

**CHAPTER 98****(HB 759)**

AN ACT relating to commercialization and innovation.

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

➔Section 1. KRS 154.12-278 is amended to read as follows:

- (1) As used in this section, "cluster" and "knowledge-based" shall have the same meaning as in KRS 164.6011.
- (2) There is established the Department of Commercialization and Innovation in the Cabinet for Economic Development. The department shall be headed by a commissioner appointed by the Governor under KRS 12.040.
- (3) The duties of the Department of Commercialization and Innovation shall include but not be limited to:
  - (a) Implement the Kentucky Innovation and Commercialization Center Program as set forth in KRS 154.12-300 to **154.12-310**~~[154.12-315]~~;
  - (b) Monitor the return on investments and effectiveness of the Kentucky Innovation Act initiatives as set forth in the Strategic Plan for the New Economy as approved by the Kentucky Innovation Commission, January 7, 2002, or as revised, and report annually prior to November 1 to the Kentucky Innovation Commission, the Governor, and the General Assembly;
  - (c) Oversee the modernization initiative in KRS 154.12-274;
  - (d) Assist the cabinet in the recruitment of research and development companies;
  - (e) Assist the cabinet in the attraction of high-technology research and development centers;
  - (f) Support growth and creation of knowledge-based, innovative companies;
  - (g) Build the infrastructure for the new economy businesses and promote networks of technology-driven clusters and research intensive industries;
  - (h) Administer the high-tech construction pool and the high-tech investment pool;
  - (i) Recommend projects to the Kentucky Economic Development Finance Authority for funding through the high-tech construction pool and high-tech investment pool; and
  - (j) Review and approve the annual plan which details the annual allocation of funds from the Science and Technology Funding Program, prior to the Council on Postsecondary Education executing a contract with the science and technology organization to administer science and technology funding programs. As used in this paragraph, the Science and Technology Funding Program means the Kentucky **Enterprise Fund Program, the Rural Innovation Program,**~~[the Kentucky Research and Development Voucher Program.]~~ the Kentucky Commercialization Program, The Regional Technology Corporations/Innovation and Commercialization Center Satellites, and the Experimental Program to Stimulate Competitive Research/Kentucky Science and Engineering Foundation.
- (4) The high-tech construction pool shall be used for projects with a special emphasis on the creation of high-technology jobs and knowledge-based companies. The commissioner, in administering the high-tech construction pool, shall recommend distribution of funds and projects to the Kentucky Economic Development Finance Authority for its approval. The commissioner shall recommend any designated amount of pool funds to be set aside for any match requirements. Any funds used for matching purposes may include public and private funds.
- (5) The high-tech investment pool shall be used to build and promote technology-driven industries and research-intensive industries, as well as their related suppliers, with the goal of creating clusters of innovation-driven industries in Kentucky. The commissioner, in administering the high-tech investment pool, shall be authorized to recommend funds to be used to support loans and grants, or to secure an equity or related position.
- (6) The Kentucky Economic Development Finance Authority shall assure in their approval of funding of projects that the highest priority is given to knowledge-based companies in fulfillment of the purposes and intentions of the purposes of this section.

➔Section 2. KRS 164.6019 is amended to read as follows:

There is established and created in the State Treasury a fund entitled the "Kentucky *Enterprise* ~~Research and Development Voucher~~ Fund" for the purpose of enabling small or medium-size, Kentucky-based companies to undertake *feasibility, concept development, research and development, or commercialization* work in partnership with *colleges and* universities in the Commonwealth. The fund may receive state appropriations, gifts, grants, federal funds, revolving funds, and any other funds both public and private. Moneys deposited in the fund shall be disbursed by the State Treasurer upon the warrant of the secretary of the Finance and Administration Cabinet. Any unallocated or unencumbered balances in the fund shall be invested as provided in KRS 42.500(9), and any income earned from the investments along with the unallotted or unencumbered balances in the fund shall not lapse, and shall be deemed a trust and agency account and made available solely for the purposes and benefits of the Kentucky *Enterprise* ~~Research and Development Voucher~~ Program.

➔Section 3. KRS 164.6021 is amended to read as follows:

- (1) There is created and established in the Council on Postsecondary Education a Kentucky *Enterprise* ~~Research and Development Voucher~~ Program to provide *capital* ~~vouchers~~ to small and medium-size, Kentucky-based companies to undertake *feasibility, concept development, research and development, or commercialization* work in partnership with *colleges and* universities in the Commonwealth.
- (2) The purpose of the Kentucky *Enterprise* ~~Research and Development Voucher~~ Program is to:
  - (a) Accelerate knowledge transfer and technological innovation, improve economic competitiveness, and spur economic growth in Kentucky-based companies;
  - (b) Support *feasibility, concept development, research and development, or commercialization* activities that have clear potential to lead to commercially successful products, processes, or services within a reasonable period of time;
  - (c) Stimulate growth-oriented enterprises within the Commonwealth;
  - (d) Encourage partnerships and collaborative projects between private enterprises, Kentucky's *colleges and* universities, and research organizations; ~~and~~
  - (e) Promote research and development *and commercialization* activities that are market-oriented; *and*
  - (f) *Support small and medium-sized companies.*
- (3) *The Kentucky Enterprise Fund Program shall make financial assistance available to qualified companies in accordance with this section as follows:*
  - (a) *Grants of up to thirty thousand dollars (\$30,000) for companies exploring the feasibility of technology commercialization;*
  - (b) *Funding of up to two hundred fifty thousand dollars (\$250,000) for companies in the concept development phase of technology commercialization;*
  - (c) *Funding of up to five hundred thousand dollars (\$500,000) for companies in post-initialization but before full commercialization; and*
  - (d) *Funding of up to seven hundred fifty thousand dollars (\$750,000) for companies with high growth potential and a clear path to commercialization.*
- (4) *Notwithstanding any other provision of law to the contrary, if the science and technology organization determines that, despite all best efforts, it is not practicable for a qualified company to partner with a college or university on a project for which all other requirements are met, then the requirement to partner with a college or university may be waived.*

➔Section 4. KRS 164.6023 is amended to read as follows:

- (1) The science and technology organization shall have the authority to review applications, qualify companies, and certify qualified companies *under the Kentucky Enterprise Fund Program.*
- (2) The science and technology organization shall develop application criteria and an application process subject to the following limitations. The proposed ~~research and development~~ project shall be likely to:

- (a) Produce a measurable result and be technically sound;
  - (b) Lead to innovative technology or new knowledge;
  - (c) Lead to commercially successful products, processes, or services within a reasonable period of time; or
  - (d) Show significant potential for stimulating economic growth and a reasonable probability to enhance employment opportunities within the Commonwealth.
- (3) The applicant shall provide to the science and technology organization an application that shall include but not be limited to the following information:
- (a) Verification that the applicant is an eligible company that meets the definition of a Kentucky-based company and medium-size company or small company;
  - (b) A **technology description and**~~technical research~~ plan that is sufficient for outside expert review;
  - (c) A detailed financial analysis that includes the commitment of resources by the applicant and others;
  - (d) Sufficient detail concerning proposed project partners, type and amount of work to be performed by each partner, and expected product or service with estimated costs to be reflected in the negotiated contract or agreement; and
  - (e) A statement of the economic development potential of the project.
- (4) The science and technology organization shall conduct an independent review with the use of outside experts to evaluate each application. Following the application review, the science and technology organization shall make a determination of the application and may determine that the applicant is a qualified company as defined in KRS 164.6011.
- (5) Upon a qualified company's presentation of a legal agreement or contract meeting the conditions under subsection (6) of this section, the science and technology organization shall present the qualified company, the project partner, if any, and the **college or** university in the Commonwealth, **if any**, with a certification authorizing ~~voucher~~ funding.
- (6) Prior to receiving certification authorizing ~~voucher~~ funding from the science and technology organization, the qualified company shall:
- (a) Negotiate an agreement and funding contract with a **college or** university in the Commonwealth and with a project partner, if any, that is satisfactory to the science and technology organization, to undertake the **commercialization**~~research and development~~ work; and
  - (b) Provide assurance to the science and technology organization that the **college or** university and the qualified company have negotiated the ownership and disposition of patents, royalties, all other intellectual property rights, and equity or related position relating to the contract between the qualifying company and the **college or** university;
- unless the requirement to partner with a college or university is waived under subsection (4) Section 4 of this Act.***
- (7) Prior to certifying a qualified company, the science and technology organization may negotiate with the qualified company the ownership and disposition of patents, royalties, all other intellectual property rights, and an equity or related position on behalf of the Kentucky **Enterprise**~~research and development voucher~~ Fund for the sole purpose of reinvesting and sustaining a revolving fund to carry out the provisions of KRS 164.6021 **and**~~[,] 164.6023[, and 164.6025].~~
- (8) The science and technology organization, upon approval by the council, shall set forth guidelines as to when and how all areas of the state will be notified about the program's availability and a program schedule, including but not limited to the following:
- (a) A review cycle including:
    - 1. A deadline for submission of applications at least biannually; and
    - 2. A deadline for reviewing applications of no more than one hundred twenty (120) days after the application submission deadline; and

- (b) A deadline, from the date an applicant is determined to be a qualified company, by which certification shall be made. If certification is not made by that deadline the funding voucher award is made void.

➔Section 5. KRS 164.6035 is amended to read as follows:

There is established and created in the State Treasury a fund entitled the "Kentucky Commercialization Fund" to provide *seed funding for the development and commercialization of* ~~funds for~~ promising technologies *at and emerging from colleges and* ~~developed through the research and development work undertaken at the~~ universities in the Commonwealth. The fund may receive state appropriations, gifts, grants, federal funds, revolving funds, and any other funds both public and private. Moneys deposited in the fund shall be disbursed by the State Treasurer upon the warrant of the secretary of the Finance and Administration Cabinet. Any unallocated or unencumbered balances in the fund shall be invested as provided in KRS 42.500(9), and any income earned from the investments along with the unallotted or unencumbered balances in the fund shall not lapse, and shall be deemed a trust and agency account and made available solely for the purposes and benefits of the Kentucky Commercialization Fund Program.

➔Section 6. KRS 164.6037 is amended to read as follows:

- (1) There is created and established in the Council on Postsecondary Education a Kentucky Commercialization Fund Program to provide seed funding as defined in KRS 164.6011, for the development *and commercialization* of promising technologies *at and* emerging from Kentucky's *colleges and* universities.
- (2) The purposes of the Kentucky Commercialization Fund Program are to:
  - (a) Accelerate knowledge transfer and technological innovation, improve economic competitiveness, and spur economic growth in Kentucky-based companies;
  - (b) Provide seed funding for promising technologies developed in Kentucky's *colleges and* universities;
  - (c) Support promising technologies with commercial potential that are in their early stages of development;
  - (d) Promote technologies and resources offered by Kentucky's postsecondary institutions to private enterprises; and
  - (e) Support the formation and organization of private enterprise that advances commercial applications based on a university's research and development work.

➔Section 7. KRS 164.6041 is amended to read as follows:

Project funding in the Kentucky Commercialization Fund Program shall have the following limitations:

- (1) The maximum amount of funding for a project award *under the Kentucky Commercialization Fund Program* shall not exceed seventy-five thousand dollars (\$75,000) each year up to *two (2)* ~~three (3)~~ years, equal to a maximum of *one* ~~two~~ hundred *fifty* ~~twenty-five~~ thousand dollars (*\$150,000*) ~~(\$225,000)~~; and
- (2) The University of Kentucky and the University of Louisville shall be awarded together no more than seventy percent (70%) of fund awards.

➔Section 8. KRS 154.12-300 is amended to read as follows:

As used in KRS 154.12-300 to *154.12-310* ~~[154.12-315]~~, unless the context indicates otherwise:

- (1) "Affiliate" means an ICC identified as the headquarters for program activity in a region or subregion;
- (2) "Commissioner" means the commissioner of the Department of Commercialization and Innovation established in KRS 154.12-278;
- (3) "ICC" means the Kentucky Innovation and Commercialization Center;
- (4) "Region" means a geographic area of Kentucky designated as having a unique innovation strategic plan by the Department of Commercialization and Innovation; and
- (5) "Satellite" means an office of an affiliate in a region.

➔Section 9. KRS 154.12-310 is amended to read as follows:

- (1) The Kentucky Innovation and Commercialization Centers are private-public partnerships, operating as a cohesive statewide infrastructure to support the implementation of key Kentucky Innovation Act initiatives.

- (2) The organization of the ICCs shall include a central statewide headquarters, six (6) affiliate centers, and a number of satellite offices.
- (a) The central headquarters has primary responsibility for the following:
1. Managing and administering the ICC Program;
  2. Establishing uniform program application, protocol, and operating guidelines when appropriate;
  3. Supporting the protocol by creating and funding centralized services to be distributed throughout the network; and
  4. Identifying those issues, opportunities, and challenges that have statewide implications.
- (b) The regional affiliates are responsible for fulfilling the duties as set forth in KRS 154.12-305 relating to the implementation of the region's innovation strategic plan and supporting the implementation of the Kentucky Innovation Act initiatives in the region or subregion;
- (c) The satellites are responsible for generating technology business development in their assigned geographic area, acting as a bridge between individuals and businesses needing critical early state concept and development work and the affiliate centers that can provide this support.

The affiliates and satellites provide a valuable assurance for equal access to the Kentucky Innovation Act initiatives and funding, and provide an opportunity for full participation in rural and remote, as well as metropolitan, areas of the state.

- (3) The commissioner shall have all the powers and authority, not explicitly prohibited by statute, necessary and convenient to carry out and effectuate the purposes of KRS 154.12-300 to ***154.12-310***~~{154.12-315}~~.
- (4) The commissioner may, in effectuating the provisions of KRS 154.12-300 to ***154.12-310***~~{154.12-315}~~, contract with a science and technology organization as defined in KRS 164.6011 to administer and manage the ICC Program.

➔Section 10. KRS 164.6013 is amended to read as follows:

The General Assembly finds that the general welfare and material well-being of the citizens of the Commonwealth depend on immediate action to develop a strong, entrepreneurial economy, characterized by knowledge, innovation, and speed and that it is in the best interest of the Commonwealth to promote research, innovation, and high-technology enterprises that utilize the higher-order skills of an educated workforce. The provisions in KRS 164.6011 to 164.6041, 154.12-274, 154.12-278, and KRS 154.12-300 to ***154.12-310***~~{154.12-315}~~ shall be liberally construed and applied to advance public purposes.

➔Section 11. KRS 164.6015 is amended to read as follows:

- (1) There is established the Kentucky Innovation Commission, as an independent advisory commission, consisting of fifteen (15) members as follows:
- (a) The Governor or designee;
- (b) The secretary of the Governor's Executive Cabinet or designee;
- (c) The secretary of the Cabinet for Economic Development or designee;
- (d) The president of the Council on Postsecondary Education or designee;
- (e) The state budget director or designee;
- (f) The Speaker of the House or designee;
- (g) The President of the Senate or designee; and
- (h) Eight (8) at-large members appointed by the Governor as follows:
1. Four (4) members of the private sector possessing extensive experience and expertise relating to managing a high-technology business or engaging in an innovation-driven, knowledge-based enterprise;
  2. One (1) member engaged in the business of venture capital;

3. One (1) member of the private sector possessing extensive experience and expertise relating to providing or supporting communications infrastructure; and
  4. Two (2) members who are engineers or scientists recognized for their scientific or technological research efforts, or educators with an interest or background in teaching students to become highly skilled workers or entrepreneurs.
- (2) The eight (8) at-large members shall serve terms of four (4) years, except that the original appointments shall be staggered so that two (2) appointments shall expire at two (2) years, three (3) appointments shall expire at three (3) years, and three (3) appointments shall expire at four (4) years from the dates of initial appointment.
  - (3) The commission shall meet quarterly and at other times upon call by the chair.
  - (4) Eight (8) members shall constitute a quorum for conducting business.
  - (5) Members shall receive no compensation except that the at-large members shall be reimbursed for actual and necessary travel expenses for attending meetings and performing other official functions, consistent with state reimbursement policy for state employees.
  - (6) A vacancy shall be filled in the same manner as the original appointment.
  - (7) The chair and vice chair of the commission shall be appointed by the Governor.
  - (8) The commission shall provide ongoing advice, direction, and policy recommendations to the Governor and the General Assembly relating to the status of Kentucky knowledge-driven businesses, research and development initiatives, and related high-skill training and education in the Commonwealth.
  - (9) The duties and responsibilities of the commission shall be to:
    - (a) Promote the cooperation of private and public entities that have the purpose and duty of advancing the knowledge-based economy in the Commonwealth through technological innovation and knowledge transfer;
    - (b) Report on the progress the Commonwealth has made annually toward achieving the goals in KRS 164.6013 through its agreed-upon benchmarks. In the setting of benchmarks the commission shall consider performance indicators recommended by public and private experts in and outside of the state in the fields of research and development and economic development, for the purpose of recommending benchmarks. Experts in this state shall include but not be limited to representatives from the universities undertaking research and development activities, representatives of the Kentucky Science and Technology Corporation, representatives of targeted technology sectors, representatives of the Cabinet for Economic Development, and representatives of other state agencies having economic development and information technology responsibilities. Outside state experts shall include nationally recognized independent reviewers to assess the competitiveness of technology sectors in this state and the impact of research and development activities on economic development in the Commonwealth. Quantitative and qualitative indicators may include but are not limited to the following:
      1. Kentucky companies modernizing to become more technologically innovative and globally competitive;
      2. Research and development initiatives undertaken at Kentucky universities with federal, state, or private funds;
      3. Educational attainment in areas that support the workforce needs of information technology and high-growth knowledge industries;
      4. High-technology sectors and companies moving to and operating in the state;
      5. Patents filed for technology or knowledge-based commercial products, processes, or services;
      6. Businesses using electronic commerce and the communications infrastructure access capacity for Kentucky businesses;
      7. Growth in corporate headquarters, research and development centers, high-income employees, and clustering of related technology industries and suppliers; and

8. Monitoring reports indicating progress made by the Kentucky Innovation Act investments as reported by the Department of Commercialization and Innovation and the Council on Postsecondary Education;
  - (c) Operate as a common strategic umbrella to advocate for the use of federal, state, local government, and private sector funds to create research and development projects, modernize manufacturing facilities, and promote knowledge-based, technology sectors and companies in the Commonwealth; and
  - (d) Report to the Governor and to the General Assembly annually on performance indicators, recommending benchmarks for measuring progress toward the advancement of the knowledge-based economy, technological innovation, and knowledge transfer, and reporting on the programs and initiatives set forth in KRS 164.6019 to 164.6041, 154.12-274, 154.12-278, and KRS 154.12-300 to ~~154.12-310~~~~[154.12-315]~~.
- (10) The support staff for the commission shall be from the office of the state budget director.

➔Section 12. KRS 211.482 is amended to read as follows:

- (1) The KCDI board shall establish goals and business plans for one (1), three (3), five (5), and ten (10) year time periods that include but are not limited to benchmark measures on:
  - (a) Outreach, including identification of Kentuckians who are at high risk for cardiovascular disease utilizing allied health programs in postsecondary institutions, the resources of community-based physicians, and local health departments;
  - (b) Education on lifestyle modifications to prevent cardiovascular disease;
  - (c) Early identification, including identification of target populations for hypertension, cholesterol, diabetes, and other at-risk histories utilizing a statewide data repository;
  - (d) Education, including the development and implementation of educational curricula and public awareness materials that address different target populations, such as age groups, gender, and identified occupational groups, and include distinctions for rural and urban populations;
  - (e) Follow-up strategies for identified at-risk Kentuckians, including disease management protocols utilizing a statewide data repository and the allied health programs in postsecondary institutions, the resources of community-based physicians, and local health departments;
  - (f) Improving access to health care for at-risk and identified patient population and improving access to best practices for health-care providers, including utilization of an Internet-based e-health system;
  - (g) Basic, clinical, and translational research on cardiovascular disease and its treatment;
  - (h) Commercialization of intellectual property to create profitable new businesses, as well as the development of an Internet-based data repository and e-health program established at Kentucky Innovation and Commercialization Centers affiliated with regional and comprehensive universities, in accordance with KRS 154.12-300 to ~~154.12-310~~~~[154.12-315]~~, on cardiovascular and other diseases that can be accessed by health-care providers working with patients; and
  - (i) Patient privacy protection as required by federal and state law.
- (2) The board shall present business plans that include specific budget items developed pursuant to subsection (1) of this section to the Interim Joint Committee on Appropriations and Revenue and the Interim Joint Committee on Health and Welfare of the General Assembly prior to initial expenditure of any funds relating to implementation of the business plans and shall provide updates annually or upon request of the General Assembly. The board shall make business plans available to any interested party upon request.
- (3)
  - (a) The board may create a public or nonprofit corporation to facilitate public-private collaboration in development and implementation of the KCDI.
  - (b) A public or nonprofit organization may receive and expend funds appropriated by the General Assembly and may solicit, apply for, and receive any funds, grants, contracts, contributions, property, or services from any person, governmental agency, or other organization to carry out the responsibilities given to it by the KCDI Board.

- (c) Funds appropriated to a public or nonprofit corporation shall not lapse at the end of a state fiscal year and shall be used solely for the purposes for which the funds were appropriated.
- (d) A public or nonprofit corporation created under this subsection shall:
  - 1. Follow standard accounting practices;
  - 2. Submit to an annual financial audit by an independent auditor;
  - 3. Submit a quarterly report of receipts and expenditures to the secretary of the Cabinet for Health and Family Services and the KCDI board no later than sixty (60) days after the end of a quarter; and
  - 4. Submit an annual financial and progress report to the Governor, the secretary of the Finance and Administration Cabinet, and the Interim Joint Committees on Appropriations and Revenue and Health and Welfare by September 30 following the end of each state fiscal year. The annual report shall include a report of receipts and expenditures, the financial audit, and a report on the status and progress of the corporation's initiatives.

➔Section 13. The following KRS sections are repealed:

154.12-315 Concept phase funding pool.

164.6025 Limitations upon project funding in the Kentucky Research and Development Voucher Program.

**Signed by Governor April 14, 2008.**