

CHAPTER 105**(HB 593)**

AN ACT relating to economic development.

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

Section 1. KRS 147.075 is amended to read as follows:

As used in KRS 147.070 to 147.120 the term "Governor's Cabinet" shall mean the "Governor's Executive Cabinet" and such other persons as the Governor may designate to compose the membership of the "State Planning Committee. "The Governor shall serve as chairman of the State Planning Committee, **and shall appoint a vice chairman from committee membership at his or her discretion.** ~~The secretary of the Cabinet for Economic Development shall serve as vice chairman, and the~~ special assistant to the Governor for budget and management shall serve as secretary.

Section 2. KRS 154.22-010 is amended to read as follows:

The following words and terms as used in KRS 154.22-010 to 154.22-080, unless the context clearly indicates a different meaning, shall have the following meanings:

- (1) "Activation date" means a date selected by an approved company in the tax incentive agreement at any time within a two (2) year period after the date of final approval of the tax incentive agreement by the authority;
- (2) "Affiliate" means the following:
 - (a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;
 - (b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;
 - (c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or profits are owned or controlled, directly or indirectly, by or for that individual;
 - (d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:
 1. One (1) or more chains of corporations connected through stock ownership with a common parent corporation if:
 - a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and
 - b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or

2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;
- (e) A grantor and a fiduciary of any trust;
 - (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
 - (g) A fiduciary of a trust and a beneficiary of that trust;
 - (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;
 - (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
 - (j) A fiduciary of a trust and a limited liability company more than fifty percent (50%) of the capital interest, or the interest in profits, of which is owned directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
 - (k) A corporation and a partnership, including a registered limited liability partnership, if the same persons own:
 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership, including a registered limited liability partnership;
 - (l) A corporation and a limited liability company if the same persons own:
 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
 - (m) A partnership, including a registered limited liability partnership, and a limited liability company if the same persons own:
 1. More than fifty percent (50%) of the capital interest or profits in the partnership, including a registered limited liability partnership; and
 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
 - (n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or
 - (o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation

designations being the same as those designations under the Internal Revenue Code of 1986, as amended;

- (3) "Agribusiness" means any activity involving the processing of raw agricultural products, including timber, or the providing of value-added functions with regard to raw agricultural products;
- (4) "Approved company" means any eligible company seeking to locate an economic development project in a qualified county, which eligible company is approved by the authority pursuant to KRS 154.22-010 to 154.22-080;
- (5) "Approved costs" means:
 - (a) Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
 - (b) The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;
 - (c) The cost of contract bonds and of 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 which is not paid by the contractor or contractors or otherwise provided for;
 - (d) All costs 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 the duties required by or consequent upon the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
 - (e) All costs which shall be required to be paid under the terms of any contract or contracts for the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and
 - (f) All other costs of a nature comparable to those described above;
- (6) "Assessment" means the job development assessment fee authorized by KRS 154.22-010 to 154.22-080;
- (7) "Authority" means the Kentucky Economic Development Finance Authority as created in KRS 154.20-010;
- (8) "Average hourly wage" means the ~~most current~~ wage and employment data published by the Department for Employment Services in the Kentucky Cabinet for Workforce Development collectively translated into wages per hour based on a two thousand eighty (2,080) hour work year for the following sectors:
 - (a) Manufacturing;
 - (b) Transportation, communications and public utilities;
 - (c) Wholesale and retail trade;
 - (d) Finance, insurance, and real estate; and
 - (e) Services;
- (9) "Commonwealth" means the Commonwealth of Kentucky;

- (10) (a) "Economic development project" means and includes:
1. The acquisition of ownership in any real estate in a qualified county by the authority, the approved manufacturing or agribusiness company, or its affiliate;
 2. The present ownership of real estate in a qualified county by the approved manufacturing or agribusiness company or its affiliate;
 3. The acquisition or present ownership of improvements or facilities, as described in paragraph (b) of this subsection, on land which is possessed or is to be possessed by the approved manufacturing or agribusiness company pursuant to a ground lease having a term of sixty (60) years or more; and
 4. The new construction of an electric generation facility;
- (b) For purposes of subparagraphs 1. and 2. of paragraph (a) of this subsection, ownership of real estate shall only include fee ownership of real estate and possession of real estate pursuant 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. With respect to subparagraphs 1., 2., and 3. of paragraph (a) or paragraph (b) of this subsection, the construction, installation, equipping, and rehabilitation of improvements, including fixtures and equipment, and facilities necessary or desirable for improvement of the real estate, 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, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; and the acquisition, installation, equipping, and rehabilitation of manufacturing facilities on the real estate, for use and occupancy by the approved company or its affiliates for manufacturing purposes, electric generation, or for agribusiness purposes. Pursuant to subparagraph 3. of paragraph (a) of this subsection, an economic development project shall not include lease payments made pursuant to a ground lease for purposes of the tax credits provided under the provisions of KRS 154.22-010 to 154.22-080;
- (11) "Electric generation" means the generation of electricity for resale by means of combusting at least fifty percent (50%) of the total fuel used to generate electricity from coal or from gas derived from coal;
- (12) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity engaged in manufacturing, electric generation, or in agribusiness;
- (13) "Employee benefits" means nonmandated costs paid by an eligible company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k) or similar plans;
- (14) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter;
- (15) "Full-time employee" means a person employed by an approved company for a minimum of thirty-five (35) hours per week and subject to the state income tax imposed by KRS 141.020;

- (16) "Inducements" means the assessment and the income tax credits allowed by KRS 154.22-060;
- (17) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property and any activity related to it, together with the storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals;
- (18) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements under this subchapter;
- (19) "Qualified county" means any county certified as such by the authority pursuant to KRS 154.22-010 to 154.22-080;
- (20) "Revenues" shall not be considered state funds;
- (21) "State agency" shall have the meaning assigned to the term in KRS 56.440(8); and
- (22) "Tax incentive agreement" means the agreement entered into, pursuant to KRS 154.22-050, between the authority and an approved company with respect to an economic development project.

Section 3. KRS 154.22-050 is amended to read as follows:

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

- (1) The tax incentive agreement shall set forth the maximum amount of inducements available to the approved company for recovery of the approved costs authorized by the authority and expended by the approved company.
- (2) The approved company shall expend the authorized approved costs for the economic development project within three (3) years of the date of the final approval by the authority.
- (3) The approved company shall provide the authority with documentation as to the expenditures for approved costs in a manner acceptable to the authority.
- (4) The term of the tax incentive agreement shall commence upon the activation date and will terminate upon the earlier of the full receipt of the maximum amount of inducements by the approved company or fifteen (15) years after the activation date.
- (5) The tax incentive agreement shall include the activation date. 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 tax incentive 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 tax incentive 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 154.22-040(3) within two (2) years from the date of final approval of the tax incentive agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.

- (6) *The tax agreement shall also state that if the total number of new full-time employees at the site of the economic development project who are residents of the Commonwealth and subject to the Kentucky income tax is less than fifteen (15) at any time after activation, the authorized inducements shall be suspended for a period of up to one (1) year. If the company does not have at least fifteen (15) new full-time employees at the site who are residents of the Commonwealth and subject to Kentucky income tax within one (1) year from the date of the initial suspension, the inducements may be terminated at the discretion of the authority.*
- (7) The approved company shall comply with the hourly wage criteria set forth in KRS 154.22-040(4) and provide documentation in connection with hourly wages paid to its full-time employees hired as a result of the economic development project in a manner acceptable to the authority.
- ~~(8)~~~~(7)~~ The approved company may be permitted the following inducements during the term of the tax incentive agreement:
- (a) A one-hundred percent (100%) credit against the Kentucky income tax that would otherwise be owed in the approved company's fiscal 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 from the economic development project; and
 - (b) The aggregate assessments withheld by the approved company in each year.
- ~~(9)~~~~(8)~~ 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 total inducements may not exceed authorized cumulative approved costs paid by the approved company in the period commencing with the date of final approval.
- ~~(10)~~~~(9)~~ The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042 on the Kentucky taxable income generated by or arising from the economic development project.
- ~~(11)~~~~(10)~~ The tax incentive 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.
- ~~(12)~~~~(11)~~ The tax incentive agreement shall provide that if an approved company fails to comply with its obligations under the tax incentive agreement then the authority shall have the right, at its option, to:
- (a) Suspend the income tax credits and assessments available to the approved company;
 - (b) Pursue any remedy provided under the tax incentive agreement, including termination thereof; and
 - (c) Pursue any other remedy at law to which it may be entitled.
- ~~(13)~~~~(12)~~ All remedies provided in subsection ~~(12)~~~~(11)~~ of this section shall be deemed to be cumulative.

Section 4. KRS 154.23-010 is amended to read as follows:

LEGISLATIVE RESEARCH COMMISSION PDF VERSION

As used in KRS 154.23-005 to 154.23-079, 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 KRS 154.23-030;
- (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 KRS 154.23-055;
- (4) "Authority" means the Kentucky Economic Development Finance Authority, as created in KRS 154.20-010;
- (5) "Average hourly wage" means the ~~most current~~ wage and employment data published by the Department for Employment Services in the Kentucky Cabinet for Workforce Development collectively translated into wages per hour based on a two thousand eighty (2,080) hour work year for the following sectors:
 - (a) Manufacturing;
 - (b) Transportation, communications, and public utilities;
 - (c) Wholesale and retail trade;

- (d) Finance, insurance, and real estate; and
- (e) Services;
- (6) "Commonwealth" means the Commonwealth of Kentucky;
- (7) "Economic development project" or "project" means:
 - (a) *A new or expanded service or technology activity conducted at a new or expanded site by:*
 - 1. *An approved company; or*
 - 2. *An approved company and its affiliate or affiliates*~~[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 KRS 154.23-005 to 154.23-079, 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 KRS 154.23-005 to 154.23-079;
 - 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 KRS 154.23-060;
- (8) "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;
- (9) "Employee benefits" means nonmandated costs paid by an eligible company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k) or similar plans;
- (10) "Final approval" means action taken by the authority that authorizes the eligible company to receive inducements in connection with a project under KRS 154.23-005 to 154.23-079;

- (11) "Full-time employee" means a person employed by an approved company for a minimum of thirty-five (35) hours per week and subject to the state income tax imposed by KRS 141.020;
- (12) "Inducements" means the assessment and the income tax credits allowed to an approved company under KRS 154.23-050 and 154.23-055;
- (13) "Local government" means a city, county, or urban-county government;
- (14) "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;
- (15) ***"Person" means an individual, sole proprietorship, partnership, registered limited liability partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, entity or government, whether federal, state, county, city, or otherwise, including without limitation any instrumentality, division, political subdivision, district, court, agency, or department thereof;***
- (16) "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 KRS 154.23-005 to 154.23-079;
- ~~(17)~~~~(16)~~ (17) "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;
- ~~(18)~~~~(17)~~ (18) "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 KRS 154.23-015, 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;
- ~~(19)~~~~(18)~~ (19) "Qualified zone" means any census tract or county certified as such by the authority in KRS 154.23-015 and 154.23-020;
- ~~(19) "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.;~~
- (20) "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, **including**~~[that includes]~~ but~~[is]~~ not limited to property taxes, heating and air conditioning, electricity, **water**, sewer, and insurance;
- (21) "Service and technology agreement" means any agreement entered into, under KRS 154.23-040, 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;
- (22) (a) "Service or technology" means *either*:
1. *Any activity involving the performance of work except work classified by the divisions, including successor divisions, of agriculture, forestry and fishing, mining, utilities, construction, manufacturing, wholesale trade, retail trade, real estate rental and leasing, educational services, accommodation and food services, and public administration in accordance with the "North American Industry Classification System," as revised by the United States Office of Management and Budget from time to time, or any successor publication; or*
 2. *Regional or headquarters operations of an entity engaged in an activity listed in subparagraph 1. of this paragraph.*
- (b) *Notwithstanding paragraph (a) of this subsection, "service or technology" shall not include any activity involving the performance of work by an individual who is providing direct service to the public pursuant to a license issued by the state or an association that licenses in lieu of the state*~~[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];~~
- (23) "Start-up costs" ~~means~~~~[mean]~~ the **acquisition** cost **associated with the project and related to**~~[of]~~ furnishing and equipping a building for ordinary business functions, including computers, nonrecurring costs of fixed telecommunication equipment, furnishings, office equipment, and **the relocation of out-of-state equipment**,~~[relocation costs]~~ as verified and approved by the authority in accordance with KRS 154.23-040;
- (24) "Tax incentive agreement" means that agreement entered into, pursuant to KRS 154.23-035, between the authority and an approved company with respect to an economic development project; and
- (25) "Affiliate" means the following:
- (a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;
 - (b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;
 - (c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or profits are owned or controlled, directly or indirectly, by or for that individual;

- (d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:
 - 1. One (1) or more chains of corporations connected through stock ownership with a common parent corporation if:
 - a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and
 - b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or
 - 2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;
- (e) A grantor and a fiduciary of any trust;
- (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
- (g) A fiduciary of a trust and a beneficiary of that trust;
- (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;
- (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
- (j) A fiduciary of a trust and a limited liability company, of which more than fifty percent (50%) of the capital interest, or the interest in profits, is owned directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
- (k) A corporation and a partnership, including a registered limited liability partnership, if the same persons own:
 - 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 - 2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership, including a registered limited liability partnership;
- (l) A corporation and a limited liability company if the same persons own:
 - 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
- (m) A partnership, including a registered limited liability partnership, and a limited liability company if the same persons own:
 1. More than fifty percent (50%) of the capital interest or profits in the partnership, including a registered limited liability partnership; and
 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
- (n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or
- (o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended.

Section 5. KRS 154.23-015 is amended 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 KRS 154.23-005

to 154.23-079, unless the tax incentive 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) *If decertification causes a formerly certified contiguous census tract to become noncontiguous, the applicant shall have the discretion to eliminate or maintain the noncontiguous tract. If the applicant eliminates the noncontiguous tract, it may replace the noncontiguous tract with another qualifying census tract, subject to approval of the authority*~~[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 KRS 154.23-020 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 6. KRS 154.23-025 is amended 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.
- (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;
 - (b) Creation of a minimum of ten (10) new full-time jobs at the project site for qualified employees *by the activation date as set forth in Section 7 or Section 8 of this Act*;
 - (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 is one:
1. a. That rehabilitates a manufacturing or service or technology facility that has not been in operation; or
 - b. For which the current occupant of the facility has published a notice of closure so long as the eligible company intending to acquire the facility is not an affiliate of the current occupant; or
 - c. To which the title 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.
- (4) (a) Within six (6) months after the activation date, the approved company shall compensate a minimum of ninety percent (90%) of its full-time employees whose jobs were created with base hourly wages equal to either:
1. Seventy-five percent (75%) of the average hourly wage for the Commonwealth; or
 2. Seventy-five percent (75%) of the average hourly wage for the county in which the project is to be undertaken.
- (b) If the base hourly wage calculated in subparagraph (a)1. or (a)2. of this subsection is less than one hundred fifty percent (150%) of the federal minimum wage, then the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage. In addition to the applicable base hourly wage calculated above, the eligible company shall provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage; however, if the eligible company does not provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage, the eligible company may qualify under this section if it provides the employees hired by the eligible company as a result of the economic development project total hourly compensation equal to or greater than one hundred fifteen percent (115%) of the applicable base hourly wage through increased hourly wages combined with employee benefits.

Section 7. KRS 154.23-035 is amended to read as follows:

The authority, upon adoption of an authorizing resolution, may enter into a tax incentive agreement with any approved company engaged in manufacturing activities with respect to its economic development project. The terms and provisions of each tax incentive 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:

- (1) The tax incentive agreement shall set forth the maximum amount of inducements available to the approved company for recovery of the approved costs authorized by the authority and expended by the approved company.
- (2) The approved company shall expend the authorized approved costs within three (3) years of the date of the final approval by the authority.
- (3) The approved company shall provide the authority with documentation as to the expenditures for approved costs in a manner acceptable to the authority.
- (4) The term of the tax incentive agreement shall commence upon the activation date and will terminate upon the earlier of the full receipt of the maximum amount of inducements by the approved company or ten (10) years after the activation date.
- (5) The tax incentive agreement shall include the activation date, which shall be a date selected by the approved company within two (2) years of the date of final approval by the authority of the tax incentive agreement. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.23-025 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 ten (10) year period for the term of the tax incentive 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 154.23-025 within two (2) years from the date of final approval of the tax incentive agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.
- (6) The approved company shall comply with the hourly wage criteria set forth in KRS 154.23-025(4) and provide documentation in connection with hourly wages paid to its full-time employees hired as a result of the economic development project in a manner acceptable to the authority.
- (7) The approved company may be permitted the following inducements during the term of the tax incentive agreement:
 - (a) A one-hundred percent (100%) credit against the Kentucky income tax that would otherwise be owed in the approved company's fiscal year, as determined under KRS 141.401, to the Commonwealth by the approved company on the income of the approved company generated by or arising from the economic development project; and
 - (b) The aggregate assessments withheld by the approved company each year.
- (8) The total inducements may not exceed authorized cumulative approved costs paid by the approved company in the three (3) year period commencing with and after the date of final approval.
- (9) 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 on the Kentucky taxable income generated by or arising from the economic development project.
- (10) The tax incentive 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.

- (11) The tax incentive agreement shall provide that if the total number of full-time qualified employees at the site of the economic development project is less than ten (10), the authorized inducements shall be suspended *for a period of up to one (1) year. If the company does not have at least ten (10) new full-time qualified employees at the site within one (1) year from the date of the initial suspension, the inducements may be terminated at the discretion of the authority*~~[until at least ten (10) full-time qualified employees are employed by the approved company at the project site].~~
- (12) The tax incentive agreement shall provide that if an approved company fails to comply with its obligations under the tax incentive agreement then the authority shall have the right, at its option, to:
- (a) Suspend the income tax credits and assessments available to the approved company, *pursuant to subsection (11) of this section;*
 - (b) Pursue any remedy provided under the tax incentive agreement, including termination thereof; and
 - (c) Pursue any other remedy at law to which it may be entitled.
- (13) All remedies provided in subsection (12) of this section shall be deemed to be cumulative.
- (14) The approved company shall pay all costs of counsel to the authority resulting from approval of its economic development project.

Section 8. KRS 154.23-040 is amended to read as follows:

- (1) Before any approved company engaged in service or technology activity is granted inducements under KRS 154.23-005 to 154.23-079, 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 *commence upon the activation date and shall terminate upon the earlier of the full receipt of the maximum amount of inducements by the approved company or ten (10) years after the activation date*~~[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].~~
 - (b) *The service and technology agreement shall include the activation date, which shall be a date selected by the approved company within two (2) years of the date of final approval by the authority of the service and technology agreement. If the approved company does not satisfy the minimum investment and minimum employment requirements of Section 6 of this Act 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 ten (10) year period for the term of the service and technology 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 6 of this Act within two (2) years from the date of final approval of the service and*

technology agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.

- (c) 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;
- (d)~~(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 KRS 141.401, 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 KRS 154.23-045; and
 2. The assessment, if applicable, withheld by the approved company in each year;
- (e)~~(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;
- (f)~~(d)~~ If the total number of ***full-time*** qualified employees at the site of the economic development project is less than ten (10), ***or in the case of an existing business the approved company fails to maintain the increase of at least ten (10) full-time qualified employees***, the authorized inducements shall be suspended ***for a period of up to one (1) year. If the company does not have at least ten (10) new full-time qualified employees at the site within one (1) year from the date of the initial suspension, the inducements may be terminated at the discretion of the authority***~~[until at least ten (10) full-time qualified employees are employed by the approved company at the project site];~~
- (g)~~(e)~~ The service and technology agreement may be assigned by the approved company only upon the prior written consent of the authority; and
- (h)~~(f)~~ The approved company shall pay all costs of counsel to the authority resulting from approval of its economic development project.
- (2) 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.
 - (3) 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.
 - (4) 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.

- (5) 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.
- (6) 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. KRS 154.23-055 is amended 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, ***or, with the authority's consent, an affiliate of the approved company,*** may require each qualified statewide employee, as a condition to employment, to agree to pay an assessment in an amount determined by the percentage of the local occupational license fee, which shall be one-fifth (1/5) of the total assessment, plus the Commonwealth's contribution of four-fifths (4/5) of the total assessment, 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 forgo 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 forgo 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 forgo.

- (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 KRS 141.310 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 forgo 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 tax incentive 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 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 10. KRS 154.24-010 is amended to read as follows:

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings in KRS 154.24-010 to 154.24-150:

- (1) "Affiliate" means the following:
 - (a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;
 - (b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;
 - (c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or profits are owned or controlled, directly or indirectly, by or for that individual;

- (d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:
1. One (1) or more chains of corporations connected through stock ownership with a common parent corporation if:
 - a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and
 - b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or
 2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;
- (e) A grantor and a fiduciary of any trust;
- (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
- (g) A fiduciary of a trust and a beneficiary of that trust;
- (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;
- (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
- (j) A fiduciary of a trust and a limited liability company, of which more than fifty percent (50%) of the capital interest, or the interest in profits, is owned directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
- (k) A corporation and a partnership, including a registered limited liability partnership, if the same persons own:
1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership, including a registered limited liability partnership;
- (l) A corporation and a limited liability company if the same persons own:
1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
- (m) A partnership, including a registered limited liability partnership, and a limited liability company if the same persons own:
 1. More than fifty percent (50%) of the capital interest or profits in the partnership, including a registered limited liability partnership; and
 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
- (n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or
- (o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended;
- (2) "Agreement" means the service and technology agreement made pursuant to KRS 154.24-120, between the authority and an approved company with respect to an economic development project;
- (3) "Approved company" means any eligible company seeking to locate an economic development project from outside the Commonwealth into the Commonwealth, or undertaking an economic development project in the Commonwealth for which it is approved pursuant to KRS 154.24-100;
- (4) "Approved costs" means fifty percent (50%) of the total of the start-up costs up to a maximum of ten thousand dollars (\$10,000) per new full-time job created and to be held by a Kentucky resident subject to the personal income tax of the Commonwealth, plus fifty percent (50%) of the annual rent for each elapsed year of the service and technology agreement;
- (5) "Assessment" means the "service and technology job creation assessment fee" authorized by KRS 154.24-110;
- (6) "Authority" means the Kentucky Economic Development Finance Authority, as created in KRS 154.20-010;
- (7) "Average hourly wage" means the ~~most current~~ wage and employment data published by the Department for Employment Services in the Kentucky Cabinet for Workforce Development collectively translated into wages per hour based on a two thousand eighty (2,080) hour work year for the following sectors:
 - (a) Manufacturing;
 - (b) Transportation, communications, and public utilities;
 - (c) Wholesale and retail trade;
 - (d) Finance, insurance, and real estate; and
 - (e) Services;

- (8) "Commonwealth" means the Commonwealth of Kentucky;
- (9) "Economic development project" or "project" means *a new or expanded service or technology activity conducted at a new or expanded site by:*
- (a) *An approved company; or*
 - (b) *An approved company and its affiliate or affiliates*~~[a service or technology activity conducted by an approved company];~~
- (10) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity engaged in service or technology and meeting the standards promulgated by the authority in accordance with KRS Chapter 13A;
- (11) "Employee benefits" means nonmandated costs paid by an approved company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k) or similar plans;
- (12) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter;
- (13) "Full-time employee" means a person employed by an approved company for a minimum of thirty-five (35) hours per week and subject to the state tax imposed by KRS 141.020;
- (14) "In lieu of credits" means a local government appropriation to the extent permitted by law, or other form of local government grant or service benefit, directly related to the economic development project and in an amount equal to one percent (1%) of employees' gross wages, exclusive of any noncash benefits provided to an employee, or the provision by a local government of an in-kind contribution directly related to the economic development project and in an amount equal to one half (1/2) of the rent for the duration of the agreement;
- (15) "Inducements" means the income tax credits allowed and the assessment authorized by KRS 154.24-110, which are intended to induce companies engaged in service and technology industries to locate or expand in the Commonwealth;
- (16) "Person" means an individual, sole proprietorship, partnership, registered limited liability partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, entity or government, whether federal, state, county, city, or otherwise, including without limitation any instrumentality, division, political subdivision, district, court, agency, or department thereof;
- (17) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements under this subchapter;
- (18) ~~["Relocation costs" means the identified expenditures by the company for moving costs, separation costs, and any other expenditures substantiated by the company which directly related to the move from an existing location outside of Kentucky to locations approved by the authority;~~
- (19)} "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 activity 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 activity for which the inducement has been granted as determined by the authority using criteria which is 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;
- (c) Rent shall include the customary cost of occupancy, including but not limited to property taxes, heating and air-conditioning, electricity, water, sewer, and insurance;

(19) (a) ~~(20)~~ "Service or technology" means *either*:

1. *Any activity involving the performance of work except work classified by the divisions, including successor divisions, of agriculture, forestry and fishing, mining, utilities, construction, manufacturing, wholesale trade, retail trade, real estate rental and leasing, educational services, accommodation and food services, and public administration in accordance with the "North American Industry Classification System," as revised by the United States Office of Management and Budget from time to time, or any successor publication; or*
2. *Regional or headquarters operations of an entity engaged in an activity listed in subparagraph 1. of this paragraph.*

- (b) *Notwithstanding paragraph (a) of this subsection, "service or technology" shall not include any activity involving the performance of work by an individual who is providing direct service to the public pursuant to a license issued by the state or an association that licenses in lieu of the state* ~~[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. A company otherwise engaged in an ineligible activity may operate a service and technology activity in a separate division and, with the approval of the authority and subject to the record keeping requirements established by the authority, the service and technology activity may be deemed an eligible activity];~~ and

(20) ~~(21)~~ "Start-up costs" means the acquisition cost *associated with the project related to the* ~~of~~ furnishing and equipping the building for ordinary business functions, including computers, furnishings, office equipment, *the relocation of out-of-state equipment* ~~[relocation costs]~~, and nonrecurring costs of fixed telecommunication equipment as verified and approved by the authority in accordance with KRS 154.24-130.

Section 11. KRS 154.24-120 is amended to read as follows:

Before any approved company is granted inducements as prescribed in KRS 154.24-010 to 154.24-150, a service and technology agreement with respect to the company's economic development project shall be entered into between the authority and the approved company. The terms and provisions of the 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:

- (1) The term of an 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 two (2)

years after the date of final approval of the agreement by the authority. In order to implement the activation date, the approved company shall notify the authority, the Kentucky Revenue Cabinet, the employees, and the affected local jurisdictions, if any, of the activation date on which implementation of the inducements authorized in the agreement shall occur.

- (2) The agreement shall include:
- (a) A description of the authorized inducements to be used by the approved company;
 - (b) A provision that, if the total number of full-time employees at the site of the economic development project who are residents of the Commonwealth and subject to the Kentucky income tax is less than fifteen (15), or in the case of an existing Kentucky business the approved company fails to maintain the increase of at least fifteen (15) full-time employees who are residents of the Commonwealth and subject to the Kentucky income tax, the authorized inducements shall be suspended *for a period of up to one (1) year. If the company does not have at least fifteen (15) new full-time employees at the site who are residents of the Commonwealth and subject to Kentucky income tax within one (1) year from the date of the initial suspension, the inducements may be terminated at the discretion of the authority*~~[until the number of full-time employees at the site of the economic development project who are residents of the Commonwealth and subject to the Kentucky income tax equals or exceeds fifteen (15); or in the case of an existing Kentucky business until the maintenance requirement of subsection (4) of KRS 154.24-140 is satisfied];~~
 - (c) A provision that, if seventy-five percent (75%) or less of services provided by the approved company from the economic development project should be provided to persons located outside of the Commonwealth during any fiscal year of the approved company as prescribed in KRS 154.24-090, the authorized inducements shall be suspended *for a period of up to one (1) year. If the percentage of these services does not exceed seventy-five percent (75%) within one (1) year from the initial date of suspension, the inducements may be terminated at the discretion of the authority*~~[until the percentage of these services again exceeds seventy five percent (75%) for a full fiscal year of the approved company]; and~~
 - (d) A provision that neither income tax credits nor assessments are assignable without written consent by the authority.

Section 12. KRS 154.26-090 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 project. The terms and provisions of each agreement, including the amount of approved costs, *the amount of the license tax credit pursuant to Section 14 of this Act, and any limitations the authority may deem necessary*, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:
- (a) *The amount the approved company may recover through inducements under this subchapter shall not exceed seventy-five percent (75%) of approved costs.*
 - (b) The agreement shall set a date by which the approved company will have completed the project. Within three (3) months of the completion date, the approved company shall document the actual cost of the project in a manner acceptable to the authority. The authority may employ an independent consultant or utilize technical resources to

verify the cost of the project. The approved company shall reimburse the authority for the cost of the consultant.~~;~~

~~(c)~~~~(b)~~ In consideration of the execution of the agreement, the approved company may be permitted during the time not to exceed ten (10) years during which the agreement is in effect, which time shall commence on the date of the agreement for purposes of the inducements:

1. A credit against the 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 revitalization project as determined under KRS 141.403;
2. A credit against the Kentucky license tax imposed by KRS 136.070 ~~on the capital of the approved company generated by or arising out of the economic revitalization project~~ as determined under KRS 136.0704; plus
3. The aggregate assessment withheld by the approved company in each year;

~~(d)~~~~(c)~~ The tax *credits*~~credit~~ allowed to the approved company shall be equal to the lesser of the total amount of the tax liability or ***the amount that the company may recover under paragraph (a) of this subsection***~~[fifty percent (50%) of the approved cost]~~ that has not yet been recovered,~~[which fifty percent (50%) shall be]~~ reduced by any recovery through the collection of assessments and appropriations made under any appropriation agreement. The credit shall be allowed for each fiscal year of the approved company during the term of the agreement and for which a tax return of the approved company is filed until the ***amount that the company may recover under paragraph (a) of this subsection***~~[entire fifty percent (50%) of the approved cost]~~ has been received through a combination of credits, assessments, if assessments are elected to be imposed, and appropriations made under any appropriation agreement. The approved company shall not be required to pay estimated income tax payments as prescribed under KRS 141.044 or 141.305 on income from the economic revitalization project. 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 for the preceding fiscal year of an approved company for which a return was filed with respect to an economic revitalization project of the approved company the state tax liability of the approved company receiving inducements under KRS 154.26-015 to 154.26-100 and the amount of any tax credits taken pursuant to this section;

~~(e)~~~~(d)~~ The agreement shall provide that ***the***~~:~~

~~1. The~~ term shall not be longer than the earlier of:

- 1.~~[a.]~~ The date on which the approved company has received inducements or ***withheld***~~[withholds]~~ assessments equal to ***the amount that the company may recover under paragraph (a) of this subsection***~~[fifty percent (50%) of the approved costs of its economic revitalization project]~~; or
- 2.~~[b.]~~ Ten (10) years from the date of the execution of the agreement.

~~(f)~~~~[2.]~~ Prior to execution of the agreement, the eligible company shall secure from all local governmental authorities responsible for collecting local occupational license fees one (1) of the following:

- 1.~~[a.]~~ A resolution or order of the local governmental entities acknowledging and consenting to the termination or partial termination of the receipt of local

occupational license fees paid by the approved company on behalf of its employees to the local government entities resulting from the execution of the agreement; or

- 2.~~[b.]~~ In lieu of the credit against the local occupational license fee, an appropriation agreement with the authority and the local governmental entities by which the local governmental entities will appropriate funds in an amount equal to the amount of the credit of the local occupational license fee for the benefit of the approved company in a manner consistent with the applicable state laws.
- (g) If more than one (1) local occupational license fee is imposed upon the employees of the approved company, the assessment imposed upon the employees shall be credited against the local occupational license fee and shall be apportioned to each local occupational license fee according to each local occupational license fee's proportion to the total of all local occupational license fees for such employees. No credit, or portion thereof shall be allowed against any local occupational license fee imposed by or dedicated solely to a local board of education.
- (h)~~[3.]~~ If in any fiscal year of the approved company during which the agreement is in effect the total of the *tax credits*~~[income tax credit]~~ granted to the approved company plus the assessment collected from the wages of the employees exceeds ***the expended portion of the amount that the approved company may recover under paragraph (a) of this subsection***~~[fifty percent (50%) of the approved costs then expended]~~, the approved company shall pay the excess to the Commonwealth as income tax.
- (i)~~[4.]~~ If in any fiscal year of the approved company during which the agreement is in effect the assessment collected from the wages of the employees exceeds ***the expended portion of the amount that the approved company may recover under paragraph (a) of this section***~~[fifty percent (50%) of the approved costs then expended]~~, 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.
- (j)~~[e)]~~ All proceeds of any loan or other financing incurred in connection with the economic revitalization project shall be expended by the approved company within five (5) years from the date of the revitalization agreement. In the event that all proceeds of any loan or other financing incurred in connection with the economic revitalization project are not fully expended within the five (5) 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 five (5) year period.
- (2) If the approved company elects to utilize the assessment as prescribed in KRS 154.26-100, ***it shall not assess the wages of an employee who is party to an individual employment contract with the approved company***~~[a vote of the employees shall be taken by the approved company to approve or disapprove the withholding of the assessment. The vote shall be conducted in a manner approved by the authority.]~~

- ~~(3) If the approved company elects to utilize the assessment, neither the appropriation agreement, if it is so used, nor the agreement shall be executed unless the assessment is approved by a majority of the employees voting. If the approved company elects not to utilize the assessment, no employee vote shall be required for the execution of the agreement.~~
- ~~(4) A majority vote of the employees of the approved company voting in favor of the assessment shall authorize the approved company to invoke the assessment on all employees of the approved company.~~
- ~~(5) Notwithstanding the provisions of this section, no approved company shall assess the wages of an employee who is party to an individual employment contract with the approved company, or the wages of an employee whose wages will fall below applicable federal or state minimum wage standards if the job revitalization assessment fee is imposed.~~
- ~~(3){(6)}~~ Neither the appropriation agreement nor the agreement shall be transferable or assignable by the approved company without the expressed written consent of the authority.

Section 13. 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, **five percent (5%)**~~{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, **unless:**
- (a) ~~The~~~~[. However, if the]~~ appropriation agreement is consummated, **in which case** the assessment shall be **four percent (4%)**~~{five percent (5%)}~~ of each employee's gross wages subject to the income tax imposed by KRS 141.020;
- (b) **The local government or governments in which the project is located have a local occupational license fee of less than one percent (1%) and agree to forgo all of their local occupational license fee, in which case the assessment shall equal four percent (4%) plus the percentage of the local occupational license fee that the local government or governments have agreed to forgo; or**
- (c) **The local government or governments in which the project is located have no occupational license fee, in which case the assessment shall be four percent (4%).**
- (2) Each assessed employee shall be entitled to a credit against his Kentucky income tax required to be withheld under KRS 141.310 **in the form of a simultaneous adjustment** equal to **four-fifths (4/5)**~~{two-thirds (2/3)}~~ of the assessment, **unless:**
- (a) ~~The~~~~[; or if the]~~ appropriation agreement is consummated, **in which case** the credit shall be equal to **one hundred percent (100%)**~~{four-fifths (4/5)}~~ of the assessment;
- (b) **The local government or governments in which the project is located have a local occupational license fee of less than one percent (1%) and agree to forgo all of their local occupational license fee, in which case the credit shall be equal to the total assessment less the local occupational license fee; or**
- (c) **If the local government or governments in which the project is located have no local occupational license fee, in which case the credit shall be equal to one hundred percent (100%) 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-fifth (1/5)***~~one-sixth (1/6)~~ of the assessment, unless:
- (a) The appropriation agreement is consummated; ***or***
 - (b) ***The local occupational license fee is less than one percent (1%), in which case the credit shall equal the same amount as the local occupational license fee.***
- (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, 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.

Section 14. KRS 136.0704 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
- (a) "Approved company" means a company approved under KRS 154.26-010 and subject to license tax under KRS 136.070;
 - (b) "Economic revitalization project" shall have the same meaning as set forth in KRS 154.26-010; and
 - (c) "Tax credit" means the tax credit allowed in KRS 154.26-090(1)(c)~~(b)~~².
- (2) An approved company ***that entered into a revitalization agreement prior to the effective date of this Act*** shall:
- (a) Compute the company's total license tax due as provided by KRS 136.070; and
 - (b) Compute the license tax due excluding the capital attributable to an economic revitalization project.
- (3) The tax credit shall be the amount by which the tax computed under subsection (2)(a) of this section exceeds the tax computed under subsection (2)(b) of this section; however, the credit shall not exceed the limits set forth in KRS 154.26-090.
- (4) The capital attributable to an economic revitalization project shall be determined by a formula approved by the Revenue Cabinet.

- (5) *For an approved company that enters into a revitalization agreement after the effective date of this Act, the tax credit shall be negotiated pursuant to Section 12 of this Act, but shall not exceed one hundred percent (100%) of the computed license tax attributable to the location of the economic revitalization project. In no case shall the tax credit exceed the limits set forth in Section 12 of this Act.*
- (6) *The license tax attributable to a revitalization project shall be determined by a formula approved by the Revenue Cabinet.*
- (7) The Revenue Cabinet may promulgate administrative regulations and require the filing of forms designed by the Revenue Cabinet to reflect the intent of KRS 154.26-010 to 154.26-100 and the allowable income tax credit which an approved company may retain under KRS 154.26-010 to 154.26-100.

SECTION 15. A NEW SECTION OF SUBCHAPTER 26 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *If, prior to the effective date of this Act, the authority has given its preliminary approval designating an eligible company as a preliminarily approved company and authorizing the undertaking of an economic revitalization project, but has not entered into a final agreement with the company, the company shall have the one-time option to:*
 - (a) *Operate under the existing agreement as preliminarily approved; or*
 - (b) *Request the authority to amend the agreement to comply with the amendments in Sections 12, 13, 14, and 21 of this Act.*
- (2) *If, prior to the effective date of this Act, the authority has entered into a final agreement with an eligible company, and if the final agreement is still in effect, the company shall have the one-time option to:*
 - (a) *Operate under the existing final agreement; or*
 - (b) *Request the authority to amend only the employee assessment portion of the final agreement to comply with the amendment in Section 13 of this Act.*

Section 16. KRS 154.28-010 is amended to read as follows:

As used in KRS 154.28-010 to 154.28-100, unless the context clearly indicates otherwise:

- (1) "Activation date" means a date selected by an approved company in the agreement at any time within the two (2) year period after the date of final approval of the agreement by the authority;
- (2) "Affiliate" means the following:
 - (a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;
 - (b) An individual and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;
 - (c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or the profits interest of which is owned, directly or indirectly, by or for that individual;
 - (d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:

1. One (1) or more chains of corporations connected through stock ownership with a common parent corporation if:
 - a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and
 - b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing such voting power or value, stock owned directly by the other corporations; or
 2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;
- (e) A grantor and a fiduciary of any trust;
 - (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
 - (g) A fiduciary of a trust and a beneficiary of that trust;
 - (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;
 - (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
 - (j) A fiduciary of a trust and a limited liability company of which more than fifty percent (50%) of the capital interest or the profits interest of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
 - (k) A corporation and a partnership, including a registered limited liability partnership, if the same persons own:
 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership, including a registered limited liability partnership;
 - (l) A corporation and a limited liability company if the same persons own:
 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;

- (m) A partnership, including a registered limited liability partnership, and a limited liability company if the same persons own:
 - 1. More than fifty percent (50%) of the capital interest or profits in the partnership, including a registered limited liability partnership; and
 - 2. More than fifty percent (50%) of the capital interest or profits in the limited liability company;
- (n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or
- (o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation: S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended;
- (3) "Agreement" means the tax incentive agreement entered into, pursuant to KRS 154.28-090, between the authority and an approved company with respect to an economic development project;
- (4) "Agribusiness" means any activity involving the processing of raw agricultural products, including timber, or the providing of value-added functions with regard to raw agricultural products;
- (5) "Approved company" means any eligible company, approved by the authority pursuant to KRS 154.28-080, requiring an economic development project;
- (6) "Approved costs" means:
 - (a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, rehabilitation, and installation of an economic development project;
 - (b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, rehabilitation, and installation of an economic project which is not paid by the vendor, supplier, deliverymen, contractors, or otherwise else provided;
 - (c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation, and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, rehabilitation, and installation of an economic development project;
 - (d) All costs which shall be required to be paid under the terms of any contract for the acquisition, construction, rehabilitation, and installation of an economic development project;
 - (e) All costs which shall be required for the installation of utilities such as water, sewer, sewer treatment, gas, electricity, communications, railroads, and similar facilities, and including offsite construction of the facilities paid for by the approved company; and
 - (f) All other costs comparable to those described above;

- (7) "Assessment" means the job development assessment fee authorized by this section to KRS 154.28-100;
- (8) "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;
- (9) "Average hourly wage" means the ~~most current~~ wage and employment data published by the Department for Employment Services in the Kentucky Cabinet for Workforce Development collectively translated into wages per hour based on a two thousand eighty (2,080) hour work year for the following sectors:
- (a) Manufacturing;
 - (b) Transportation, communications, and public utilities;
 - (c) Wholesale and retail trade;
 - (d) Finance, insurance, and real estate; and
 - (e) Services;
- (10) "Commonwealth" means the Commonwealth of Kentucky;
- (11) (a) "Economic development project" or "project" means and includes:
- 1. The acquisition of ownership in any real estate by the approved manufacturing or agribusiness company or its affiliate;
 - 2. The present ownership of real estate by the approved manufacturing or agribusiness company or its affiliate; or
 - 3. The acquisition or present ownership of improvements or facilities, as described in paragraph (b) of this subsection, on land which is possessed or is to be possessed by the approved company pursuant to a ground lease having a term of sixty (60) years or more.
- (b) For purposes of subparagraphs 1. and 2. of paragraph (a) of this subsection, ownership of real estate shall only include fee ownership of real estate and possession of real estate pursuant 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. With respect to subparagraphs 1., 2., and 3. of paragraph (a) of this subsection, the construction, installation, equipping, and rehabilitating of improvements, including fixtures and equipment directly involved in the manufacturing process, and facilities necessary or desirable for improvement of the real estate shall include: surveys, site tests, and inspections; subsurface site work and excavation; removal of structures, roadways, cemeteries, and other site obstructions; filling, grading, provision of drainage, and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; offsite construction of utility extensions to the boundaries of the real estate; and the acquisition, installation, equipping, and rehabilitation of manufacturing facilities or agribusiness operations on the real estate for the use of the approved company or its affiliates for manufacturing or agribusiness operational purposes. Pursuant to paragraphs (a)3. and (b) of this subsection, an economic development project shall not include lease payments made pursuant to a ground lease for purposes of the tax credits provided under the provisions of KRS 154.28-010 to 154.28-100. An economic development project shall

include the equipping of a facility with equipment but, for purposes of the tax credits provided under the provisions of KRS 154.28-010 to 154.28-090, only to the extent of ten thousand dollars (\$10,000) per job created by and maintained at the economic development project;

- (12) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, trust, or any other entity engaged in manufacturing or agribusiness operations;
- (13) "Employee benefits" means nonmandated costs paid by an eligible company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k) or similar plans;
- (14) "Full-time employee" means a person employed by an approved company for a minimum of thirty-five (35) hours per week and subject to the state income tax imposed by KRS 141.020;
- (15) "Inducement" means the assessment or the Kentucky income tax credit as set forth in KRS 154.28-090;
- (16) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property, and any activity functionally related to it, together with storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals; and
- (17) "State agency" shall have the meaning assigned to the term in KRS 56.440(8).

Section 17. KRS 154.28-090 is amended to read as follows:

The authority, upon adoption of an authorizing resolution, may enter into, with any approved company, an 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:

- (1) The agreement shall set forth the maximum amount of inducements available to the approved company for recovery of the approved costs authorized by the authority and expended by the approved company.
- (2) The approved company shall expend the authorized approved costs within three (3) years of the date of the final approval by the authority.
- (3) The approved company shall provide the authority with documentation as to the expenditures for approved costs in a manner acceptable to the authority.
- (4) The agreement shall include the activation date and will terminate upon the earlier of the full receipt of the maximum amount of inducements by the approved company or ten (10) years from the activation date. 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 agreement shall occur. The activation date shall be the time when the maximum dollar value of equipment that constitutes a portion of the economic development project under KRS 154.28-010(11) 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 shall not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies the requirements; however, the ten (10) year period for the term of the 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 agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.

- (5) *The tax agreement shall also state that if the total number of new full-time employees at the site of the economic development project who are residents of the Commonwealth and subject to the Kentucky income tax is less than fifteen (15) at any time after activation, the authorized inducements shall be suspended for a period of up to one (1) year. If the company does not have at least fifteen (15) new full-time employees at the site who are residents of the Commonwealth and subject to Kentucky income tax within one (1) year from the date of the initial suspension, the inducements may be terminated at the discretion of the authority.*
- (6) The approved company shall comply with the wage criteria set forth in KRS 154.28-080(4) and provide documentation in connection with wages paid to its full-time employees hired as a result of the economic development project in a manner acceptable to the authority.
- (7)~~(6)~~ The approved company may be permitted one of the following inducements during the term of the agreement and shall select the applicable inducement at the time of final approval by the authority:
 - (a) A one hundred percent (100%) credit against the Kentucky income tax that would otherwise be owed in the approved company's fiscal year, as determined under KRS 141.400, to the Commonwealth by the approved company on the income of the approved company generated by or arising from the economic development project; or
 - (b) The aggregate assessments pursuant to KRS 154.28-110 withheld by the approved company each year.
- (8)~~(7)~~ Either the total income tax credit or assessments may not exceed authorized cumulative approved costs paid by the approved company in the three (3) year period commencing with the date of final approval.
- (9)~~(8)~~ If the approved company elects to use the income tax credit, 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 on the Kentucky taxable income generated by or arising from the economic development project.
- (10)~~(9)~~ 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.
- (11)~~(10)~~ The agreement shall provide that if an approved company fails to comply with its obligations under the agreement then the authority shall have the right, at its option, to:
 - (a) Suspend either the income tax credits or assessments available to the approved company, **pursuant to subsection (5) of this section**;
 - (b) Pursue any remedy provided under the agreement, including termination thereof; and

(c) Pursue any other remedy at law to which it may be entitled.

~~(12)~~~~(11)~~ All remedies provided in subsection ~~(11)~~~~(10)~~ of this section shall be deemed to be cumulative.

~~(13)~~~~(12)~~ By October 1 of each year, 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 development 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 or assessments equal to its total inducements.

Section 18. KRS 154.47-110 is amended to read as follows:

- (1) To encourage the continued development of Kentucky's primary and secondary wood products industries, the Kentucky Forest Products Council is established ~~and attached to the Cabinet for Economic Development for administrative purposes~~.
- (2) The council shall work with members of the primary and secondary wood products industries and owners of forest resources to foster cooperation in the planning and implementation of forest resources technical assistance and education efforts, including, but not limited to, silvicultural best management practices, a forest stewardship program, a master logger program, guidelines for water quality management, forest fire prevention and other technical assistance and education efforts focused on sustaining the development and productivity of the Commonwealth's forest resources.
- (3) The council shall be comprised of the following members:
 - ~~(a)~~ ~~The secretary of the Cabinet for Economic Development or his designee, who shall serve ex officio;~~
 - ~~(b)~~ The secretary of the Natural Resources and Environmental Protection Cabinet or his designee, who shall serve ex officio;
 - ~~(b)~~~~(e)~~ The director of the Division of Forestry or his designee;
 - ~~(c)~~~~(d)~~ The chairman of the University of Kentucky Department of Forestry or his designee;
 - ~~(d)~~~~(e)~~ The chairman of the Kentucky Soil and Water Conservation Commission or his designee;
 - ~~(e)~~~~(f)~~ A representative of the Kentucky Forest Industries Association appointed by the Governor;
 - ~~(f)~~~~(g)~~ A representative of the primary wood products industry appointed by the Governor;
 - ~~(g)~~~~(h)~~ A representative of the secondary wood products industry appointed by the Governor;
 - ~~(h)~~~~(i)~~ A representative of the Kentucky Farm Bureau Federation appointed by the Governor;
 - ~~(i)~~~~(j)~~ A certified tree farmer or forest steward appointed by the Governor;

- (j)~~(k)~~ A representative of the Kentucky paper products industry appointed by the Governor; and
- (k) **Two representatives of public interest groups**~~(1) A representative of a public interest group which is~~ active in natural resource conservation or environmental protection issues appointed by the Governor from three (3) nominees, one (1) from the Cumberland Chapter of the Sierra Club, one (1) from the Kentucky Resources Council; and one (1) from Kentuckians for the Commonwealth.
- (4) The initial term of office of members appointed by the Governor shall be staggered so that the three (3) members shall serve for two (2) years each, two (2) members shall serve for three (3) years each, and two (2) members shall serve a four (4) year term. Subsequent appointments shall be for a term of four (4) years each. Vacancies shall be filled in the same manner as for the original appointment. Members appointed by the Governor may be reappointed by the Governor for succeeding terms.
- (5) The council chairperson shall be appointed from the membership by the Governor for a term of two (2) years and may be reappointed by the Governor for succeeding terms.
- (6) The~~Cabinet for Economic Development and the~~ Natural Resources and Environmental Protection Cabinet shall provide staff services to the council.

Section 19. KRS 198A.035 is amended to read as follows:

- (1) The Kentucky Housing Corporation shall oversee the development and implementation of the Kentucky housing policy. The corporation shall create an advisory committee on housing policy consisting of the following:
- (a) The following **ten (10)**~~eleven (11)~~ state government members, or their duly-appointed designees: the commissioner of education; commissioner of the Department for Local Government; commissioner of the Department of Housing, Buildings and Construction;~~secretary of the Cabinet for Economic Development;~~ secretary of the Cabinet for Families and Children; secretary of the Natural Resources and Environmental Protection Cabinet; secretary of the Cabinet for Health Services; executive director of the Human Rights Commission; state historic preservation officer; secretary of the Transportation Cabinet; and executive director of the Kentucky Housing Corporation.
- (b) At-large members shall be appointed by the chairman of the board of directors of the Kentucky Housing Corporation. There shall be one (1) at-large representative for each of the following:
1. Public housing authorities;
 2. Mortgage banking industry;
 3. Manufactured housing industry;
 4. Realtors;
 5. Homebuilders;
 6. Urban nonprofit housing organizations;
 7. Rural nonprofit housing organizations;
 8. Urban advocates for the homeless;

9. Rural advocates for the homeless;
10. Residents of economically-diverse urban neighborhoods;
11. Residents of economically-diverse rural neighborhoods;
12. Rental property providers;
13. Advocates for persons with physical disabilities;
14. Advocates for persons with mental disabilities;
15. The Kentucky State Building Trades Council;
16. The Kentucky League of Cities; and
17. The Kentucky Association of Counties.

(c) One (1) member of the Senate and one (1) member of the House of Representatives.

- (2) State government members and General Assembly members shall serve on the advisory committee during the term of their elected or appointed state government positions. Members appointed as provided by subsection (1)(b) of this section shall be appointed for four (4) year terms, except that initially five (5) shall be appointed for two (2) year terms, six (6) shall be appointed for three (3) year terms, and six (6) shall be appointed for four (4) year terms.
- (3) The advisory committee shall meet at least quarterly and hold additional meetings as necessary. Eleven (11) members of the committee shall constitute a quorum for the purposes of conducting business and exercising its powers for all purposes.
- (4) Any vacancy shall be filled as provided by the requirements and procedures for the initial appointment and only for the remainder of the term of the initial appointment.
- (5) Any at-large member may be removed at any time, with or without cause, by resolution of a majority of the board of directors of the corporation.
- (6) The advisory committee shall consult with and advise the officers and directors of the corporation concerning matters relating to the Kentucky housing policy.
- (7) The corporation shall annually report its findings and recommendations regarding the Kentucky housing policy to the Governor and the Interim Joint Committee on Local Government of the Legislative Research Commission.
- (8) The advisory committee shall elect a presiding officer from among its members and may establish its own rules of procedure which shall not be inconsistent with the provisions of this chapter.
- (9) Members of the advisory committee shall serve without compensation. Members who are not employees of the Commonwealth shall be entitled to reimbursement for actual expenses incurred in carrying out their duties on the committee.
- (10) The Kentucky Housing Corporation shall provide the staff and funding for the administrative activities of the advisory committee. The Kentucky Housing Corporation shall perform all budgeting, procurement, and other administrative activities necessary to the functioning of the advisory committee. The advisory committee may authorize studies as it deems necessary and utilize Kentucky Housing Corporation funds and other available resources from the public or private sector to provide housing needs data.

Section 20. KRS 342.1224 is amended to read as follows:

- (1) The commission shall be governed by a board of directors consisting of seven (7) members. The seven (7) members shall include the secretary of the Labor Cabinet, the secretary of the Cabinet for Economic Development *or a designee*, the secretary of the Revenue Cabinet, and four (4) members who shall be appointed by the Governor.
- (2) The four (4) appointed members shall include:
 - (a) One (1) member, selected from a list of three (3) submitted by the secretary of labor, who shall represent labor;
 - (b) One (1) member, selected from a list of three (3) submitted by the secretary for economic development, who shall represent employers, provided, however, that these three (3) members shall represent employers who purchase workers' compensation coverage for their employees from insurance companies writing workers' compensation insurance in the Commonwealth; and
 - (c) One (1) member, selected from a list of three (3) submitted by the insurance advisory organization having jurisdiction over Kentucky, who shall represent insurance companies writing workers' compensation insurance in the Commonwealth; and
 - (d) One (1) member, selected from a list of three (3) submitted by the associations representing self-insured employers in the Commonwealth.
- (3) The members of the board of directors shall serve a term of four (4) years, except that the initial terms of the members shall be staggered as follows:
 - (a) The initial member appointed by the Governor to represent labor shall serve a term of one (1) year. Thereafter, such member shall serve a term of four (4) years;
 - (b) The initial member appointed by the Governor to represent employers shall serve a term of two (2) years. Thereafter, such member shall serve a term of four (4) years;
 - (c) The initial member appointed by the Governor to represent insurance companies shall serve a term of four (4) years. Thereafter, such member shall serve a term of four (4) years; and
 - (d) The initial member appointed by the Governor to represent self-insured employers shall serve a term of three (3) years. Thereafter, such member shall serve a term of four (4) years.
- (4) The board of directors shall annually elect from among its members a chairman, a vice chairman, and a secretary-treasurer. The board of directors may also elect or appoint, and prescribe the duties of, other officers as the board of directors deems necessary or advisable.
- (5) The board of directors shall appoint an executive director to administer, manage, and direct the affairs and business of the commission, and other staff persons to carry out the affairs and business of the commission, subject in each instance to the policies, control, and directions of the board of directors. The board of directors shall fix the compensation of all such persons and shall pay such compensation out of the funds of the commission.
- (6) Notwithstanding any other law, the Governor, pursuant to an executive order, may cause the employees of the commission to be eligible to participate in the Kentucky Retirement System and the Kentucky Public Employees Deferred Compensation System.

- (7) A majority of the board of directors of the commission shall constitute a quorum for the purposes of conducting its business and exercising its powers and for all other purposes. The majority shall be determined by excluding any existing vacancies from the total number of directors.
- (8) The board of directors of the Kentucky Workers' Compensation Funding Commission are hereby determined to be officers and agents of the Commonwealth of Kentucky and, as such, shall enjoy the same immunities from suit for the performance of their official acts as do other officers of the Commonwealth of Kentucky.

Section 21. 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 an assessment provided in KRS 154.22-070 or KRS 154.28-110 may offset the fee against the Kentucky income tax required to be withheld from the employee under this section.
- (11) ~~Any~~~~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 **four-fifths (4/5)**~~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)~~(f)~~~~(d)~~2.~~(b)~~ is consummated, the offset shall be **one hundred percent (100%)**~~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.

Section 22. KRS 154.26-010 is amended to read as follows:

As used in *this subchapter*~~[KRS 154.26-015 to 154.26-100]~~, unless the context clearly indicates otherwise:

- (1) "Agreement" means a revitalization agreement entered into, pursuant to KRS 154.26-090, on behalf of the authority and an approved company with respect to an economic revitalization project;
- (2) "Agribusiness" means any activity involving the processing of raw agricultural products, including timber, or the providing of value-added functions with regard to raw agricultural products;
- (3) "Appropriation agreement" means an agreement entered into, pursuant to KRS 154.26-090(1)(f)~~(d)~~^{2.(b)}, among the approved company, the authority, and local governmental entities with respect to appropriations by these local governmental entities for the benefit of the approved company;
- (4) "Approved company" means any eligible company approved by the authority pursuant to KRS 154.26-080 requiring an economic revitalization project;
- (5) "Approved costs" means:
 - (a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;
 - (b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;
 - (c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;
 - (d) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;
 - (e) All costs required for the installation of utilities, including, but not limited to, water, sewer, sewer treatment, gas, electricity, communications, and railroads, and including off-site construction of the facilities paid for by the approved company; and
 - (f) All other costs comparable with those described above;
- (6) "Assessment" means the job revitalization assessment fee authorized by KRS 154.26-100;
- (7) "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;
- (8) "Commonwealth" means the Commonwealth of Kentucky;
- (9) "Economic revitalization project" or "project" means the acquisition, construction, equipping, and rehabilitation of machinery and equipment, constituting fixtures or otherwise, and with respect thereto, the construction, rehabilitation, and installation of improvements of facilities necessary or desirable for the acquisition, construction, installation, and rehabilitation of the machinery and equipment, including surveys; installation of utilities, including water, sewer, sewage treatment, gas, electricity,

communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are utilized to improve the economic situation of the approved company to allow the approved company to remain in operation and retain or create jobs;

- (10) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity:
- (a) Employing or intending to employ full-time a minimum of twenty-five (25) persons engaged in manufacturing or agribusiness operations at the same facility, whether owned or leased, located and operating within the Commonwealth on a permanent basis for a reasonable period of time preceding the request for approval by the authority of an economic revitalization project, including facilities where manufacturing or agribusiness operations has been temporarily suspended and which meets the standards promulgated by the authority pursuant to KRS 154.26-080; or
 - (b) Having a base contract for annual delivery of at least four (4) million tons of coal mined within the Commonwealth and employing a minimum of five hundred (500) persons engaged in coal mining and processing operations at facilities, whether owned or leased, located and operating within the Commonwealth on a permanent basis for a reasonable period of time preceding the request for approval by the authority of an economic revitalization project, including facilities on or adjacent to where coal mining and processing operations have been temporarily suspended or severely reduced, and which meets the standards promulgated by the authority under KRS 154.26-080;
- (11) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter;
- (12) "Inducements" means the Kentucky tax credit and the job revitalization assessment fee as prescribed in KRS 154.26-090 and 154.26-100;
- (13) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing that results in a change in the condition of the property and any related activity or function, together with the storage, warehousing, distribution, and related office facilities;
- (14) "Coal mining and processing" means activities resulting in the eligible company being subject to the tax imposed by KRS Chapter 143;
- (15) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements under this subchapter; and
- (16) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.010, or any board, commission, institution, or division exercising any function of the state which is not an independent municipal corporation or political subdivision.

Section 23. KRS 148.851 is amended to read as follows:

As used in KRS 139.536 and KRS 148.851 to 148.860, unless the context clearly indicates otherwise:

- (1) "Agreement" means a tourism attraction agreement entered into, pursuant to KRS 148.859, on behalf of the authority and an approved company, with respect to a tourism attraction project;
- (2) "Approved company" means any eligible company approved by the secretary of the Tourism Development Cabinet and the authority pursuant to KRS 148.859 that is seeking to undertake a tourism attraction project;
- (3) "Approved costs" means:
 - (a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a tourism attraction project;
 - (b) The costs of acquiring real property or rights in real property and any costs incidental thereto;
 - (c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a tourism attraction project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;
 - (d) All costs of architectural and engineering services, including but not limited to: estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a tourism attraction project;
 - (e) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a tourism attraction project;
 - (f) All costs required for the installation of utilities, including but not limited to: water, sewer, sewer treatment, gas, electricity and communications, and including off-site construction of the facilities paid for by the approved company; and
 - (g) All other costs comparable with those described in this subsection;
- (4) "Authority" means the Kentucky Tourism Development Finance Authority as set forth in KRS 148.850;
- (5) "Crafts and products center" means a facility primarily devoted to the display, promotion, and sale of Kentucky products, and at which a minimum of eighty percent (80%) of the sales occurring at the facility are of Kentucky arts, crafts, or agricultural products;
- (6) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity operating or intending to operate a tourism attraction project, whether owned or leased, within the Commonwealth that meets the standards promulgated by the secretary of the Tourism Development Cabinet pursuant to KRS 148.855. An eligible company may operate or intend to operate directly or indirectly through a lessee;
- (7) "Entertainment destination center" means a facility containing a minimum of two hundred thousand (200,000) square feet of building space adjacent or complementary to an existing tourism attraction, an approved tourism attraction project, or a major convention facility, and which provides a variety of entertainment and leisure options that contain at least one (1) major themed restaurant and at least three (3) additional entertainment venues, including

but not limited to live entertainment, multiplex theaters, large format theaters, motion simulators, family entertainment centers, concert halls, virtual reality or other interactive games, museums, exhibitions, or other cultural and leisure time activities. Entertainment and food and drink options shall occupy a minimum of sixty percent (60%) of total gross area available for lease, and other retail stores shall occupy no more than forty percent (40%) of the total gross area available for lease;

- (8) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under KRS 139.536 and KRS 148.851 to 148.860;
- (9) "Inducements" means the Kentucky sales tax refund as prescribed in KRS 139.536;
- (10) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements of KRS 139.536 and KRS 148.851 to 148.860;
- (11) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, or any board, commission, institution, or division exercising any function of the state that is not an independent municipal corporation or political subdivision;
- (12) "Theme restaurant destination attraction" means a restaurant facility that ~~has~~:
- (a) **Has** construction, equipment, and furnishing costs in excess of five million dollars (\$5,000,000);
 - (b) **Has** ~~Seating capacity of four hundred fifty (450) guests, of which~~ an annual average of not less than fifty percent (50%) ~~of~~ ~~shall be~~ guests who are not residents of the Commonwealth;
 - (c) **Is** ~~Business plans that indicate that the attraction shall be~~ in operation and open to the public no less than three hundred (300) days per year and for no less than eight (8) hours per day;
 - (d) ~~Business plans that indicate that the attraction shall offer live music or live musical and theatrical entertainment during the peak business hours that the facility is in operation and open to the public, and shall offer a unique dining and cultural experience that is not available elsewhere in the Commonwealth; and~~
 - (e) **Has** food and nonalcoholic drink options that constitute a minimum of fifty percent (50%) of total gross sales receipts; **and**
 - (e) **1. Has seating capacity of four hundred fifty (450) guests and offers live music or live musical and theatrical entertainment during the peak business hours that the facility is in operation and open to the public;**
 - 2. Within three (3) years of the completion date pursuant to KRS 148.859(1)(b), holds a top two (2) tier rating by a nationally accredited service; or**
 - 3. Offers a unique dining experience that is not available in the Commonwealth within a one hundred (100) mile radius of the attraction;**
- (13) "Tourism attraction" means a cultural or historical site, a recreation or entertainment facility, an area of natural phenomenon or scenic beauty, a Kentucky crafts and products center, a theme restaurant destination attraction, or an entertainment destination center. A tourism attraction shall not include any of the following:

- (a) Lodging facilities, unless:
1. The facilities constitute a portion of a tourism attraction project and represent less than fifty percent (50%) of the total approved cost of the tourism attraction project, or the facilities are to be located on recreational property owned or leased by the Commonwealth or federal government and the facilities have received prior approval from the appropriate state or federal agency;
 2. The facilities involve the restoration or rehabilitation of a structure that is listed individually in the National Register of Historic Places or are located in a National Register Historic District and certified by the Kentucky Heritage Council as contributing to the historic significance of the district, and the rehabilitation or restoration project has been approved in advance by the Kentucky Heritage Council;~~[-or-]~~
 3. The facilities involve the reconstruction, restoration, rehabilitation, or upgrade of a full-service lodging facility having not less than five hundred (500) guest rooms, with reconstruction, restoration, rehabilitation, or upgrade costs exceeding ten million dollars (\$10,000,000);
 4. *The facilities involve the construction, restoration, rehabilitation, or upgrade of a full-service lodging facility which is or will be an integral part of a major convention or sports facility, with construction, restoration, rehabilitation, or upgrade costs exceeding six million dollars (\$6,000,000); or*
 5. *The facilities involve the construction, restoration, rehabilitation, or upgrade of a lodging facility which is or will be located:*
 - a. *In the Commonwealth within a fifty (50) mile radius of a property listed on the National Register of Historic Places with a current function of recreation and culture; and*
 - b. *Within any of the one hundred (100) least populated counties in the Commonwealth, in terms of population density, according to the most recent census;*~~[-]~~
- (b) Facilities that are primarily devoted to the retail sale of goods, other than an entertainment destination center, a theme restaurant destination attraction, a Kentucky crafts and products center, or a tourism attraction where the sale of goods is a secondary and subordinate component of the attraction; and
- (c) Recreational facilities that do not serve as a likely destination where individuals who are not residents of the Commonwealth would remain overnight in commercial lodging at or near the tourism attraction project; and
- (14) "Tourism attraction project" or "project" means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten (10) years, construction, and equipping of a tourism attraction; the construction, and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction, including but not limited to surveys; installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic

situation of the approved company in a manner that shall allow the approved company to attract persons.

Approved April 9, 2004