granted if it is determined that there is no net positive economic impact to the Commonwealth.*

SECTION 3. A NEW SECTION OF KRS 65.680 TO 65.699 IS CREATED TO READ AS FOLLOWS:

- (1) If a company, against whose employees an assessment is levied under Section 2 of this Act, enters into an agreement with the Kentucky Economic Development Finance Authority under KRS 154.22-010 to 154.22-080, KRS 154.23-005 to 154.23-079, KRS 154.24-010 to 154.24-150, KRS 154.26-010 to 154.26-100, and KRS 154.28-010 to 154.28-100 allowing the company to assess a job development assessment fee as part of that agreement, the total assessment levied against the employee shall not exceed the maximum assessment allowed under KRS 154.22-010 to 154.22-080, KRS 154.23-005 to 154.23-079, KRS 154.24-010 to 154.24-150, KRS 154.26-010 to 154.26-100, and KRS 154.28-010 to 154.28-100.*
- (2) When added with the job development assessment fees under Section 2 of this Act, the total credits that an employee may claim against his or her Kentucky income tax imposed under KRS 141.240 shall not exceed the maximum total job development assessment fees under KRS 154.22-010 to 154.22-080, KRS 154.23-005 to 154.23-079, KRS 154.24-010 to 154.24-150, KRS 154.26-010 to 154.26-100, and KRS 154.28-010 to 154.28-100.*

SECTION 4. A NEW SECTION OF KRS 65.680 TO 65.699 IS CREATED TO READ AS FOLLOWS:

- (1) The employees of any approved company choosing to locate in a development area shall be subject to any assessments levied against them, and the approved company shall not have the authority to reject an assessment.*
- (2) Each employer in the development area shall:*
 - (a) Collect the assessment from its employees by deducting the assessment from each paycheck of its employees;*
 - (b) Promptly remit the assessment to the revenue collector;*

- (c) *Make its payroll books and records available to the revenue collector at a reasonable time as specified by the governing body; and*
- (d) *File with the revenue collector any documentation with regard to the assessment as required by the governing body.*

Section 5. KRS 65.680 is amended to read as follows:

As used in KRS 65.680 to 65.699:

- (1) *"Assessment" means the job development assessment fee authorized by Section 2 of this Act, which the governing body may elect to impose throughout the development area;*
- (2) "City" means any city or urban-county;
- (3)~~(2)~~ "Commencement date" means the date a development area is established, as provided in the ordinance creating the development area;
- (4)~~(3)~~ "County" means any county or charter county;
- (5)~~(4)~~ "Debt charges" means the principal, including any mandatory sinking fund deposits, interest, and any redemption premium, payable on increment bonds as the payments come due and are payable and any charges related to the payment of the foregoing;
- (6)~~(5)~~ "Development area" means a contiguous geographic area, which may be within one (1) or more cities or counties, defined and created for economic development purposes by an ordinance of a city or county in which one (1) or more economic development projects are proposed to be located;
- (7)~~(6)~~ "Economic development project" means any property, asset, or improvement certified by the governing body, which certification is conclusive as:
 - (a) Being for a public purpose;
 - (b) Being for economic development purposes;
 - (c) Being in or related to a development area; and
 - (d) Having an estimated life or period of usefulness of one (1) year or more, including, but not limited to, real estate, buildings, personal property, equipment, furnishings, and site improvements and reconstruction, rehabilitation, renovation, installation, improvement, enlargement, and extension of property, assets, or improvements so certified as having an estimated life or period of usefulness of one (1) year or more;
- (8)~~(7)~~ "Economic development purposes" means the development of facilities for residential, commercial, industrial, public, recreational, or other uses, or for open space, or any combination thereof, which is determined by the governing body establishing the development area as contributing to economic development;
- (9)~~(8)~~ "Financing agreement" means an agreement made between cities, counties, or a combination thereof providing for the release of increments under the authority of KRS 65.680 to 65.699;
- (10)~~(9)~~ "Governing body" means the body possessing legislative authority in a city or county;
- (11)~~(10)~~ "Increment bonds" means bonds and notes issued for the purpose of paying the costs of one (1) or more economic development projects in a development area, the payment of which is secured solely by a pledge of increments or by a pledge of increments and other

sources of payment that are otherwise permitted by law to be pledged or used as a source of payment of the bonds or notes;

- (12)~~(11)~~ "Increments" means that amount of revenue due to be received by a city or county, determined by subtracting the amount of old revenues from the amount of new revenues, ***including assessments, if any***, with respect to a development area;
- (13)~~(12)~~ "Issuer" means a city or county issuing increment bonds;
- (14)~~(13)~~ "New revenues" means the revenues received with respect to a development area in any year after the commencement date for the development area ***and may include all or a portion of the assessments as determined by the governing body***;
- (15)~~(14)~~ "Old revenues" means the amount of revenues received with respect to a development area in the last year prior to the commencement date for the development area;
- (16)~~(15)~~ "Outstanding" means increment bonds that have been issued, delivered, and paid for, except any of the following:
- (a) Increment bonds canceled upon surrender, exchange, or transfer, or upon payment or redemption;
 - (b) Increment bonds in replacement of which or in exchange for which other bonds have been issued; or
 - (c) Increment bonds for the payment, or redemption or purchase for cancellation prior to maturity, of which sufficient moneys or investments, in accordance with the ordinance or other proceedings or any applicable law, by mandatory sinking fund redemption requirements, or otherwise, have been deposited, and credited in a sinking fund or with a trustee or paying or escrow agent, whether at or prior to their maturity or redemption, and, in the case of increment bonds to be redeemed prior to their stated maturity, notice of redemption has been given or satisfactory arrangements have been made for giving notice of that redemption, or waiver of that notice by or on behalf of the affected bond holders has been filed with the issuer or its agent;
- (17)~~(16)~~ "Revenue collector" means any official charged with collecting revenues in a development area;
- (18)~~(17)~~ "Revenues" means ad valorem revenues, ~~and~~ occupational license fees, ***and assessments*** received by the city or county creating a development area and by each city and county that is a party to a financing agreement related to that development area;
- (19)~~(18)~~ "Special fund" means a special fund created in accordance with KRS 65.688 into which increments are to be deposited;
- (20)~~(19)~~ "Termination date" means the date on which the development area shall cease to exist, which date shall be no earlier than the date any increment bonds secured by increments from a development area are no longer outstanding~~, and which shall be no later than the first December 31 that is at least thirty (30) years from the commencement date~~; and
- (21)~~(20)~~ "Year" means January 1 to December 31 of the same calendar year.

Section 6. KRS 65.684 is amended to read as follows:

In addition to any other powers conferred by law, any city or county may exercise any powers necessary or convenient to carry out the purposes of KRS 65.680 to 65.699, including the power to:

- (1) Create development areas and to define their boundaries;
- (2) Undertake economic development projects;
- (3) Issue increment bonds and pledge increments to the payment of debt charges on those increment bonds;
- (4) Create a special fund established for the deposit of increments and other funds that may be used or pledged for the payment of increment bonds and to pay the costs of economic development projects; and
- (5) Utilize increments to pay the costs of economic development projects and for the payment of amounts due on increment bonds; *and*
- (6) ***Impose job development assessment fees.***

Section 7. KRS 65.686 is amended to read as follows:

- (1) Any city or county may establish or modify a development area by:
 - (a) Holding a public hearing by its governing body or its designee at which interested parties are afforded a reasonable opportunity to express their views on the proposed creation or modification of a development area and its boundaries. Notice of the hearing shall:
 1. Include a declaration that the purpose of the hearing is to afford interested parties an opportunity to express their views regarding the development area;
 2. Include a general description of the boundaries of the proposed development area;
 3. State the time and place of the hearing; and
 4. Be published in a local newspaper of general circulation at least seven (7) days but no more than twenty-one (21) days prior to the scheduled hearing date; and
 - (b) Adopting an ordinance which shall:
 1. Describe the boundaries of the development area with sufficiency to allow ordinary and reasonable certainty of the territory included. However, no development area shall include property located in any other development area;
 2. Create the development area on a date certain, which shall be referred to as the commencement date, and, if deemed appropriate by the governing body, establish a termination date;
 3. Assign a name to the development area for identification purposes;
 4. Contain findings that the designation of the proposed development area will result in the increase in the value of property located in the development area or result in increased employment within or around the development area, or both;
 5. Approve the financing agreement, if any, relating to the economic development project;
 6. Establish a special fund for that development area;~~and~~

7. Contain any other findings, limitations, rules, or procedures regarding the development area and its establishment or maintenance as deemed necessary by the governing body; and
 8. ***Levy the job development assessment fee, if any; and***
 - (c) Providing the revenue collector, if the collector is not an employee of the city or county designating the development area, with a description of the development area and any other information available which is needed to determine increments or new revenues.
- (2) Increments generated in a development area shall be submitted by the revenue collector to the city or county establishing the special fund for that development area, deposited to that special fund and used to pay the costs of economic development projects or to pay debt charges on increment bonds, except that increments payable to any city or county other than the city or county establishing the economic development area shall be submitted to that city or county as if no development area existed unless that city or county is a party to a financing agreement that provides that some or all of the increments are to be submitted to a special fund.
 - (3) The existence of a development area shall terminate on the termination date and if no termination date is established by the ordinance creating the development area, on the earlier of the termination date subsequently established by ordinance or the first December 31 that is at least thirty (30) years from the commencement date; ***however, any development area shall not be terminated as long as there are any increment bonds outstanding for which the revenues of the development area are pledged to the repayment thereof.***

Section 8. 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 (30) 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 or the Commonwealth's contribution of KRS 154.24-110(3) applies. If the provisions in KRS 154.24-150(3) or (4) apply, the offset, 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, ~~KRS 154.28-110~~, **or Section 2 of this Act** may offset the fee against the Kentucky income tax required to be withheld from the employee under this section.
- (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, or 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.
- (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 154.23-055 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 KRS 154.23-055(1) to (3).

- (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.

Approved March 20, 2001