

## CHAPTER 1

## (HB 3)

AN ACT relating to economic development, making an appropriation therefor, and declaring an emergency.

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

➔Section 1. KRS 154.34-010 is amended to read as follows:

As used in *this subchapter* [~~KRS 154.34-010 to 154.34-100, unless the context clearly indicates otherwise~~]:

- (1) "Approved company" means ~~an~~ *any* eligible company **approved for a reinvestment project** [~~for which the authority has granted final approval of its application pursuant to KRS 154.34-070~~];
- (2) "Approved costs" means **the sum of the:**
  - (a) [~~that portion of the~~] Eligible **equipment and related costs; and**
  - (b) **Eligible skills upgrade training costs;**

approved by the authority that **may be recovered** by an approved company [~~may recover~~] through the **incentives** [~~inducements~~] authorized by *this subchapter* [~~KRS 154.34-010 to 154.34-100; however, approved costs shall not exceed ten percent (10%) of the eligible costs~~];
- (3) "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;
- (4) "Commonwealth" means the Commonwealth of Kentucky;
- (5) **"Department" means the Department of Revenue;**
- (6) [~~(5)~~] "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity [~~designated by the United States Department of Commerce, United States Census Bureau North American Industry Classification System code of 336211, 336111, 336112, or 336120 that employs a minimum of one thousand (1,000) full-time persons~~] engaged in manufacturing at **a** [~~the same~~] facility [~~or at multiple facilities located within the same county, whether owned or leased, is~~] located and operating within the Commonwealth on a permanent basis for a reasonable period of time preceding the request for approval **of a reinvestment project** by the authority [~~of a reinvestment project which meets the standards set forth in KRS 154.34-070, and has not been an approved company in an industrial revitalization project under Subchapter 26 of KRS Chapter 154 for a period of at least five (5) years~~];
- (7) (a) [~~(6)~~] "Eligible **equipment and related costs**" means:
  1. [~~(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 **a** [~~an existing manufacturing~~] reinvestment project;
  2. [~~(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 a reinvestment project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;
  3. [~~(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 a reinvestment project;
  4. [~~(d)~~] All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, rehabilitation, and installation of **a** [~~an existing manufacturing~~] reinvestment project; [~~and~~]
  5. [~~(e)~~] All costs required for the installation of utilities, including but not limited to water, sewer, sewer treatment, gas, electricity, communications, and access to transportation, and including off-site construction of the facilities paid for by the approved company; **and**
  6. **All other costs of a nature comparable to those described in this paragraph.**

- (b) *"Eligible equipment and related costs" does not include costs related to the replacement or repair of existing machinery or equipment resulting from normal wear and usage of the machinery;*
- (8) *"Eligible skills upgrade training costs" means costs incurred by an approved company in connection with an occupational training program for full-time employees specifically related to training or retraining employees as part of the reinvestment project, including the following:*
- (a) *Fees or salaries paid to instructors, whether those instructors are employees of the approved company, contractors, or consultants;*
  - (b) *Administrative fees paid to educational institutions;*
  - (c) *Amounts paid for supplies, materials, and equipment used exclusively for the occupational training program;*
  - (d) *Amounts paid to lease a training facility if sufficient training space is not available at the approved company or at an educational institution;*
  - (e) *Amounts paid to employees as wages for attending the occupational training program;*
  - (f) *Amounts paid for travel expenses for employees; and*
  - (g) *All other costs of a nature comparable to those described in this subsection;*
- (9)(7) *"Equipment" means manufacturing machinery installed by the approved company as part of the reinvestment[~~at the~~] project[~~;~~ however, Equipment shall not mean accessories or appurtenances of existing or new manufacturing machinery including but not limited to molds, dies, or other attachments of a less permanent nature];*
- (10)(8) *"Final approval" means the action taken[~~after July 1, 2004,~~] by the authority designating a preliminarily approved eligible company[~~an eligible company that has previously received a preliminary approval~~] as an approved company;*
- (11) *"Full-time" means a minimum of thirty-five (35) hours per week;*
- (12) *"Kentucky gross profits" has the same meaning as in KRS 141.0401;*
- (13) *"Kentucky gross receipts" has the same meaning as in KRS 141.0401[~~and authorizing the execution of a reinvestment agreement between the authority and the approved company;~~]*
- (9) ~~"Inducements" means the Kentucky tax credits as authorized by KRS 154.34-010 to 154.34-100;~~
- (14)(10) *"Manufacturing" means any activity involving the[~~manufacturing,~~] processing, assembling, or production of any property, including activities[~~the processing~~] that result[~~results~~] in a change in the condition of the property. "Manufacturing" includes[~~and~~] any[~~related~~] activity or function related to the manufacturing activity, including[~~together with the~~] storage, warehousing, distribution, and related office facilities;*
- (15)(11) *"Preliminary approval" means the action taken by the authority designating an eligible company as a preliminarily approved company[~~, and conditioning final approval by the authority upon satisfaction by the eligible company of the requirements set forth in the preliminary approval~~];*
- (16)(12) *"Reinvestment agreement"[~~or "agreement"~~] means the agreement entered into pursuant to KRS 154.34-080 between[~~on behalf of~~] the authority and an approved company with respect to a reinvestment project; and*
- (17)(13) *"Reinvestment project"[~~or "project"~~] means:*
- (a) *A reinvestment in the physical plant of a manufacturing facility, and in the full-time employees of a manufacturing facility, through:*
    - I. *The acquisition, construction, and installation of new equipment and, with respect thereto, the construction, rehabilitation, and installation of improvements to facilities necessary to house the[~~acquisition, construction, and installation of~~] new equipment, including surveys; installation of utilities including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located; and*

2. *The development of an occupational training program to train or retrain the full-time employees of the company to support the reinvestment in the manufacturing facility, if applicable, for the purpose of improving*~~[shall contain eligible costs of not less than one hundred million dollars (\$100,000,000), all of which are utilized to improve]~~ the economic and operational situation of a~~[an approved] company~~~~[to allow the approved company to reinvest in its operations and retain or create jobs within the Commonwealth]; and~~

(b) *The expenditure of at least two million five hundred thousand dollars (\$2,500,000) in eligible equipment and related costs*

~~[(14) "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;~~

~~(15) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401; and~~

~~(16) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401].~~

➔SECTION 2. A NEW SECTION OF SUBCHAPTER 34 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) *The purpose of this subchapter is to provide a means for the Commonwealth to promote job retention by providing incentives for existing businesses to reinvest in existing manufacturing operations in Kentucky.*

(2) (a) *To qualify for the incentives provided in this subchapter, an approved company shall:*

1. *Incur eligible equipment and related costs of at least two million five hundred thousand dollars (\$2,500,000);*

2. *Agree to maintain a full-time employment base of at least eighty-five percent (85%) at the facility on the date of preliminary approval; and*

3. *Not have been awarded incentives under Subchapter 26 of this chapter for a period of at least five (5) years prior to applying for incentives under this subchapter.*

(b) *An approved company meeting the expenditure and employment retention requirements established by this subsection shall be eligible to recover up to fifty percent (50%) of the amount expended for eligible equipment and related costs, and up to one hundred percent (100%) of job skills upgrade training costs. The actual amount that an approved company may recover shall be negotiated with the authority, and may be less than the maximum amount for which the approved company is eligible.*

(3) *An approved company shall be eligible for tax incentives of up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.020 or 141.040 and the limited liability entity tax imposed under KRS 141.0401 on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the eligible project, as set forth in Section 5 of this Act.*

(4) *The General Assembly finds and declares that:*

(a) *The general welfare and material well-being of the citizens of the Commonwealth depend in large measure upon the reinvestment and development of existing industry in the Commonwealth;*

(b) *It is in the best interest of the Commonwealth to induce reinvestment in existing manufacturing facilities within the Commonwealth in order to advance the public purposes of relieving unemployment by preserving jobs that may be lost if not for the incentives to be offered by the authority to approved companies, and by preserving and creating sources of tax revenues for the support of public services provided by the Commonwealth; and*

(c) *The authority prescribed by this subchapter and the purposes to be accomplished under this subchapter are proper governmental and public purposes for which public moneys may be expended.*

➔Section 3. KRS 154.34-070 is amended to read as follows:

(1) *The application and approval process under this subchapter shall be as follows:*

- (a) *An eligible company with a proposed reinvestment project may submit an application to the authority. The application shall include the information required by subsection (4) of this section;*
  - (b) *Upon review of the application and any additional information submitted, the authority may, by resolution, give preliminary approval to a reinvestment project and authorize the negotiation and execution of a memorandum of agreement. The memorandum of agreement shall establish the minimum job retention requirements and maximum total approved cost for the reinvestment project, shall only allow the recovery of costs incurred after preliminary approval, and may include any other terms as agreed to by the parties to the agreement. Upon preliminary approval, the preliminarily approved company may undertake the project in accordance with the memorandum of agreement;*
  - (c) *The preliminarily approved company shall submit any documentation required by the authority upon request of the authority;*
  - (d) *The preliminarily approved company shall have up to three (3) years from the date of preliminary approval to obtain final approval. Upon the earlier of completion of the project or the passage of three (3) years from the date of preliminary approval, the preliminarily approved company shall submit documentation required by the authority, and the authority shall confirm that the minimum investment and job retention requirements established by the memorandum of agreement have been met. Upon review and confirmation of the documentation, the authority may, by resolution, give final approval to the preliminarily approved company, and authorize the execution of a reinvestment agreement between the authority and the approved company pursuant to Section 4 of this Act. As part of the reinvestment agreement, the approved costs shall be finally determined, not to exceed the maximum approved costs as determined at preliminary approval, and the approved company shall be eligible to receive incentives in accordance with the provisions of the reinvestment agreement;*
  - (e) *The authority shall monitor the reinvestment agreement at least annually, and the approved company shall submit all documentation necessary for the authority to monitor the agreement. The authority shall, based on the documentation provided, confirm that the approved company is in continued compliance with the provisions of the reinvestment agreement and, therefore, eligible for incentives; and*
  - (f) *Upon final approval, the authority shall notify the department that an approved company is eligible for incentives and shall provide the department with the information necessary to monitor the use of credits by the approved company. If, at any time during the term of the reinvestment agreement, an approved company becomes ineligible for incentives, the authority shall notify the department, and the department shall discontinue the availability of credits for the approved company.*
- (2) The authority may establish standards for ~~the determination and~~ preliminary *and final* approval of eligible companies and their projects ~~through~~ *by* the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.
- (3)~~(2)~~ The criteria for preliminary *and final* approval of eligible companies and reinvestment projects shall include but not be limited to the need for the project, the eligible *equipment and other* costs *and eligible skills upgrade training costs* to be expended by the eligible company, and the number of ~~employees whose~~ jobs ~~are to be~~ created or retained as a result of the project.
- (4)~~(3)~~ *The application* ~~Each eligible company making an application to the authority for inducements~~ shall include: ~~in a manner acceptable to the authority,~~
- (a) *A description of* ~~describe~~ the condition of the existing facility, including but not limited to *the status of the physical plant, the financial situation of the company, and the* ~~efficiency~~ *and productivity of the facility* ~~matters~~;
  - (b) *A description of the proposed reinvestment project, including anticipated sources of funding, the total anticipated equipment and related costs and skills upgrade training costs, the impact of the proposed reinvestment project on full-time employment at the facility, and an explanation of why reinvestment in the facility and its full-time employees is necessary* ~~explain the reasons required for reinvestment in the facility~~;
  - (c) *A timeline for* ~~identify the time schedule of~~ the proposed *reinvestment* project;
  - (d) *A description of the other* ~~set out~~ alternatives that are available to the eligible company, *if incentives are not provided*;

- (e) *The amount of incentives sought, and an explanation of why the requested incentives are needed;*
  - (f) *A certification from the company that the reinvestment project would not be economically feasible for the company, but for the incentives available under this subchapter;*
  - (g) *Payment of any applicable application fees required by the authority; and*~~[explain the need for the inducements for the eligible company to undertake the project; and provide]~~
  - (h) Any additional information relating to the *proposed reinvestment* project ~~that~~~~as~~ the authority may require.
- (5) *The authority may request any materials and make any inquiries concerning an application that the authority deems necessary*~~[(4) After a review of relevant materials and completion of inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and authorize a conditional undertaking of the project pursuant to a memorandum of agreement negotiated between the eligible company and the authority.~~
- ~~(5) The preliminarily approved company shall, in a manner acceptable to the authority and at certain times as the authority may require, provide documentation relating to the eligible costs expended or obligated in connection with the project. The authority shall review the preliminarily approved company's progress in connection with the project to determine if the conditions set forth in the memorandum of agreement have been met.~~
- ~~(6) After July 1, 2004, and upon a review of the documentation relating to the preliminarily approved company's compliance under the memorandum of agreement, the authority, by resolution, may give its final approval to the preliminarily approved company's application for a reinvestment project and may grant to the preliminarily approved company the status of an approved company.~~
- ~~(7) All meetings of the authority shall be held in accordance with KRS 61.805 to 61.850. The authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company].~~

➔Section 4. KRS 154.34-080 is amended to read as follows:

The authority, upon ~~adoption of its~~ final approval *of a company*, may enter into *a reinvestment agreement with the approved company. The terms and conditions of the reinvestment agreement shall be negotiated between the authority and the approved company*~~[with any approved company a reinvestment agreement with respect to its project].~~ The terms *of the* ~~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~~ reinvestment agreement shall include *but not be limited to* the following provisions:

- (1) ~~That~~~~[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 its expenditures of the eligible costs attributable to 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, *and that*~~[-]~~ the approved company shall reimburse the authority for the cost of a consultant or other technical resources employed by the authority;
  - (2) *The maximum approved costs that may be recovered;*
  - (3) *A set employment retention goal, which shall be at least eighty-five percent (85%) of the number of full-time employees employed at the facility on the date the company receives preliminary approval;*
  - (4) *That approval of the company is not a guarantee of incentives and that eligibility for incentives shall be contingent on the approved company meeting the requirements established by the reinvestment agreement and this subchapter;*
- ~~(2) In consideration of the execution of the agreement between the authority and approved company, the approved company may be permitted one (1) or both of the following inducements:~~
- (a) A credit against the Kentucky tax imposed by KRS 141.020 or 141.040 on the income of the approved company generated by or arising out of the reinvestment project as determined under KRS 141.415, and a credit against the limited liability entity tax imposed by KRS 141.0401, with the ordering of credits as provided in KRS 141.0205;

- (b) ~~A credit against the Kentucky license tax imposed by KRS 136.070 on the approved company as determined under KRS 141.416;~~
- (3) ~~The total inducements authorized in the agreement for the benefits of the approved company shall be equal to the lesser of the total amount of the tax liability or the approved costs that have not yet been recovered. The inducements 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. The approved company shall not be required to pay estimated tax payments as prescribed under KRS 141.044 or 141.305 on income, Kentucky gross profits, or Kentucky gross receipts from the project;~~
- (5)~~(4)~~ The *term of the reinvestment agreement, which* ~~agreement shall provide that the term~~ shall not be longer than the earlier of:
- (a) The date on which the approved company has received *incentives* ~~inducements~~ equal to the approved costs of its reinvestment project; or
  - (b) Ten (10) years from the date of final approval granted by the authority;
- (6) *That the authority may reduce the incentives, suspend the incentives, or terminate the agreement if the approved company fails to comply with provisions of the reinvestment agreement;*
- (7) *That both the authority and the department shall have the right to pursue any remedy provided under this reinvestment agreement and any other remedy at law to which it may be entitled;*
- (8)~~(5)~~ All eligible costs of the project shall be expended by the approved company within three (3) years from the date of final approval by the authority. In the event that all eligible costs of the project are not fully expended by the approved company within the three (3) year period, the authority is authorized to:
- (a) ~~Reduce the inducements; or~~
  - (b) ~~Suspend the inducements; or~~
  - (c) ~~Terminate the agreement;~~
- (6) ~~If the agreement is terminated, the authority may require the approved company to repay the Department of Revenue of the Commonwealth all or part of any inducements received by the approved company prior to the termination of the agreement;~~
- (7) ~~The agreement shall specify~~ That the approved company shall make available *to the department and the authority* all of its records pertaining to the *reinvestment* project, including but not limited to payroll records, records relating to the expenditure of eligible *equipment and related* costs, *eligible skills upgrade training costs*, and approved costs, and any other records pertaining to the project as the authority *or the department* may require;
- (9) *That the authority may share information with the department for the purposes of monitoring and enforcing the terms of the reinvestment agreement;*
- (10) ~~That~~~~and (8)~~ the agreement shall not be transferred or assigned by the approved company without the expressed written consent of the authority; *and*
- (11) *Any other provisions not inconsistent with this subchapter and determined to be necessary or appropriate by the parties to the reinvestment agreement.*

➔ SECTION 5. A NEW SECTION OF SUBCHAPTER 34 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *For taxable years beginning after December 31, 2009, an approved company may be eligible for a nonrefundable credit of up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.020 or 141.040, and the limited liability entity tax imposed under KRS 141.0401 that would otherwise be owed by the approved company to the Commonwealth for the approved company's tax year, on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the reinvestment project.*
- (2) *The credit allowed the approved company shall be applied against both the income tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by KRS 141.0401, with credit ordering as provided in Section 30 of this Act, for the tax year for which the tax return of the approved company is*

*filed. Any credit not used in the year in which it was first available may be carried forward to subsequent years, provided that no credit may be carried forward beyond the term of the reinvestment agreement.*

- (3) *The approved company shall not be required to pay estimated tax payments as prescribed in KRS 141.042 on the Kentucky taxable income, Kentucky gross receipts, or Kentucky gross profits generated by or arising from the eligible project.*
- (4) *The credit provided by this section shall be determined as provided in Section 31 of this Act.*
- (5) *The amount of incentives allowed in any year shall not exceed the lesser of the tax liability of the approved company related to the reinvestment project for that taxable year or the approved costs that have not yet been recovered. The incentives shall be allowed for each taxable year of the approved company during the term of the reinvestment agreement for which a tax return is filed by the approved company.*

➔Section 6. KRS 154.34-090 is amended to read as follows:

By October 1 of each year, the Department of Revenue of the Commonwealth shall certify to the authority, in the form of an annual report, aggregate tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year by approved companies with respect to their reinvestment projects under *this subchapter* ~~[KRS 154.34-010 to 154.34-100,] 141.415, and 141.416,~~ and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state tax return, when an approved company has taken inducements equal to its approved costs.

➔Section 7. Notwithstanding the amendments contained in Sections 1 to 6 of this Act, all reinvestment projects preliminarily approved on or after the effective date of this Act shall not be eligible for final approval until after July 1, 2010.

➔Section 8. Notwithstanding the amendments contained in Sections 1 to 6 of this Act, or repealers contained in Section 114 of this Act, all reinvestment projects preliminarily or finally approved prior to the effective date of this Act shall be governed by Subchapter 34 of KRS Chapter 154 as it existed prior to the effective date of this Act.

➔SECTION 9. SUBCHAPTER 32 OF KRS CHAPTER 154 IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

*As used in this subchapter:*

- (1) *"Activation date" means the date established in the tax incentive agreement that is within two (2) years of final approval;*
- (2) *"Advance disbursement" means the disbursement of incentives prior to the activation date;*
- (3) *"Affiliate" has the same meaning as in KRS 154.48-010, and in addition shall include two (2) or more limited liability companies if the same persons own more than fifty percent (50%) of the capital interest or are entitled to more than fifty percent (50%) of the capital profits in the limited liability companies;*
- (4) *"Agribusiness" means the processing of raw agricultural products, including timber, or the performance of value-added functions with regard to raw agricultural products;*
- (5) *"Approved company" means an eligible company that has received final approval to receive incentives under this subchapter;*
- (6) *"Approved costs" means the amount of eligible costs approved by the authority at final approval;*
- (7) *"Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;*
- (8) *"Capital lease" means a lease classified as a capital lease by the Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976, as amended;*
- (9) *"Commonwealth" means the Commonwealth of Kentucky;*
- (10) *"Confirmed approved costs" means:*
  - (a) *For owned economic development projects, the documented eligible costs incurred on or before the activation date; or*

(b) *For leased economic development projects:*

1. *The documented eligible costs incurred on or before the activation date; and*
2. *Estimated rent to be incurred by the approved company throughout the term of the tax incentive agreement.*

*For both owned and leased economic development projects, "confirmed approved costs" may be less than approved costs, but shall not be more than approved costs;*

(11) *"Department" means the Department of Revenue;*

(12) *"Economic development project" means:*

- (a) 1. *The acquisition, leasing, or construction of a new facility; or*
2. *The acquisition, leasing, rehabilitation, or expansion of an existing facility; and*

(b) *The installation and equipping of the facility;*

*by an eligible company. "Economic development project" does not include any economic development project that will result in the replacement of facilities existing in the Commonwealth, except as provided in Section 14 of this Act;*

(13) (a) *"Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity with a proposed economic development project that is engaged in or is planning to be engaged in one (1) or more of the following activities within the Commonwealth:*

1. *Manufacturing;*
2. *Agribusiness;*
3. *Nonretail service or technology; or*
4. *National or regional headquarters operations regardless of the underlying business activity of the company.*

(b) *"Eligible company" does not include companies where the primary activity to be conducted within the Commonwealth is forestry, fishing, mining, coal or mineral processing, the provision of utilities, construction, wholesale trade, retail trade, real estate, rental and leasing, educational services, accommodation and food services, or public administration services;*

(14) *"Eligible costs" means:*

(a) *For owned economic development projects:*

1. *Start-up costs;*
2. *Obligations incurred for labor and amounts paid to contractors, subcontractors, builders, and materialmen in connection with the economic development project;*
3. *The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;*
4. *The cost of contract bonds and of insurance of all kinds that may be required or necessary for completion of an economic development project which is not paid by a contractor or otherwise provided for;*
5. *All costs of architectural and engineering services, including test borings, surveys, estimated plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required for construction of the economic development project;*
6. *All costs which are required to be paid under the terms of any contract for the economic development project;*
7. *All costs incurred for construction activities, including 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; construction and installation of railroad spurs as needed to connect the economic development project to existing railways; or similar activities as the authority may determine necessary for construction of the economic development project; and*

8. *All other costs of a nature comparable to those described above; and*
- (b) *For leased economic development projects:*
  1. *Start-up costs; and*
  2. *Fifty percent (50%) of the estimated annual rent for each year of the tax incentive agreement.*

*Notwithstanding any other provision of this subsection, for economic development projects that are not in enhanced incentive counties, the cost of equipment eligible for recovery as an eligible cost shall not exceed twenty thousand dollars (\$20,000) for each new full-time job created as of the activation date;*

- (15) *"Employee benefits" means nonmandated payments 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;*
- (16) *"Enhanced incentive counties" means counties certified by the authority pursuant to Section 13 of this Act;*
- (17) *"Final approval" means the action taken by the authority authorizing the eligible company to receive incentives under this subchapter;*
- (18) *"Full-time job" means a job held by a person who:*
  - (a) *Is a Kentucky resident subject to the Kentucky individual income tax imposed by KRS 141.020; and*
  - (b) *Is required to work a minimum of thirty-five (35) hours per week;*
- (19) *"Incentives" means the incentives available under this subchapter, as listed in subsection (3) of Section 10 of this Act;*
- (20) *"Job target" means the annual average number of new full-time jobs that the approved company commits to create and maintain at the economic development project, which shall not be less than ten (10) new full-time jobs;*
- (21) *"Kentucky gross receipts" has the same meaning as in KRS 141.0401;*
- (22) *"Kentucky gross profits" has the same meaning as in KRS 141.0401;*
- (23) *"Lease agreement" means an agreement between an approved company and an unrelated entity conveying the right to use property, plant, or equipment, the terms of which reflect an arms' length transaction. "Lease agreement" does not include a capital lease;*
- (24) *"Leased project" means an economic development project site occupied by an approved company pursuant to a lease agreement;*
- (25) *"Loan agreement" means the agreement between the authority and a preliminarily approved company establishing the terms and conditions of an advance disbursement;*
- (26) *"Manufacturing" means any activity involving the 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 the processing, assembling, or production of property. "Manufacturing" also includes storage, warehousing, distribution, and office activities related to the manufacturing activity;*
- (27) *"Minimum wage target" means the average minimum wage amount that the approved company commits to meet for all new full-time jobs created and maintained as a result of the economic development project, which shall not be less than:*
  - (a) *One hundred twenty-five percent (125%) of the federal minimum wage in enhanced incentive counties; or*
  - (b) *One hundred fifty percent (150%) of the federal minimum wage in all other counties;*

- (28) (a) *"Nonretail service or technology" means any activity where:*
1. *Service or technology is:*
    - a. *Provided predominantly outside the Commonwealth; and*
    - b. *Designed to serve a multistate, national, or international market; or*
  2. *Service or technology is provided by a national or regional headquarters as a support to other business activities conducted by the eligible company.*
- (b) *"Nonretail service or technology" includes but is not limited to call centers, centralized administrative or processing centers, telephone or Internet sales order or processing centers, distribution or fulfillment centers, data processing centers, research and development facilities, and other similar activities;*
- (29) *"Owned project" means an economic development project owned in fee simple by the approved company or an affiliate, or possessed by the approved company or an affiliate pursuant to a capital lease;*
- (30) *"Preliminary approval" means the action taken by the authority preliminarily approving an eligible company for incentives under this subchapter;*
- (31) *"Rent" means the actual annual rent or fee paid by an approved company under a lease agreement;*
- (32) *"Start-up costs" means costs incurred to furnish and equip a facility for an economic development project, including costs incurred for:*
- (a) *Computers, furnishings, office equipment, manufacturing equipment, and fixtures;*
  - (b) *The relocation of out-of-state equipment; and*
  - (c) *Nonrecurring costs of fixed telecommunications equipment;*
- as certified to the authority in accordance with Section 11 of this Act;*
- (33) *"Tax incentive agreement" means the agreement entered into pursuant to Section 12 of this Act between the authority and an approved company; and*
- (34) *"Term" means the period of time for which a tax incentive agreement may be in effect, which shall not exceed fifteen (15) years for an economic development project located in an enhanced incentive county, or ten (10) years for an economic development project not located in any other county.*

➔SECTION 10. A NEW SECTION OF SUBCHAPTER 32 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The purposes of this subchapter are:*
- (a) *To provide incentives for eligible companies and to encourage the location or expansion of manufacturing facilities, agribusiness operations, nonretail service or technology facilities, and regional or national corporate headquarters in the Commonwealth to advance the public purposes of:*
    1. *Creation of new jobs that, but for the incentives offered by the authority, would not exist within the Commonwealth;*
    2. *Creation of new sources of tax revenues for the support of public services provided by the Commonwealth; and*
    3. *Improvement in the quality of life for Kentucky citizens through the creation of sustainable jobs with higher salaries; and*
  - (b) *To provide enhanced incentives for companies that locate in enhanced incentive counties in recognition of the depressed economic conditions in those counties and the increased need for the growth and development caused by the depressed economic conditions.*
- (2) (a) *To qualify for the incentives provided by subsection (3) of this section, an approved company shall:*
1. *Incur eligible costs of at least one hundred thousand dollars (\$100,000);*
  2. *Create at least ten (10) new full-time jobs and maintain an annual average number of at least ten (10) new full-time jobs; and*

3.
  - a. *Pay at least ninety percent (90%) of all new full-time employees whose jobs were created as a result of the economic development project a minimum wage of at least one hundred twenty-five percent (125%) of the federal minimum wage in enhanced incentive counties, and one hundred fifty percent (150%) of the federal minimum wage in other counties throughout the term of the economic development project; and*
  - b. *Provide employee benefits for all new full-time jobs equal to at least fifteen percent (15%) of the minimum wage target established by the tax incentive agreement. If the eligible company does not provide employee benefits equal to at least fifteen percent (15%) of the minimum wage target established by the tax incentive agreement, the eligible company may still qualify for incentives if it provides the full-time employees hired as a result of the economic development project total hourly compensation equal to or greater than one hundred fifteen percent (115%) of the minimum wage target established in the tax incentive agreement through increased hourly wages combined with employee benefits.*
- (b) *To qualify for the advance disbursement provided by Section 17 of this Act, an approved company shall commit to meeting the job and wage requirements established by paragraph (a) of this subsection, and shall provide documentation indicating that the proposed economic development project will require investment of at least five hundred million dollars (\$500,000,000).*
- (3) *The incentives available under this subchapter are as follows:*
  - (a) *Tax credits of up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.020 or 141.040 and the limited liability entity tax imposed under KRS 141.0401 on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the economic development project, as set forth in Sections 16 and 31 of this Act;*
  - (b) *Authorization for the approved company to impose a wage assessment against the gross wages of each new employee subject to the Kentucky income tax as provided in Section 18 of this Act; and*
  - (c) *For economic development projects with an investment of more than five hundred million dollars (\$500,000,000), an advance disbursement as provided in Section 17 of this Act.*
- (4) *The General Assembly hereby finds and declares that the authority granted in this subchapter and the purposes accomplished hereby are proper governmental and public purposes for which public moneys may be expended, and that the inducement of the location of economic development projects within the Commonwealth is of paramount importance to the economic well-being of the Commonwealth.*

➔SECTION 11. A NEW SECTION OF SUBCHAPTER 32 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The application, approval, and review process under this subchapter shall be as follows:*
  - (a) *An eligible company with a proposed economic development project may submit an application to the authority. The application shall include the information required by subsection (3) of this section;*
  - (b)
    1. *Upon review of the application and any additional information submitted, the authority may, by resolution, give preliminary approval to an eligible company and authorize the negotiation and execution of a memorandum of agreement. The memorandum of agreement shall establish a preliminary job target, minimum wage target, including employee benefits, and maximum total approved cost for the economic development project, and shall only allow the recovery of eligible costs incurred after preliminary approval. Upon preliminary approval, the preliminarily approved company may undertake the project in accordance with the memorandum of agreement, and may begin to hire employees that may be counted toward the minimum full-time job requirements established by the memorandum of agreement.*
    2. *If the preliminary approval includes an advance disbursement, a separate loan agreement shall also be negotiated establishing the terms for the advance disbursement in accordance with the provisions of Section 17 of this Act;*
  - (c) *After preliminary approval but before final approval, the authority shall post the preliminarily approved company's name, the location of the economic development project, and the incentives that have been preliminarily approved on the Cabinet for Economic Development's Web site;*

- (d) *The preliminarily approved company shall submit any documentation required by the authority upon request of the authority;*
- (e) *To obtain final approval, the preliminarily approved company shall submit:*
1. *Documentation required by the authority to confirm that the requirements established by the memorandum of agreement have been met; and*
  2. *Documentation of official action taken by a local governmental entity detailing the manner and level of local contribution, if applicable.*
- Upon review and confirmation of the documentation, the authority may, by resolution, give final approval to the preliminarily approved company, and authorize the execution of a tax incentive agreement between the authority and the approved company pursuant to Section 12 of this Act. The tax incentive agreement shall establish an activation date, which shall be within two (2) years of final approval;*
- (f) 1. *On or before the activation date, the approved company shall notify the authority of its intention to activate the tax incentive agreement. The approved company shall submit:*
- a. *Documentation that it has met the minimum full-time job, minimum investment, and minimum wage and employee benefits requirements established by Section 10 of this Act as of the date of activation; and*
  - b. *The confirmed approved costs incurred as of the date of activation, which shall be the total eligible costs that may be recovered by the approved company.*
2. *If the approved company fails to meet any of the minimum investment, full-time job, or wage requirements, including employee benefits, established by Section 10 of this Act on the activation date, the tax incentive agreement shall be canceled and the approved company shall not be eligible for incentives.*
  3. *If an approved company meets the minimum investment, full-time job, and wage requirements, including employee benefits, established by Section 10 of this Act, but fails to meet higher job targets and minimum wage targets, including employee benefits, established in the tax incentive agreement, then the provisions of subsection (4) of this section shall apply in determining the incentives for which the approved company qualifies.*
  4. *Upon activation of a tax incentive agreement, the authority shall notify the department, and shall provide the department with the information necessary to monitor and track the incentives taken by the approved company; and*
- (g) 1. *The authority shall monitor the tax incentive agreement at least annually, and the approved company shall submit all documentation necessary for the authority to monitor the agreement.*
2. *The authority shall, based on the documentation provided, confirm that the approved company is in continued compliance with the provisions of the tax incentive agreement and, therefore, eligible for incentives.*
  3. *Upon annual review, if the approved company meets the minimum job and wage requirements, including employee benefits, established by Section 10 of this Act, but fails to meet the job target and minimum wage target, including employee benefits, established in the tax incentive agreement, then the provisions of subsection (4) of this section shall apply in determining the incentives for which the approved company qualifies in any year.*
  4. *Upon final approval, the authority shall notify the department that an approved company is eligible for incentives and shall provide the department with the information necessary to monitor the use of incentives by the approved company. If, at any time during the term of the tax incentive agreement, an approved company becomes ineligible for incentives, the authority shall notify the department, and the department shall discontinue the availability of incentives for the approved company.*
- (2) (a) *The authority may establish procedures and standards for the review and approval of eligible companies and their economic development projects through the promulgation of administrative regulations in accordance with KRS Chapter 13A.*

- (b) *Standards to be used by the authority in reviewing and approving an eligible company and its economic development project shall include but not be limited to:*
1. *The creditworthiness of the eligible company;*
  2. *The proposed capital investment to be made;*
  3. *The number of new full-time jobs to be provided for the residents of the Commonwealth and the wages to be paid;*
  4. *Support of the local community; and*
  5. *The likelihood of the economic success of the economic development project.*
- (3) *The application shall include but not be limited to:*
- (a) *The name of the applicant and identification of any affiliates of the applicant who will have some relation to the economic development project;*
  - (b) *A description of the economic development project, including its location, the total investment in the economic development project, and total proposed eligible costs;*
  - (c) *The projected number of new full-time jobs to be created as a result of the economic development project and identification of any affiliates who may employ persons hired to fill those jobs;*
  - (d) *The number of existing full-time jobs at the site of the economic development project on the date of the application and a description and breakdown of the relevant affiliated employers;*
  - (e) *Proposed wage and employee benefit amounts for the new full-time jobs to be created as a result of the proposed economic development project;*
  - (f) *For proposed economic development projects new to the Commonwealth, certification by the eligible company that the economic development project could reasonably and efficiently locate outside of the Commonwealth and, without the incentives offered by the authority, the eligible company would likely locate outside the Commonwealth;*
  - (g) *For eligible companies with an existing location in the Commonwealth considering an expansion, certification that the tax incentives are necessary for the expansion to occur;*
  - (h) *A letter of support from a local governmental entity in the city or county where the economic development project will be located; and*
  - (i) *Any other information the authority may require.*
- (4) (a) *An approved company that meets the minimum job and wage requirements, including employee benefits, established by Section 10 of this Act, but fails to meet the job target and minimum wage target, including employee benefits, established by the tax incentive agreement shall be eligible to receive the incentives authorized by the tax incentive agreement as provided in this subsection.*
- (b) *If, upon activation or annual review, an approved company achieves at least ninety percent (90%) of both the job target and minimum wage target, including employee benefits, established by the tax incentive agreement and no other default has occurred, then the approved company shall be eligible to receive full incentives as provided in the tax incentive agreement.*
- (c) *If, upon activation or annual review, an approved company achieves less than ninety percent (90%) of either the job target or minimum wage target, including employee benefits, established in the tax incentive agreement and no other default has occurred, then the incentives available to the approved company for the following year shall be reduced by a percentage equal to the percentage representing the difference between the job target or minimum wage target, including employee benefits, established in the tax incentive agreement, and the actual average number of full-time jobs or average wage, including employee benefits, paid. If both the number of actual average full-time jobs and average wages paid, including employee benefits, are below ninety percent (90%) of the targets on the same measurement date, then the greater percentage reduction of the two (2) shall be applied rather than reducing the incentives available by the sum of the two (2).*

- (d) *If, upon annual review, either the actual number of new full-time jobs or the average wages paid for those jobs, including employee benefits, is less than the minimum requirements established by Section 10 of this Act, then the economic development project may be suspended automatically or, with approval of the authority, terminated.*

➔SECTION 12. A NEW SECTION OF SUBCHAPTER 32 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

*The authority, upon final approval of a company, may enter into a tax incentive agreement with the approved company. The terms and conditions of the tax incentive agreement shall be negotiated between the authority and the approved company. The terms of the tax incentive agreement shall include but not be limited to the following provisions:*

- (1) *The maximum approved costs that may be recovered over the term of the tax incentive agreement and the annual maximum for approved costs;*
- (2) *That the approved company shall provide the authority with all documentation requested in a manner acceptable to the authority;*
- (3) *Identification of the contribution of the local government to the economic development project, if any;*
- (4) *The activation date, which shall be within two (2) years of final approval;*
- (5) *That the approved company shall implement the activation date by notifying the authority;*
- (6) *That the approved company shall provide documentation satisfactory to the authority within the timeframes required by the authority that it has met the minimum employment, minimum investment, and minimum wage requirements, including employee benefits, established by Section 10 of this Act;*
- (7) *That failure of the approved company to meet any of the minimum job, minimum investment, or minimum wage requirements, including employee benefits, established by Section 10 of this Act on the activation date shall result in cancellation of the tax incentive agreement;*
- (8) *The term of the agreement, which shall not exceed fifteen (15) years for an economic development project located in an enhanced incentive county, or ten (10) years for an economic development project located in another county;*
- (9) *That, if confirmed approved costs are less than the maximum approved costs included in the tax incentive agreement, the confirmed approved costs shall become the maximum amount that may be recovered by the approved company;*
- (10) *If the economic development project is a leased project, that future rent payments that are included in eligible costs shall be included as confirmed approved costs upon submission of a valid lease agreement executed after preliminary approval;*
- (11) *Establishment of a job target and minimum wage target, including employee benefits;*
- (12) *A requirement that the job target and minimum wage target, including employee benefits, be measured:*
  - (a) *On the activation date, against the actual new full-time jobs created and the average wages, including employee benefits, paid for those jobs; and*
  - (b) *Annually during each year of the agreement, against the annual average of the new full-time jobs and the average wages paid for those jobs, including employee benefits;*
- (13) *A provision requiring the approved company to notify the authority immediately if the approved company sells or otherwise transfers or disposes of the land on which an economic development project is located, if a lease relating to the economic development project is terminated or lapses, or if the approved company ceases or fundamentally alters operations at the economic development project;*
- (14) *A provision detailing the reductions in incentives that will occur pursuant to subsection (4) of Section 11 of this Act if an approved company fails to meet its job target or minimum wage target, including employee benefits;*
- (15) *If the tax incentive agreement includes an advance disbursement, incorporation of the provisions of the loan agreement or inclusion of the loan agreement as an attachment to the tax incentive agreement;*

- (16) *That the agreement may be assigned by the approved company upon the adoption of a resolution by the authority to that effect;*
- (17) *That the approved company shall make available to the authority all of its records pertaining to the economic development project, including but not limited to payroll records, records relating to eligible costs, and any other records pertaining to the economic development project that the authority may require;*
- (18) *That the authority may share information with the department for the purposes of monitoring and enforcing the terms of the tax incentive agreement;*
- (19) *That, if an approved company fails to comply with its obligations under the tax incentive agreement other than the jobs target or minimum wage target, the authority may take any or all of the following actions:*
  - (a) *Suspend the incentives available to the approved company;*
  - (b) *Terminate the incentives available to the approved company; or*
  - (c) *Pursue any other remedy set forth in the tax incentive agreement or to which it may be entitled by law; and*
- (20) *Any other provisions not inconsistent with this subchapter and determined to be necessary or appropriate by the parties to the tax incentive agreement.*

➔SECTION 13. A NEW SECTION OF SUBCHAPTER 32 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The authority shall identify and certify or decertify enhanced incentive counties on an annual basis as provided in this section.*
- (2) *Each fiscal year, the authority shall:*
  - (a) *Obtain from the Office of Employment and Training within the Department of Workforce Investment in the Education and Work Force Development Cabinet, the final unemployment figures for the prior calendar year for each county and for the Commonwealth as a whole;*
  - (b) *Identify those counties which have had:*
    - 1. *A countywide unemployment rate that exceeds the statewide unemployment rate in the most recent five (5) consecutive calendar years; or*
    - 2. *An average countywide rate of unemployment exceeding the statewide unemployment rate by two hundred percent (200%) in the most recent calendar year; and*
  - (c) *Certify the counties identified in paragraph (b) of this subsection as enhanced incentive counties.*
- (3) *A county not certified under subsection (2) of this section may also be certified by the authority as an enhanced incentive county if the authority determines the county is one (1) of the sixty (60) most distressed counties in the Commonwealth based on the following criteria with equal weight given to each criterion:*
  - (a) *The average countywide rate of unemployment in the most recent three (3) consecutive calendar years, using the information obtained under subsection (2)(a) of this section;*
  - (b) *The percentage of adults twenty-five (25) years of age and older who have attained at least a high school education or equivalent, on the basis of the most recent data available from the United States Department of Commerce, Bureau of the Census; and*
  - (c) *The quality of the roads in the county. Quality of roads shall be determined by the access within a county to roads, ranked in descending order from best quality to worst quality, as certified to the authority by the Kentucky Transportation Cabinet as follows:*
    - 1. *Two (2) or more interstate highways;*
    - 2. *One (1) interstate highway;*
    - 3. *A state four (4) lane parkway;*
    - 4. *A four (4) lane principal arterial access to an interstate highway;*
    - 5. *A state two (2) lane parkway; and*

6. *None of the preceding road types.*
- (4) (a) *If the authority determines that an enhanced incentive county no longer meets the criteria to be certified as an enhanced incentive county under this section, the authority shall decertify that county.*
- (b) *Any economic development project located in an enhanced incentive county that was decertified by the authority after May 1, 2009, shall have until July 1 of the third year following the fiscal year in which the county was decertified to obtain final approval from the authority.*
- (5) (a) *As used in this subsection, "industrial park" means a regional industrial park as defined in KRS 42.4588, or an industrial park created pursuant to an interlocal agreement in which revenues are shared as provided in KRS 65.245.*
- (b) *An economic development project undertaken in an industrial park that is located in two (2) or more counties, one (1) of which is an enhanced incentive county, may be approved for the enhanced incentive county incentives set forth in this subchapter.*

➔SECTION 14. A NEW SECTION OF SUBCHAPTER 32 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The authority shall not approve an economic development project that otherwise meets the requirements of this subchapter if the economic development project will result in the replacement of facilities existing in the state except as provided in this section.*
- (2) *The authority may approve an economic development project that:*
- (a) *Rehabilitates an existing facility used for manufacturing, agribusiness, or nonretail service or technology, or as a national or regional corporate headquarters, if:*
1. *The facility has not been in operation for a period of ninety (90) or more consecutive days; or*
  2. *a. The current occupant of the facility has advertised a notice of closure; and*  
*b. The eligible company proposing the economic development project is not an affiliate of the current occupant of the facility; or*
  3. *a. The facility is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction; and*  
*b. The title to the facility prior to the sale is not vested in the eligible company or an affiliate of the eligible company;*
- (b) *Replaces an existing manufacturing, agribusiness, nonretail service or technology, or national or regional corporate headquarters facility if:*
1. *a. Title to the facility:*
    - i. *Is held by exercise of the power of eminent domain; or*
    - ii. *May be taken pursuant to a nonappealable judgment granting authority to exercise the power of eminent domain; and*
  - b. *Normal operations at the facility cannot be resumed within twelve (12) months; or*
2. *The facility has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or*
- (c) *Replaces an existing facility located in the same county if the existing facility cannot be expanded due to the unavailability of real estate at or adjacent to the facility to be replaced. Any economic development project satisfying the requirements of this paragraph shall be eligible for incentives under this subchapter only to the extent of the expansion. No incentives shall be available for the equivalent of the facility to be replaced or rehabilitated.*
- (3) *The authority shall not approve an economic development project under this section which results in a lease abandonment or lease termination by the approved company without the consent of the lessor.*

➔SECTION 15. A NEW SECTION SUBCHAPTER 32 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

*By October 1 of each year, the department shall certify to the authority, in the form of an annual report, aggregate tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year and aggregate 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 tax credits or assessments equal to the total incentives available to the approved company.*

➔SECTION 16. A NEW SECTION SUBCHAPTER 32 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *For taxable years beginning after December 31, 2009, an approved company may be eligible for a credit of up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.020 or 141.040, and the limited liability entity tax imposed under KRS 141.0401, that would otherwise be owed by the approved company to the Commonwealth for the approved company's taxable year, on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the economic development project.*
- (2) *The credit allowed the approved company shall be applied against both the income tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by KRS 141.0401, with credit ordering as provided in Section 30 of this Act, for the taxable year for which the tax return of the approved company is filed, subject to the annual maximum set forth in the tax incentive agreement. Any credit not used in the year in which it was first available may be carried forward to subsequent years, provided that no credit may be carried forward beyond the term of the tax incentive agreement.*
- (3) *The approved company shall not be required to pay estimated tax payments as prescribed in KRS 141.042 on the Kentucky taxable income, Kentucky gross receipts, or Kentucky gross profits generated by or arising from the eligible project.*
- (4) *The credit provided by this section shall be determined as provided in Section 31 of this Act.*
- (5) *The amount of incentives allowed in any year shall not exceed the lesser of the tax liability of the approved company related to the economic development project for that year or the annual maximum approved costs set forth in the tax incentive agreement. The incentives shall be allowed for each fiscal year of the approved company during the term of the tax incentive agreement for which a tax return is filed by the approved company.*

➔SECTION 17. A NEW SECTION OF SUBCHAPTER 32 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to the availability of funds and approval by the General Assembly, a preliminarily approved company with an investment of five hundred million dollars (\$500,000,000) or more may be eligible for the advance disbursement of a portion of the incentives provided under this subchapter. The amount of the advance disbursement shall be based on the employment of Kentucky residents during the construction of the economic development project, shall be negotiated with the authority and shall not exceed the limitations established by this section.*
- (2) *The authority shall compute the maximum amount of the advance disbursement employment incentive as follows:*
  - (a) *The base amount shall equal the total investment specified in the tax incentive agreement multiplied by the labor intensity factor as determined in paragraph (c) of this subsection;*
  - (b) *The base amount shall then be multiplied by the Kentucky resident factor as determined in paragraph (d) of this subsection. The resulting amount shall be the maximum advance disbursement employment incentive that the authority may approve;*
  - (c) *The labor intensity factor shall be:*
    1. *Twenty-five percent (25%), if the estimated labor component for the economic development project is greater than thirty percent (30%) of the total investment;*
    2. *Twenty percent (20%), if the estimated labor component for the economic development project is greater than twenty-five percent (25%) but less than or equal to thirty percent (30%) of the total investment; or*

3. *Fifteen percent (15%), if the estimated labor component for the economic development project is equal to or less than twenty-five percent (25%) of the total capital investment; and*
  - (d) *The Kentucky resident factor shall be four percent (4%) multiplied by a fraction, the numerator of which shall be the estimated total gross wages that will be paid to Kentucky residents who are working on the construction, retrofit, or upgrade of the economic development project, and the denominator of which shall be the estimated total gross wages that will be paid to all workers working on the construction, retrofit, or upgrade of the economic development project.*
- (3) *In negotiating an advance disbursement, the authority shall consider the possible increased risk to the Commonwealth associated with the disbursement of funds prior to project completion, should the preliminarily approved company fail to comply with the terms of the loan agreement or tax incentive agreement.*
- (4) *The authority and the preliminarily approved company shall enter into a loan agreement as provided in subsection (1)(b)2. of Section 11 of this Act. The loan agreement shall include but not be limited to:*
  - (a) *A schedule for the disbursement of funds to the preliminarily approved company;*
  - (b) *Identification of the collateral or other forms of assurance required to mitigate the risk to the Commonwealth;*
  - (c) *A provision that requires a reduction or adjustment in the incentives the approved company is scheduled to receive after activation of the economic development project until the advanced disbursement has been repaid. The amount by which the incentives are reduced shall be applied as a credit against the amount owed by the approved company for the advanced disbursement;*
  - (d) *A repayment schedule, which shall require uniform incremental payments to the extent possible, and which shall include the amount of interest due, the time period over which the advance disbursement amount shall be repaid, and the amount due each year; and*
  - (e) *An alternative method for payment if incentives are not sufficient to cover the amount of any payment due as set forth in the repayment schedule.*
- (5) *The department shall monitor the total incentives for which an approved company is eligible. Any portion of the incentives identified in the tax incentive agreement as being devoted to the repayment of an advance disbursement shall be deducted from the balance of approved costs available for recovery by the approved company, and the department shall forward the amount deducted to the Cabinet for Economic Development, Department of Financial Incentives, for deposit in the authority's account. The timing of all reporting and fund transfers shall be established by agreement between the department and the authority.*
- (6) *During the period when an approved company's incentives are being applied to repay an advance disbursement, the approved company shall, at the direction of the authority or the department, file all required requests for incentives, submit all required remittances, make all required tax payments, and provide the department and the authority any information that would normally be required for the approved company to receive incentives.*

➔SECTION 18. A NEW SECTION OF SUBCHAPTER 32 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *An approved company or, with the authority's consent, an affiliate of an approved company may impose wage assessments against employees as provided in this section, if a wage assessment is included in the incentives awarded to the approved company in the tax incentive agreement. The level of wage assessment shall be negotiated as part of the tax incentive agreement.*
- (2) *If an economic development project is located in an enhanced incentive county, the approved company or, with the authority's consent, an affiliate of the approved company may require that each employee subject to the tax imposed by KRS 141.020, whose job is determined by the authority to be created as a result of the economic development project, as a condition of employment, agree to an assessment of up to five percent (5%) of taxable wages.*
- (3) (a) *If the economic development project is not located in an enhanced incentive county, and is located in a local jurisdiction where:*
  1. *No local occupational license fee is imposed; or*

2.
  - a. *A local occupational license fee greater than or equal to one percent (1%) is imposed; and*
  - b. *The local jurisdiction agrees to forgo one percent (1%) via credits against the local occupational license fee for the affected employees; then*
- (b) *An approved company or, with the authority's consent, an affiliate of an approved company may require that each employee subject to tax imposed by KRS 141.020, whose job is determined by the authority to be created as a result of the economic development project, as a condition of employment, agree to pay an assessment of up to four percent (4%) of taxable wages.*
- (4) (a) *If:*
  1. *The economic development project is not located in an enhanced incentive county, and is located in a jurisdiction where the local occupational license fee is less than one percent (1%); and*
  2. *The local jurisdiction agrees to forgo the total amount of the local occupational license fee; then*
- (b) *An approved company or, with the authority's consent, an affiliate of an approved company may require that each employee subject to tax imposed by KRS 141.020, whose job is determined by the authority to be created as a result of the economic development project, as a condition of employment, agree to pay an assessment of up to three percent (3%) of taxable wages, plus a percentage equal to the amount of the local occupational license fee the local jurisdiction agrees to forgo.*
- (5) (a) *If:*
  1. *The project is not located in an enhanced incentive county and is located in a county where the jurisdiction imposes a local occupational license fee of less than one percent (1%); and*
  2. *The local jurisdiction agrees to forgo only a portion of the total amount of the local occupational license fee; then*
- (b) *An approved company or, with the authority's consent, an affiliate of an approved company may require that each employee subject to tax imposed by KRS 141.020, whose job is determined by the authority to be created as a result of the economic development project, as a condition of employment, agree to pay an assessment to be determined as follows:*
  1. *Divide the local occupational license fee that the local jurisdiction has agreed to forgo by the total local occupational license fee imposed;*
  2. *Multiply the result determined under subparagraph 1. of this paragraph by three percent (3%); and*
  3. *Add the result from subparagraph 2. of this paragraph to the local occupational license fee that the local jurisdiction has agreed to forgo.*
- (6) (a) *If:*
  1. *The project is not located in an enhanced incentive county, and is located in a county where the jurisdiction imposes a local occupational license fee equal to or greater than one percent (1%); and*
  2. *The local jurisdiction agrees to forgo the local occupational license fee in an amount of less than one percent (1%); then*
- (b) *An approved company or, with the authority's consent, an affiliate of an approved company may require that each employee subject to tax imposed by KRS 141.020, whose job is determined by the authority to be created as a result of the economic development project, as a condition of employment, agree to pay an assessment to be determined as follows:*
  1. *Divide the local occupational license fee that the local jurisdiction has agreed to forgo by one percent (1%);*

2. *Multiply the result determined under subparagraph 1. of this paragraph by three percent (3%); and*
  3. *Add the result from subparagraph 2. of this paragraph to the local occupational license fee that the local jurisdiction has agreed to forgo.*
- (7) *If the project is not located in an enhanced incentive county, and is located in a local jurisdiction where the jurisdiction does not impose a local occupational license fee, the local jurisdiction shall be required to provide some alternative inducement satisfactory to the authority at the local level in order for a preliminarily approved company to receive final approval. However, the authority may waive this requirement if there are reasonable circumstances that prevent the local jurisdiction from providing a reasonable inducement.*
  - (8) *Each employee paying the assessment shall simultaneously be entitled to a credit against the Kentucky individual income tax required to be withheld under Section 52 of this Act equal to the state portion of the assessment and shall be entitled to a credit against the local occupational license tax equal to the local portion of the assessment.*
  - (9) *If more than one (1) local jurisdiction imposes an occupational license fee, the local jurisdiction portion of the assessment shall be prorated proportionately among the taxes imposed by the local jurisdictions unless one (1) local jurisdiction agrees to forgo the receipt of these taxes in an amount equal to the local jurisdiction portion of the wage assessment, in which case no proration shall be made.*
  - (10) *If a full-time employee subject to state tax imposed by KRS 141.020 is already employed by the approved company at a site other than the site of the economic development project, that full-time employee's job shall be deemed to have been created when the full-time employee is transferred to the site of the economic development project, if the full-time employee's existing job is filled with a new full-time employee.*
  - (11) *If an approved company elects to impose the assessment as a condition of employment, it shall be authorized to deduct the assessment from each payment of wages to the employee unless the approved company receives an advance disbursement as set forth in Section 17 of this Act, in which case assessment claims shall be filed with the department, but no assessment shall be withheld by the company until the advance disbursement is repaid in full.*
  - (12) *Notwithstanding any other provision of the Kentucky Revised Statutes, if an approved company elects not to deduct the assessment from each payment of wages to the employee, but rather requests a reimbursement of state tax imposed by KRS 141.020 or local occupational tax in the aggregate after they have been paid to the state or local jurisdiction, no interest shall be paid by the state or by the local jurisdiction on that reimbursement.*
  - (13) *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.*
  - (14) *An approved company imposing an assessment shall make its payroll, books, and records available to the authority or the department upon request, and shall file with the authority or department documentation pertaining to the assessment as the authority or department may require.*
  - (15) *Any assessment of the wages of employees of an approved company in connection with their employment at an economic development project shall permanently cease at the expiration of the tax incentive agreement.*
- ➔SECTION 19. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:
- (1) *As used in this section:*
    - (a) *"Corporation" means the Bluegrass State Skills Corporation established by KRS 154.12-205;*
    - (b) *"Educational institution" means a regionally accredited college, university, or technical school;*
    - (c) *"Metropolitan College" means a nonprofit consortium that includes educational institutions located within the Commonwealth and the qualified taxpayer as members. The purpose of Metropolitan College shall be to provide postsecondary educational opportunities to employees of the qualified taxpayer as part of a combined work and postsecondary education program;*
    - (d) *"Other educational expenses" means the same kinds of educational expenses that were permitted under the Metropolitan College Consortium Agreement approved November 5, 2005; and*

- (e) *"Qualified taxpayer" means any taxpayer who, on the effective date of this Act, is a party to the Metropolitan College Consortium Agreement approved November 5, 2005.*
- (2) *To be eligible for the tax credit provided by this section, a qualified taxpayer shall be a partner in Metropolitan College.*
- (3) *A qualified taxpayer shall be allowed a nonrefundable credit against the tax imposed by KRS 141.020 or 141.040, and KRS 141.0401, for each taxable year beginning on or after July 1, 2010, in the amount of fifty percent (50%) of the actual costs incurred by the qualified taxpayer for:*
- (a) *Tuition paid to an educational institution for a student participating in the Metropolitan College; and*
- (b) *Other educational expenses paid on behalf of a student participating in the Metropolitan College; on behalf of employees of the qualified corporation, for up to two thousand eight hundred (2,800) employees each year.*
- (4) *To claim the credit each year, the qualified taxpayer shall, on an annual basis, submit to the corporation information listing each employee of the qualified taxpayer for whom tuition or other educational expenses were paid, the amount paid on behalf of each employee, and the amount of credit the qualified company is eligible to claim. The corporation shall review the information provided by the qualified company, and shall notify the department and the qualified company of the amount of credit the qualified company is eligible to claim.*
- (5) *The credit allowed by this section for any taxable year shall not exceed the tax liability of the taxpayer for the taxable year. Any credit not used may be carried forward to subsequent years.*
- (6) *The qualified company shall provide to the corporation and the department any information and documentation requested for the purpose of monitoring the credit established by this section.*
- (7) *The approved company shall maintain records and submit information as required by the corporation and the department. The corporation may share information provided by the approved company with the department for the purpose of monitoring the credit established by this section.*
- (8) *The corporation may, through the promulgation of administrative regulations in accordance with KRS Chapter 13A, establish additional standards or requirements for the administration of this section.*
- (9) *The credit established by this section shall expire on April 15, 2013, unless extended by the General Assembly.*

➔SECTION 20. SUBCHAPTER 31 OF KRS CHAPTER 154 IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

*As used in this subchapter:*

- (1) *"Agreement" means an agreement entered into pursuant to Section 22 of this Act between the authority and an approved company;*
- (2) *"Approved company" means an eligible company that has received approval from the authority for a sales and use tax incentive under this subchapter;*
- (3) *"Approved recovery amount" means the maximum sales and use tax incentive recoverable by an approved company as established in the agreement;*
- (4) *"Authority" means the Kentucky Economic Development Finance Authority;*
- (5) *"Department" means the Department of Revenue;*
- (6) *"Economic development project" means:*
- (a) 1. *The acquisition or construction of a new facility; or*
2. *The expansion or rehabilitation of an existing facility; and*
- (b) *The installation and equipping of the facility;*
- by an eligible company at a specific site in the Commonwealth to be used in a service or technology, manufacturing, or tourism attraction activity conducted by the approved company;*

- (7) *"Electronic processing" means the use of technology having electronic, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities, now in existence or later developed to perform a service or technology activity;*
- (8) (a) *"Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or other legal entity that is primarily engaged in manufacturing or service or technology activities, or in operating or developing a tourism attraction; and*
- (b) *"Eligible company" does not include any company whose primary activity is retail sales;*
- (9) *"Eligible expenses" means the amount expended for:*
- (a) *Building and construction materials permanently incorporated as an improvement to real property as part of an economic development project; or*
- (b) *Equipment used for research and development or electronic processing at an economic development project;*
- if the Kentucky sales and use tax imposed by KRS Chapter 139 is paid on the purchase of the materials or equipment at the time of purchase;*
- (10) (a) *"Equipment" means tangible personal property which is subject to depreciation under Sections 167 and 168 of the Internal Revenue Code, including assets which are expensed under Section 179 of the Internal Revenue Code, and that is used in the operation of a business.*
- (b) *"Equipment" does not include any tangible personal property used to maintain, restore, mend, or repair machinery or equipment, consumable operating supplies, office supplies, or maintenance supplies;*
- (11) (a) *"Manufacturing" means to make, assemble, process, produce, or perform any 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.*
- (b) *"Manufacturing" does not include any activity involving the performance of work classified by the divisions, including successor divisions, of mining 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;*
- (12) *"Project term" means the time for which an agreement shall be in effect. The project term shall be established in the agreement and shall not exceed seven (7) years;*
- (13) (a) *"Research and development" means experimental or laboratory activity that has as its ultimate goal the development of new products, the improvement of existing products, the development of new uses for existing products, or the development or improvement of methods for producing products.*
- (b) *"Research and development" does not include testing or inspection of materials or products for quality control purposes, efficiency surveys, management studies, consumer surveys or other market research, advertising or promotional activities, or research in connection with literary, historical, or similar projects; and*
- (14) *"Service or technology" means any nonretail activity using technology or providing a service, including but not limited to:*
- (a) *Administration and processing activities;*
- (b) *Research and development;*
- (c) *Telephone or Internet sales or services;*
- (d) *Distribution or fulfillment of orders;*
- (e) *Data processing; and*
- (f) *Similar activities;*
- provided to customer or affiliate entities primarily outside the Commonwealth and designed to serve a multistate, national, or international market.*

➔SECTION 21. A NEW SECTION OF SUBCHAPTER 31 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The maximum amount of sales and use tax incentives that may be committed in each fiscal year by the authority shall be capped at twenty million dollars (\$20,000,000) for building and construction materials, and five million dollars (\$5,000,000) for equipment used for research and development or electronic processing.*
- (2)
  - (a) *To qualify for the sales and use tax incentives available under this subchapter, an eligible company shall make a minimum investment of at least five hundred thousand dollars (\$500,000) in an economic development project, including the cost of land, but excluding the cost of labor.*
  - (b) *To qualify for the sales and use tax incentive available under this subchapter for electronic processing equipment, in addition to the requirements of paragraph (a) of this subsection, the eligible company shall spend an aggregate amount of at least fifty thousand dollars (\$50,000) on electronic processing equipment installed as part of the economic development project.*
- (3)
  - (a) *The maximum sales and use tax incentive available to an approved company under this subchapter is the total amount of sales and use tax paid on purchases made on the following items, up to the approved recovery amount after approval by the authority:*
    1. *Building and construction materials;*
    2. *Research and development equipment; and*
    3. *Electronic processing equipment.*
  - (b) *An approved company may qualify for a sales and use tax incentive in more than one (1) category listed in paragraph (a) of this subsection for the same economic development project. If the authority approves an eligible company to receive the sales and use tax incentives in more than one (1) category, the authority shall allocate the incentives to the appropriate cap established by subsection (2) of this section.*

➔SECTION 22. A NEW SECTION OF SUBCHAPTER 31 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The application, approval, and monitoring process under this subchapter shall be as follows:*
  - (a) *An eligible company with a proposed economic development project may submit an application to the authority. The application shall include the information required by subsection (3) of this section;*
  - (b) *Upon review of the application and any additional information submitted, the authority may, by resolution, approve an economic development project and authorize the negotiation and execution of an agreement pursuant to subsection (4) of this section. Approval granted pursuant to this subsection shall apply to a specific economic development project at a specific location within the Commonwealth;*
  - (c) *Upon approval, the authority shall notify the department that an approved company is eligible for a sales and use tax incentive under this subchapter and shall provide the department with the information necessary to monitor the use of incentives by the approved company. The authority shall notify the department if the agreement is extended or amended, or if the incentives are transferred, and shall provide the department with the information necessary to update its records; and*
  - (d) *The approved company shall be eligible to receive the sales and use tax incentives authorized by the agreement upon the earlier of the completion of the economic development project or expiration of the project term. The approved company shall apply to the department for the sales and use tax incentives as provided in Section 23 of this Act, and shall, during the project term, submit all information required by the department as provided in Section 23 of this Act.*
- (2) *The authority may establish standards for the review of applications and the approval of eligible companies through the promulgation of administrative regulations in accordance with KRS Chapter 13A. In reviewing applications and establishing standards, the authority shall consider the creditworthiness of the eligible company, employment opportunities for Kentucky residents, wages to be paid, whether the eligible company is participating in other incentive programs pursuant to KRS Chapter 154 for the project, the likelihood that the project will be an economic success, and any other factors the authority determines to be relevant.*

- (3) *The application submitted by an eligible company shall include but not be limited to the following:*
- (a) *A description of the proposed economic development project;*
  - (b) *The anticipated minimum investment in the proposed economic development project;*
  - (c) *An estimate of the approved recovery amount that the company will seek;*
  - (d) *A timeline for completion of the proposed economic development project;*
  - (e) *Supporting documentation, as requested by the authority;*
  - (f) *Payment of any applicable application fee required by the authority; and*
  - (g) *Any other information requested by the authority.*
- (4) (a) *Upon approval of an eligible company, the authority may enter into an agreement with the approved company. The terms of the agreement shall be determined by negotiations between the authority and the approved company, and shall include but not be limited to the following provisions:*
- 1. *The project term;*
  - 2. *A description of the economic development project;*
  - 3. *The total approved recovery amount in each category for which the approved company is eligible;*
  - 4. *That the approved company shall maintain all records and documentation relating to eligible expenditures and the Kentucky sales and use tax paid, and shall provide those records and documentation to the authority or the department upon request;*
  - 5. *That the approved company shall execute information-sharing agreements prescribed by the department with contractors, vendors, and other related parties to verify the costs of and payment of sales and use tax on the tangible personal property eligible for the sales and use tax incentive under this subchapter;*
  - 6. *That the sales and use tax incentives shall not be assignable or transferable without written notice to the authority and approval of the authority; and*
  - 7. *Any other provisions not inconsistent with this subchapter.*
- (b) *The project term established in the agreement may be extended by approval of the authority for good cause shown; however, the term shall not be extended beyond seven (7) years from the date of approval.*
- (c) *An approved company may transfer or assign its designation as an approved company upon prior notification to the authority and approval of the authority in a manner prescribed by the authority.*
- (5) *The contents of a company's filings under this subchapter shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.*
- (6) *The authority shall annually submit a complete and detailed report of the use of the sales and use tax incentives and participation of approved companies under this subchapter within one hundred twenty (120) days after the end of each fiscal year to the Legislative Research Commission and to the Governor.*

➔SECTION 23. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*
- (a) *"Agreement" has the same meaning as in Section 20 of this Act;*
  - (b) *"Approved company" has the same meaning as in Section 20 of this Act;*
  - (c) *"Economic development project" has the same meaning as in Section 20 of this Act;*
  - (d) *"Electronic processing" has the same meaning as in Section 20 of this Act;*
  - (e) *"Equipment" has the same meaning as in Section 20 of this Act;*
  - (f) *"Project term" has the same meaning as in Section 20 of this Act; and*
  - (g) *"Research and development" has the same meaning as in Section 20 of this Act.*

- (2) *Notwithstanding any provision of KRS 139.770 to the contrary, an approved company may receive a refund of sales and use tax paid on approved expenses after execution of the agreement for building and construction materials, and equipment used in research and development or for electronic processing at an economic development project as provided in the agreement executed under Section 22 of this Act.*
- (3) (a) *The approved company shall apply for the sales and use tax incentives as provided in this subsection.*
- (b) *For an economic development project with a project term of three (3) years or less, the approved company shall submit an application to receive the sales and use tax incentives to the department within sixty (60) days of the earlier of the completion of the economic development project or the expiration of the project term.*
- (c) 1. *For an economic development project with a project term of greater than three (3) years, the approved company shall, beginning with the third year of the project term, file with the department annually an information return, and any supporting documentation required by the department. The approved company shall not be eligible to receive the sales and use tax incentives until the project is complete and the application for incentives is submitted to the department as required by subparagraph 3. of this paragraph.*
2. *The information return and documentation shall be filed with the department within sixty (60) days following the end of the calendar year, and shall include information relating to prior unreported years.*
3. *The approved company shall file a final request for sales and use tax incentives within sixty (60) days of the earlier of the completion of the economic development project or the expiration of the project term.*
- (4) *The approved company shall have no obligation to refund or otherwise return any amount of the sales and use tax refund received to the person who originally collected the tax and remitted it to the Commonwealth.*
- (5) *An approved company shall execute information-sharing agreements prescribed by the department with contractors, vendors, and other related parties so that the department may verify expenditures and sales and use tax paid.*
- (6) *Interest shall not be allowed or paid on any incentives paid under this section. The department may examine any distribution of sales and use tax incentives within four (4) years from the date the final application for sales and use tax incentives is received. An overpayment resulting from the examination shall be repaid to the State Treasury. Any amount required to be repaid is subject to the interest provisions of KRS 131.183 and to the penalty provisions of KRS 131.180.*
- (7) *The department may promulgate administrative regulations, in accordance with KRS Chapter 13A, and shall require the filing of forms designed by the department to reflect the intent of this subchapter.*

➔SECTION 24. A NEW SECTION OF KRS 154.20-200 TO 154.20-216 IS CREATED TO READ AS FOLLOWS:

*New applications shall not be accepted or considered under KRS 154.20-200 to 154.20-216 on or after the effective date of this Act. All outstanding approved projects as of the effective date of this Act shall continue to be governed by the provisions of KRS 154.20-200 to 154.20-216.*

➔SECTION 25. A NEW SECTION OF SUBCHAPTER 22 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

*New applications shall not be accepted or considered under this subchapter on or after the effective date of this Act. All outstanding projects with preliminary or final approval under this subchapter as of the effective date of this Act shall continue to be governed by the provisions of this subchapter.*

➔SECTION 26. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

*New applications shall not be accepted or considered under this subchapter on or after the effective date of this Act. All outstanding projects with preliminary or final approval under this subchapter as of the effective date of this Act shall continue to be governed by the provisions of this subchapter.*

➔SECTION 27. A NEW SECTION OF SUBCHAPTER 24 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

*New applications shall not be accepted or considered under this subchapter on or after the effective date of this Act. All outstanding projects with preliminary or final approval under this subchapter as of the effective date of this Act shall continue to be governed by the provisions of this subchapter.*

➔SECTION 28. A NEW SECTION OF SUBCHAPTER 28 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

*New applications shall not be accepted or considered under this subchapter on or after the effective date of this Act. All outstanding projects with preliminary or final approval under this subchapter as of the effective date of this Act shall continue to be governed by the provisions of this subchapter.*

➔Section 29. KRS 154.20-033 is amended to read as follows:

(1) The authority shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of Subchapters 20 to 28 and 30 ~~to 34~~ of this chapter, including but not limited to:

(a)~~(1)~~ Employing fiscal consultants, attorneys, appraisers, and other agents on behalf of the authority whom the authority deems necessary or convenient for the preparation and administration of agreements and documents necessary or incident to any project. The fees for the services provided by persons employed on behalf of the authority shall be paid by the beneficiary of a loan, grant, assessment, incentive, inducement, or tax credit under this chapter directly to the person providing consultation, advisory, legal or other services; and

(b)~~(2)~~ Imposing and collecting fees and charges in connection with any transaction and providing for reasonable penalties for delinquent payment of fees and charges.

(2) *A director or officer of the authority shall not be subject to any personal liability or accountability by reason of the execution of any obligation duly authorized by the authority.*

(3) *The authority may accept and expend moneys which may be appropriated from time to time by the General Assembly, or moneys which may be received from any source, including income from the authority's operations for effectuating its purpose, including without limitation the payment of the expenses of administration and operation.*

➔Section 30. KRS 141.0205 is amended to read as follows:

If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of the credits shall be determined as follows:

(1) The nonrefundable business incentive credits against the tax imposed by KRS 141.020 shall be taken in the following order:

(a) 1. For taxable years beginning after December 31, 2004, and before January 1, 2007, the corporation income tax credit permitted by KRS 141.420(3)(a);

2. For taxable years beginning after December 31, 2006, the limited liability entity tax credit permitted by KRS 141.0401;

(b) The economic development credits computed under KRS 141.347, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-2088, *Sections 19 and 68 of this Act*, and 154.27-080;

(c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);

(d) The health insurance credit permitted by KRS 141.062;

(e) The tax paid to other states credit permitted by KRS 141.070;

(f) The credit for hiring the unemployed permitted by KRS 141.065;

(g) The recycling or composting equipment credit permitted by KRS 141.390;

(h) The tax credit for cash contributions in investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;

(i) The coal incentive credit permitted under KRS 141.0405;

- (j) The research facilities credit permitted under KRS 141.395;
  - (k) The employer GED incentive credit permitted under KRS 151B.127;
  - (l) The voluntary environmental remediation credit permitted by KRS 141.418;
  - (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
  - (n) The environmental stewardship credit permitted by KRS 154.48-025;
  - (o) The clean coal incentive credit permitted by KRS 141.428;
  - (p) The ethanol credit permitted by KRS 141.4242;
  - (q) The cellulosic ethanol credit permitted by KRS 141.4244;
  - (r) The energy efficiency credits permitted by KRS 141.436; and
  - (s) ~~The ENERGY STAR home or ENERGY STAR manufactured home credit permitted by KRS 141.437~~ ***The railroad maintenance and improvement credit permitted by Section 69 of this Act.***
- (2) After the application of the nonrefundable credits in subsection (1) of this section, the nonrefundable personal tax credits against the tax imposed by KRS 141.020 shall be taken in the following order:
- (a) The individual credits permitted by KRS 141.020(3);
  - (b) The credit permitted by KRS 141.066;
  - (c) The tuition credit permitted by KRS 141.069;~~and~~
  - (d) The household and dependent care credit permitted by KRS 141.067; ***and***
  - (e) ***The new home credit permitted by section 104 of this Act.***
- (3) After the application of the nonrefundable credits provided for in subsection (2) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
- (a) The individual withholding tax credit permitted by KRS 141.350;
  - (b) The individual estimated tax payment credit permitted by KRS 141.305; and
  - (c) For taxable years beginning after December 31, 2004, and before January 1, 2007, the corporation income tax credit permitted by KRS 141.420(3)(c);
  - (d) ***The certified rehabilitation credit permitted by subsection (1)(b) of Section 32 of this Act; and***
  - (e) ***The film industry tax credit allowed by Section 47 of this Act.***
- (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the tax imposed by KRS 141.040.
- (5) The following nonrefundable credits shall be applied against the sum of the tax imposed by KRS 141.040 after subtracting the credit provided for in subsection (4) of this section, and the tax imposed by KRS 141.0401 in the following order:
- (a) The economic development credits computed under KRS 141.347, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-2088, ***Sections 19 and 68 of this Act***, and KRS 154.27-080;
  - (b) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
  - (c) The health insurance credit permitted by KRS 141.062;
  - (d) The unemployment credit permitted by KRS 141.065;
  - (e) The recycling or composting equipment credit permitted by KRS 141.390;
  - (f) The coal conversion credit permitted by KRS 141.041;
  - (g) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods ending prior to January 1, 2008;

- (h) The tax credit for cash contributions to investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
  - (i) The coal incentive credit permitted under KRS 141.0405;
  - (j) The research facilities credit permitted under KRS 141.395;
  - (k) The employer GED incentive credit permitted under KRS 151B.127;
  - (l) The voluntary environmental remediation credit permitted by KRS 141.418;
  - (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
  - (n) The environmental stewardship credit permitted by KRS 154.48-025;
  - (o) The clean coal incentive credit permitted by KRS 141.428;
  - (p) The ethanol credit permitted by KRS 141.4242;
  - (q) The cellulosic ethanol credit permitted by KRS 141.4244;
  - (r) The energy efficiency credits permitted by KRS 141.436;~~and~~
  - (s) The ENERGY STAR home or ENERGY STAR manufactured home credit permitted by KRS 141.437;
  - (t) ***The railroad maintenance and improvement credit permitted by Section 69 of this Act; and***
  - (u) ***The railroad expansion credit permitted by Section 70 of this Act.***
- (6) After the application of the nonrefundable credits in subsection (5) of this section, the refundable ***credits shall be taken in the following order:***
- (a) ***The*** corporation estimated tax payment credit permitted by KRS 141.044;
  - (b) ***The certified rehabilitation credit permitted by subsection (1)(b) of Section 32 of this Act; and***
  - (c) ***The film industry tax credit allowed in Section 47 of this Act*** ~~shall be allowed as a credit against the total of any remaining taxes imposed by KRS 141.040 and the tax imposed by KRS 141.0401].~~
- ➔Section 31. KRS 141.415 is amended to read as follows:
- (1) As used in this section, unless the context requires otherwise:
- (a) "Approved company" ~~means~~~~has~~ the same ~~meaning~~ as ~~defined~~~~set forth~~ in KRS 154.34-010 ***or Section 9 of this Act;***
  - (b) ***"Economic development project" means the same as defined in Section 9 of this Act;***
  - (c) "Reinvestment project" ~~means~~~~has~~ the same ~~meaning~~ as ~~defined~~~~set forth~~ in KRS 154.34-010;
  - ~~(d)(c)~~ "Tax credit" means the tax credit allowed in ***Section 5 of this Act or the credit allowed in Section 16 of this Act, as the case may be***~~[KRS 154.34-080];~~
  - ~~(e)(d)~~ "Kentucky gross receipts" means ***the same***~~[Kentucky gross receipts]~~ as defined in KRS 141.0401; and
  - ~~(f)(e)~~ "Kentucky gross profits" means ***the same***~~[Kentucky gross profits]~~ as defined in KRS 141.0401.
- (2) An approved company shall determine the income tax credit as provided in this section.
- (3) An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation or pass-through entity treated as a corporation for federal income tax purposes subject to tax under KRS 141.040(1) shall:
- (a) 1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income as defined by KRS 141.010(11) or taxable net income as defined by KRS 141.010(14), including income from a reinvestment project ***or economic development project;***
  - 2. Compute the limited liability entity tax imposed under KRS 141.0401 including Kentucky gross profits or Kentucky gross receipts from the reinvestment project ***or economic development project;*** and

3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.
- (b)
    1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income as defined by KRS 141.010(11) or taxable net income as defined by KRS 141.010(14), excluding net income attributable to a reinvestment project *or economic development project*;
    2. Using the same method used under paragraph (a)2. of this subsection, compute the limited liability entity tax imposed under KRS 141.0401, including Kentucky gross profits or Kentucky gross receipts from the reinvestment project *or economic development project*; and
    3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.
  - (c) The tax credit shall be the amount by which the tax computed under paragraph (a)3. of this subsection exceeds the tax computed under paragraph (b)3. of this subsection; however, the credit shall not exceed the limits set forth in *Section 5 of this Act or Section 16 of this Act, as the case may be* ~~KRS 154.34-080~~.
- (4)
    - (a) Notwithstanding any other provisions of this chapter, an approved company which is a pass-through entity not subject to the tax imposed by KRS 141.040 or trust not subject to the tax imposed by KRS 141.040 shall be subject to income tax on the net income attributable to a reinvestment project *or economic development project* at the rates provided in KRS 141.020(2).
    - (b) The amount of the tax credit shall be determined as provided in subsection (3) of this section. Upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this paragraph shall be in satisfaction of the tax liability of the partners, members, shareholders, or beneficiaries of the pass-through entity or trust, and shall be paid on behalf of the partners, members, shareholders, or beneficiaries.
    - (c) The tax credit or estimated payment shall not exceed the limits set forth in *Section 5 of this Act or Section 16 of this Act, as the case may be* ~~KRS 154.34-080~~.
    - (d) If the tax computed in this section exceeds the tax credit, the difference shall be paid by the pass-through entity or trust at the times provided by KRS 141.160 for filing the returns.
    - (e) Any estimated tax payment made by the pass-through entity or trust in satisfaction of the tax liability of partners, members, shareholders, or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the partner, member, shareholder, or beneficiary.
  - (5) Notwithstanding any other provisions of this chapter, the net income subject to tax, the tax credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each partner's, member's, shareholder's, or beneficiary's distributive share of net income or credit of a pass-through entity or trust.
  - (6) If the reinvestment project *or economic development project* is a totally separate facility:
    - (a) Net income attributable to the project for the purposes of subsections (3), (4), and (5) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility; and
    - (b) Kentucky gross receipts or Kentucky gross profits attributable to the project for the purposes of subsection (3) of this section shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility.
  - (7) If the reinvestment project *or economic development project* is an expansion to a previously existing facility:
    - (a) Net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility, and the net

income attributable to the reinvestment project **or economic development project** for the purposes of subsections (3), (4), and (5) of this section shall be determined by apportioning the separate accounting net income of the entire facility to the reinvestment project **or economic development project** by a formula approved by the department~~[of Revenue]~~; and

- (b) Kentucky gross receipts or Kentucky gross profits attributable to the entire facility shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility, and Kentucky gross receipts or Kentucky gross profits attributable to the reinvestment project **or economic development project** for the purposes of subsection (3) of this section shall be determined by apportioning the separate accounting Kentucky gross receipts or Kentucky gross profits of the entire facility to the reinvestment project **or economic development project** by a formula approved by the department~~[of Revenue]~~.
- (8) If an approved company can show to the satisfaction of the department~~[of Revenue]~~ that the nature of the operations and activities of the approved company are such that it is not practical to use the separate accounting method to determine the net income, Kentucky gross receipts, or Kentucky gross profits from the facility at which the reinvestment project **or economic development project** is located, the approved company shall determine net income, Kentucky gross receipts, or Kentucky gross profits from the reinvestment project **or economic development project** using an alternative method approved by the department~~[of Revenue]~~.
- (9) The department~~[of Revenue]~~ may **promulgate**~~[issue]~~ administrative regulations and require the filing of forms designed by the department~~[of Revenue]~~ to reflect the intent of KRS 154.34-010 to 154.34-100 **and Subchapter 32 of KRS Chapter 154**, and the allowable income tax credit which an approved company may retain under KRS 154.34-010 to 154.34-100 **or Subchapter 32 of KRS Chapter 154**.

➔SECTION 32. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"Certified historic structure" means the same as defined in Section 33 of this Act;*
- (b) *"Qualified rehabilitation expense" means the same as defined in Section 33 of this Act; and*
- (c) *"Substantial rehabilitation" means the same as defined in Section 33 of this Act.*

- (2) *A refundable or transferable credit in the amount determined in Section 34 of this Act shall be allowed against the taxes imposed by KRS 136.505 or 141.020 or 141.040 and 141.0401, with the ordering of credits provided in Section 30 of this Act, for qualified rehabilitation expenses incurred by the taxpayer and used for substantial rehabilitation to a certified historic structure.*

➔Section 33. KRS 171.396 is amended to read as follows:

As used in this section and KRS 171.397:

- (1) "Certified historic structure" means a structure that is located within the Commonwealth of Kentucky ~~that and~~ is:
- (a) Listed individually on the National Register of Historic Places; or
- (b) Located in a historic district listed on the National Register of Historic Places and is certified by the council as contributing to the historic significance of the district;
- (2) "Certified rehabilitation" means a completed substantial rehabilitation of a certified historic structure that the council certifies meets the United States Secretary of the Interior's Standards for Rehabilitation;
- (3) "Certified rehabilitation credit cap" means **an annual amount of:**
- (a) Three million dollars (\$3,000,000) **for applications received prior to April 30, 2010; and**
- (b) **Five million dollars (\$5,000,000) for applications received on or after April 30, 2010;**
- plus any amount added to the certified rehabilitation credit cap pursuant to subsection (2)(c) of Section 34 of this Act;**
- (4) "Council" means the Kentucky Heritage Council;

- (5) "Disqualifying work" means work that is performed within three (3) years of the completion of the certified rehabilitation that, if performed as part of the rehabilitation certified under **Section 34 of this Act**~~[this section]~~, would have made the rehabilitation ineligible for certification;
- (6) "Exempt entity" means any tax exempt organization pursuant to sec. 501(c)(3) of the Internal Revenue Code, any political subdivision of the Commonwealth, any state or local agency, board, or commission, or any quasi-governmental entity;
- (7) "Local government" means a city, county, urban-county, charter county, or consolidated local government;
- (8) "Owner-occupied residential property" means a building or portion thereof, condominium, or cooperative occupied by the owner as his *or her* principal residence;
- (9) "Qualified rehabilitation expense" means any amount that is properly chargeable to a capital account, whether or not depreciation is allowed under Section 168 of the Internal Revenue Code, and is expended in connection with the certified~~[substantial]~~ rehabilitation of a certified historic structure. It shall include the cost of restoring landscaping and fencing that contributes to the historic significance of this structure, but shall not include the cost of acquisition of a certified historic structure, enlargement of or additions to an existing building, or the purchase of personal property;
- (10) "Substantial rehabilitation" means rehabilitation of a certified historic structure for which the qualified rehabilitation expenses, during a twenty-four (24) month period selected by the taxpayer or exempt entity, ending with or within the taxable year, exceed:
- (a) Twenty thousand dollars (\$20,000) for an owner-occupied residential property; or
  - (b) For all other property, the greater of:
    1. The adjusted basis of the structure; or
    2. Twenty thousand dollars (\$20,000);
- (11) "Taxpayer" means any individual, corporation, limited liability company, business development corporation, partnership, limited partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted *that*:
- (a) *Elects to claim the credit on a return and receive a refund as provided in subsection (2)(b)2.a. of Section 34 of this Act; or*
  - (b) *Is the recipient of a credit which is transferred as provided in subsection (2)(b)2.b. of Section 34 of this Act; and*
- (12) "Qualified purchased historic home" means any substantially rehabilitated certified historic structure if:
- (a) The taxpayer claiming the credit authorized under KRS 171.397 is the first purchaser of the structure after the date of completion of the substantial rehabilitation;
  - (b) The structure or a portion thereof will be the principal residence of the taxpayer; and
  - (c) No credit was allowed to the seller under this section.

A qualified purchased historic home shall be deemed owner-occupied residential property for purposes of this section.

➔Section 34. KRS 171.397 is amended to read as follows:

- (1) (a) ***For all applications for a preliminary approval received prior to April 30, 2010***, there shall be allowed as a credit against the taxes imposed by KRS 141.020, 141.040, 141.0401, or 136.505, an amount equal to:
- ~~1.(a)~~ Thirty percent (30%) of the qualified rehabilitation expenses, in the case of owner-occupied residential property; and
  - ~~2.(b)~~ Twenty percent (20%) of the qualified rehabilitation expenses, in the case of all other property.

In the case of an exempt entity that has incurred qualified rehabilitation expenses, the credit provided in this subsection shall be available to transfer or assign as provided under subsection (8) or (9) of this section.

- (b) *For applications for preliminary approval received on or after April 30, 2010, the credit shall be refundable if the taxpayer makes an election under subsection (2)(b) of this section.*
- (2) (a) A taxpayer seeking the credit provided under subsection (1) of this section shall file an application for a preliminary determination of maximum credit eligibility before April 30 of the year in which the proposed project will begin. The application shall describe the project and shall include documentation supporting the qualification of the project for the credit, the proposed start date, the proposed completion date, the projected qualified rehabilitation expenses, and any other information the council may require. The council shall determine the preliminary maximum credit available for each taxpayer and shall notify the taxpayer of that amount by ~~June 30~~~~May 31~~ of the year in which the application was filed. If total credits applied for in any year exceed the certified rehabilitation credit cap, plus any amounts added to the cap pursuant to paragraph (c) of this subsection, the provisions of subsection (5) of this section shall be applied to reduce the approved credits for all taxpayers with qualifying applications for that year.
- (b) 1. An application for a final determination of credit shall be submitted to the council *upon completion of the project*~~within thirty (30) days following the close of the calendar year in which the project is completed~~.
2. *The application shall include an irrevocable election by the taxpayer to:*
- a. *Use the credit, in which case, the credit shall be refundable; or*
- b. *Transfer the credit.*
3. The council shall determine the final amount of credit approved for each taxpayer based upon the actual expenditures, preliminary determination of maximum credit, and a determination that the expenditures are qualified rehabilitation expenses.
4. The council shall notify the taxpayer and Department of Revenue of the final approved credit amount *within sixty (60) days of the receipt of a completed application from the taxpayer*~~by the thirty first day of the third month following the close of the calendar year~~.
- (c) 1. If the total amount of credits finally approved for a taxpayer under paragraph (b) of this subsection are less than the credits initially approved for a taxpayer under paragraph (a) of this subsection, the difference between the two (2) amounts shall be added to the certified rehabilitation credit cap for the next calendar year.
2. If the total amount of credits approved under paragraph (a) of this subsection in any calendar year is less than *the certified rehabilitation credit cap*~~three million dollars (\$3,000,000)~~, the difference between the credits actually awarded and the *certified rehabilitation credit cap*~~amount of three million dollars (\$3,000,000)~~ shall be added to the certified rehabilitation credit cap for the next calendar year.
- (3) (a) The maximum credit which may be claimed with regard to owner-occupied residential property shall be sixty thousand dollars (\$60,000) subject to subsection (5) of this section. The credit in this section shall be claimed for the taxable year in which the certified rehabilitation is completed.
- (b) The maximum credit which may be claimed with regard to all other property that is not owner-occupied residential shall be four hundred thousand dollars (\$400,000) subject to subsection (5) of this section. The credit in this section shall be claimed for the taxable year in which the certified rehabilitation is completed.
- (4) In the case of a husband and wife filing separate returns or filing separately on a joint return, the credit may be taken by either or divided equally, but the combined credit shall not exceed sixty thousand dollars (\$60,000) if subject to the limitation in subsection (3)(a) of this section, or four hundred thousand dollars (\$400,000) if subject to the limitation in subsection (3)(b) of this section, subject to the provisions of subsection (5) of this section.
- (5) The credit amount approved for a calendar year for all taxpayers under subsection (2)(a) of this section shall be limited to the certified rehabilitation credit cap~~plus any amounts added to the cap pursuant to subsection~~

~~(2)(c) of this section~~. When the total credits applied for and approved in any year under subsection (2)(a) of this section exceed the certified rehabilitation credit cap, ~~plus any amounts added to the cap pursuant to subsection (2)(c) of this section~~, the council shall apportion the certified rehabilitation credit cap as follows: ***The certified rehabilitation credit cap for the year under consideration shall be*** ~~Three million dollars (\$3,000,000) plus any amounts added to the cap pursuant to subsection (2)(c) of this section,~~ multiplied by a fraction, the numerator which is the approved credit amount for an individual taxpayer for a calendar year and the denominator which is the total approved credits for all taxpayers for a calendar year.

- (6) (a) ***For all applications received prior to April 30, 2010***, if the credit amount that may be claimed in any tax year as determined under subsections (3) to (5) of this section exceeds the taxpayer's total tax liabilities under KRS 136.505, ***or*** 141.020, 141.040, ~~and~~ 141.0401, the taxpayer may carry the excess tax credit forward until the tax credit is used, provided that any tax credits not used within seven (7) years of the taxable year the certified rehabilitation was complete shall be lost.
- (b) ***For all applications received on or after April 30, 2010, if the credit amount that may be claimed in any tax year as determined under subsections (3) to (5) of this section exceeds the taxpayer's total tax liabilities under KRS 136.505 or 141.020 or 141.040 and 141.0401, the taxpayer may receive a refund, if the taxpayer elected to take the credit as required by subsection (2)(b) of this section.***
- (7) (a) The credit shall apply against both the tax imposed by KRS 141.020 or 141.040 and the limited liability entity tax imposed by KRS 141.0401, with the ordering of credits as provided in KRS 141.0205.
- (b) 1. ***For applications received prior to April 30, 2010***, if the taxpayer is a pass-through entity not subject to the tax imposed by KRS 141.040, the taxpayer shall apply the credit at the entity level against the limited liability tax entity imposed by KRS 141.0401, and shall also pass the credit through in the same proportion as the distributive share of income or loss is passed through.
2. ***For applications received on or after April 30, 2010, if the taxpayer is a pass-through entity not subject to the tax imposed by KRS 141.040, the taxpayer shall apply the credit at the entity level against the limited liability tax entity imposed by KRS 141.0401, and may receive a refund if the taxpayer elected to take the credit as required by subsection (2)(b)2.a. of this section.***
- (8) Credits received under this section may be transferred or assigned ***if an election is made under subsection (2)(b) of this section***, for some or no consideration, along with any related benefits, rights, responsibilities, and liabilities to any entity subject to the tax imposed by KRS 136.505. Within thirty (30) days of the date of any transfer of credits, the party transferring the credits shall notify the Department of Revenue of:
- (a) The name, address, employer identification number, and bank routing and transfer number, of the party to which the credits are transferred;
- (b) The amount of credits transferred; and
- (c) Any additional information the Department of Revenue deems necessary.
- The provisions of this subsection shall apply to any credits that pass through to a successor or beneficiary of a taxpayer.
- (9) For purposes of this section, a lessee of a certified historic structure shall be treated as the owner of the structure if the remaining term of the lease is not less than the minimum period promulgated by administrative regulation by the council.
- (10) The taxes imposed in KRS 141.020, 141.040, and 141.0401 shall not apply to any consideration received for the transfer, sale, assignment, or use of a tax credit approved under this section.
- (11) The Department of Revenue shall assess a penalty on any taxpayer or exempt entity that performs disqualifying work, as determined by the Kentucky Heritage Council, on a certified historic structure for which a rehabilitation has been certified under this section in an amount equal to one hundred percent (100%) of the tax credit allowed on the rehabilitation. Any penalties shall be assessed against the property owner who performs the disqualifying work and not against any transferee of the credits.
- (12) The council may impose fees for processing applications for tax credits, not to exceed the actual cost associated with processing the applications.

- (13) The council may authorize a local government to perform an initial review of applications for the credit allowed under this section and forward the applications to the council with its recommendations.
- (14) The council and the Department of Revenue may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to establish policies and procedures to implement the provisions of subsections (1) to (13) of this section.
- (15) The tax credit authorized by this section shall apply to tax periods ending on or after December 31, 2005.

➔SECTION 35. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO READ AS FOLLOWS:

**(1) As used in this section:**

- (a) *"Approved company" means an eligible company that has received preliminary approval from the department for a sales and use tax refund under this section;*
- (b) *"Communications system" means a system composed of equipment used to provide communications services as defined in KRS 139.195. "Communications system" does not include repair, replacement, or spare parts as defined in KRS 139.010, installation materials, operating supplies, office supplies, or supplies to maintain the system;*
- (c) *"Computer software" means a set of coded instructions designed to cause a computer or automatic processing equipment to perform a task;*
- (d) *"Computer system" means a system composed of personal computers, laptops, computer software, computer servers, processors, coprocessors, memory devices, storage devices, input and output devices, and other similar devices deployed as part of the system configuration. "Computer system" does not include repair, replacement, or spare parts as defined in KRS 139.010, installation materials, operating supplies, office supplies, or supplies to maintain the system;*
- (e) *"Eligible company" means a corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity that is classified under the following 2007 North American Industry Classification System (NAICS) industry codes, including any subsequent updates or revisions thereto:*
1. *NAICS 511210, Software publishers;*
  2. *NAICS 518210, Data processing, hosting, and related services;*
  3. *NAICS 519130, Internet publishing, broadcasting, and web search portal business; or*
  4. *NAICS 541511, Custom computer programming services; and*
- (f) *"Qualifying system" means:*
1. *A communications system;*
  2. *A computer system; or*
  3. *A combination thereof;*
- that is subject to depreciation under Section 167 or 168 of the Internal Revenue Code, including assets expensed under Section 179 of the Internal Revenue Code.*

- (2) *Notwithstanding KRS 134.580(3) and 139.770, an approved company may qualify for a refund of up to one hundred percent (100%) of the Kentucky sales and use tax paid, reduced by the amount of vendor compensation allowed under KRS 139.570, on the purchase of a qualifying system.*
- (3) *To qualify for the refund provided in subsection (2) of this section, all of the following requirements shall be met:*
- (a) *The eligible company shall file an application for preliminary approval with the department prior to making the purchase;*
  - (b) *Upon receiving preliminary approval, the approved company shall purchase the qualifying system on or after July 1, 2010, and shall spend one hundred million dollars (\$100,000,000) or more on the purchase or purchases, excluding tax;*

- (c) *The qualifying system shall be installed at a single location in the Commonwealth within eighteen (18) months from the date the department preliminarily approves the eligible company for a sales and use tax refund as provided in subsection (5) of this section; and*
- (d) *The approved company shall use the qualifying system:*
  - 1. *At the specified location until the property is fully depreciated or, if the approved company elects to expense the property under Section 179 of the Internal Revenue Code, the property shall be operated at the Kentucky location for the same time as if the property were depreciated under Section 167 or 168 of the Internal Revenue Code; and*
  - 2. *In the business activities that are included within the NAICS industry codes listed in subsection (1)(e) of this section.*
- (4) *The eligible company shall file an application for preliminary approval with the department prior to purchasing the qualifying system. The application shall be in the form prescribed by the department and shall include:*
  - (a) *The name and address of the eligible company;*
  - (b) *A description of the eligible company's business activities and applicable NAICS code;*
  - (c) *A description of the qualifying system and an explanation of how the components thereof will be used by the eligible company in its business activities;*
  - (d) *The estimated cost of the system;*
  - (e) *The business location where the system will be located;*
  - (f) *The date of anticipated purchase;*
  - (g) *The anticipated installation completion date; and*
  - (h) *Any other information the department may require.*
- (5) *The department shall notify the eligible company that the application for preliminary approval has been approved or denied.*
- (6) (a) *To be eligible to receive a full refund, the approved company shall file a request for a sales and use tax refund within sixty (60) days following the completed installation of qualifying system.*
  - (b) *Failure to file a refund request within sixty (60) days shall result in an adjustment to the refund amount paid as follows:*
    - 1. *For late refund requests filed on or after the sixty-first day and prior to the one hundred eighty-first day after the completed installation, for each thirty (30) days, or portion thereof, that the refund request is late, the refund amount shall be reduced by one-twelfth (1/12) of the total amount determined by the department; and*
    - 2. *Any refund request filed more than one hundred eighty (180) days after the completed installation shall be rejected, and no refunds shall be paid for the time period covered by the request.*
- (7) *Interest shall not be allowed or paid on any sales and use tax refund made under this section.*
- (8) (a) *If the approved company does not operate the qualifying system at the business location where the system was initially installed for the time period required under subsection (3)(d)1. of this section, or in the manner required under subsection (3)(d)2. of this section, the approved company shall notify the department that the requirements of subsection (3) of this section have not been met. The approved company shall repay the previously received sales and use tax refunds plus interest at the rate established in KRS 131.183 computed from the date the refund was issued.*
  - (b) *If the approved company fails to pay the tax and interest within thirty (30) days of the notification, the department shall apply all applicable penalties provided in KRS 131.180.*

➔Section 36. KRS 148.851 is amended to read as follows:

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

- (1) "Agreement" means ~~the~~<sup>a</sup> tourism ~~development~~<sup>attraction</sup> agreement entered into ~~between~~<sup>by</sup>, 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 *that has received final approval to receive incentives provided under Section 37 of this Act* ~~approved by the secretary of the Tourism, Arts and Heritage Cabinet and the authority pursuant to KRS 148.859 that is seeking to undertake a tourism attraction project~~;
- (3) "Approved costs" means *the amount of eligible costs approved by the authority upon completion of the project*~~:~~
- ~~(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, excluding costs subject to refund under KRS 154.20 202, 154.20 204, 154.20 206, 154.20 208, and 154.20 210;~~
- (4) "Authority" means the Kentucky Tourism Development Finance Authority as set forth in KRS 148.850;
- ~~(4)~~<sup>(5)</sup> **"Cabinet" means the Tourism, Arts and Heritage Cabinet;**
- (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, limited partnership, sole proprietorship, business trust, or any other entity operating or intending to operate a tourism ~~development~~<sup>attraction</sup> project~~, whether owned or leased, within the Commonwealth that meets the standards promulgated by the secretary of the Tourism, Arts and Heritage Cabinet pursuant to KRS 148.855. An eligible company may operate or intend to operate directly or indirectly through a lessee~~;
- (7) **"Eligible costs" means:**
- (a) Obligations incurred for labor and amounts paid to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a tourism development project;**
  - (b) The costs of acquiring real property or rights include the acquisition of real property by a leasehold interest with a minimum term of ten (10) years, 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 development 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 development project;**

- (e) *All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a tourism development 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, excluding costs subject to refund under KRS 154.20-202, 154.20-204, 154.20-206, 154.20-208, and 154.20-210 or Subchapter 31 of KRS Chapter 154;*
- (8)~~(7)~~ "Entertainment destination center *project*" means a facility *that meets the requirements of subsection (2)(b) of Section 37 of this Act*~~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;~~
- (9)~~(8)~~ "Final approval" means the action taken by the authority authorizing the eligible company to receive *incentives*~~[inducements]~~ under KRS 139.536 and 148.851 to 148.860;
- (10)~~(9)~~ "*Full-service lodging facility*" means a facility that provides overnight sleeping accommodations, including private bathrooms and all of the following:
- (a) *On-site dining facilities;*
  - (b) *Room service;*
  - (c) *Catering; and*
  - (d) *Meeting space;*
- (11) "*Incentives*"~~["Inducements"]~~ means the Kentucky sales tax refund as prescribed in KRS 139.536;
- (12) "*Kentucky sales tax*" means the sales tax imposed by KRS 139.200;
- (13) "*Lodging facility project*" means a full-service lodging facility that:
- (a) *Is located on recreational property owned or leased by the Commonwealth or the federal government;*
  - (b) *Involves the restoration or rehabilitation of a structure that:*
    - 1. *Is listed individually on the National Register of Historic Places; or*
    - 2. *Is located in the National Register Historic District; and*
    - 3. *Is certified by the Kentucky Heritage Council as contributing to the historic significance of the district, and the rehabilitation or restoration of the structure has been approved in advance by the Kentucky Heritage Council;*
  - (c) *Is an integral part of a major convention or sports facility;*
  - (d) *Is located:*
    - 1. *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*
    - 2. *In any of the one hundred (100) least-populated counties in the Commonwealth, in terms of population density, according to the most recent census;*
  - (e) *Is located on property:*
    - 1. *Owned by the Commonwealth, or leased by the Commonwealth from the federal government;*

2. *Acquired for use in the state park system pursuant to KRS 148.028; and*
  3. *Operated by the Kentucky Department of Parks pursuant to KRS 148.021 or the Kentucky Horse Park Commission pursuant to KRS 148.258 to 148.320;*
- (f) *Is located on property:*
1. *Owned or leased by the federal government and under the control of the Department of the Interior; or*
  2. *Owned by the Commonwealth and in the custody of the State Fair Board as provided in KRS 247.140;*
- (g) *Is part of a tourism attraction project, entertainment destination center project, or theme restaurant destination attraction project and the full-service lodging facility represents less than fifty percent (50%) of the total eligible costs; or*
- (h) *Has not less than five hundred (500) guest rooms:*
- (14) *"Net positive fiscal impact" means the amount by which increased state tax revenues will exceed the incentives given;*
- (15)~~(10)~~ *"Preliminary approval" means the action taken by the authority conditionally approving an ~~conditioning final approval by the authority upon satisfaction by the~~ eligible company for the incentives under ~~of the requirements of~~ KRS 139.536 and 148.851 to 148.860;*
- (16) *"Recreational facility" means a structure or outdoor area that:*
- (a) *Provides visitors recreational opportunities, including but not limited to amusement parks, boating, hiking, horseback riding, hunting, fishing, camping, wildlife viewing, live theater, rock climbing, and all-terrain vehicle trails; and*
  - (b) *Serves as a likely destination where individuals who are not residents of the Commonwealth would remain overnight in commercial lodging at or near the recreational facility;*
- (17)~~(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)~~(1)~~ *"Theme restaurant destination attraction project" means a restaurant facility that meets the requirements for incentives under subsection (2)(c) of Section 37 of this Act~~:~~*
- (a) ~~Has construction, equipment, and furnishing costs in excess of five million dollars (\$5,000,000);~~
  - (b) ~~Has an annual average of not less than fifty percent (50%) of guests who are not residents of the Commonwealth;~~
  - (c) ~~Is 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) ~~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;~~
- (18) (a)~~(13)~~ *"Tourism attraction project" means:*
1. *A cultural or historical site;~~;~~*
  2. *A recreational facility;~~recreation or~~*
  3. *An entertainment facility;~~;~~*

4. An area of natural phenomenon or scenic beauty; *or*
  5. A Kentucky crafts and products center~~[, a theme restaurant destination attraction, or an entertainment destination center.~~
- (a) ~~A tourism attraction may include lodging facilities if:~~
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;~~
  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) ~~[A] "Tourism attraction *project*" ~~does~~[shall] not include [the following:~~
1. ~~]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~~
  2. ~~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~~
- (19)~~(14)~~ "Tourism *development*~~[attraction]~~ project"~~[or "project"]~~ means:
- (a) *A tourism attraction project;*
  - (b) *A theme restaurant destination attraction project;*
  - (c) *An entertainment destination center project; or*
  - (d) *A lodging facility project*~~[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].~~

➔Section 37. KRS 148.853 is amended to read as follows:

- (1) The General Assembly finds and declares that:
- (a) The general welfare and material well-being of the citizens of the Commonwealth depend in large measure upon the development of tourism in the Commonwealth;~~[- and that]~~
  - (b) It is in the best interest of the Commonwealth to **provide incentives for**~~induce~~ the creation of new **tourism attractions and**~~or~~ the expansion of existing tourism attractions within the Commonwealth in order to advance the public purposes of relieving unemployment by preserving and creating jobs that would not exist if not for the **incentives**~~inducements to be~~ offered by the authority to approved companies, and by preserving and creating sources of tax revenues for the support of public services provided by the Commonwealth;~~[- and that]~~
  - (c) The **authorities granted**~~authority prescribed~~ by ~~KRS 139.536 and~~ KRS 148.851 to 148.860~~[- and the purposes to be accomplished under the provisions of KRS 139.536 and KRS 148.851 to 148.860,]~~ are proper governmental and public purposes for which public moneys may be expended; and
  - (d) That the~~[- inducement of the]~~ creation or expansion of tourism **development**~~attraction~~ projects is of paramount importance mandating that the provisions of KRS 139.536 and KRS 148.851 to 148.860 be liberally construed and applied in order to advance public purposes.
- (2) **To qualify for incentives provided in KRS 148.851 to 148.860 and Section 42 of this Act, the following requirements shall be met:**
- (a) **For a tourism attraction project:**
    1. **The total eligible costs shall exceed one million dollars (\$1,000,000);**
    2. **In any year, including the first year of operation, the tourism attraction project shall be open to the public at least one hundred (100) days; and**
    3. **In any year following the third year of operation, the tourism attraction project shall attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth;**
  - (b) **For an entertainment destination center project:**
    1. **The total eligible costs shall exceed five million dollars (\$5,000,000);**
    2. **The facility shall contain a minimum of two hundred thousand (200,000) square feet of building space adjacent or complementary to an existing tourism attraction project or a major convention facility;**
    3. **The incentives shall be dedicated to a public infrastructure purpose that shall relate to the entertainment destination center project;**
    4. **In any year, including the first year of operation, the entertainment destination center project shall:**
      - a. **Be open to the public at least one hundred (100) days per year;**
      - b. **Maintain at least one (1) major theme restaurant and at least three (3) additional entertainment venues, including but not limited to live entertainment, multiplex theaters, large-format theater, motion simulators, family entertainment centers, concert halls, virtual reality or other interactive games, museums, exhibitions, or other cultural and leisure-time activities; and**
      - c. **Maintain a minimum occupancy of sixty percent (60%) of the total gross area available for lease with entertainment and food and drink options not including the retail sale of tangible personal property; and**
    5. **In any year following the third year of operation, the entertainment destination center project shall attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth;**
  - (c) **For a theme restaurant destination attraction project:**

1. *The total eligible costs shall exceed five million dollars (\$5,000,000);*
  2. *In any year, including the first year of operation, the attraction shall:*
    - a. *Be open to the public at least three hundred (300) days per year and for at least eight (8) hours per day; and*
    - b. *Generate no more than fifty percent (50%) of its revenue through the sale of alcoholic beverages;*
  3. *In any year following the third year of operation, the theme restaurant destination attraction project shall attract a minimum of fifty percent (50%) of its visitors from among persons who are not residents of the Commonwealth; and*
  4. *The theme restaurant destination attraction project shall:*
    - a. *At the time of final approval, offer a unique dining experience that is not available in the Commonwealth within a one hundred (100) mile radius of the attraction;*
    - b. *In any year, including the first year of operation, maintain seating capacity of four hundred fifty (450) guests and 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; or*
    - c. *Within three (3) years of the completion date, the attraction shall obtain a top two (2) tier rating by a nationally accredited service and shall maintain a top two (2) tier rating through the term of the agreement;*
- (d) *For a lodging facility project:*
1. a. *The eligible costs shall exceed five million dollars (\$5,000,000) unless the provisions of subdivision b. of this subparagraph apply.*
    - i. *If the lodging facility is an integral part of a major convention or sports facility, the eligible costs shall exceed six million dollars (\$6,000,000); and*
    - ii. *If the lodging facility includes five hundred (500) or more guest rooms, the eligible costs shall exceed ten million dollars (\$10,000,000); and*
  2. *In any year, including the first year of operation, the lodging facility shall:*
    - a. *Be open to the public at least one hundred (100) days; and*
    - b. *Attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth; and*
- (e) *An expansion of any tourism development project shall in all cases be treated as a new stand-alone project.*
- (3) *The incentives offered under the Kentucky Tourism Development Act shall be as follows:*
- (a) *An approved company may be granted a sales tax incentive based on the Kentucky sales tax imposed on sales generated by or arising at the tourism development project; and*
  - (b) 1. *For a tourism development project other than a lodging facility project described in subsection (13)(e) or (f) of Section 36 of this Act:*
    - a. *A sales tax incentive shall be allowed to an approved company over a period of ten (10) years, except as provided in subparagraph 4. of this paragraph; and*
    - b. *The sales tax incentive shall not exceed the lesser of the total amount of the sales tax liability of the approved company and its lessees or a percentage of the approved costs as specified by the agreement, not to exceed twenty-five percent (25%);*
  2. *For a lodging facility project described in subsection (13)(e) or (f) of Section 36 of this Act:*
    - a. *A sales tax incentive shall be allowed to the approved company over a period of twenty (20) years; and*

- b. *The sales tax incentive shall not exceed the lesser of total amount of the sales tax liability of the approved company and its lessees or a percentage of the approved costs as specified by the agreement, not to exceed fifty percent (50%);*
- 3. *Any unused incentives from a previous year may be carried forward to any succeeding year during the term of the agreement until the entire specified percentage of the approved costs has been received through sales tax incentives; and*
- 4. *If the approved company is an entertainment destination center that has dedicated at least thirty million dollars (\$30,000,000) of the incentives provided under the agreement to a public infrastructure purpose, the agreement may be amended to extend the term of the agreement up to two (2) additional years if the approved company agrees to:*
  - a. *Reinvest in the original entertainment destination project one hundred percent (100%) of any incentives received during the extension that were outstanding at the end of the original term of the agreement; and*
  - b. *Report to the authority at the end of each fiscal year the amount of incentives received during the extension and how the incentives were reinvested in the original entertainment destination project.*

➔Section 38. KRS 148.855 is amended to read as follows:

- (1) The ~~{secretary of the Tourism, Arts and Heritage }cabinet~~ shall ***promulgate administrative regulations in accordance with KRS Chapter 13A*** to establish standards for the making of applications for ***incentives***~~{inducements}~~ and the recommendation~~[to the authority]~~ of eligible companies and their tourism ***development***~~{attraction}~~ projects ***to the authority***~~[by the promulgation of administrative regulations in accordance with KRS Chapter 13A].~~
- (2) The ~~{secretary of the Tourism, Arts and Heritage }cabinet~~ shall consult with the authority when establishing standards to ensure that standards established pursuant to subsection (1) of this section and KRS 148.857(1) do not conflict.
- (3) (a) ***The application for incentives shall be filed with the cabinet and shall include:***
  - 1. ***The name of the applicant;***~~[With respect to each eligible company making an application to the secretary of the Tourism, Arts and Heritage Cabinet for inducements, and with respect to the tourism attraction project described in the application, the secretary of the Tourism, Arts and Heritage Cabinet shall make inquiries and request materials of the applicant that shall include, but not be limited to,]~~
  - 2. Marketing plans for the ***tourism development*** project that target individuals who are not residents of the Commonwealth;
  - 3. A description and location of the ***tourism development*** project;
  - 4. Capital and other anticipated expenditures for the ***tourism development*** project that indicate that the total cost of the project shall exceed ***the minimum required costs as provided in Section 37 of this Act***~~{one million dollars (\$1,000,000), except for a theme restaurant destination attraction's project cost, which shall exceed five million dollars (\$5,000,000)}, and the anticipated sources of funding therefor;~~
  - 5. The anticipated employment and wages to be paid at the ***tourism development*** project;
  - 6. Business plans which indicate the average number of days in a year in which the ***tourism development*** project will be in operation and open to the public;~~{and}~~
  - 7. The anticipated revenues and expenses generated by the ***tourism development*** project;~~{}~~
  - 8. If the tourism ***development***~~{attraction}~~ project is an entertainment destination center ***project***, the ***application shall include***~~{sales tax refund shall be dedicated to a public infrastructure purpose that shall relate to the tourism attraction project and shall be approved by the secretary of the Tourism, Arts and Heritage Cabinet. The applicant shall submit }the public infrastructure purpose; and~~
  - 9. ***Any other information as required by the cabinet***~~{with its application}.~~

- (b) Based upon a review of these materials, if the ~~secretary of the Tourism, Arts and Heritage~~ cabinet determines that the eligible company and the *proposed* tourism *development*~~attraction~~ project *appears to meet the requirements established by Section 37 of this Act, and that the proposed tourism development project* may reasonably satisfy the criteria for final approval in subsection (4) of this section, ~~then~~ the secretary of the ~~Tourism, Arts and Heritage~~ cabinet may submit a written request to the authority ~~for requesting that the authority consider~~ a preliminary approval of the eligible company and the tourism *development*~~attraction~~ project.
- (4) *The authority may review the request submitted by the secretary, including all relevant materials, and may, based upon that review, grant preliminary approval to an eligible company. Upon*~~After receiving~~ a preliminary approval by the authority, the ~~secretary of the Tourism, Arts and Heritage~~ cabinet shall engage the services of a competent consulting firm to analyze the data made available by the eligible company and to collect and analyze additional information necessary to determine that, in the independent judgment of the consultant, the *proposed* tourism *development*~~attraction~~ project:
- (a) ~~Will~~~~Shall~~ attract, *in all years following the third year of operation*, at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth, except for a theme restaurant destination attraction *project*, which shall attract, *in all years following the third year of operation*, a minimum of fifty percent (50%) of its visitors from among persons who are not residents of the Commonwealth;
- (b) ~~Will~~~~Shall~~ have costs in excess of *the minimum amount required by Section 37 of this Act*~~one million dollars (\$1,000,000)~~, except for a theme restaurant destination attraction, which shall have costs in excess of five million dollars (\$5,000,000);
- (c) 1. ~~Will~~~~Shall~~ have a *net*~~significant and~~ positive fiscal~~economic~~ impact on the Commonwealth considering, among other factors, the extent to which the *proposed* tourism *development*~~attraction~~ project will compete directly with existing tourism attractions *or previously approved tourism development projects* in the Commonwealth and the amount by which increased tax revenues from the tourism *development*~~attraction~~ project will exceed the *incentives*~~credit~~ given to the approved company *at the maximum level of recovery of approved costs as provided in Section 37 of this Act; or*
2. *If the independent consultant determines that the proposed tourism development project cannot produce a net positive fiscal impact to the Commonwealth at the maximum level of recovery of approved costs as provided in Section 37 of this Act, the independent consultant shall determine the level of recovery, if any, at which the proposed tourism development project can meet those standards;*
- (d) ~~Will~~~~Shall~~ produce sufficient revenues and public demand to be operating and open to the public for a minimum of one hundred (100) days per year, except for a theme restaurant destination attraction, which shall be operating and open to the public for a minimum of three hundred (300) days per year;~~and~~
- (e) ~~Will~~~~Shall~~ not adversely affect existing employment in the Commonwealth; *and*
- (f) *Meets all other requirements of Sections 36 and 37 of this Act.*
- (5) *The independent consultant, in determining the amount of net positive fiscal impact to the Commonwealth for a new proposed tourism development project that is an expansion of an existing tourism development project shall not consider positive fiscal impacts from the following sources:*
- (a) *Increased operations at the previously approved tourism development project that is being expanded by the proposed tourism development project;*
- (b) *Increased operations at any other tourism development project approved for incentives provided under Section 37 of this Act; or*
- (c) *Increased operations at any project approved for tax increment financing that includes state revenues approved pursuant to Subchapter 30 of KRS Chapter 154.*
- (6) (a) The independent *consultant*~~consulting firm~~ shall consult with the authority, the Office of the State Budget Director and the Finance and Administration Cabinet in the development of a report on the proposed tourism *development*~~attraction~~ project.

- (b) The Office of the State Budget Director and the Finance and Administration Cabinet shall agree as to the methodology to be used and assumptions to be made by the independent consultant in preparing its report.
- (c) On the basis of the independent consultant's report and prior to any *final* approval of a project by the authority, the Office of the State Budget Director and the Finance and Administration Cabinet shall certify to the authority whether there is a projected net positive *fiscal*~~[economic]~~ impact to the Commonwealth and the expected amount of incremental state revenues from the *tourism development* project. A *final* approval shall not be granted if it is determined that there is no projected net positive *fiscal*~~[economic]~~ impact to the Commonwealth.
- ~~(7)(6)~~ The eligible company shall pay for the cost of the consultant's report and shall cooperate with the consultant and provide all of the data that the consultant deems necessary to make its determination under subsection (4) of this section.
- ~~(8)(7)~~ *In lieu of the independent consultant analysis required in subsection (4) of this section, if the eligible company is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code and the estimated approved costs are less than ten million dollars (\$10,000,000), the cabinet shall have the option of performing an interagency review to analyze the data made available by the eligible company and to collect and analyze additional information necessary to determine that the proposed tourism development project meets the requirements set forth in subsection (4)(a) of this section. The cabinet shall comply with the same consulting and reporting requirements as an independent consultant.*
- (9) After a review of relevant materials, the consultant's report, and completion of other inquiries, the secretary~~[-of the Tourism, Arts and Heritage Cabinet]~~ shall, by written notification to the authority, provide a recommendation to the authority regarding final approval of the tourism *development*~~[attraction]~~ project.
- ➔Section 39. KRS 148.857 is amended to read as follows:
- (1) The authority shall establish standards for preliminary approval and final approval of eligible companies and their projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A.
- (2) The authority shall consult with the secretary~~[-of the Tourism, Arts and Heritage cabinet]~~ when establishing standards to ensure that standards established pursuant to KRS 148.855(1) and subsection (1) of this section do not conflict.
- ~~(3)~~~~[-At the written request of the secretary of the Tourism, Arts and Heritage Cabinet, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and preliminarily authorizing the undertaking of the tourism attraction project.]~~
- ~~(4)~~ After~~[-the adoption of]~~ the authority's preliminary approval, an agent designated by the~~[-Tourism, Arts and Heritage]~~ cabinet shall hold at least one (1) public hearing to solicit public comments regarding the designation of an eligible company as a preliminarily approved~~[-company and the preliminary authorization for the undertaking of a tourism attraction project]~~. Notice of the public hearing shall be given in accordance with KRS Chapter 424.
- ~~(4)(5)~~ The authority shall review the report of the consultant prepared pursuant to KRS 148.855(4), the recommendation of the secretary~~[-of the Tourism, Arts and Heritage cabinet]~~, the report prepared by the agent documenting all comments, both written and oral, received at the public hearing required by subsection ~~(3)(4)~~ of this section, and other information that has been made available to the authority in order to assist the authority in determining whether the tourism *development*~~[attraction]~~ project will further the purposes of~~[-KRS 139.536]~~ and 148.851 to 148.860.
- ~~(5)(6)~~ The criteria for final approval of eligible companies and tourism *development*~~[attraction]~~ projects shall include, but not be limited to, the criteria set forth in KRS 148.855(4). *Final approval shall not be granted if it is determined that there is no projected net positive fiscal impact to the Commonwealth.*
- ~~(6)(7)~~ After a review of the consultant's report, the recommendation of the secretary,~~[-of the Tourism, Arts and Heritage cabinet]~~ and other information made available to the authority, the authority, by resolution, may~~[-give its final approval to the eligible company's application for a tourism attraction project and may]~~ grant to the eligible company the status of an approved company *and authorize the execution of a tourism development project agreement as provided in Section 40 of this Act.* The decision reached by the authority shall be final and no appeal shall be granted.

~~(7)(8)~~ All meetings of the authority shall be held in accordance with KRS 61.805 to 61.850. The authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company.

➔ Section 40. KRS 148.859 is amended to read as follows:

(1) The authority, upon adoption of its final approval, may enter into *a tourism development agreement* with any approved company ~~an agreement with respect to its tourism attraction project~~. The terms ~~and provisions~~ of ~~the~~ ~~each~~ agreement shall *be negotiated between the authority and the approved company and shall include*, but not be limited to:

(a) The amount of approved costs; ~~which shall be determined by negotiations between the authority and the approved company.~~

(b) *That* any increase in approved costs incurred by the approved company and agreed to by the authority shall apply retroactively for purposes of calculating the carry forward for unused ~~incentives~~ ~~inducements as set forth in KRS 139.536(3) and (4) for tax years commencing on or after July 1, 2004;~~

~~(c)(b)~~ A date certain by which the approved company shall have completed the *tourism development* ~~attraction~~ project; ~~Upon request from any approved company that has received final approval prior to or after July 15, 2000;~~

(d) *That* the authority ~~may~~ ~~shall~~ grant an extension or change, which in no event shall exceed three (3) years from the date of final approval, to the completion date as specified in the agreement of an approved company; ~~;~~

(e) *That* within three (3) months of the completion date, the approved company shall document the actual cost of the *tourism development* project through a certification of the costs to be provided by an independent certified public accountant acceptable to the authority;

~~(f)(e)~~ The *term of the tourism development agreement and the maximum amount of recovery* ~~following provisions:~~

1. ~~For all tourism attraction projects except a tourism attraction project identified in subparagraph 2. of this paragraph, the term shall be ten (10) years from the later of:~~

a. ~~The date of the final approval of the project; or~~

b. ~~The original completion date specified in the agreement, if this completion date is within three (3) years of the date of the final approval of the project. An extension of the original completion date shall not alter the commencement date of the term;~~

2. ~~For a tourism attraction project that includes a facility, including but not limited to a lodging facility or shrine:~~

a. ~~i. Located on property owned by the Commonwealth, or leased by the Commonwealth from the federal government; and~~

~~ii. Acquired for use in the state park system pursuant to the provisions of KRS 148.028, and operated by the Kentucky Department of Parks pursuant to the provisions of KRS 148.021; or the Kentucky Horse Park Commission pursuant to the provision of KRS 148.258 to 148.320; or~~

b. ~~Located on property owned or leased by the federal government and identified as a national park;~~

~~the term shall be twenty (20) years from the later of the date of the final approval of the project, or the original completion date specified in the agreement, if this completion date is within three (3) years of the date of the final approval of the project. An extension of the original completion date shall not alter the commencement date of the term;~~

(g) ~~That~~ ~~3.~~ within forty-five (45) days after the end of each fiscal year of the approved company, during the term of the agreement, the approved company shall supply the authority with ~~such~~ reports and certifications as the authority may request demonstrating to the satisfaction of the authority that the

approved company is in compliance with the provisions of KRS 139.536 and KRS 148.851 to 148.860~~[-~~  
~~Based upon a review of these materials and other documents that may be made available, the authority shall then certify to the Department of Revenue that the approved company is in compliance with this section];~~[-and]~~~~

- (h) *That the approved company shall notify the authority if any change in ownership of the tourism attraction is contemplated. The authority shall reserve the option to renegotiate the terms of the agreement or if the change in ownership is detrimental to the Commonwealth, the authority may terminate the agreement;*
- (i) *That~~[-~~ the approved company shall not receive a sales tax *incentive*~~[-refund]~~ as prescribed by KRS 139.536 with respect to any fiscal year if *the requirements of subsection (2) of Section 37 of this Act have not been met*~~[-~~;*
- a. ~~In any year following the fourth year of the agreement, the tourism attraction project fails to attract at least twenty five percent (25%) of its visitors from among persons who are not residents of the Commonwealth, except for a theme restaurant destination attraction, which shall attract a minimum of fifty percent (50%) of its visitors from among persons who are not residents of the Commonwealth; or~~
- b. ~~In any year following the first year of the agreement, the tourism attraction project is not operating and open to the public for at least one hundred (100) days; and]~~
- (j) *That the authority may grant an extension of up to three (3) years to the completion date in addition to the extension provided for in paragraph (d) of this subsection, to~~[(d) Upon request from]~~ an approved company that has completed at least fifty percent (50%) of an entertainment destination center *project*~~[-~~; ~~the authority shall grant an extension of up to three (3) years to the completion date specified in the agreement of the approved company, in addition to the extension provided for in paragraph (b) of this subsection.]~~*
- (k) *That in no event shall the completion date be more than six (6) years from the date of final approval; and~~[-~~*
- (l) *That the extension provided for in~~[-this]~~ paragraph (j) of this subsection shall be subject to the following conditions:*
1. The approved company shall have spent or have contractually obligated to spend an amount equal to or greater than the amount of approved costs set forth in the initial agreement;
  2. The term of the agreement shall not be extended, *except as provided in subsection (3)(b)4. of Section 37 of this Act*; and
  3. The scope of the entertainment destination center *project*, as set forth in the initial agreement, shall not be altered to include new or additional entertainment and leisure options.

- (2) The agreement, *including the incentives provided under Section 37 of this Act*, shall not be transferable or assignable by the approved company without the written consent of the authority *and a passage of a resolution approving the proposed assignee of the incentives as an approved company.*

~~[(3) In consideration of the execution of the agreement as defined in KRS 148.851 and notwithstanding any provision of KRS 139.770 to the contrary, the approved company as defined in KRS 148.851 excluding its lessees, may be granted a sales tax refund under KRS 139.536 from the Kentucky sales tax imposed by KRS 139.200 on the sales generated by or arising at the tourism attraction project as defined in KRS 148.851.]~~

➔SECTION 41. A NEW SECTION OF KRS 148.851 TO 148.860 IS CREATED TO READ AS FOLLOWS:

- (1) *By October 1, 2010, and on or before October 1 of each year thereafter, the authority shall file an annual report with the Legislative Research Commission. The report shall also be available on the Tourism, Arts and Heritage Cabinet's Web site.*
- (2) *The report shall include information for all projects approved after the effective date of this Act.*
- (3) *The report shall include the following information:*
  - (a) *For each approved project:*

1. *The name of the approved company and a brief description of the project;*
  2. *The amount of approved costs included in the agreement;*
  3. *The maximum amount of incentives the approved company may recover over the term of the agreement;*
  4. *The term of the agreement; and*
  5. *The total amount recovered under the agreement, reported for both the prior fiscal year and cumulatively;*
- (b) *The number of applications for projects submitted during the prior fiscal year;*
  - (c) *The number of projects finally approved during the prior fiscal year; and*
  - (d) *The total dollar amount approved for recovery for all projects approved during the prior fiscal year, and cumulatively under the Tourism Development Act since its inception, by year of approval.*
- (4) *The information required to be reported under this section shall not be considered confidential taxpayer information and shall not be subject to KRS Chapter 131 or any other provision of the Kentucky Revised Statutes prohibiting disclosure or reporting of information.*

➔Section 42. KRS 139.536 is amended to read as follows:

- (1) *As used in this section:*
- (a) *"Agreement" means the same as defined in Section 36 of this Act;*
  - (b) *"Approved company" means the same as defined in Section 36 of this Act;*
  - (c) *"Approved costs" means the same as defined in Section 36 of this Act;*
  - (d) *"Authority" means the same as defined in Section 36 of this Act;*
  - (e) *"Cabinet" means the same as defined in Section 36 of this Act;*
  - (f) *"Secretary" means the secretary of the Tourism, Arts and Heritage Cabinet; and*
  - (g) *"Tourism development project" means the same as defined in Section 36 of this Act.*
- (2) (a) In consideration of the execution of the agreement~~[as defined in KRS 148.851]~~ and notwithstanding any provision of KRS 139.770 to the contrary, the approved company~~[as defined in KRS 148.851]~~ excluding its lessees, may be granted a sales tax *incentive based on*~~[refund from]~~ the Kentucky sales tax imposed by KRS 139.200 on the sales generated by or arising at the tourism *development*~~[attraction]~~ project as *provided in Section 37 of this Act*~~[defined in KRS 148.851]~~.
- (b) The approved company shall have no obligation to refund or otherwise return any amount of this sales tax refund to the persons from whom the sales tax was collected.
- ~~[(c) For all tourism attraction projects except those identified in paragraph (d) of this subsection, the term of the agreement granting the sales tax refund shall be ten (10) years.~~
- ~~(d) The term of the agreement granting the sales tax refund shall be twenty (20) years for a tourism attraction project that includes a facility, including but not limited to a lodging facility or shrine that is:~~
- ~~1. a. Located on property owned by the Commonwealth, or leased by the Commonwealth from the federal government; and~~
  - ~~b. Acquired for use in the state park system pursuant to the provisions of KRS 148.028, and operated by the Kentucky Department of Parks pursuant to the provisions of KRS 148.021 or the Kentucky Horse Park Commission pursuant to the provisions of KRS 148.258 to 148.320; or~~
  - ~~2. Located on property owned or leased by the federal government and identified as a national park.~~
- ~~(e) This time period shall commence on the later of:~~
- ~~1. The final approval for purposes of the inducements; or~~

- ~~2.—The completion date specified in the agreement.]~~
- (3) ***The authority shall notify the department upon approval of a tourism development project. The notification shall include the name of the approved company, the name of the tourism development project, the date on which the approved company is eligible to receive incentives under this section, the term of the agreement, the estimated approved costs, and the specified percentage of the approved costs that the approved company is eligible to receive and any other information that the department may require.***
- ~~{(2)—Any sales tax collected by an approved company as defined in KRS 148.851 on sales transacted after final approval but prior to the commencement of the term of the agreement, including any approved company that has received final approval prior to July 15, 2000, shall be refundable as if collected after the commencement of the term and applied to the approved company's first fiscal year's refund after activation of the term and without changing the term.~~
- ~~(3)—(a)—The total sales tax refund allowed to the approved company over the term of the agreement in subsection (1)(c) of this section shall be equal to the lesser of the total amount of the sales tax liability of the approved company and its lessees or twenty five percent (25%) of the approved costs:~~
- ~~1.—The sales tax refund shall accrue over the term of the agreement in an annual amount equal to two and one half percent (2.5%) of the approved cost.~~
- ~~2.—Notwithstanding the foregoing two and one half percent (2.5%) limitation, any unused inducements as set forth in KRS 148.851(9) from a previous year may be carried forward to any succeeding year during the term of the agreement until the entire twenty five percent (25%) of the approved costs have been received through sales tax refunds.~~
- ~~(b)—The total sales tax refund allowed to the approved company over the term of the agreement in subsection (1)(d) of this section shall be equal to the lesser of the total amount of the sales tax liability of the approved company and its lessees or fifty percent (50%) of the approved costs:~~
- ~~1.—The sales tax refund shall accrue over the term of the agreement in an annual amount equal to two and one half percent (2.5%) of the approved cost.~~
- ~~2.—Notwithstanding the foregoing two and one half percent (2.5%) limitation, any unused inducements as set forth in KRS 148.851(9) from a previous year may be carried forward to any succeeding year during the term of the agreement until the entire fifty percent (50%) of the approved costs have been received through sales tax refunds.]~~
- (4) ***The sales tax incentive shall be reduced by the amount of vendor compensation allowed under KRS 139.570***~~[Notwithstanding subsection (3) of this section, to the extent that the tourism attraction defined in KRS 148.851 includes a lodging facility 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, the total sales tax refund allowed to the approved company over the term of the agreement shall be the lesser of the total amount of sales tax liability or fifty percent (50%) of the approved costs. The sales tax refund shall accrue over the term of the agreement in an annual amount equal to five percent (5%) of the approved cost. Notwithstanding the foregoing five percent (5%) limitation, any unused inducements as set forth in KRS 148.851(9) from a previous year may be carried forward to any succeeding year during the term of the agreement until the entire fifty percent (50%) of the approved costs have been received through the sales tax refunds].~~
- (5) ***The approved company seeking the incentives shall execute information-sharing agreements prescribed by the department with its lessees and other related parties to verify the amount of sales tax eligible for the sales tax refund under this section.***
- (6) By October 1 of each year, the department shall certify to the authority and the secretary~~{ of the Commerce Cabinet for the preceding fiscal year for all approved companies for which sales tax returns were filed with respect to a tourism attraction project,}~~ the sales tax liability of the approved companies receiving ***incentives***~~[inducements]~~ under this section and KRS 148.851 to 148.860, and their lessees, and the amount of the sales tax refunds issued pursuant to~~{ subsections (1) and (4) of}~~ this section ***for the preceding fiscal year.***
- ~~(7){(6)}~~ Interest shall not be allowed or paid on any refund made under the provisions of this section.
- ~~(8){(7)}~~ The department may promulgate administrative regulations and require the filing of forms designed by the department to reflect the intent of this section and KRS 148.851 to 148.860.

**➔SECTION 43. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:**

*As used in Sections 43 to 45 of this Act:*

- (1) *"Above-the-line production crew" means employees involved with the production of a motion picture or entertainment production whose salaries are negotiated prior to commencement of production, such as actors, directors, producers, and writers;*
- (2) *"Animated production" means a nationally distributed feature-length film created with the rapid display of a sequence of images using 2-D or 3-D graphics of artwork or model positions in order to create an illusion of movement;*
- (3) *"Approved company" means an eligible company approved for incentives provided under Sections 44 and 47 of this Act;*
- (4) *"Below-the-line production crew" means employees involved with the production of a motion picture or entertainment production except above-the-line production crew. "Below-the-line production crew" includes but is not limited to:*
  - (a) *Casting assistants;*
  - (b) *Costume design;*
  - (c) *Extras;*
  - (d) *Gaffers;*
  - (e) *Grips;*
  - (f) *Location managers;*
  - (g) *Production assistants;*
  - (h) *Set construction staff; and*
  - (i) *Set design staff;*
- (5) *"Cabinet" means the Finance and Administration Cabinet;*
- (6) *"Commercial" means an individual production or series of live-action or animated productions, music videos, infomercials, or interstitials that are:*
  - (a) *Less than thirty-one (31) minutes in length;*
  - (b) *Made for the purpose of promoting a product, service, or idea; and*
  - (c) *Produced for regional or national distribution via broadcast, cable, or any digital format, including but not limited to cable, satellite, Internet, or mobile electronic devices;*
- (7) *"Commonwealth" means the Commonwealth of Kentucky;*
- (8) *"Compensation" means compensation included in adjusted gross income as defined in KRS 141.010(10);*
- (9) *"Documentary" means a production based upon factual information and not subjective interjections;*
- (10) *"Eligible company" means any person that intends to film or produce a motion picture or entertainment production in the Commonwealth;*
- (11) *"Employee" means the same as defined in KRS 141.010(20);*
- (12) *"Feature-length film" means a live-action or animated production that is:*
  - (a) *More than thirty (30) minutes in length; and*
  - (b) *Produced for distribution in theaters or via digital format, including but not limited to DVD, Internet, or mobile electronic devices;*
- (13) *"Industrial film" means a business-to-business film that may be viewed by the public, including but not limited to videos used for training or for viewing at a trade show;*
- (14) (a) *"Motion picture or entertainment production" means:*

1. *The following if filmed in whole or in part, or produced in whole or in part, in the Commonwealth:*
    - a. *A feature-length film;*
    - b. *A television program;*
    - c. *An industrial film;*
    - d. *A documentary; or*
    - e. *A commercial; or*
  2. *A national touring production of a Broadway show produced in Kentucky;*
- (b) *"Motion picture or entertainment production" does not include the filming or production of obscene material or television coverage of news or athletic events;*
- (15) *"Obscene" means the same as defined in KRS 531.010;*
- (16) *"Office" means the Kentucky Film Office in the Tourism, Arts and Heritage Cabinet;*
- (17) *"Person" means the same as defined in KRS 141.010(15);*
- (18) (a) *"Qualifying expenditure" means expenditures made in the Commonwealth for the following if directly used in or for a motion picture or entertainment production:*
1. *The production script and synopsis;*
  2. *Set construction and operations, wardrobe, accessories, and related services;*
  3. *Lease or rental of real property in Kentucky as a set location;*
  4. *Photography, sound synchronization, lighting, and related services;*
  5. *Editing and related services;*
  6. *Rental of facilities and equipment;*
  7. *Vehicle leases;*
  8. *Food; and*
  9. *Accommodations.*
- (b) *"Qualifying expenditure" does not include Kentucky sales and use tax paid by the approved company on the qualifying expenditure;*
- (19) *"Qualifying payroll expenditure" means compensation paid to above-the-line crew and below-the line crew while working on a motion picture or entertainment production in the Commonwealth if the compensation is for services performed in the Commonwealth;*
- (20) *"Secretary" means the secretary of the Tourism, Arts and Heritage Cabinet;*
- (21) *"Tax incentive agreement" means the agreement entered into pursuant to Section 45 of this Act between the office and the approved company; and*
- (22) *"Television program" means any live-action or animated production or documentary, including but not limited to:*
- (a) *An episodic series;*
  - (b) *A miniseries;*
  - (c) *A television movie; or*
  - (d) *A television pilot;*

*that is produced for distribution on television via broadcast, cable, or any digital format, including but not limited to cable, satellite, Internet, or mobile electronic devices.*

➔SECTION 44. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

- (1) *The purposes of Sections 43 to 45 and 47 of this Act are to:*

- (a) *Encourage the film and entertainment industry to choose locations in the Commonwealth for the filming and production of motion picture or entertainment productions;*
  - (b) *Encourage the development of a film and entertainment industry in Kentucky;*
  - (c) *Encourage increased employment opportunities for the citizens of the Commonwealth within the film and entertainment industry; and*
  - (d) *Encourage the development of a production and postproduction infrastructure in the Commonwealth for film production and touring Broadway show production facilities containing state-of-the-art technologies.*
- (2) *The Kentucky Film Office is hereby established in the Tourism, Arts and Heritage Cabinet to administer, together with the Finance and Administration Cabinet and the Tourism Development Finance Authority, the tax incentive established by Sections 43 to 45 and 47 of this Act.*
- (3) *To qualify for the tax incentive provided in subsection (4) of this section, the following requirements shall be met:*
- (a) *For an approved company that films or produces a motion picture production, except for a commercial or documentary, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be five hundred thousand dollars (\$500,000);*
  - (b) *For an approved company that films or produces a commercial in the Commonwealth that is distributed regionally or nationally, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be two hundred thousand dollars (\$200,000); and*
  - (c) *For an approved company that films or produces a documentary in the Commonwealth or that produces a national touring production of a Broadway show, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be fifty thousand dollars (\$50,000).*
- (4) (a) *The incentive available under Sections 43 to 45 and 47 of this Act is a refundable credit against the Kentucky income tax imposed under KRS 141.020 or 141.040, and the limited liability entity tax imposed under KRS 141.0401, as provided in Section 47 of this Act. The amount of the incentive shall not exceed:*
- 1. *Twenty percent (20%) of the approved company's qualifying expenditures;*
  - 2. *Twenty percent (20%) of the approved company's qualifying payroll expenditures paid to below-the-line production crew; and*
  - 3. *Twenty percent (20%) of the approved company's qualifying payroll expenditures paid to above-the-line production crew not to exceed one hundred thousand dollars (\$100,000) in payroll expenditures per employee.*
- (b) 1. *The Tourism Development Finance Authority may accept applications, authorize the execution of tax incentive agreements, and enter into tax incentive agreements beginning on the effective date of this Act; however, no credit amount shall be claimed by the taxpayer as a refund or paid by the Department of Revenue prior to July 1, 2010.*
  - 2. *The credit shall be available to approved companies with tax incentive agreements executed before January 1, 2015.*

➔SECTION 45. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

- (1) *An eligible company shall, at least thirty (30) days prior to incurring any expenditure for which recovery will be sought, file an application for tax incentives with the office. The application shall include:*
- (a) *The name and address of the applicant;*
  - (b) *The production script or a detailed synopsis of the script;*
  - (c) *The anticipated date on which filming or production shall begin;*
  - (d) *The anticipated date on which the production will be completed;*
  - (e) *The total anticipated qualifying expenditures;*

- (f) *The total anticipated qualifying payroll expenditures for above-the-line crew;*
  - (g) *The total anticipated qualifying payroll expenditures for below-the-line crew;*
  - (h) *The address of a Kentucky location at which records of the production will be kept;*
  - (i) *An affirmation that if not for the incentive offered under Sections 43 to 45 of this Act, the eligible company would not film or produce the production in the Commonwealth; and*
  - (j) *Any other information the office may require.*
- (2) *The office shall notify the eligible company within thirty (30) days after receiving the application of its status.*
- (3) *Upon review of the application and any additional information submitted, the office shall present the application and its recommendation to the Tourism Development Finance Authority established by KRS 148.850 which may, by resolution, authorize the execution of a tax incentive agreement between the Tourism Development Finance Authority and the approved company.*
- (4) *The tax incentive agreement shall include the following provisions:*
- (a) *The duties and responsibilities of the parties;*
  - (b) *A detailed description of the motion picture or entertainment production for which incentives are requested;*
  - (c) *The anticipated qualifying expenditures and qualifying payroll expenditures for both above-the-line and below-the-line crews;*
  - (d) *The minimum combined total of qualifying expenditures and qualifying payroll expenditures necessary for the approved company to qualify for incentives;*
  - (e) *That the approved company shall have no more than two (2) years from the date the tax incentive agreement is executed to start the motion picture or entertainment production;*
  - (f) *That the approved company shall have no more than four (4) years from the execution of the tax incentive agreement to complete the motion picture or entertainment production;*
  - (g) *That the motion picture or entertainment production shall not include obscene materials and shall not negatively impact the economy or the tourism industry of the Commonwealth;*
  - (h) *That the execution of the agreement is not a guarantee of tax incentives and that actual receipt of the incentives shall be contingent upon the approved company meeting the requirements established by the tax incentive agreement;*
  - (i) *That the approved company shall submit to the office within one hundred eighty (180) days of the completion of the motion picture or entertainment production a detailed cost report of the qualifying expenditures, qualifying payroll expenditures, and final script;*
  - (j) *That the approved company shall provide the office with documentation that the approved company has withheld income tax as required by KRS 141.310 on all qualified payroll expenditures for which an incentive under Sections 44 and 47 of this Act is sought;*
  - (k) *That, if the office determines that the approved company has failed to comply with any of its obligations under the tax incentive agreement:*
    - 1. *The office may deny the incentives available to the approved company;*
    - 2. *Both the office and the cabinet may pursue any remedy provided under the tax incentive agreement;*
    - 3. *The office may terminate the tax incentive agreement; and*
    - 4. *Both the office and the cabinet may pursue any other remedy at law to which it may be entitled;*
  - (l) *That the office shall monitor the tax incentive agreement;*
  - (m) *That the approved company shall provide to the office and the cabinet all information necessary to monitor the tax incentive agreement;*

- (n) *That the office may share information with the cabinet or any other entity the office determines is necessary for the purposes of monitoring and enforcing the terms of the tax incentive agreement;*
  - (o) *That the motion picture or entertainment production shall contain an acknowledgment that the motion picture production was filmed or the touring show was produced in the Commonwealth of Kentucky;*
  - (p) *Terms of default;*
  - (q) *The method and procedures by which the approved company shall request and receive the incentive provided under Sections 44 and 47 of this Act;*
  - (r) *That the approved company may be required to pay an administrative fee as authorized under subsection (5) of this section; and*
  - (s) *Any other provisions deemed necessary or appropriate by the parties to the tax incentive agreement.*
- (5) *The office may require the approved company to pay an administrative fee, the amount of which shall be established by administrative regulation promulgated in accordance with KRS Chapter 13A. The administrative fee shall not exceed one-half of one percent (0.5%) of the estimated amount of tax incentive sought or five hundred dollars (\$500), whichever is greater.*
- (6) *Prior to commencement of activity as provided in a tax incentive agreement, the tax incentive agreement shall be submitted to the Government Contract Review Committee established by Section 50 of this Act for review, as provided in Sections 49, 50, and 51 of this Act.*
- (7) *The office shall notify the cabinet upon approval of an approved company. The notification shall include the name of the approved company, the name of the motion picture or entertainment production, the estimated amount of qualifying expenditures, the estimated date on which the approved company will complete filming or production, and any other information required by the cabinet.*
- (8) *Within one hundred eighty days (180) days of completion of the motion picture or entertainment production, the approved company shall submit to the office a detailed cost report of:*
- (a) *Qualifying expenditures;*
  - (b) *Qualifying payroll expenditures for above-the-line crew;*
  - (c) *Qualifying payroll expenditures for below-the-line crew; and*
  - (d) *The final script.*
- (9) (a) *The office, together with the secretary, shall review all information submitted for accuracy and shall confirm that all relevant provisions of the tax incentive agreement have been met.*
- (b) *Upon confirmation that all requirements of the tax incentive agreement have been met, the office, and the secretary shall review the final script, and if they determine that the motion picture or entertainment production does not:*
- 1. *Contain visual or implied scenes that are obscene; or*
  - 2. *Negatively impact the economy or the tourism industry of the Commonwealth;*
- the office shall forward the detailed cost report to the cabinet for calculation of the refundable credit.*
- (10) *The cabinet shall verify that the approved company withheld the proper amount of income tax on qualifying payroll expenditures, and the cabinet shall notify the office of the total amount of refundable credit available on qualifying expenditures and qualifying payroll expenditures.*
- (11) *On or before October 1, 2010, and on or before each October 1 thereafter, for the immediately preceding fiscal year, the office shall report to the Tourism Development Finance Authority:*
- (a) *The number of tax incentive agreements that have been executed;*
  - (b) *The estimated amount of tax incentives that have been requested under Sections 43 to 45 and 47 of this Act; and*
  - (c) *The amount of tax incentives approved under Sections 43 to 45 and 47 of this Act and KRS 139.538.*

- (12) (a) *By October 1, 2010, and on or before October 1 of each year thereafter, the authority shall file an annual report with the Legislative Research Commission. The report shall also be available on the Tourism, Arts and Heritage Cabinet's Web site.*
- (b) *The report shall include information for all motion picture or entertainment production projects approved.*
- (c) *The report shall include the following information:*
1. *For each approved motion picture or entertainment production project:*
    - a. *The name of the approved company and a brief description of the project;*
    - b. *The amount of approved costs included in the agreement; and*
    - c. *The total amount recovered under the tax incentive agreement;*
  2. *The number of applications for projects submitted during the prior fiscal year;*
  3. *The number of projects finally approved during the prior fiscal year; and*
  4. *The total dollar amount approved for recovery for all projects approved during the prior fiscal year, and cumulatively under Sections 43 to 45 and 47 of this Act since its inception, by year of approval.*
- (d) *The information required to be reported under this section shall not be considered confidential taxpayer information and shall not be subject to KRS Chapter 131 or any other provisions of the Kentucky Revised Statutes prohibiting disclosure or reporting of information.*

➔SECTION 46. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Film Commission is hereby established and administratively attached to the Office of the Secretary, Tourism, Arts and Heritage Cabinet.*
- (2) *The functions and purpose of the Kentucky Film Commission shall be:*
- (a) *To serve in an advisory capacity to support the Tourism, Arts and Heritage Cabinet in:*
    1. *Promoting the growth of the film, television, and video production industry within the Commonwealth;*
    2. *Marketing and promoting Kentucky as a location destination for motion picture productions throughout the Commonwealth for the express purpose of economic development; and*
    3. *Providing a broad base of industry-specific demographic, economic, and informational support to the Tourism, Arts and Heritage Cabinet; and*
  - (b) *To advise the Governor and members of the General Assembly on issues relating to the Commonwealth's development and implementation of programs to attract and encourage film, television, and video production in the Commonwealth.*
- (3) (a) *The commission shall consist of fifteen (15) members who shall be appointed by the Governor.*
- (b) *Initially, the Governor shall appoint:*
1. *Not more than four (4) members for a term of one (1) year;*
  2. *Not more than four (4) members for a term of two (2) years;*
  3. *Not more than four (4) members for a term of three (3) years; and*
  4. *Not more than three (3) members for a term of four (4) years.*
- (c) *Thereafter, the Governor shall make all appointments for a term of four (4) years.*
- (d) *The Governor shall appoint a chairman from among the members.*
- (4) *The members of the commission shall serve without compensation but shall be reimbursed for necessary travel expenses.*
- (5) *The commission shall meet at the call of the chairman at locations within the Commonwealth designated by the chairman.*

- (6) *The commission, by majority vote, may appoint other nonvoting ex officio members within the Commonwealth to assist the commission in achieving its functions and purpose as described in subsection (2) of this section.*

➔SECTION 47. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*

- (a) *"Above-the-line production crew" means the same as defined in Section 43 of this Act;*
- (b) *"Approved company" means the same as defined in Section 43 of this Act;*
- (c) *"Below-the-line production crew" means the same as defined in Section 43 of this Act;*
- (d) *"Cabinet" means the same as defined in Section 43 of this Act;*
- (e) *"Office" means the same as defined in Section 43 of this Act;*
- (f) *"Qualifying expenditure" means the same as defined in Section 43 of this Act;*
- (g) *"Qualifying payroll expenditure" means the same as defined in Section 43 of this Act;*
- (h) *"Secretary" means the same as defined in Section 43 of this Act; and*
- (i) *"Tax incentive agreement" means the same as defined in Section 43 of this Act.*

- (2) *There is hereby created a refundable tax credit against the tax imposed under KRS 141.020 or 141.040, and KRS 141.0401, with the ordering of credits as provided in Section 30 of this Act.*

- (3) *For tax incentive agreements executed before January 1, 2015, an approved company may receive a refundable tax credit on and after July 1, 2010, if:*

- (a) *The cabinet has received notification from the office that the approved company has satisfied all requirements of Sections 43 to 45 of this Act; and*
- (b) *The approved company has provided a detailed cost report and sufficient documentation to the office, which has been forwarded by the office to the cabinet, that:*
  - 1. *The purchases of qualifying expenditures were made after the execution of the tax incentive agreement; and*
  - 2. *The approved company has withheld income tax as required by KRS 141.310 on all qualified payroll expenditures.*

- (4) *The refundable tax credit shall not apply until the taxable year in which the secretary notifies the approved company of the amount of refundable credit that is available. If the notification of approval is provided prior to July 1, 2010, the company shall not claim the credit and the department shall not issue any refunds until on or after July 1, 2010.*

- (5) *Interest shall not be allowed or paid on any refundable credits provided under this section.*

- (6) *The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to administer this section.*

- (7) *On or before September 1, 2010, and on or before each September 1 thereafter, for the immediately preceding fiscal year, the cabinet shall report to the office the names of the approved companies and the amounts of refundable income tax credit claimed.*

➔Section 48. KRS 45A.690 is amended to read as follows:

- (1) *As used in KRS 45A.690 to 45A.725:*

- (a) *"Committee" means the Government Contract Review Committee of the Legislative Research Commission;*
- (b) *"Contracting body" means each state board, bureau, commission, department, division, authority, university, college, officer, or other entity, except the Legislature, authorized by law to contract for personal services. "Contracting body" includes the Tourism Development Finance Authority with regard to tax incentive agreements;*

- (c) "Governmental emergency" means an unforeseen event or set of circumstances that creates an emergency condition as determined by the committee by promulgation of an administrative regulation;
- (d) "Memorandum of agreement" means any memorandum of agreement, memorandum of understanding, program administration contract, interlocal agreement to which the Commonwealth is a party, privatization contract, or similar device relating to services between a state agency and any other governmental body or political subdivision of the Commonwealth that involves an exchange of resources or responsibilities to carry out a governmental function. It includes agreements by regional cooperative organizations formed by local boards of education or other public educational institutions for the purpose of providing professional educational services to the participating organizations and agreements with Kentucky Distinguished Educators pursuant to KRS 158.782. This definition does not apply to:
1. Agreements between the Transportation Cabinet and any political subdivision of the Commonwealth for road and road-related projects;
  2. Agreements between the Auditor of Public Accounts and any other governmental agency or political subdivision of the Commonwealth for auditing services;
  3. Agreements between state agencies as required by federal or state law;
  4. Agreements between state agencies and state universities or colleges and agreements between state universities or colleges and employers of students in the Commonwealth work-study program sponsored by the Kentucky Higher Education Assistance Authority;
  5. Agreements involving child support collections and enforcement;
  6. Agreements with public utilities, providers of direct Medicaid health care to individuals except for any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services established by law or by agreement with the Cabinet for Health and Family Services, and transit authorities;
  7. Nonfinancial agreements;
  8. Any obligation or payment for reimbursement of the cost of corrective action made pursuant to KRS 224.60-140;
  9. Exchanges of confidential personal information between agencies;
  10. Agreements between state agencies and rural concentrated employment programs; or
  11. Any other agreement that the committee deems inappropriate for consideration;
- (e) ***"Motion picture or entertainment production" means the same as defined in Section 43 of this Act;***
- (f) "Multicontract" means a group of personal service contracts between a contracting body and individual vendors providing the same or substantially similar services to the contracting body that, for purposes of the committee, are treated as one (1) contract; ~~and~~
- (g)~~(f)~~ "Personal service contract" means an agreement whereby an individual, firm, partnership, or corporation is to perform certain services requiring professional skill or professional judgment for a specified period of time at a price agreed upon. It includes all price contracts for personal services between a governmental body or political subdivision of the Commonwealth and any other entity in any amount. This definition does not apply to:
1. Agreements between the Department of Parks and a performing artist or artists for less than five thousand dollars (\$5,000) per fiscal year per artist or artists;
  2. Agreements with public utilities, foster care parents, providers of direct Medicaid health care to individuals except for any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services established by law or by agreement with the Cabinet for Health and Family Services, individuals performing homemaker services, and transit authorities;
  3. Agreements between state universities or colleges and employers of students in the Commonwealth work study program sponsored by the Kentucky Higher Education Assistance Authority;

4. Agreements between a state agency and rural concentrated employment programs;
5. Agreements between the State Fair Board and judges, officials, and entertainers contracted for events promoted by the State Fair Board; or
6. Any other contract that the committee deems inappropriate for consideration;

**(h) "Tax incentive agreement" means an agreement executed under Section 45 of this Act; and**

**(i) "Tourism Development Finance Authority" means the authority established by KRS 148.850.**

- (2) Compliance with the provisions of KRS 45A.690 to 45A.725 does not dispense with the requirements of any other law necessary to make the personal service contract or memorandum of agreement valid.

➔Section 49. KRS 45A.695 is amended to read as follows:

- (1) Except as provided in subsection (8) of this section, no one shall begin work on a personal service contract entered into by any contracting body **or incur expenditures under a tax incentive agreement** until notification of the personal service contract **or tax incentive agreement** is filed with the committee. Each personal service contract shall have a cancellation clause not to exceed thirty (30) days notice to the contractee.
- (2) Each personal service contract, **tax incentive agreement**, and memorandum of agreement shall be filed with the committee prior to the effective date and shall be accompanied by a completed proof of necessity form as established by the committee by promulgation of an administrative regulation, or equivalent information if submitted electronically. The proof of necessity form shall document:
  - (a) The need for the service **or benefit to the Commonwealth of the tax incentive agreement**;
  - (b) **For personal service contracts and memoranda of agreement**, the unavailability of state personnel or the nonfeasibility of utilizing state personnel to perform the service;
  - (c) The total projected cost of the contract or agreement and source of funding;
  - (d) The total projected duration of the contract **or tax incentive agreement**;
  - (e) Payment information, in detail;
  - (f) In the case of memoranda of agreement or similar device, the reason for exchanging resources or responsibilities; and
  - (g) Such other information as the committee deems appropriate.
- (3) Adequate notice of the need for a personal service contract shall be given by the contracting body through a request for proposals. The request for proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications.
- (4) The head of the contracting body or his **or her** designee may conduct discussions with any offeror who has submitted a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.
- (5) Award shall be made to the offeror determined by the head of the contracting body, or his **or her** designee, to be the best qualified of all offerors based on the evaluation factors set forth in the request for proposals and the negotiation of fair and reasonable compensation. If compensation cannot be agreed upon with the best qualified offeror and if proposals were submitted by one (1) or more other offerors determined to be qualified, negotiations may be conducted with the other offeror or offerors in the order of their respective qualification ranking. In this case, the contract may be awarded to the next best ranked offeror for a fair and reasonable compensation. All determinations of the qualification rankings of offerors by the head of the contracting body or a designee of the officer based on evaluation factors set forth in the request for proposals shall be made in writing. Written documentation shall be maintained concerning the final results of negotiation with each vendor and reasoning as to why each vendor was chosen.
- (6) The committee shall maintain a record or have readily accessible records of the date on which each personal service contract, **tax incentive agreement**, and memorandum of agreement was received and shall maintain or have access to electronic or paper files on all personal service contracts, **tax incentive agreements**, and memoranda of agreement. Except for records exempt from inspection under KRS 61.870 to 61.884, all

personal service contracts, *tax incentive agreements*, and memoranda of agreement shall be made available for public inspection.

- (7) Payment on personal service contracts, *tax incentive agreements*, and memoranda of agreement submitted to the committee for approval shall not be made for services rendered *or projects undertaken* after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the secretary of the Finance and Administration Cabinet. All personal service contracts, *tax incentive agreements*, and memoranda of agreement shall contain a provision that stipulates that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority.
- (8) In the event of a governmental emergency as defined under KRS 45A.690, work may begin prior to filing notification of the personal service contract with the committee, if the secretary of the Finance and Administration Cabinet or his designee determines that the time involved in the normal review process would be detrimental to the Commonwealth's ability to act or procure the services and the normal process will not accommodate the governmental emergency. Payment shall not be made until written notification and explanation of the reasons for this action are forwarded to the committee.
- (9) If a governmental emergency exists as defined under KRS 45A.690 and work is authorized to begin on a personal service contact immediately, a copy of a statement, approved by the secretary of the Finance and Administration Cabinet or his designee, setting forth in detail the nature of the emergency shall be filed with the committee, along with a copy of the personal service contract.

➔Section 50. KRS 45A.705 is amended to read as follows:

- (1) There is hereby created a permanent committee of the Legislative Research Commission to be known as the Government Contract Review Committee. The committee shall be composed of eight (8) members appointed as follows: three (3) members of the Senate appointed by the President of the Senate; one (1) member of the minority party in the Senate appointed by the Minority Floor Leader in the Senate; three (3) members of the House of Representatives appointed by the Speaker of the House of Representatives; and one (1) member of the minority party in the House of Representatives appointed by the Minority Floor Leader in the House of Representatives. Members shall serve for terms of two (2) years, and the members appointed from each chamber shall elect one (1) member from their chamber to serve as co-chair. Any vacancy that may occur in the membership of the committee shall be filled by the appointing authority who made the original appointment.
- (2) On an alternating basis, each co-chair shall have the first option to set the monthly meeting date. A monthly meeting may be canceled by agreement of both co-chairs. The co-chairs shall have joint responsibilities for committee meeting agendas and presiding at committee meetings. A majority of the entire membership of the Government Contract Review Committee shall constitute a quorum, and all actions of the committee shall be by vote of a majority of its entire membership. The members of the committee shall be compensated for attending meetings, as provided in KRS 7.090(3).
- (3) Any professional, clerical, or other employees required by the committee shall be provided in accordance with the provisions of KRS 7.090(4) and (5).
- (4) All proposed personal service contracts, *tax incentive agreements*, and memoranda of agreement received by the Legislative Research Commission shall be submitted to the committee to:
  - (a) Examine the stated need for the service *or benefit to the Commonwealth of the motion picture or entertainment production*;
  - (b) Examine whether the service could or should be performed by state personnel, *for personal service contracts and memoranda of agreement*;
  - (c) Examine the amount and duration of the contract or agreement; and
  - (d) Examine the appropriateness of any exchange of resources or responsibilities.
- (5) If the committee determines that the contract service or agreement, other than an emergency contract approved by the secretary of the Finance and Administration Cabinet or his *or her* designee, is not needed or inappropriate, *the motion picture or entertainment production is not beneficial or is inappropriate*, the

service could or should be performed by state personnel, the amount or duration is excessive, or the exchange of resources or responsibilities are inappropriate, the committee shall attach a written notation of the reasons for its disapproval or objection to the personal service contract, *tax incentive agreement*, or memorandum of agreement and shall return the personal service contract, *tax incentive agreement*, or memorandum of agreement to the secretary of the Finance and Administration Cabinet or his *or her* designee. The committee shall act on a personal service contract, *tax incentive agreement*, or memorandum of agreement submitted to the Legislative Research Commission within forty-five (45) days of the date received.

- (6) Upon receipt of the committee's disapproval or objection to a personal service contract, *tax incentive agreement*, or memorandum of agreement, the secretary of the Finance and Administration Cabinet or his *or her* designee shall determine whether the personal service contract, *tax incentive agreement*, or memorandum of agreement shall:
  - (a) Be revised to comply with the objections of the committee;
  - (b) Be canceled and, if applicable, payment allowed for services rendered under the contract or amendment; or
  - (c) Remain effective as originally approved.
- (7) The secretary of the Finance and Administration Cabinet or his *or her* designee shall notify the committee of the action taken on personal service contracts, *tax incentive agreements*, and memoranda of agreement disapproved or objected to within ten (10) days from the date the personal service contracts, *tax incentive agreement*, or memoranda of agreement were reviewed by the committee.
- (8) Contracting bodies shall make annual reports to the committee not later than December 1 of each year. The committee shall establish reporting procedures for contracting bodies related to personal service contracts, *tax incentive agreements*, and memoranda of agreement submitted by the secretary of the Finance and Administration Cabinet or his *or her* designee.

➔Section 51. KRS 45A.725 is amended to read as follows:

- (1) The Government Contract Review Committee may establish policies and procedures concerning the manner and form of notification and the documentation to accompany the proposed personal service contract, *tax incentive agreement*, or memorandum of agreement.
- (2) Nothing in this code shall prohibit the committee from accepting personal service contracts, *tax incentive agreement*, or memoranda of agreement through the use of electronic instrumentalities.

➔Section 52. 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) If 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 shall consider the standard deduction.
- (6) The department may permit the use of accounting machines to calculate the proper amount to be deducted from wages when the calculation produces substantially the same result as set forth in the tables authorized by KRS 141.370. Prior approval of the calculation shall be secured from the department at least thirty (30) days before the first payroll period for which it is to be used.

- (7) The department may, by administrative 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 department 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 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) of the amount of the assessment fee withheld from the employee, or if the agreement under KRS 154.26-090(1)(f)2. is consummated, the offset shall be one hundred percent (100%) 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 who assesses and withholds from employees the job development assessment fee provided in Section 18 of this Act may offset the state portion of the assessment against the Kentucky income tax required to be withheld from the employee under this section.*
- (14) Any employer required by this section to withhold Kentucky income tax may be required to post a bond with the department. The bond shall be a corporate surety bond or cash. The amount of the bond shall be determined by the department, but shall not exceed fifty thousand dollars (\$50,000).
- ~~(15)~~~~(14)~~ Any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees an assessment provided in KRS 154.27-080 may offset the assessment against the Kentucky income tax required to be withheld from the employee under this section.
- ~~(16)~~~~(15)~~ 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 53. KRS 141.350 is amended to read as follows:

The amount deducted and withheld as tax under KRS 141.310 and 141.315 during any calendar year upon the wages of any individual and the amount of credit described in KRS 154.22-070(2), 154.23-055, 154.24-110, 154.24-150(3) and (4), 154.26-100(2), 154.27-080, *Section 18 of this Act*, or 154.28-110 shall be allowed as a credit to the recipient of the income against the tax imposed by KRS 141.020, for taxable years beginning in the calendar year. If more than

one (1) taxable year begins in the calendar year, the amount shall be allowed as a credit against the tax for the last taxable year so beginning.

➔SECTION 54. A NEW SECTION OF KRS CHAPTER 176 IS CREATED TO READ AS FOLLOWS:

*For the purposes of this chapter and KRS Chapter 178 on and after July 1, 2010, railroad crossings, railroad spurs that access industrial parks, and shortline railroads at or near intersections with roadways shall be considered roads. The industrial access road fund within the Transportation Cabinet and other funds specified by the secretary or requested by the secretary of the Cabinet for Economic Development may be used for their maintenance and repair.*

➔SECTION 55. A NEW SECTION OF KRS 148.851 TO 148.860 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

(a) *"Legacy expansion project" means an expansion project approved under this section; and*

(b) *"Premier event" means a sports event that:*

1. *Is in the premier series or top sanctioned level of all similar types of events staged on a national basis; and*
2. *Is broadcast nationally.*

(2) *The purpose of this section is to encourage the location of premier events in the Commonwealth.*

(3) *To qualify for incentives under this section, an eligible company or its assignee shall:*

- (a) *Have an existing project under KRS 148.851 to 148.860 that was approved prior to the effective date of this Act;*
- (b) *Invest a minimum of thirty million dollars (\$30,000,000) in the expansion of the previously approved project;*
- (c) *Present one (1) or more new premier events on an annual basis at the legacy expansion project site. As used in this paragraph, "new premier event" means a premier event that was not presented at the existing project prior to approval of the legacy expansion project; and*
- (d) *Include a facility with a permanent seating capacity of sixty-five thousand (65,000) or more, where premier events will be held.*

(4) *An approved company meeting the requirements established by subsection (3) of this section shall be eligible to recover the following:*

- (a) *Up to twenty-five percent (25%) of the approved costs expended for the legacy expansion project; and*
- (b) *One hundred percent (100%) of any amounts outstanding under the agreement for the original project between the approved company, or any assignee of the approved company, and the authority.*

(5) *To obtain the incentives authorized pursuant to this section, an eligible company that meets the requirements of subsection (3) of this section shall file an application for a legacy expansion project with the authority. The legacy expansion project shall be reviewed and evaluated as a new project under KRS 148.851 to 148.860, and the application and review process established in KRS 148.851 to 148.860 shall apply, except as otherwise provided in this section. The cabinet may establish requirements and guidelines for the review and approval of projects under this section that are different from, or in addition to the requirements and guidelines established for the review of projects in general under KRS 148.851 to 148.860.*

(6) (a) *The application required under subsection (5) of this section shall include a plan describing the eligible company's efforts to promote the hiring of Kentucky residents to be employed in the construction and operation of the legacy expansion project.*

1. *The plan shall be submitted in a format, and with sufficient detail to demonstrate that the eligible company has evaluated the following factors in the development of its plan:*

- a. *An analysis of its specific need to employ particular occupations, skills, trades, and technical expertise in the construction and operation of the legacy expansion project;*
  - b. *An estimate of the total number of individuals expected to be employed in the construction and operation of the legacy expansion project, which shall include a categorization of construction phase and operational phase employment projections;*
  - c. *An analysis of the specific need to employ individuals skilled in specialized tasks or in the operation of specialized equipment unique to the construction or operation of the legacy expansion project, together with an evaluation of the availability of sufficiently skilled laborers within the Commonwealth who may be employed to perform the specialized tasks identified or to work with particular specialized equipment;*
  - d. *An analysis of the labor market conditions in Kentucky counties in the vicinity of the legacy expansion project at the time construction of the project is ongoing and during the time at which operations at the project commence, which shall include the eligible company's estimates of the availability of Kentucky laborers of sufficient skill, training, and expertise to perform the work the company requires, during both the construction and operational phases of the project; and*
  - e. *An analysis of any other factor the authority and the eligible company may agree upon.*
2. *The plan may include any other items the authority and the eligible company may agree upon.*
  3.
    - a. *The plan may include an expression of hiring targets and preferences for Kentucky residents in a format and with the detail that the authority and eligible company may agree upon.*
    - b. *The benchmark hiring target for the construction phase shall be to hire one hundred percent (100%) of contractors from contractors with facilities in Kentucky, and the benchmark hiring target for the operations phase shall be the employment of workers, of whom at least seventy-five percent (75%) are Kentucky residents.*
    - c. *Notwithstanding the benchmark targets established by subdivision b. of this subparagraph, the authority and eligible company may agree upon specific hiring targets after consideration of the analyses required by subparagraph 1. of this paragraph.*
    - d. *The plan may set forth preferences for use of materials manufactured in Kentucky, so long as they are competitively priced.*
    - e. *In no event shall hiring benchmarks, hiring targets, or any preferences take precedence over the results of a competitive bidding process.*
- (b) *The authority shall not approve the application required by subsection (5) of this section until the eligible company has submitted the plan required by this subsection, and the plan has been evaluated and approved by the authority.*
  - (c) *An approved company shall report annually to the authority concerning its compliance with the terms of its plan.*
  - (d) *The authority shall review the annual reports filed by an approved company in relation to an approved company's approved plan to determine compliance with the plan. If the authority determines that the approved company has substantially failed to comply with the terms of its plan, the authority may take reasonably necessary measures to ensure compliance with the plan, including but not limited to the withholding of the incentives authorized by this section. If the authority has determined that the approved company has substantially failed to comply with the terms of its plan, it shall provide the eligible company with written notice of this determination, and the eligible company shall be provided a reasonable opportunity to cure any deficiencies prior to the withholding of any incentives.*
- (7) (a) *The initial term of an agreement entered into under this section shall be ten (10) years. During each year of the agreement term, the approved company shall be eligible to recover one-tenth (1/10) of the total incentives approved by the authority.*

- (b) *If, at the end of the original ten (10) year term of the legacy expansion project agreement, the approved company has not claimed all of the approved incentives available under the legacy expansion project agreement, the authority shall extend the term of the agreement by one (1) year for each year during the original ten (10) year term of the agreement that the approved company met or exceeded the requirements established by subsection (3)(c) of this section. The term of the legacy expansion project agreement, including all extensions, shall not exceed twenty (20) years, and the amount of recovery during each year that the agreement is extended shall be determined on a pro rata basis, based upon the total number of years for which the agreement is extended.*
- (8) *The Kentucky General Assembly recognizes that the benefits accruing to the Commonwealth from a legacy expansion project include benefits beyond those that would typically be considered in making the determination required by KRS 148.855(4)(c). Therefore, the analysis of positive fiscal impact required by KRS 148.855(4)(c) and (5) shall include an accounting of the following social benefits:*
- (a) *The positive impact that the legacy expansion project will have on the existing tourism attraction project;*
- (b) *The positive impact the legacy expansion project will have on other tourism attractions that will receive increased visitation due to the existence of the legacy expansion project; and*
- (c) *The positive impacts that will accrue to the economy of the Commonwealth from the national and international exposure the legacy expansion project is expected to provide.*

➔Section 56. KRS 65.7043 is amended to read as follows:

The purposes of KRS 65.7041 to 65.7083 are as follows:

- (1) KRS 65.7047 provides authority for cities and counties to establish local development areas for the development of previously undeveloped land within their jurisdictional boundaries and to devote local resources to support the development of projects in those local development areas. Local development areas established under KRS 65.7047 and projects within local development areas shall not be eligible for participation by the Commonwealth; and
- (2) (a) KRS 65.7049, 65.7051, and 65.7053 provide a framework for cities and counties:
- I. To establish development areas for:
    - a. The redevelopment of previously developed land within their jurisdictional boundaries; *and*
    - b. *The development of previously undeveloped land, if the project proposed for the development area includes an arena as part of the proposed development; and*
  2. ~~[-and-]~~To devote local resources to providing redevelopment assistance and supporting projects in those development areas.
- (b) Projects within development areas established pursuant to KRS 65.7049, 65.7051, and 65.7053 shall be eligible for participation by the Commonwealth if such projects meet the requirements for Commonwealth participation established by Subchapter 30 of KRS Chapter 154.

➔Section 57. KRS 65.7045 is amended to read as follows:

As used in KRS 65.7041 to 65.7083:

- (1) "Activation date" means the date established any time within a two (2) year period after the commencement date. The activation date is the date on which the time period for the pledge of incremental revenues shall commence. The governing body may extend the two (2) year period to no more than four (4) years upon written application by the agency requesting the extension. To implement the activation date, the agency that is a party to the local participation agreement or the local development area agreement shall notify the governing body that created the development area or local development area;
- (2) "Agency" means:
- (a) An urban renewal and community development agency established under KRS Chapter 99;
  - (b) A development authority established under KRS Chapter 99;

- (c) A nonprofit corporation;
  - (d) A housing authority established under KRS Chapter 80;
  - (e) An air board established under KRS 183.132 to 183.160;
  - (f) A local industrial development authority established under KRS 154.50-301 to 154.50-346;
  - (g) A riverport authority established under KRS 65.510 to 65.650; or
  - (h) A designated department, division, or office of a city or county;
- (3) ***"Arena" means a facility which serves primarily as a venue for athletic events, live entertainment, and other performances, and which has a permanent seating capacity of at least five thousand (5,000);***
- (4) "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;
- (5)~~(4)~~ "Brownfield site" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant;
- (6)~~(5)~~ "Capital investment" means:
- (a) Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of a project;
  - (b) The cost of acquiring land or rights in land within the development area on the footprint of the project, and any cost incident 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 a project which is not paid by the contractor or contractors or otherwise provided;
  - (d) All costs of architectural and engineering services, including test borings, surveys, estimates, plans, specifications, preliminary investigations, supervision of construction, and the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, and rehabilitation of a project;
  - (e) All costs that are required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, and rehabilitation of a project; and
  - (f) All other costs of a nature comparable to those described in this subsection;
- (7)~~(6)~~ "City" means any city, consolidated local government, or urban-county government;
- (8)~~(7)~~ "Commencement date" means:
- (a) The date on which a local development area agreement is executed; or
  - (b) The date on which a local participation agreement is executed;
- (9)~~(8)~~ "Commonwealth" means the Commonwealth of Kentucky;
- (10)~~(9)~~ "County" means any county, consolidated local government, charter county, unified local government, or urban-county government;
- (11)~~(10)~~ "Debt charges" means the principal, including any mandatory sinking fund deposits, interest, and any redemption premium, payable on increment bonds as the payments come due and are payable and any charges related to the payment of the foregoing;
- (12)~~(11)~~ "Development area" means an area established under KRS 65.7049, 65.7051, and 65.7053;
- (13)~~(12)~~ "Economic development projects" means projects which are approved for tax credits under Subchapter 20, 22, 23, 24, 25, 26, 27, 28, 34, or 48 of KRS Chapter 154;
- (14)~~(13)~~ "Establishment date" means the date on which a development area or a local development area is created. If the development area, local development area, development area plan, or local development area plan is modified or amended subsequent to the original establishment date, the modifications or amendments shall not extend the existence of the development area or local development area beyond what would be permitted under KRS 65.7041 to 65.7083 from the original establishment date;

- ~~(15)~~~~(14)~~ "Governing body" means the body possessing legislative authority in a city or county;
- ~~(16)~~~~(15)~~ "Increment bonds" means bonds and notes issued for the purpose of paying the costs of one (1) or more projects, or grant or loan programs as described in subsection ~~(29)~~~~(28)~~(c) of this section, in a development area or a local development area;
- ~~(17)~~~~(16)~~ "Incremental revenues" means the amount of revenues received by a taxing district, as determined by subtracting old revenues from new revenues in a calendar year with respect to a development area, a project within a development area, or a local development area;
- ~~(18)~~~~(17)~~ "Issuer" means a city, county, or agency issuing increment bonds;
- ~~(19)~~~~(18)~~ "Local development area" means a development area established under KRS 65.7047;
- ~~(20)~~~~(19)~~ "Local development area agreement" means an agreement entered into under KRS 65.7047;
- ~~(21)~~~~(20)~~ "Local participation agreement" means the agreement entered into under KRS 65.7063;
- ~~(22)~~~~(21)~~ "Local tax revenues" means:
- (a) Revenues derived by a city or county from one (1) or more of the following sources:
    1. Real property ad valorem taxes;
    2. Occupational license taxes, excluding occupational license taxes that have already been pledged to support an economic development project within the development area; and
    3. The occupational license fee permitted by KRS 65.7056; and
  - (b) Revenues derived by any taxing district other than school districts or fire districts from real property ad valorem taxes;
- ~~(23)~~~~(22)~~ "Low-income household" means a household in which gross income is no more than two hundred percent (200%) of the poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. sec. 9902(2);
- ~~(24)~~~~(23)~~ "New revenues" means the amount of local tax revenues received by a taxing district with respect to a development area or a local development area in any calendar year beginning with the year in which the activation date occurred;
- ~~(25)~~~~(24)~~ "Old revenues" means the amount of local tax revenues received by a taxing district with respect to a development area or a local development area during the last calendar year prior to the commencement date. If the governing body determines that the amount of local tax revenues received during the last calendar year prior to the commencement date does not represent a true and accurate depiction of revenues, the governing body may consider revenues for a period of no longer than three (3) calendar years prior to the commencement date, so as to determine a fair representation of local tax revenues.
- ~~(26)~~~~(25)~~ "Outstanding" means increment bonds that have been issued, delivered, and paid for by the purchaser, except any of the following:
- (a) Increment bonds canceled upon surrender, exchange, or transfer, or upon payment or redemption;
  - (b) Increment bonds in replacement of which or in exchange for which other increment bonds have been issued; or
  - (c) Increment bonds for the payment, redemption, or purchase for cancellation prior to maturity, of which sufficient moneys or investments, in accordance with the ordinance or other proceedings or any applicable law, by mandatory sinking fund redemption requirements, or otherwise, have been deposited, and credited in a sinking fund or with a trustee or paying or escrow agent, whether at or prior to their maturity or redemption, and, in the case of increment bonds to be redeemed prior to their stated maturity, notice of redemption has been given or satisfactory arrangements have been made for giving notice of that redemption, or waiver of that notice by or on behalf of the affected bond holders has been filed with the issuer or its agent;
- ~~(27)~~~~(26)~~ "Planning unit" means a planning commission established pursuant to KRS Chapter 100;

~~(28)~~~~(27)~~ "Project" means any property, asset, or improvement located in a development area or a local development area and certified by the governing body as:

- (a) Being for a public purpose; and
- (b) Being for the development of facilities for residential, commercial, industrial, public, recreational, or other uses, or for open space, including the development, rehabilitation, renovation, installation, improvement, enlargement, or extension of real estate and buildings; and
- (c) Contributing to economic development or tourism;

~~(29)~~~~(28)~~ "Redevelopment assistance," as utilized within a development area, includes the following:

- (a) Technical assistance programs to provide information and guidance to existing, new, and potential businesses and residences;
- (b) Programs to market and promote the development area and attract new businesses and residents;
- (c) Grant and loan programs to encourage the *construction or* rehabilitation of residential, commercial, and industrial buildings; improve the appearance of building facades and signage; and stimulate business start-ups and expansions;
- (d) Programs to obtain a reduced interest rate, down payment, or other improved terms for loans made by private, for-profit, or nonprofit lenders to encourage the *construction or* rehabilitation of residential, commercial, and industrial buildings; improve the appearance of building facades and signage; and stimulate business start-ups and expansions;
- (e) Local capital improvements, including but not limited to the installation, construction, or reconstruction of streets, lighting, pedestrian amenities, public utilities, public transportation facilities, public parking, parks, playgrounds, recreational facilities, and public buildings and facilities;
- (f) Improved or increased provision of public services, including but not limited to police or security patrols, solid waste management, and street cleaning;
- (g) Provision of technical, financial, or other assistance in connection with:
  1. Applications to the Environmental and Public Protection Cabinet for a brownfields assessment or a No Further Remediation Letter issued pursuant to KRS 224.01-450; or
  2. Site remediation by means of the Voluntary Environmental Remediation Program to remove environmental contamination in the development area, or lots or parcels within it, pursuant to KRS 224.01-510 to 224.01-532; and
- (h) Direct development by a city, county, or agency of real property acquired by the city, county, or agency. Direct development may include one (1) or more of the following:
  1. Assembly and replatting of lots or parcels;
  2. Rehabilitation of existing structures and improvements;
  3. Demolition of structures and improvements and construction of new structures and improvements;
  4. Programs of temporary or permanent relocation assistance for businesses and residents;
  5. The sale, lease, donation, or other permanent or temporary transfer of real property to public agencies, persons, and entities both for profit and nonprofit; and
  6. The acquisition and construction of projects;

~~(30)~~~~(29)~~ "Service payment agreement" means an agreement between a city, county, or issuer of increment bonds or other obligations and any person, whereby the person agrees to guarantee the receipt of incremental revenues, or the payment of debt charges, or any portion thereof, on increment bonds or other obligations issued by the city, county, or issuer;

~~(31)~~~~(30)~~ "Special fund" means a special fund created under KRS 65.7061 in which all incremental revenues shall be deposited;

- ~~(32)~~~~(31)~~ "Taxing district" means any city, county, or special taxing district other than school districts and fire districts;
- ~~(33)~~~~(32)~~ "Tax incentive agreement" means an agreement entered into under KRS 154.30-070; and
- ~~(34)~~~~(33)~~ "Termination date" means:
- (a) For a development area, a date established by the ordinance creating the development area that is no more than twenty (20) years from the establishment date. If a tax incentive agreement for a project within a development area or a local participation agreement relating to the development area has a termination date that is later than the termination date established in the ordinance, the termination date for the development area shall be extended to the termination date of the tax incentive agreement, or local participation agreement. However, the termination date for the development area shall in no event be more than forty (40) years from the establishment date;
  - (b) For a local development area, a date established by the ordinance creating the local development area that is no more than twenty (20) years from the establishment date, provided that if a local development area agreement relating to the local development area has a termination date that is later than the termination date established in the ordinance, the termination date for the local development area shall be extended to the termination date of the local development area agreement;
  - (c) For a local participation agreement, a date that is no more than twenty (20) years from the activation date. However, the termination date for a local participation agreement shall in no event be more than forty (40) years from the establishment date of the development area to which the local participation agreement relates; and
  - (d) For a local development area agreement, a date that is no more than twenty (20) years from the activation date. However, the termination date for a local development area agreement shall in no event be more than forty (40) years from the establishment date of the local development area to which the development area agreement relates.

➔Section 58. KRS 65.7049 is amended to read as follows:

Any city or county may establish a development area pursuant to KRS 65.7049, 65.7051, and 65.7053 to encourage **investment and** reinvestment in and development, **use**, and reuse of areas of the city or county under the following conditions:

- (1) The area shall be contiguous and shall be no more than three (3) square miles;
- (2) The establishment or expansion of the development area shall not cause the assessed value of taxable real property within all development areas and local development areas of the city or county establishing the development area to exceed twenty percent (20%) of the assessed value of all taxable real property within its jurisdiction. For the purpose of determining whether the twenty percent (20%) threshold has been met, the assessed value of taxable real property within all of the development areas and local development areas shall be valued as of the establishment date;
- (3) The governing body of the city or county shall determine that the development area has two (2) or more of the following conditions:
  - (a) Substantial loss of residential, commercial, or industrial activity or use;
  - (b) Forty percent (40%) or more of the households are low-income households;
  - (c) More than fifty percent (50%) of residential, commercial, or industrial structures are deteriorating or deteriorated;
  - (d) Substantial abandonment of residential, commercial, or industrial structures;
  - (e) Substantial presence of environmentally contaminated land;
  - (f) Inadequate public improvements or substantial deterioration in public infrastructure; or
  - (g) Any combination of factors that substantially impairs or arrests the growth and economic development of the city or county; impedes the provision of adequate housing; impedes the development of

commercial or industrial property; or adversely affects public health, safety, or general welfare due to the development area's present condition and use; and

- (4) The governing body of the city or county shall find that all of the following are true:
- (a) That the development area is not reasonably expected to be developed without public assistance. This finding shall be supported by specific reasons and supporting facts, including a clear demonstration of the financial need for public assistance; and
  - (b) That the public benefits of the development area justify the public costs proposed. This finding shall be supported by specific data and figures demonstrating that the projected benefits outweigh the anticipated costs and shall take into account the positive and negative effects of investment in the development on existing businesses and residents within the community as a whole; and
  - (c)
    - 1. That the area immediately surrounding the development area has not been subject to growth and development through investment by private enterprise; or
    - 2. If the area immediately surrounding the development area has been subject to growth and development through investment by private enterprise, the identification of special circumstances within the development area that would prevent its development without public assistance.

➔Section 59. KRS 65.7053 is amended to read as follows:

- (1) An ordinance establishing a development area shall include the following provisions:
- (a) A legal description of the boundaries of the development area, and geographic reference points;
  - (b) The establishment date;
  - (c) The termination date, including a provision that allows the termination date to be extended as provided in KRS 65.7045(34){(33)};
  - (d) A name for the development area for identification purposes;
  - (e) A finding that the conditions in the development area meet the criteria described in KRS 65.7049;
  - (f) A finding supporting the need to employ redevelopment assistance in the development area;
  - (g) A provision adopting the development plan required by KRS 65.7051(1);
  - (h) Approval of any agreements relating to the development area, including any local participation agreements;
  - (i) A provision establishing a special fund for the development area or any project within the development area;
  - (j) A requirement that any entity other than the governing body that receives financial assistance under the development area ordinance, whether in the form of a grant, loan, or loan guarantee, shall make periodic accounting to the governing body;
  - (k) A provision for periodic analysis and review by the governing body of the development activity in the development area, a review of the progress in meeting the stated goals of the development area, and a requirement that the review and analysis be forwarded to the authority if the development activity includes projects subject to a tax incentive agreement;
  - (l) Designation of the agency or agencies responsible for oversight, administration, and implementation of the development ordinance; and
  - (m) Any other provisions, findings, limitations, rules, or procedures regarding the proposed development area or a project within the development area and its establishment or maintenance deemed necessary by the city or county.
- (2) An ordinance establishing a development area may designate an existing agency to oversee and administer implementation of a development area ordinance or a portion thereof.
- (3) Unless the ordinance establishing a development area requires an earlier date, a development area shall cease to exist on the termination date.

➔Section 60. KRS 65.680 is amended to read as follows:

As used in KRS 65.680 to 65.699:

- (1) "Activation date" means the date established in the grant contract at any time in a two (2) year period after the date of approval of the grant contract by the economic development authority or the tourism development authority, as appropriate. The economic development authority or tourism development authority, as appropriate, may extend this two (2) year period to no more than four (4) years upon written application of the agency requesting the extension. To implement the activation date, the agency who is a party to the grant contract shall notify the economic development authority or the tourism development authority, as appropriate, the Department of Revenue, and other taxing districts that are parties to the grant contract when the implementation of the increment authorized in the grant contract shall occur;
- (2) "Agency" means an urban renewal and community development agency established under KRS Chapter 99; a development authority established under KRS Chapter 99; a nonprofit corporation established under KRS Chapter 58; an air board established under KRS 183.132 to 183.160; a local industrial development authority established under KRS 154.50-301 to 154.50-346; a riverport authority established under KRS 65.510 to 65.650; or a designated department, division, or office of a city or county;
- (3) "Assessment" means the job development assessment fee authorized by KRS 65.6851, which the governing body may elect to impose throughout the development area;
- (4) "Brownfield site" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant;
- (5) "City" means any city, consolidated local government, or urban-county;
- (6) "Commencement date" means the date a development area is established, as provided in the ordinance creating the development area;
- (7) "Commonwealth" means the Commonwealth of Kentucky;
- (8) "County" means any county, consolidated local government, or charter county;
- (9) "CPI" means the nonseasonally adjusted Consumer Price Index for all urban consumers, all items (base year computed for 1982 to 1984 equals one hundred (100)), published by the United States Department of Labor, Bureau of Labor Statistics;
- (10) "Debt charges" means the principal, including any mandatory sinking fund deposits, interest, and any redemption premium, payable on increment bonds as the payments come due and are payable and any charges related to the payment of the foregoing;
- (11) "Development area" means a contiguous geographic area, which may be within one (1) or more cities or counties, defined and created for economic development purposes by an ordinance of a city or county in which one (1) or more projects are proposed to be located, except that for any development area for which increments are to include revenues from the Commonwealth, the contiguous geographic area shall satisfy the requirements of KRS 65.6971 or 65.6972;
- (12) "Economic development authority" means the Kentucky Economic Development Finance Authority as created in KRS 154.20-010;
- (13) "Enterprise Zone" means an area that had been designated by the Enterprise Zone Authority of Kentucky to be eligible for the benefits of Subchapter 45 of KRS Chapter 154 before January 1, 2005;
- (14) "Governing body" means the body possessing legislative authority in a city or county;
- (15) "Grant contract" means:
  - (a) That agreement with respect to a development area established under KRS 65.686, by and among an agency and one (1) or more taxing districts other than the Commonwealth, by which a taxing district permits the payment to an agency of an amount equal to a portion of increments other than revenues from the Commonwealth received by it in return for the benefits accruing to the taxing district by reason of one (1) or more projects in a development area; or
  - (b) That agreement, including with respect to a development area satisfying the requirements of KRS 65.6971 or 65.6972, a master agreement and addenda to the master agreement, by and among an agency, one (1) or more taxing districts, and the economic development authority or the tourism

development authority, as appropriate, by which a taxing district permits the payment to an agency of an amount equal to a portion of increments received by it in return for the benefits accruing to the taxing district by reason of one (1) or more projects in a development area;

- (16) "Increment bonds" means bonds and notes issued for the purpose of paying the costs of one (1) or more projects in a development area, the payment of which is secured solely by a pledge of increments or by a pledge of increments and other sources of payment that are otherwise permitted by law to be pledged or used as a source of payment of the bonds or notes;
- (17) "Increments" means the amount of revenues received by any taxing district, determined by subtracting the amount of old revenues from the amount of new revenues in the calendar year with respect to a development area and for which the taxing district or districts and the agency have agreed upon under the terms of a grant contract;
- (18) "Infrastructure development" means the acquisition of real estate within a development area meeting the requirements of KRS 65.6971 and the construction or improvement, within a development area meeting the requirements of KRS 65.6971, of roads and facilities necessary or desirable for improvements of the real estate, including surveys; site tests and inspections; environmental remediation; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other underground and surface obstructions; filling, grading, and provision of drainage, storm water retention, installation of utilities such as water, sewer, sewage treatment, gas, and electricity, communications, and similar facilities; and utility extensions to the boundaries of the development area meeting the requirements of KRS 65.6971;
- (19) "Issuer" means a city, county, or an agency issuing increment bonds;
- (20) "New revenues" means the amount of revenues received with respect to a development area in any calendar year after the activation date for a development area:
  - (a) Established under KRS 65.686, the ad valorem taxes other than the school and fire district portions of the ad valorem taxes received from real property generated from the development area and properties sold within the development area, and occupational license fees not otherwise used as a credit against an assessment, and all or a portion of assessments as determined by the governing body; or
  - (b) Satisfying the requirements of KRS 65.6971, the ad valorem taxes other than the school and fire district portions of the ad valorem taxes received from real property generated from the development area and properties sold within the development area; or
  - (c) Satisfying the requirements of KRS 65.6972, the ad valorem taxes, other than the school and fire district portions of the ad valorem taxes, received from real property, Kentucky individual income tax, Kentucky sales and use taxes, local insurance premium taxes, occupational license fees, or other such state taxes as may be determined by the Department of Revenue to be applicable to the project and specified in the grant contract, generated from the primary project entity within the development area minus relocation revenue;
- (21) "Old revenues" means the amount of revenues received with respect to a development area:
  - (a) Established under KRS 65.686, in the last calendar year prior to the commencement date for the development area, revenues which constitute ad valorem taxes other than the school and fire district portions of ad valorem taxes received from real property in the development area and occupational license fees generated from the development area; or
  - (b) Satisfying the requirements of KRS 65.6971, in the last calendar year prior to the commencement date for the development area, revenues which constitute ad valorem taxes other than the school and fire district portions of ad valorem taxes received from real property in the development area; or
  - (c) Satisfying the requirements of KRS 65.6972, in the period of no longer than three (3) calendar years prior to the commencement date, the average as determined by the Department of Revenue to be a fair representation of revenues derived from ad valorem taxes, other than the school and fire district portions of ad valorem taxes, from real property in the development area, and Kentucky individual income tax, Kentucky sales and use taxes, local insurance premium taxes, occupational license fees, and other such state taxes as may be determined by the Department of Revenue as specified in the grant contract generated from the development area. With respect to this paragraph, if the development area was within an active enterprise zone for the period used by the Department of Revenue for measuring old revenues, then the calculation of old revenues shall include the amounts of ad valorem taxes, other than

the school and fire district portions of ad valorem taxes, that would have been generated from real property, Kentucky individual income tax, Kentucky sales and use taxes, local insurance premium taxes, occupational license fees, and other such state taxes as may be determined by the Department of Revenue as specified in the grant contract, were the development area not within an active enterprise zone. With respect to this paragraph, if the primary project entity generated old revenue prior to the commencement date in the development area or revenues were derived from the development area prior to the commencement date of the development area, then revenues shall increase each calendar year by the percentage increase of the consumer price index, if any;

- (22) "Outstanding" means increment bonds that have been issued, delivered, and paid for, except any of the following:
- (a) Increment bonds canceled upon surrender, exchange, or transfer, or upon payment or redemption;
  - (b) Increment bonds in replacement of which or in exchange for which other bonds have been issued; or
  - (c) Increment bonds for the payment, or redemption or purchase for cancellation prior to maturity, of which sufficient moneys or investments, in accordance with the ordinance or other proceedings or any applicable law, by mandatory sinking fund redemption requirements, or otherwise, have been deposited, and credited in a sinking fund or with a trustee or paying or escrow agent, whether at or prior to their maturity or redemption, and, in the case of increment bonds to be redeemed prior to their stated maturity, notice of redemption has been given or satisfactory arrangements have been made for giving notice of that redemption, or waiver of that notice by or on behalf of the affected bond holders has been filed with the issuer or its agent;
- (23) "Primary project entity" means the entity responsible for control, ownership, and operation of the project within a development area satisfying the requirements of KRS 65.6972 which generates the greatest amount of new revenues or, in the case of a proposed development area satisfying the requirements of KRS 65.6972, is expected to generate the greatest amount of new revenues;
- (24) "Project" means, for purposes of a development area:
- (a) Established under KRS 65.686, any property, asset, or improvement certified by the governing body, which certification is conclusive as:
    1. Being for a public purpose;
    2. Being for the development of facilities for residential, commercial, industrial, public, recreational, or other uses, or for open space, or any combination thereof, which is determined by the governing body establishing the development areas as contributing to economic development;
    3. Being in or related to a development area; and
    4. Having an estimated life or period of usefulness of one (1) year or more, including but not limited to real estate, buildings, personal property, equipment, furnishings, and site improvements and reconstruction, rehabilitation, renovation, installation, improvement, enlargement, and extension of property, assets, or improvements so certified as having an estimated life or period of usefulness of one (1) year or more;
  - (b) Satisfying the requirements of KRS 65.6971; an economic development project defined under KRS 154.22-010, 154.24-010, or 154.28-010; or a tourism attraction project defined under KRS 148.851; or
  - (c) Satisfying the requirements of KRS 65.6972, the development of facilities for:
    1. The transportation of goods or persons by air, ground, water, or rail;
    2. The transmission or utilization of information through fiber-optic cable or other advanced means;
    3. Commercial, industrial, recreational, tourism attraction, or educational uses; or
    4. Any combination thereof;
- (25) "Relocation revenue" means the ad valorem taxes, other than the school and fire district portions of ad valorem taxes, from real property, Kentucky individual income tax, Kentucky sales and use taxes, local insurance premium taxes, occupational license fees, and other such state taxes as specified in the grant contract, received

by a taxing district attributable to that portion of the existing operations of the primary project entity located in the Commonwealth and relocating to the development area satisfying the requirements of KRS 65.6972;

- (26) "Special fund" means a special fund created in accordance with KRS 65.688 into which increments are to be deposited;
- (27) "Taxing district" means a city, county, or other taxing district that encompasses all or part of a development area, or the Commonwealth, but does not mean a school district or fire district;
- (28) "Termination date" means the date on which a development area shall cease to exist, which for purposes of a development area:
- (a) Established under KRS 65.686, shall be:
    1. For a period of no longer than twenty (20) years from the commencement date and set forth in the grant contract; *or*
    2. ***For a period as determined under Section 61 of this Act.***

Increment bonds shall not mature on a date beyond the termination date established by this paragraph;  
or
  - (b) Satisfying the requirements of KRS 65.6971, shall be for a period of no longer than twenty (20) years from the commencement date and set forth in the grant contract constituting a master agreement, except that for an addendum added to the master agreement for each project in the development area, the termination date may be extended to no longer than twenty (20) years from the date of each addendum;  
or
  - (c) Satisfying the requirements of KRS 65.6972, shall be for a period of no longer than twenty (20) years from the activation date of the grant contract. Increment bonds shall not mature on a date beyond the termination date established by this subsection;

(29) "Tourism development authority" means the Tourism Development Finance Authority as created in KRS 148.850; and

(30) "Project costs" mean the total private and public capital costs of a project.

➔SECTION 61. A NEW SECTION OF KRS 65.680 TO 65.699 IS CREATED TO READ AS FOLLOWS:

- (1) ***The termination date for a development area may be extended beyond twenty (20) years as provided in this section. To qualify for an extension of the termination date, the development area shall meet the following conditions:***
- (a) ***The initial development area shall have been established by the county under KRS 65.686 prior to July 1, 2003, and all subsequent development areas contiguous to the initial development area shall have been established prior to August 1, 2006;***
  - (b) ***The development area, consisting of one (1) or more contiguous development areas, includes at least four hundred (400) acres in the aggregate; and***
  - (c) ***The agency that issued the increment bonds for the development areas described in paragraphs (a) and (b) of this subsection shall, within two (2) years of the effective date of this Act, refund the outstanding increment bonds with the issuance of new increment bonds for a term not to exceed twenty (20) years.***
- (2) ***The termination date for development areas meeting the requirements of subsection (1) of this section shall be the term of the new increment bonds issued in accordance with subsection (1)(c) of this section, not to exceed twenty (20) years from the date the new increment bonds described in subsection (1)(c) of this section are issued.***

➔Section 62. KRS 230.752 is amended to read as follows:

All harness racetracks licensed by the authority shall not be required to pay the excise tax imposed under KRS 138.510(2) ~~and (3)~~, and the amount that would have been paid under those subsections shall be retained by the track to promote and maintain its facilities and its live meet.

➔Section 63. Notwithstanding the \$200,000,000 minimum capital investment required by KRS 154.30-050(2)(a)1.b., the Kentucky Economic Development Finance Authority shall have the authority, upon application of

an agency with an existing agreement executed prior to January 1, 2008, to approve a reduction in the required minimum capital investment to an amount of not less than \$150,000,000.

➔SECTION 64. A NEW SECTION OF SUBCHAPTER 30 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *An agency with a signature project approved under KRS 154.30-050(2)(a) with a tax incentive agreement executed prior to January 1, 2008, may apply to the authority to participate in a loan support program.*
- (2) *The authority shall establish a loan support program for agencies meeting the requirements of subsection (1) of this section. The program shall, at a minimum, include the following requirements:*
  - (a) *An agency seeking to participate in the loan support program shall file an application with the authority, in the form and format determined by the authority. The authority shall review the application and may request any additional information necessary to evaluate the application;*
  - (b) *If the authority approves an agency for participation in the loan support program, the authority shall enter into an agreement with the agency detailing the terms and conditions of the agency's participation in the program. The terms of the agreement shall include but not be limited to:*
    1. *Identification of the collateral or other forms of repayment assurance that will be available from the agency if the Cabinet for Economic Development makes a loan to the agency;*
    2. *A requirement that the agency obtain from the developer or developers an agreement to indemnify the Commonwealth or the agency, as the case may be, if the Cabinet for Economic Development makes a loan to the agency that the agency is not able to repay;*
    3. *Identification of any other alternative methods for repayment of any loans if incremental revenues are insufficient;*
    4. *A statement that the authority has verified that the agency requesting participation in the program has the resources available to maintain an acceptable balance in the account as required by paragraph (g) of this subsection;*
    5. *A requirement that any balance remaining in the account of an agency at the expiration of the agreement, and after all required amounts have been repaid shall be repaid to the agency; and*
    6. *The agreement term, which shall not be longer than the term of the tax incentive agreement between the agency and the authority;*
  - (c) *The agency requesting participation in the loan support program shall provide to the authority a lump-sum payment in an amount equal to at least seventy-five percent (75%) of the annual average projected incremental revenues to be generated within the agency's development area over the term of the tax incentive agreement;*
  - (d) *The authority shall hold the funds transferred by an agency on behalf of the agency making the deposit in a separate account;*
  - (e) *To the extent funds are available in the agency's account, the authority shall, upon request of the agency, make a distribution from the agency's account to the agency in any year that the incremental revenues generated from the agency's development area are insufficient to make any debt payments the agency is obligated to make;*
  - (f)
    1. *If the balance in an agency's account at the close of any fiscal year is less than the amount initially provided by the agency to the authority, the agency shall provide to the authority from incremental revenues, an amount necessary to bring the level of the account back to the amount of the lump-sum payment required by paragraph (c) of this subsection.*
    2.
      - a. *If the agency does not have sufficient incremental revenues to bring its account back to the initial level, the Cabinet for Economic Development shall, subject to the availability of funds, deposit in the account of the agency the amount necessary to bring the balance in the fund back to the initial level.*
      - b. *If the Cabinet for Economic Development does not have sufficient funds to restore the account to the initial level, the Cabinet for Economic Development shall seek funding*

*from the General Assembly in an amount sufficient to restore the account balance to the initial amount.*

- c. *Any amount deposited in the account of an agency by the Cabinet for Economic Development shall be a loan from the Cabinet for Economic Development to the agency, and shall be repaid by the agency according to the terms and conditions agreed to by the agency and the authority;*
- (g) *Prior to entering into an agreement with an agency pursuant to this section, the authority shall verify that the agency requesting the loan has the resources available to maintain an acceptable balance in its account; and*
- (h) *Any balance remaining in the account of an agency at the expiration of the agreement and after all required amounts have been repaid shall be returned to the agency.*

➔SECTION 65. SUBCHAPTER 60 OF KRS CHAPTER 154 IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

*As used in this subchapter:*

- (1) *"Average hourly wage" has the same meaning as in KRS 154.28-010;*
- (2) *"Base employment" means:*
  - (a) *For the initial year for which credits are claimed, the number of full-time employees employed on December 31 of the base year; and*
  - (b) *For subsequent years, the greater of:*
    - 1. *The number of full-time employees employed on December 31 of the base year plus each eligible position for which a credit has been claimed under Section 68 of this Act; or*
    - 2. *The number of full-time employees employed on December 31 of the prior year;*
- (3) *"Base year" means the later of the first full year of operation of a small business or the year that begins on or after January 1, 2010, and before January 1, 2011;*
- (4) *"Creates and fills" means establishes a new eligible position and hires a full-time employee and replaces that employee within thirty (30) days if the employee ceases for any reason to be employed by the employer;*
- (5) *"Eligible position" means each position that:*
  - (a) *Is filled by a full-time employee and that increases the total employment of the small business above its base employment; and*
  - (b) *Carries a base hourly wage of no less than one hundred fifty percent (150%) of the federal minimum wage;*
- (6) *"Full-time employee" means a person employed by a small business for at least thirty-five (35) hours per week and subject to the state tax imposed by KRS 141.020;*
- (7) *"Qualifying equipment or technology" means equipment or technology that has been approved by the Division of Small Business Services; and*
- (8) *"Small business" has the same meaning as in KRS 154.12-325.*

➔SECTION 66. A NEW SECTION OF SUBCHAPTER 60 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Economic Development Finance Authority shall develop a small business development credit program in consultation with the Division of Small Business Services to assist new or existing small businesses operating in the Commonwealth. The nonrefundable credit shall be allowed against the taxes imposed by KRS 141.020 or 141.040, and 141.0401. The ordering of credits shall be as provided in Section 30 of this Act.*
- (2) *The authority shall determine the terms, conditions, and requirements for application for the credit, in consultation with the Division of Small Business Services, subject to the provisions of subsection (3) of this section. The application shall contain identification information about the number of eligible positions created and filled, a calculation of the base employment of the small business for each year from fiscal year*

*2010-2011 and forward, verification of investment of five thousand dollars (\$5,000) or more in qualifying equipment or technology, and other information the authority may specify to determine eligibility for the credit.*

- (3) (a) *The maximum amount of credits that may be committed in each fiscal year by the Kentucky Economic Development Finance Authority shall be capped at three million dollars (\$3,000,000).*
- (b) 1. *A small business shall not be eligible to apply for credits and receive final approval for the credits until one (1) year after the small business:*
- a. *Creates and fills one (1) or more eligible positions over the base employment, and that position or positions are created and filled for twelve (12) months; and*
- b. *Invests five thousand dollars (\$5,000) or more in qualifying equipment or technology.*
2. *The small business shall submit all information necessary for the Kentucky Economic Development Finance Authority to determine credit eligibility for each year, and the amount of credit for which the small business is eligible.*
- (c) *The maximum amount of credit for each small business for each year shall not exceed twenty-five thousand dollars (\$25,000).*
- (d) *The credit shall be claimed on the tax return for the year during which the credit was approved. Unused credits may be carried forward for up to five (5) years.*

➔SECTION 67. A NEW SECTION OF SUBCHAPTER 60 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

*The authority shall establish the procedures and standards for a small business development credit program by the promulgation of administrative regulations in accordance with KRS Chapter 13A.*

➔SECTION 68. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "small business" has the same meaning as in KRS 154.12-325.*
- (2) (a) *For taxable years beginning after December 31, 2011, a small business may be eligible for a nonrefundable credit of up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.020 or 141.040, and the limited liability entity tax imposed under KRS 141.0401.*
- (b) *A small business that is subject to the tax imposed by KRS 141.020 or 141.040 and that has tax credits approved under Subchapter 60 of KRS Chapter 154 shall apply the credits against the income tax imposed by KRS 141.020 or 141.040 and against the limited liability entity tax imposed by KRS 141.0401, with the ordering of credits as provided in Section 30 of this Act.*
- (c) *A small business that is a pass-through entity not subject to the tax imposed by KRS 141.040 and that has tax credits approved under Subchapter 60 of KRS Chapter 154 shall apply the credits against the limited liability entity tax imposed by KRS 141.0401, and shall also distribute the amount of the approved tax credits to each partner, member, or shareholder based on the partner's, member's, or shareholder's distributive share of income as determined for the year during which the tax credits are approved, with the ordering of credits as provided in Section 30 of this Act.*

➔SECTION 69. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*
- (a) *"Class II railroad" means a railroad company classified as a Class II carrier by the federal Surface Transportation Board;*
- (b) *"Class III railroad" means a railroad company classified as a Class III carrier by the federal Surface Transportation Board;*
- (c) *"Qualified expenditures" means expenditures, whether or not otherwise chargeable to a capital account, that are made to maintain or improve railroads located in Kentucky, including roadbeds, bridges, and related structures, that are owned or leased as of January 1, 2008, by a Class II or Class III railroad; and*
- (d) *"Eligible taxpayer" means:*

1. *The owner of any Class II railroad or Class III railroad located in Kentucky; or*
  2. *Any person who transports property using the rail facilities of a Class II railroad or Class III railroad located in Kentucky or furnishes railroad-related property or services to a Class II railroad or Class III railroad located in Kentucky, but only with respect to miles of railroad track assigned to the person by a Class II railroad or Class III railroad for purposes of subsection (3) of this section.*
- (2) *For taxable years beginning after December 31, 2009, an eligible taxpayer shall be entitled to a nonrefundable credit against the taxes imposed by KRS 141.020 or 141.040, and 141.0401 with the ordering of credits as directed in Section 30 of this Act, in an amount equal to fifty percent (50%) of the qualified expenditures paid or incurred by the taxpayer during the taxable year.*
- (3) *The credit allowed under subsection (2) of this section shall not exceed the product of:*
- (a) *Three thousand five hundred dollars (\$3,500) multiplied by:*
  - (b) *The sum of:*
    1. *The number of miles of railroad track in Kentucky owned or leased by the eligible taxpayer as of the close of the taxable year; and*
    2. *The number of miles of railroad track in Kentucky assigned for purposes of this section to the eligible taxpayer by a Class II railroad or Class III railroad which owns or leases the railroad track as of the close of the taxable year.*
- (4) *A mile of railroad track may be taken into account by a qualified taxpayer other than the owner only if the mile of railroad track is assigned to the person by the owner for purposes of this section. Any mile that is so assigned shall not be taken into account by the owner for purposes of this section.*
- (5) *With respect to any assignment of a mile of railroad track under subsection (4) of this section:*
- (a) *The assignment may be made only once per taxable year of the Class II railroad or Class III railroad and shall be treated as made as of the close of the taxable year;*
  - (b) *The mile shall not be taken into account under this section by the railroad for such taxable year; and*
  - (c) *The assignment shall be taken into account for the taxable year of the assignee, which includes the date that the assignment is treated as effective.*
- (6) *If a credit is taken as provided for in subsection (2) of this section, the basis of the track shall be reduced by the amount of credit taken.*

➔SECTION 70. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*
- (a) *"Fossil energy resources" means reserves of coal, oil shale, and natural gas; and*
  - (b) *"Biomass resources" means agricultural materials that may be used for production of transportation fuels such as biodiesel or ethanol or that may themselves be used as a fuel, alone or in combination with a fossil fuel, for generation of electricity.*
- (2) *For taxable years beginning after December 31, 2009:*
- (a) *A corporation that owns fossil energy resources subject to tax under KRS 143.020 or 143A.020 or biomass resources and transports these resources using rail facilities; or*
  - (b) *A railway company subject to tax under KRS 136.120 that serves a corporation that owns fossil energy resources subject to tax under KRS 143.020 or 143A.020 or biomass resources;*
- shall be entitled to a nonrefundable tax credit against the taxes imposed under KRS 141.040 and 141.0401, with the ordering of credits as directed by Section 30 of this Act, in an amount certified by the department pursuant to subsection (4) of this section.*
- (3) (a) *The credit shall be equal to twenty-five percent (25%) of the expenditures paid or incurred by the corporation or railway company to expand or upgrade railroad track, including roadbeds, bridges, and related track structures, to accommodate the transport of fossil energy resources or biomass resources.*

- (b) *The credit amount approved for a calendar year for all taxpayers under this section shall be limited to one million dollars (\$1,000,000).*
- (c) *If the total amount of approved credit exceeds one million dollars (\$1,000,000), the department shall determine the amount of credit each corporation and railway company receives by multiplying one million dollars (\$1,000,000) by a fraction, the numerator of which is the amount of approved credit for a corporation or railway company and the denominator of which is the total approved credit for all corporations and railway companies.*

- (4) *Each corporation or railway company eligible for the credit provided under this section shall file a railroad expansion tax credit claim on forms prescribed by the department by the fifteenth day of the first month following the close of the preceding calendar year. The department shall determine the amount of the approved credit and issue a credit certificate to the corporation or railway company by the fifteenth day of the third month following the close of the calendar year.*

➔SECTION 71. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) *The tax credits established by Sections 69 and 70 of this Act shall not be carried forward to a return for any other period.*
- (2) *If an expenditure by a taxpayer qualifies for credits under more than one (1) of the provisions of Sections 69 and 70 of this Act, the taxpayer may claim credit under one (1) section only.*

➔SECTION 72. A NEW SECTION OF KRS CHAPTER 174 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*

- (a) *"Class II railroad" means a railroad company classified as a Class II carrier by the federal Surface Transportation Board; and*
- (b) *"Class III railroad" means a railroad company classified as a Class III carrier by the federal Surface Transportation Board.*

- (2) *The shortline railroad assistance fund is hereby established in the State Treasury as an interest-bearing fund and shall be administered by the cabinet.*
- (3) *The fund shall be a dedicated fund, and all moneys in the fund shall be used solely to provide financial assistance for the rehabilitation and improvement of a Class II railroad and Class III railroad operating in Kentucky.*
- (4) *Eligible costs for which financial assistance may be provided shall include construction, reconstruction, improvement, or rehabilitation of rail facilities, including tracks, ties, roadbeds, and related structures used for freight rail operation.*
- (5) *Financial assistance provided from the fund shall be limited to:*
  - (a) *Grants; and*
  - (b) *Loans, which shall be made at or below market interest rates, including interest-free loans, at terms not to exceed ten (10) years.*
- (6) *All loan payments and repayments, and all interest payments on loans, shall be credited to the fund.*
- (7) *The cabinet may promulgate administrative regulations regarding procedures for providing financial assistance pursuant to this section.*
- (8) *The shortline railroad assistance fund is authorized to receive funds from appropriations of the General Assembly, repayments of loans and interest thereon, interest from fund principal, grants, donations, and payments to the fund for any lawful purpose.*
- (9) *Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year to be used for the purposes set forth in this section.*
- (10) *The cabinet may enter into agreements with federal or state agencies or any other persons to carry out the provisions of this section.*
- (11) *Any moneys in the fund are hereby appropriated for the purposes set forth in this section.*

➔Section 73. Sections 65 to 67 of this Act shall be known as the Emergency Small Business Jobs Stimulus Act.

➔SECTION 74. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

(a) *"Effective date" means the first day of the month following the month in which the department notifies the governmental entity that it is eligible to receive a sales tax rebate;*

(b) *"Governmental entity" means:*

1. *Any county with a population of less than one hundred thousand (100,000) residents; or*
2. *Any city, agency, instrumentality, quasi-governmental entity, or other political subdivision of the Commonwealth that is located in a county with a population of less than one hundred thousand (100,000) residents; and*

(c) 1. *"Public facility" means a building owned and operated by a governmental entity that is a multipurpose facility open to the general public for performances and programs relating to arts, sports, and entertainment and which includes at least five hundred (500) seats but not more than eight thousand (8,000) seats.*

2. *"Public facility" does not include a university, college, or school gymnasium or auditorium.*

(2) (a) *Notwithstanding KRS 134.580 and 139.770, effective July 1, 2010, a governmental entity may be granted a sales tax rebate of up to one hundred percent (100%) of the Kentucky sales tax generated by the sale of admissions to the public facility and the sale of tangible personal property at the public facility. The tax rebate shall be reduced by the vendor compensation allowed under KRS 139.570 on or after July 1, 2010.*

(b) *The governmental entity shall have no obligation to refund or otherwise return any amount of the sales tax rebate to the persons from whom the sales tax was collected.*

(c) *The total tax rebate for each public facility shall not exceed two hundred fifty thousand dollars (\$250,000) in each calendar year.*

(3) (a) *To be eligible for a sales tax rebate under this section, the governmental entity shall file an application with the department in the form prescribed by the department through the promulgation of an administrative regulation in accordance with KRS Chapter 13A.*

(b) *The department shall:*

1. *Review the application;*
2. *Determine whether the applicant meets the requirements of this section; and*
3. *Notify the applicant in writing whether the applicant qualifies for a rebate and the effective date of qualification.*

(4) *A qualified applicant shall file a request for a sales tax rebate within sixty (60) days following the end of each calendar quarter for sales made during the quarter. The request shall be submitted in the form prescribed by the department through the promulgation of an administrative regulation in accordance with KRS Chapter 13A, and shall include supporting information and documentation as determined necessary by the department to verify the requested tax rebate.*

(5) *The department shall review the request, verify the amount of sales tax rebate due to the governmental entity, and pay the amount determined due within forty-five (45) days of receipt of the request and all necessary supporting information to the extent the cap established by subsection (2)(c) of this section has not been met.*

(6) *Interest shall not be allowed or paid on any sales tax rebate payment made under this section.*

➔SECTION 75. KRS CHAPTER 175B IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

(1) *The purpose of this chapter is to establish a structure for the construction, operation, financing, and oversight of significant transportation projects within the Commonwealth and between the Commonwealth and the state of Indiana. To accomplish this purpose, the Kentucky Public Transportation Infrastructure*

*Authority is established by Section 77 of this Act to review, approve, and monitor all projects eligible for construction and financing under this chapter and, if necessary, to assist with the operation, financing, and management of projects.*

- (2) *All projects approved by the Kentucky Public Transportation Infrastructure Authority shall be managed, constructed, and financed entirely or in part by:*
- (a) *A bi-state authority as provided in Section 80 of this Act; or*
  - (b) *A project authority as provided in Section 81 of this Act.*

➔SECTION 76. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

*As used in this chapter:*

- (1) *"Authority" means the state authority, or a bi-state authority, or a project authority, unless the specific use requires that it apply only to the state authority, or a bi-state authority, or a project authority;*
- (2) *"Bi-state authority" means an authority created under Section 80 of this Act;*
- (3) *"Cabinet" means the Transportation Cabinet;*
- (4) *"Commonwealth" means the Commonwealth of Kentucky;*
- (5) *"Cost" means:*
  - (a) *The cost of construction of the project, including the acquisition of land, rights-of-way, property, rights in land, easements, and interests acquired by the authority for construction of a project;*
  - (b) *The cost of preparing land or property, including demolishing or removing any buildings or structures, and the cost of acquiring any lands to which those buildings or structures may be moved;*
  - (c) *The pro-rata value of all machinery and equipment used in construction of the project;*
  - (d) *Financing charges and provisions for working capital in an amount the authority determines to be reasonable;*
  - (e) *Interest prior to and during construction and, if approved by the authority, for a period up to two (2) years after completion of construction;*
  - (f) *The cost of traffic estimates and of engineering, financial and legal services, plans, specifications, surveys, estimates of cost and revenues, or other expenses necessary or incidental to determining the feasibility or practicability of constructing any project;*
  - (g) *The cost and expense of the relocation or removal of public utilities impacted by a project, including the cost of installing the facilities in a new location, the cost of any lands or any rights or interests in lands, and the cost of any other rights acquired to accomplish the relocation or removal;*
  - (h) *Administrative expenses and any other expenses that are necessary for or incidental to the construction of a project, the financing of the construction, and the placing of the project in operation; and*
  - (i) *The cost of maintenance of the completed project.*

*Any obligation or expense incurred by and reimbursed to the Commonwealth in connection with any of the items of cost set out in this subsection may be regarded as a part of that cost;*

- (6) *"Department" means the Department of Highways;*
- (7) *"Developing authority" means the authority involved in the development of a project;*
- (8) *"Issuing authority" means the authority that will issue or has issued debt associated with a project;*
- (9) *"Local government" means a consolidated local government, an urban-county government, a charter county government, a unified local government, or a county;*
- (10) (a) *"Project" means:*
  - 1. *Any highway or section of a highway designated as part of the federal interstate highway system; or*

2. *Any highway or section of highway built to the standards of the interstate highway system; That would be designated a mega-project by the Federal Highway Administration;*
- (b) *"Project" includes all bridges, tollhouses, garages, and other buildings and facilities which the authority deems necessary for the operation of the project, together with all property, rights, easements, and interests which may be acquired by the authority or by the Commonwealth for the construction and operation of a project;*
- (11) *"Project authority" means an authority created pursuant to Section 81 of this Act;*
- (12) *"Project revenue bonds" means revenue funding bonds, revenue refunding bonds, notes, or other financial obligations issued under this chapter by the issuing authority;*
- (13) *"Public utility facilities" means tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances of any public utility in, on, along, over, or under any project; and*
- (14) *"State authority" means the Kentucky Public Transportation Infrastructure Authority created under Section 77 of this Act.*

➔SECTION 77. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Public Transportation Infrastructure Authority is hereby established as an independent de jure municipal corporation and political subdivision of the Commonwealth constituting a governmental agency and instrumentality of the Commonwealth. The General Assembly hereby finds and declares that in carrying out its functions, powers, and duties as prescribed in this chapter, the state authority will be performing essential public and government functions that improve the public welfare and prosperity of the people of the Commonwealth by promoting the availability of and enhancing accessibility to improved transportation services within the Commonwealth.*
- (2) (a) *The state authority shall be composed of the following eleven (11) voting members:*
1. *The secretary of the Finance and Administration Cabinet, or the secretary's designee;*
  2. *The secretary of the Transportation Cabinet;*
  3. *A representative of the Kentucky Association of Counties, to be appointed by the Governor;*
  4. *A representative of the Kentucky County Judges/Executive Association, to be appointed by the Governor;*
  5. *A representative of the Kentucky League of Cities, to be appointed by the Governor; and*
  6. *Six (6) citizen members to be appointed by the Governor and confirmed by the Senate in accordance with KRS 11.160, at least two (2) of whom shall be familiar with road and bridge design or the financing and administration of transportation infrastructure projects; and*
- (b) *Each Kentucky member who shares duties as a presiding officer of a bi-state authority pursuant to subsection (4)(a)3. of Section 80 of this Act shall serve as a nonvoting ex officio member.*
- (3) *The ex officio members shall serve for the term of their respective offices.*
- (4) *Members appointed pursuant to subsection (2)(a)3. to 6. of this section shall begin their terms on October 1, 2009, and shall be appointed for a term of four (4) years; however, in making initial appointments, the members appointed pursuant to subsection (2)(a)6. of this section shall include two (2) members for a term of two (2) years, two (2) members for a term of three (3) years, and two (2) members for a term of four (4) years.*
- (5) *Vacancies occurring during the term of any member shall be filled in the same manner as the original appointment.*
- (6) *The members of the state authority shall receive no compensation for their services, but shall be entitled to reimbursement for all reasonable expenses necessary and incidental to the performance of their duties and functions as members of the state authority.*
- (7) (a) *Members of the state authority shall be considered public servants subject to KRS Chapter 11A.*
- (b) *The following individuals or entities shall be prohibited from entering into any contract or agreement with the state authority:*

1. *Any member of the state authority, a project authority, or a bi-state authority;*
  2. *Any spouse, child, stepchild, parent, stepparent, or sibling of a member of the state authority, a project authority, or a bi-state authority; and*
  3. *Any corporation, limited liability entity, or other business entity of which a person identified in subparagraph 1. or 2. of this paragraph is an owner, member, or partner or has any other ownership interest.*
- (8) (a) *The chairman of the state authority shall be the secretary of the Transportation Cabinet.*  
 (b) *The members of the state authority shall elect a vice chairman and a secretary from the membership.*
  - (9) *The Finance and Administration Cabinet shall provide fiscal consultant services to the state authority.*
  - (10) *The state authority shall hold its initial meeting no later than November 1, 2009, and shall meet as needed thereafter, or at least quarterly if any bi-state authority or project authority exists, with adequate notice at the call of the chair. A quorum of at least fifty percent (50%) of the members of the state authority must be present for the state authority to take any action. At least eight (8) members shall vote in the affirmative for the state authority to approve a new project. All other business shall be approved by a majority vote of the members present.*
  - (11) (a) *The state authority shall be attached for administrative purposes to the Transportation Cabinet. The state authority shall establish and maintain an office, and the secretary of the state authority shall maintain complete records of the state authority's actions and proceedings as public records open to inspection.*  
 (b) *The state authority shall employ staff as needed in the conduct of its duties and functions, and shall fix their compensation.*
  - (12) *The state authority may promulgate administrative regulations in accordance with KRS Chapter 13A as needed to fulfill the requirements of this chapter.*
  - (13) *The state authority shall comply with applicable provisions of KRS Chapter 45A in the development of a project and the procurement of goods and services.*
  - (14) *The records of the state authority shall be considered open records pursuant to KRS 61.870 to 61.884.*
  - (15) *The meetings of the state authority shall be considered open meetings pursuant to KRS 61.805 to 61.850.*

➔SECTION 78. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

- (1) *The state authority's primary purpose shall be to facilitate the construction, financing, operation, and oversight of projects by entering into bi-state agreements and by creating bi-state authorities and project authorities. To accomplish these purposes, the state authority shall have the power and duty to:*
  - (a) *Take the following actions relating to a bi-state authority authorized pursuant to Section 80 of this Act:*
    1. *To enter into a bi-state agreement;*
    2. *To review and approve project financing plans and development agreements; and*
    3. *To monitor agreements entered into by bi-state authorities; and*
  - (b) *Take the following actions relating to a project authority authorized pursuant to Section 81 of this Act:*
    1. *To request establishment of a project authority;*
    2. *To review and approve project financing plans and development agreements;*
    3. *To monitor activities of project authorities; and*
    4. *To enter into an agreement with the project authority.*
- (2) *The state authority, when authorized pursuant to subsection (4) of this section, may participate as a developing or issuing authority, or both, in the development, construction, or financing of a project by a bi-state or project authority, if necessary. If the state authority participates as a developing or issuing*

*authority, the state authority shall have the powers and duties established in Section 79 of this Act as they apply to that project.*

- (3) *The state authority, as a function of its oversight of any other authority created pursuant to this chapter, shall report before the first issuance of bonds and no less than semiannually thereafter to the Capital Projects and Bond Oversight Committee and to the Interim Joint Committee on Appropriations and Revenue of the Legislative Research Commission, on any projects currently proposed or under development by each authority. Current and proposed levels of bonding for each project shall be reviewed by the Capital Projects and Bond Oversight Committee in accordance with Section 98 of this Act before the bonds shall be issued.*
- (4) (a) *Notwithstanding any other provision of this chapter, the following actions shall not take effect until ratified by the General Assembly:*
1. *The creation of a bi-state authority;*
  2. *The creation of a project authority;*
  3. *The modification or amendment of the scope of any project; and*
  4. *The development of any project undertaken entirely by the state authority.*
- (b) *If any action described in paragraph (a) of this subsection is not ratified by the General Assembly, the creation, approval, or modification shall be considered void.*

➔SECTION 79. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

- (1) *The developing authority and issuing authority may be the same authority or separate authorities, depending on the needs of the project. The developing authority and issuing authority shall have the following powers and duties, as necessary to complete, operate, and maintain the project, subject to the limitations provided in subsection (4) of Section 78 of this Act:*
- (a) *To enter into agreements as necessary to facilitate the development, construction, maintenance, operation, repair, or financing of projects;*
  - (b) *To directly or indirectly construct, reconstruct, maintain, repair, operate, and regulate projects within the Commonwealth, or contract with another entity for these services;*
  - (c) *To issue project revenue bonds of the issuing authority payable solely from the tolls, revenues, rentals, funds from any grant anticipation revenue vehicle (GARVEE), funds appropriated by the state or federal government, and any other funds pledged for their payment, for the purpose of paying all or any cost of a project, and to refund any of its bonds;*
  - (d) *To fix, revise, charge, and collect tolls for transit over any project constructed by it, and for any ancillary or connector routes affected by the project;*
  - (e) *To establish and enforce rules and regulations for the use of a project;*
  - (f) *To acquire and hold any of the following in the name of the developing authority, and to dispose of them as the developing authority deems necessary:*
    1. *Real and personal property, including lands and structures;*
    2. *Rights;*
    3. *Rights-of-way;*
    4. *Franchises;*
    5. *Easements and other interests in lands, including lands lying under water and riparian rights; and*
    6. *Any other item or asset necessary to accomplish its mission;*
  - (g) *To designate the locations and establish, limit, and control points of access to the project, and to prohibit access to the project from any undesignated point;*
  - (h) *To make and enter into contracts and agreements in the performance of duties and the execution of powers under this chapter;*

- (i) *To employ any consultants and to fix their compensation;*
  - (j) *To receive and accept contributions and grants from any source for or in aid of the construction of a project or the operation of the developing or issuing authority;*
  - (k) *To accept interest rate subsidies, rebates, tax credits, or guarantees as provided in the American Recovery and Reinvestment Act of 2009, or as may be provided in subsequent federal legislation providing support to or credit enhancement of governmental obligations;*
  - (l) *To expend any funds provided under this chapter in advertising the facilities and services of a project to the traveling public;*
  - (m) *To enter into lease agreements with the department; and*
  - (n) *To do acts necessary or convenient to carry out the powers expressly granted in this chapter.*
- (2) *Projects may be developed in conjunction with other road development efforts of the Commonwealth that are in compliance with Federal Highway Administration requirements.*
- (3) *Projects developed pursuant to this chapter shall:*
- (a) *Comply with the requirements of KRS Chapters 45A, 174, and 176;*
  - (b) *Be included in the most recently enacted biennial highway construction plan; and*
  - (c) *Comply with all relevant requirements of the Federal Highway Administration.*

➔SECTION 80. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

- (1) *This section shall apply to any project that connects Kentucky with the state of Indiana. A project that connects Kentucky with the state of Indiana shall be constructed and financed by a bi-state authority.*
- (2) (a) *A local government that contains a portion of a proposed project may, by resolution of its governing body, request that its chief executive officer and the Governor appoint a group of Kentucky members to negotiate with a similar group from the state of Indiana for the purpose of proposing the creation of a bi-state authority composed of members from both states, recognized under the laws of both states, and existing for the purpose of financing, constructing, and operating a project or projects mutually beneficial to both states.*
- (b) *If established, the Kentucky membership of the bi-state authority shall consist of seven (7) members, three (3) of whom shall be appointed by the Governor, and four (4) of whom shall be appointed by the chief executive of the local government in which the project is located. The four (4) local government appointees shall be residents of the county in which the project is located. If a project is located in a consolidated local government, no more than two (2) appointees shall reside in the same Kentucky senatorial district. If portions of the project are located in more than one (1) local government, the chief executive of the county or consolidated local government having the largest population shall make the appointments authorized in this paragraph.*
- (c) *Any proposed agreement to establish a bi-state authority shall be presented to the state authority for approval. If the state authority approves the agreement, it shall be submitted to the General Assembly for ratification. If the agreement is ratified by the General Assembly, the state authority shall authorize the establishment of a bi-state authority and shall enter into an agreement with the state of Indiana for the creation of a bi-state authority.*
- (3) (a) *Kentucky members of a proposed bi-state authority who are appointed by the Governor shall be confirmed by the Senate in accordance with KRS 11.160. Members appointed by the chief executive of the local government shall be confirmed by the governing body of the local government.*
- (b) *At least two (2) of the Governor's appointees and two (2) of the chief executive's appointees shall be familiar with road and bridge design or financing and administration of transportation infrastructure projects.*
- (c) *Members of a bi-state authority appointed by the Governor shall serve for four (4) years, except that initial appointments shall be as follows:*
- 1. *One (1) appointee shall serve a term of two (2) years;*

2. *One (1) appointee shall serve a term of three (3) years; and*
3. *One (1) appointee shall serve a term of four (4) years.*
- (d) *The governing body of the local government requesting formation of the bi-state authority shall, by resolution, establish term lengths for the initial and succeeding members who are locally appointed, with each term not to exceed four (4) years.*
- (e) *Members of a bi-state authority representing the Commonwealth may be reappointed upon the expiration of their terms. Members reappointed shall be reconfirmed in the same manner as newly appointed members.*
- (4) (a) *An agreement establishing a bi-state authority shall at a minimum:*
  1. *Establish the total number of members of the bi-state authority;*
  2. *Establish staffing and funding to support the work of the bi-state authority;*
  3. *Designate the process for selecting a presiding officer of the bi-state authority, which shall include a requirement that a member from each state share the duties of presiding; and*
  4. *Require the approval of a majority of the members from each state before any action may be taken or any change may be made by the bi-state authority.*
- (b) *A bi-state authority created pursuant to this section shall take the legal form necessary to conform to the laws of both states. The Commonwealth shall consider the bi-state authority to be an independent de jure municipal corporation, constituting a governmental agency and instrumentality of the appropriate jurisdictions. The bi-state authority shall adopt a name indicative of its location and purpose.*
- (c) *Any bi-state agreement approved pursuant to this section may be presented to the United States Congress for consent thereof by joint resolution as provided in Article I, Section 10, Clause 3 of the United States Constitution.*
- (5) (a) *Members of a bi-state authority appointed from the Commonwealth shall be considered public servants subject to KRS Chapter 11A.*
- (b) *Members of a bi-state authority appointed from the Commonwealth shall receive no compensation for their services, but shall be entitled to reimbursement for all reasonable expenses necessary and incidental to the performance of their duties and functions as members of the bi-state authority.*
- (c) *The following individuals or entities shall be prohibited from entering into any contract or agreement with a bi-state authority:*
  1. *Any member of the bi-state authority appointed to represent the Commonwealth or any member of the state authority or a project authority;*
  2. *Any spouse, child, stepchild, parent, stepparent, or sibling of a member of the bi-state authority appointed to represent the Commonwealth or any spouse, child, stepchild, parent, stepparent, or sibling of a member of the state authority or a project authority; and*
  3. *Any corporation, limited liability entity, or other business entity of which a person identified in subparagraph 1. or 2. of this paragraph is an owner, member, or partner or has any other ownership interest.*
- (d) *A bi-state authority shall comply with the procurement laws of both states that are a party to the agreement creating the bi-state authority, including the provisions of KRS Chapter 45A, in the development of a project and the procurement of goods and services.*
- (e) *A bi-state authority shall comply with the laws of both states concerning the inspection and disclosure of public records, including the provisions of KRS 61.870 to 61.884.*
- (f) *A bi-state authority shall comply with the laws of both states concerning the conduct of open meetings, including the provisions of KRS 61.805 to 61.850.*
- (6) *After creation of the bi-state authority and prior to the execution of any agreements for the construction of the project, the bi-state authority shall prepare a financial plan specifying the construction and financing parameters of the project, including:*

- (a) *A timeline for construction of the project, including financing requirements throughout the construction of the project;*
- (b) *The amount and duration of per-vehicle tolls;*
- (c) *Expected appropriations from the General Assembly to be used for project costs; however, no financial plan shall be submitted or approved which contains expected appropriations by the General Assembly beyond those appropriated in the most recently enacted biennial highway construction plan;*
- (d) *Other sources of funds and expected amounts; and*
- (e) *Other provisions relating to the construction and financing of the project.*

*The Kentucky members of the bi-state authority shall consult with the involved local governments in Kentucky, the department, and the Finance and Administration Cabinet, Office of Financial Management, during the development of the financial plan. Upon completion and approval of the financial plan by the bi-state authority, the plan shall be submitted to the state authority for approval. The state authority shall not approve a financial plan which contains expected appropriations by the General Assembly beyond those appropriated in the most recently enacted biennial highway construction plan. If the financial plan is approved by the state authority, the cabinet and, as necessary, other state agencies or local governments may enter into a development agreement as provided in subsection (7) of this section with all necessary parties for the development of a project.*

- (7) (a) *Upon approval of the financial plan as provided in subsection (6) of this section, a development agreement may be entered into establishing the terms and conditions under which a project will be undertaken and the duties, responsibilities, powers, and authorities of the parties to the agreement. The development agreement shall, at a minimum:*
    - 1. *Require the bi-state authority to submit an annual report to the cabinet and the Legislative Research Commission;*
    - 2. *Require that an annual audit of the bi-state authority be performed by a certified public accountant;*
    - 3. *Include the relevant provisions from the financial plan required by subsection (6) of this section;*
    - 4. *Include provisions detailing the duties, responsibilities, and obligations of each party in relation to the financing, development, operation, and maintenance of the project, and the servicing and retirement of all bonds;*
    - 5. *Establish limits on any reserve funds created for operation, maintenance, or bond servicing, which shall be at a level to adequately operate and maintain the project and ensure proper bond servicing;*
    - 6. *Prohibit the amendment of the project or the financial plan without the prior evaluation and approval by the state authority. No amendment shall be approved that provides for expected appropriations by the General Assembly beyond those appropriated in the most recently enacted biennial highway construction plan;*
    - 7. *Establish a process for the transfer of ownership of the portion of the project that is within the Commonwealth to the Commonwealth upon retirement of all bonds associated with the project; and*
    - 8. *Require the approval of a majority of the members from each state before any action may be taken or any changes may be made by the bi-state authority.*
  - (b) *The parties to the agreement from the Commonwealth shall consult with the department and the Finance and Administration Cabinet, Office of Financial Management, in the development of the agreement.*
  - (c) *Additional agreements may be executed, as necessary to complete the project.*
- (8) *The General Assembly hereby finds and declares that in carrying out the functions, powers, and duties as prescribed in this chapter, a bi-state authority authorized under this section will be performing essential*

*public and government functions that improve the public welfare and prosperity of the people of the Commonwealth by promoting the availability of and enhancing accessibility to improved transportation services within the Commonwealth.*

➔SECTION 81. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

- (1) *Potential projects that are within Kentucky may be developed by a project authority as provided in this section.*
- (2) *A local government that contains a portion of a proposed project may, by resolution of its governing body, request the state authority to evaluate the establishment of a project authority for the purpose of developing a project.*
- (3) *The state authority may request that the department evaluate the proposed project by preparation of a financial plan evaluating all aspects of the proposed project, including:*
  - (a) *The most effective location for the project;*
  - (b) *The impact on local governments and citizens at the location of or along the path of the project;*
  - (c) *A detailed analysis of the proposed cost of the project;*
  - (d) *The potential economic impact to the areas affected by the project;*
  - (e) *The anticipated level of use of the project;*
  - (f) *The amount and duration of per-vehicle tolls;*
  - (g) *Expected appropriations from the General Assembly to be used for the project; however, no financial plan shall be submitted or approved which contains expected appropriations by the General Assembly beyond those appropriated in the most recently enacted biennial highway construction plan;*
  - (h) *Other sources of funds and expected amounts; and*
  - (i) *Any other provisions relating to the construction and financing of the project.*
- (4) *If, based on the project evaluation prepared pursuant to subsection (3) of this section, the state authority and the department determine that the development of the project is economically feasible, the state authority shall submit the proposal to the General Assembly for ratification. If ratified by the General Assembly, the state authority may request that the Governor establish a project authority in accordance with the following:*
  - (a) *The project authority shall be established as an independent de jure municipal corporation and political subdivision of the Commonwealth constituting a governmental agency and instrumentality of the Commonwealth, with the power to contract and be contracted with, acquire and convey property, sue and be sued, and exercise all of the usual powers of corporations not inconsistent with the authority's specifically enumerated purpose and duties;*
  - (b) *The project authority shall adopt a name that includes the name of the project and the words "Project Authority";*
  - (c) *The project authority shall be composed of seven (7) members, three (3) of whom shall be appointed by the Governor and confirmed by the Senate in accordance with KRS 11.160, and four (4) of whom shall be appointed by the chief executive of the local government that requested establishment of the project authority and confirmed by resolution of the local government's governing body;*
  - (d) *Each member of the project authority shall be appointed for a period of four (4) years, except that in making initial appointments, the Governor shall appoint members for one (1), three (3), and four (4) years, and the chief executive shall appoint two (2) members each for two (2) and four (4) years; and*
  - (e) *At least one (1) of the Governor's appointees and two (2) of the chief executive's appointees shall be familiar with road and bridge design or financing and administration of transportation infrastructure projects.*
- (5) (a) *Within ninety (90) days of its establishment under subsection (4) of this section, the project authority shall convene and organize. The project authority shall elect a chair and a vice chair, who shall be members of the project authority and elected by a majority of the project authority members. The*

- project authority shall appoint a secretary and a treasurer who shall not be members of the project authority, each of whom shall serve at the pleasure of the project authority and shall receive compensation as determined and paid by the project authority.*
- (b) The treasurer shall give bond in an amount prescribed by the project authority to the project authority and the state conditioned upon a faithful accounting for all the funds coming into the treasurer's custody, with corporate surety given by a surety company qualified to do business in the state, the premium of which shall be paid by the project authority.*
  - (c) The project authority shall maintain an office, and the secretary of the project authority shall maintain in that office complete records of all the project authority's actions and proceedings, which shall be considered open records under KRS 61.870 to 61.884.*
  - (d) A project authority shall comply with the applicable provisions of KRS Chapter 45A in the development of a project and the procurement of goods and services.*
  - (e) The meetings of a project authority shall be considered open meetings pursuant to KRS 61.805 to 61.850.*
- (6) A majority of the members of a project authority shall constitute a quorum for the transaction of business. The members of a project authority shall receive no compensation for their services in that capacity, but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and functions as members.*
- (7) (a) Members of a project authority shall be considered public servants subject to the provisions of KRS Chapter 11A.*
- (b) The following individuals or entities shall be prohibited from entering into any contract or agreement with a project authority:*
    - 1. Any member of a project authority, a bi-state authority, or the state authority;*
    - 2. Any spouse, child, stepchild, parent, stepparent, or sibling of a member of a project authority, a bi-state authority, or the state authority; and*
    - 3. Any corporation, limited liability entity, or other business entity of which a person identified in subparagraph 1. or 2. of this paragraph is an owner, a member, a partner, or has any other ownership interest.*
- (8) (a) The state authority shall enter into a development agreement with a project authority to establish the terms and conditions under which a project will be undertaken. No financial plan shall be submitted or approved which contains expected appropriations by the General Assembly beyond those appropriated in the most recently enacted biennial highway construction plan.*
- (b) The development agreement shall establish the duties, responsibilities, and powers of the state authority, the project authority, and, as necessary, the cabinet with regard to the project.*
  - (c) The development agreement shall include, at a minimum, all information necessary relating to the creation, development, operation, and disposal of the project. No financial plan shall be submitted or approved which contains expected appropriations by the General Assembly beyond those appropriated in the most recently enacted biennial highway construction plan.*
  - (d) After the proposed project has been approved and set forth in the development agreement, it shall not be changed or expanded without evaluation and approval by the state authority and ratification by the General Assembly.*
  - (e) Additional agreements may be executed, as necessary, between the state authority, the project authority, the department, and the cabinet.*
- (9) The provisions of this chapter relating to the duties, responsibilities, powers, and authorities of the state authority shall apply to a project authority to the extent that the duties, responsibilities, powers, and authorities are required for the project authority to carry out its duties and responsibilities under a development agreement.*
- (10) Upon retirement of all bonds associated with a project developed under this section, the ownership of the project shall be transferred to the Commonwealth pursuant to Section 93 of this Act.*

➔SECTION 82. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

- (1) *If imposed as part of the financing plan, tolls shall be fixed and adjusted by the developing authority to provide a fund sufficient with other revenues, if any, to:*
  - (a) *Pay the cost of maintaining, repairing, and operating the project, unless the cost or any part thereof is being paid by the Commonwealth as authorized by this chapter;*
  - (b) *Pay the principal of and interest on the project revenue bonds; and*
  - (c) *Create reserves not to exceed amounts specified in the development agreement.*
- (2) *Unless a transfer of ownership of a project occurs pursuant to Section 93 of this Act, the developing authority shall at all times maintain ownership and control of all tolls and other revenues generated by the project. Tolls shall not be subject to supervision or regulation by any other department, division, authority, board, bureau, or agency of a local government or the Commonwealth.*
- (3)
  - (a) *The tolls and all other revenues derived from the project, except those revenues necessary to pay the cost of maintenance, repair, and operation and to establish and maintain reserves as may be provided for in the authorization of the issuance of the project revenue bonds or in the trust indenture securing the project revenue bonds, shall be set aside in a sinking fund which shall be pledged to, and charged with, the payment of principal and interest on the project revenue bonds as they become due, and the redemption price or the purchase price of project revenue bonds retired by call or purchase as provided in the authorization of issuance.*
  - (b) *The pledge of the sinking fund shall be valid and binding from the time when the pledge is made.*
  - (c) *The tolls or other revenues received and pledged by the developing authority shall immediately be subject to the lien of the pledge without any physical delivery or further action, and the lien on any pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the developing authority, whether the parties have received notice or not.*
  - (d) *Neither the proceedings nor any trust indenture by which a pledge is created need be filed or recorded, except in the records of the issuing authority.*
  - (e) *The use and disposition of moneys to the credit of the sinking fund shall be subject to the provisions of the proceedings authorizing the issuance of the project revenue bonds or the trust indenture.*

➔SECTION 83. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

- (1) *Each project, upon completion, shall continuously constitute a link between parts of the highway system of the Commonwealth, or between the Commonwealth and the state of Indiana, and shall always be open to public travel, subject to any tolls or restrictions established by the developing authority. All projects shall be subject to evaluation and inspection by the department, and shall meet the standards for public roadways established by the department.*
- (2) *Projects may be developed in coordination with existing and proposed public transit systems.*

➔SECTION 84. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

- (1) *A project developed by an authority under this chapter may include construction of grade separations at intersections of any project or projects with public highways and changing and adjusting the lines and grades of the highways so as to accommodate them to the design of the grade separation, with the approval of the department.*
- (2)
  - (a) *If a project developed by an authority results in the need to change the location or grade of any portion of any public highway, it shall be reconstructed at a location that the authority and the department deem most favorable.*
  - (b) *Any highway relocated under this subsection shall be rebuilt of substantially the same type and in as good condition as the original highway.*
- (3) *Any public highway affected by the construction of any project may be vacated or relocated as a part of the project, with the approval of the department, in the manner provided by law for the vacation or relocation of public roads.*
- (4)
  - (a) *The developing authority and its authorized agents and employees may with proper notice enter upon any lands, waters, and premises in the Commonwealth for the purpose of making any surveys,*

*soundings, drillings, and examinations necessary for the purposes of this chapter. This entry shall not be deemed a trespass, nor shall an entry for these purposes be deemed an entry under any condemnation proceedings which may be then pending.*

- (b) *The developing authority shall reimburse the owners for any actual damage resulting to lands, waters, and premises as a result of these activities on behalf of the developing authority.*
- (5) (a) *The state authority may promulgate administrative regulations in accordance with KRS Chapter 13A for the installation, construction, maintenance, repair, renewal, relocation, and removal of public utility facilities.*
- (b) *If the developing authority determines that it is necessary for any public utility facilities which now are located in, on, along, over, or under the project to be relocated or be removed, the public utility owning or operating the facilities shall relocate or remove them in accordance with the requirements of the Public Service Commission.*
- (c) *In case of a relocation or removal of facilities, the public utility owning or operating the facility and its successors or assigns may maintain and operate these facilities and the necessary appurtenances in the new location, for as long a period and upon the same terms and conditions as it had the right to maintain and operate the facilities in the former location.*
- (d)
  1. *A utility may establish its lines or properties within the right-of-way of a project which has been constructed or is owned, maintained, or operated by an authority only upon approval by the authority.*
  2. *A utility may connect its lines with businesses and other installations permitted by an authority to exist upon the right-of-way of a project.*
- (6) *A developing authority may contract with any person, partnership, association, or corporation desiring the incidental use of any part of the project, including the right-of-way adjoining the project, for the limited purpose of placing telecommunications equipment, power lines, or other utilities, and to fix the terms, conditions, rents, and rates of charges for that use.*

➔SECTION 85. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

*The Commonwealth may enter into agreements with an authority regarding the use of any lands owned by it, including lands lying under water, which are deemed by the authority to be necessary for the construction or operation of any project.*

➔SECTION 86. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

- (1) (a)
  1. *An issuing authority may, by resolution, authorize the issuance of project revenue bonds for the purpose of paying the cost of a project.*
  2. *The principal of and the interest on the project revenue bonds shall be payable solely from the funds provided for the payment.*
  3. *The bonds of each issue:*
    - a. *Shall be dated;*
    - b. *Shall bear interest at a rate or method of determining rates;*
    - c. *Shall mature at a time not exceeding forty (40) years from their issuance date, as determined by the issuing authority; and*
    - d. *May be redeemable before maturity, at the option of the issuing authority, at a price and under terms and conditions as may be fixed by the issuing authority prior to the issuance of the project revenue bonds.*
  4. *The issuing authority shall:*
    - a. *Determine the form of the bonds;*
    - b. *Fix the denomination of the bonds; and*

- c. *Fix the place of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth.*
- (b) 1. *The project revenue bonds shall be signed by the chairman or other presiding officer of the issuing authority or shall bear that officer's facsimile signature, and the seal of the issuing authority or a facsimile shall be affixed to the project revenue bonds and attested by the secretary of the issuing authority.*
- 2. *If any officer whose signature or a facsimile of whose signature appears on any project revenue bonds ceases to be an officer before the delivery of the project revenue bonds, the signature or facsimile shall be valid and sufficient for all purposes as if the officer had remained in office until the delivery.*
- 3. *All project revenue bonds issued under this chapter shall have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth.*
- 4. *The project revenue bonds shall be issued in registered form.*
- 5. *The issuing authority may sell the project revenue bonds in a manner, either at public or private sale, and for a price as it determines will best carry out the purposes of this chapter.*
- (2) (a) *The proceeds of the project revenue bonds of each issue shall be used solely for the payment of the cost of the project or projects for which the bonds were issued, and shall be disbursed in a manner and under the restrictions the issuing authority provides in the resolution authorizing the issuance of the project revenue bonds or in the trust agreement securing the project revenue bonds.*
- (b) *If the proceeds of the project revenue bonds of any issue, by error of estimates or otherwise, are less than the cost of the project or projects, additional project revenue bonds may be issued to provide the amount of the deficit, and, unless otherwise provided in the resolution authorizing the issuance of the project revenue bonds or in the trust agreement securing the project revenue bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the project revenue bonds first issued.*
- (c) *If the proceeds of the project revenue bonds of any issue exceed the cost, the surplus shall be deposited to the credit of the sinking fund required by subsection (3)(a) of Section 82 of this Act for the project revenue bonds or any account or accounts the issuing authority shall have provided for in the proceedings or trust indenture authorizing and securing the project revenue bonds.*
- (3) *Project revenue bonds shall be issued in compliance with KRS 42.420 and 45A.840 to 45A.879. Except as provided in KRS 42.420 and 45A.840 to 45A.879, project revenue bonds may be issued under this chapter without obtaining the consent of any local government, department, division, authority, board, bureau, or agency of the Commonwealth, or of the Commonwealth, and without any other proceedings or conditions other than those proceedings or conditions which are specifically required by this chapter.*

➔SECTION 87. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

- (1) *Project revenue bonds issued by an authority under this chapter shall not constitute a debt of the Commonwealth or any of its political subdivisions, or a pledge of the faith and credit of the Commonwealth or any of its political subdivisions. Project revenue bonds issued pursuant to this chapter, shall be payable solely from the funds provided for in this chapter including but not limited to the funds described in subsection (1)(c) of Section 79 of this Act.*
- (2) *Project revenue bonds shall contain on their face a statement to the effect that neither the Commonwealth nor the issuing authority shall be obligated to pay the bonds or the interest thereon, except from any and all revenues associated with the project for which they are issued, and that neither the faith and credit nor the taxing power of the Commonwealth is pledged to the payment of the principal of or the interest on these project revenue bonds.*

➔SECTION 88. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Any project revenue bonds issued under this chapter may be secured by a trust agreement by and between the issuing authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth. Subject to the restrictions established in Section 86 of this Act, the trust indenture or other document providing for*

*the issuance of the project revenue bonds may pledge or assign the tolls and other revenues to be received, but shall not convey or mortgage any project or any part of a project.*

- (b) *The trust indenture or other document may contain any provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable and proper and not in violation of law, including covenants setting forth the duties of the developing authority and the issuing authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the project for which the project revenue bonds were authorized; the rates of toll or rentals to be charged; and the custody, safeguarding, and application of all moneys.*
- (2) *Any bank or trust company incorporated under the laws of the Commonwealth which acts as depository of the proceeds of project revenue bonds or of revenues may furnish indemnifying project revenue bonds or pledge securities as the issuing authority requires. Any such trust indenture may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. Any trust indenture or proceedings may contain any other provisions that the issuing authority deems reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of the trust indenture or proceedings may be treated as a part of the cost of the operation of the project.*

➔SECTION 89. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

- (1) *All moneys received under this chapter, whether as proceeds from the sale of project revenue bonds or revenues, shall be trust funds to be held and applied solely as provided in this chapter. The trust indenture or any other document authorizing the issuance of project revenue bonds or the collection of any revenues shall provide that any officer, bank, or trust company with which the moneys are deposited shall act as trustee of the moneys and shall hold and apply them for the purposes outlined in this chapter, subject to the provisions of this chapter and the proceedings or trust indenture.*
- (2) *The proceeds of project revenue bonds shall only be invested in direct obligations of the United States of America and direct federal agency obligations or other similar obligations to the extent that the full faith and credit of the United States of America is pledged for the timely payment thereof. Direct obligations shall include money market mutual funds that invest solely in the obligations referenced in this subsection.*

➔SECTION 90. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

*The exercise of the powers granted by this chapter shall be in all respects for the benefit of the people of the Commonwealth, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions. Because the operation and maintenance of projects by any authority created pursuant to this chapter will constitute the performance of essential governmental functions:*

- (1) *An authority shall not be required to pay any taxes or assessments upon any project or any property acquired or used by the authority under this chapter or upon the income therefrom; and*
- (2) *The project revenue bonds issued under this chapter, their transfer, and the income therefrom shall at all times be free from taxation within the Commonwealth.*

➔SECTION 91. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

*Project revenue bonds issued by an authority under this chapter shall be securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, trustees and other fiduciaries, and all other persons who are authorized to invest in bonds or other similar obligations, including capital in their control or belonging to them, are authorized to invest. The project revenue bonds shall be securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or other obligations of the Commonwealth is now or may hereafter be authorized by law.*

➔SECTION 92. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

- (1) *Each project constructed or operated under this chapter shall be maintained and kept in good condition and repair by the developing authority, which may contract with the department or with any local highway department for maintenance of a project.*

- (2) *All private property damaged or destroyed in carrying out the powers granted by this chapter shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation shall be made out of funds provided under this chapter.*
- (3) *All counties, cities, towns, and other political subdivisions and all public agencies and commissions of the Commonwealth, notwithstanding any contrary provision of law, may lease, lend, grant, or convey to an authority any real property which may be necessary or convenient to the effectuation of the authorized purposes of the authority, including public roads and other real property already devoted to public use.*
- (4) *In obtaining property under this chapter, an authority shall pursue the acquisition under the procedures and mandates of KRS 416.540 to 416.670.*

➔SECTION 93. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

- (1) *Not more than one (1) year prior to the scheduled retirement of all bonds issued to finance a project, the department shall undertake an evaluation of the condition of the project to determine if the project has significant maintenance, reconstruction, or rebuilding needs. The evaluation shall be completed no less than one hundred eighty (180) days prior to the scheduled retirement of the bonds.*
- (2) *If significant maintenance, reconstruction, or rebuilding is needed, the department shall determine if funds and reserves held by the developing authority for the project are adequate to accomplish the maintenance, reconstruction, or rebuilding. If additional funds are needed, additional bonds shall be authorized and issued by the same entity that issued the original bonds for the project, pursuant to this chapter.*
- (3) *Tolls for the project shall continue until all bonds are retired.*
- (4) *Notwithstanding any other provisions of this chapter, any portion of a project located within the Commonwealth and financed by an authority shall become the property of the Commonwealth upon the retirement of all bonds issued to finance the project.*
- (5) *Upon the transfer of any project to the Commonwealth pursuant to this section, the department shall evaluate the need for the continuance of any tolls. Tolls may be continued if significant rebuilding, expansion, or maintenance is needed. Tolls collected after ownership of a project has transferred to the Commonwealth shall be deposited into the road fund and used for current and future costs of the project, including maintenance, expansion, rebuilding, reconstruction, or other similar purposes.*
- (6) *When an authority has transferred a project to the Commonwealth pursuant to this section, remaining fund reserves relating to that project shall be transferred to the road fund.*

➔SECTION 94. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

- (1) *Within ninety (90) days after the expiration of each fiscal year, the state authority shall make an annual report of its activities for the preceding fiscal year to the Controller of the Commonwealth within the Finance and Administration Cabinet, the Transportation Cabinet, and the Legislative Research Commission. The report shall set forth a complete operating and financial statement covering its operation during the fiscal year.*
- (2) *The state authority shall cause an audit of its books and accounts to be made at least once each year.*
  - (a) *A request shall be made to the Auditor of Public Accounts for the performance of an annual audit. If the Auditor of Public Accounts declines in writing to assume responsibility for performing the audit or fails to respond in writing within thirty (30) days of receiving the request, the state authority may enter into a contract with a certified public accountant for an audit.*
  - (b) *Any contract with a certified public accountant entered into as a result of the Auditor of Public Accounts either declining to assume responsibility of performing the audit or failing to respond within thirty (30) days of receipt of a written request for an audit shall specify the following:*
    1. *That the certified public accountant shall forward a copy of the audit report and management letters to the Auditor of Public Accounts for review;*
    2. *That the Auditor of Public Accounts may review the certified public accountant's work papers; and*
    3. *That after review of the certified public accountant's work papers, if discrepancies are found, the Auditor of Public Accounts shall notify the authority of the discrepancies. If the certified public accountant does not correct these discrepancies prior to the release of the audit, the*

*Auditor of Public Accounts may conduct its own audit to verify the findings of the certified public accountant's report.*

- (c) *If an audit verifying the findings of the certified public accountant's report is conducted by the Auditor of Public Accounts, the total audit expense incurred shall be an allowable expenditure and shall be paid to the Auditor of Public Accounts. If the audit conducted by the Auditor of Public Accounts discloses discrepancies in the audit by the certified public accountant, the findings of the Auditor of Public Accounts shall be deemed official for all purposes.*

➔SECTION 95. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

*Officers or employees of an authority shall not have any direct interest in the sale or purchase of any project revenue bonds authorized by that authority. Violation of this section shall be punishable by fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one (1) year, or both.*

➔SECTION 96. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

*Board members, officers, and employees of each authority authorized under this chapter shall be indemnified from liability asserted by any person on the bonds or notes of the authority, or any personal liability or accountability by reason of:*

- (1) *The issuance of bonds, notes, or guarantees;*
- (2) *The acquisition, construction, ownership, or operation of any project funded in whole or part by the authority; or*
- (3) *Any other action taken or the failure to act by the authority.*

➔SECTION 97. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

*For a project for which preliminary planning or other work has been undertaken prior to the establishment of an authority, the authority shall follow all previous agreements, records of decision, or contracts entered into by the Commonwealth, subject to any modification necessary as a result of the implementation of this chapter.*

➔SECTION 98. A NEW SECTION OF KRS CHAPTER 45 TO BE NUMBERED KRS 45.794 IS CREATED TO READ AS FOLLOWS:

*The Kentucky Public Transportation Infrastructure Authority created pursuant to Section 77 of this Act shall provide to the committee at its January and July regular meetings a status report of any proposed or active project pursuant to Section 80 or 81 of this Act. The report shall contain the same information as reports required by KRS 45.793.*

➔Section 99. If any provision of this Act is declared unconstitutional or held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end, the provisions of this Act are declared to be severable.

➔Section 100. KRS 152.715 is amended to read as follows:

As used in KRS 152.710 to 152.725, unless the context requires otherwise:

- (1) "Alternative transportation fuels" means *crude oil or* transportation fuels produced by processes that convert coal, waste coal, or biomass resources or *that* extract oil from oil shale *or tar sands* to produce *crude oil or* fuels for powering vehicles, aircraft, and machinery. "Alternative transportation fuels" may include but are not limited to petroleum, jet fuel, gasoline, diesel fuel, hydrogen derived from coal, and diesel fuel and ethanol derived from biomass;
- (2) "Synthetic natural gas" means pipeline quality or industrial quality natural gas produced from coal through gasification processes;
- (3) "Fossil energy resources" means reserves of coal, oil shale, and natural gas; and
- (4) "Biomass resources" means any organic matter that is available on a renewable or recurring basis, including agricultural crops and trees; wood and wood residues; plants, aquatic plants, and plant oils; grasses; animal fats and animal by-products; animal manure; residue materials; and waste products.

➔Section 101. KRS 154.27-020 is amended to read as follows:

- (1) This subchapter shall be known as the "Incentives for Energy Independence Act.
- (2) The General Assembly hereby finds and declares that it is in the best interest of the Commonwealth to induce the location of innovative energy-related businesses in the Commonwealth in order to advance the public purposes of achieving energy independence, creating new jobs and new investment, and creating new sources of tax revenues that but for the inducements to be offered by the authority to approved companies would not exist.
- (3) The purpose of this subchapter is to assist the Commonwealth in moving to the forefront of national efforts to achieve energy independence by reducing the Commonwealth's reliance on imported energy resources. The provisions of this subchapter seek to accomplish this purpose by providing incentives for companies that, in a carbon capture ready manner, construct, retrofit, or upgrade facilities for the purpose of:
  - (a) Increasing the production and sale of alternative transportation fuels;
  - (b) Increasing the production and sale of synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels, from coal, biomass resources, or waste coal through a gasification process; or
  - (c) Generating electricity for sale through alternative methods such as solar power, wind power, biomass resources, landfill methane gas, hydropower, or other similar renewable resources.
- (4) To qualify for the incentives provided in this subchapter, the following requirements shall be met:
  - (a) For an alternative fuel facility or gasification facility that uses *oil shale, tar sands, or* coal as the primary feedstock, the minimum capital investment shall be one hundred million dollars (\$100,000,000);
  - (b) For an alternative fuel facility or gasification facility that uses biomass resources as the primary feedstock, the minimum capital investment shall be twenty-five million dollars (\$25,000,000); and
  - (c) For a renewable energy facility, the minimum capital investment shall be one million dollars (\$1,000,000).
- (5) The incentives under the Incentives for Energy Independence Act are as follows:
  - (a) An advance disbursement of post-construction incentives for which an approved company has been approved, the maximum amount of which is based upon the estimated labor component of the total capital investment of the eligible project, and the utilization of Kentucky residents during the construction period as set forth in KRS 154.27-090;
  - (b) Sales and use tax incentives of up to one hundred percent (100%) of the taxes paid on purchases of tangible personal property made to construct, retrofit, or upgrade an eligible project, as set forth in KRS 139.517 and 154.27-070;
  - (c) Up to eighty percent (80%) of the severance taxes paid on the purchase or severance of coal that is subject to the tax imposed under KRS 143.020 and that is specifically used by an alternative fuel facility or a gasification facility as feedstock for an eligible project, as set forth in KRS 143.024 and 154.27-060;
  - (d) Up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.040 or 141.020, and the limited liability entity tax imposed under KRS 141.0401 on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the eligible project, as set forth in KRS 141.421 and 154.27-080; and
  - (e) Authorization for the approved company to impose a wage assessment of up to four percent (4%) of the gross wages of each employee subject to the Kentucky income tax:
    1. Whose job was created as a result of the eligible project;
    2. Who is employed by the approved company to work at the facility; and
    3. Who is on the payroll of the approved company or an affiliate of the approved company;as set forth in KRS 154.27-080.
- (6) The maximum recovery from all incentives approved under this subchapter for an eligible project shall not exceed fifty percent (50%) of the capital investment in the eligible project.

- (7) The incentives available to an approved company shall be negotiated with and approved by the authority.
- (8) If a newly constructed facility that qualifies for incentives under this subchapter is later upgraded or retrofitted in a manner that would qualify for incentives under this subchapter, the retrofit or upgrade shall be a separate eligible project, and the minimum investment requirements and carbon capture readiness requirements, if required, shall be met for the retrofit or upgrade to qualify for incentives under this subchapter.
- (9) The General Assembly finds that the authorities granted by this subchapter are proper governmental and public purposes for which public moneys may be expended.

➔Section 102. KRS 154.30-010 is amended to read as follows:

As used in this subchapter:

- (1) "Activation date" means:
  - (a) ***For all projects except those described in paragraph (b) of this subsection, the date established any time within a two (2) year period after the commencement date. The Commonwealth may extend the two (2) year period to no more than four (4) years upon written application by the agency requesting the extension; and***
  - (b) ***For signature projects approved under KRS 154.30-050(2)(a), the date established any time within a five (5) year period after the commencement date.***

The activation date is the date on which the time period for the pledge of incremental revenues shall commence. ~~The Commonwealth may extend the two (2) year period to no more than four (4) years upon written application by the agency requesting the extension.~~ To implement the activation date, the agency that is a party to the tax incentive agreement shall notify the office;

- (2) "Agency" means:
  - (a) An urban renewal and community development agency established under KRS Chapter 99;
  - (b) A development authority established under KRS Chapter 99;
  - (c) A nonprofit corporation;
  - (d) A housing authority established under KRS Chapter 80;
  - (e) An air board established under KRS 183.132 to 183.160;
  - (f) A local industrial development authority established under KRS 154.50-301 to 154.50-346;
  - (g) A riverport authority established under KRS 65.510 to 65.650; or
  - (h) A designated department, division, or office of a city or county;
- (3) "Approved public infrastructure costs" means costs associated with the acquisition, installation, construction, or reconstruction of public works, public improvements, and public buildings, including planning and design costs associated with the development of such public amenities. "Approved public infrastructure costs" includes but is not limited to costs incurred for the following:
  - (a) Land preparation, including demolition and clearance work;
  - (b) Buildings;
  - (c) Sewers and storm drainage;
  - (d) Curbs, sidewalks, promenades, and pedways;
  - (e) Roads;
  - (f) Street lighting;
  - (g) The provision of utilities;
  - (h) Environmental remediation;
  - (i) Floodwalls and floodgates;

- (j) Public spaces or parks;
  - (k) Parking;
  - (l) Easements and rights-of-way;
  - (m) Transportation facilities;
  - (n) Public landings;
  - (o) Amenities, such as fountains, benches, and sculptures; and
  - (p) Riverbank modifications and improvements;
- (4) "Approved signature project costs" means:
- (a) The acquisition of land for portions of the project that are for infrastructure; and
  - (b) Costs associated with the acquisition, installation, development, construction, improvement, or reconstruction of infrastructure, including planning and design costs associated with the development of infrastructure, including but not limited to parking structures, including portions of parking structures that serve as platforms to support development above;
- that have been determined by the commission to represent a unique challenge in the financing of a project such that the project could not be developed without incentives intended by this chapter to foster economic development;
- (5) "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;
- (6) "Capital investment" means:
- (a) Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of a project;
  - (b) The cost of acquiring land or rights in land within the development area on the footprint of the project, and any cost incident 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 a project which is not paid by the contractor or contractors or otherwise provided;
  - (d) All costs of architectural and engineering services, including test borings, surveys, estimates, plans, specifications, preliminary investigations, supervision of construction, and the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, and rehabilitation of a project;
  - (e) All costs that are required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, and rehabilitation of a project; and
  - (f) All other costs of a nature comparable to those described in this subsection;
- (7) "City" means any city, consolidated local government, or urban-county government;
- (8) "Commencement date" means the date on which a tax incentive agreement is executed;
- (9) "Commonwealth" means the Commonwealth of Kentucky;
- (10) "County" means any county, consolidated local government, charter county, unified local government, or urban-county government;
- (11) "CPI" means the nonseasonally adjusted Consumer Price Index for all urban consumers, all items, base year computed for 1982 to 1984 equals one hundred (100), published by the United States Department of Labor, Bureau of Labor Statistics;
- (12) "Department" means the Department of Revenue;
- (13) "Development area" means an area established under KRS 65.7049, 65.7051, and 65.7053;
- (14) "Economic development projects" means projects which are approved for tax credits under Subchapter 20, 22, 23, 24, 25, 26, 27, 28, 34, or 48 of KRS Chapter 154;

- (15) "Financing costs" means principal, interest, costs of issuance, debt service reserve requirements, underwriting discount, costs of credit enhancement or liquidity instruments, and other costs directly related to the issuance of bonds or debt for approved public infrastructure costs or approved signature project costs for projects approved pursuant to KRS 154.30-050;
- (16) "Footprint" means the actual perimeter of a discrete, identified project within a development area. The footprint shall not include any portion of a development area outside the area for which actual capital investments are made;
- (17) "Governing body" means the body possessing legislative authority in a city or county;
- (18) "Increment bonds" means bonds and notes issued for the purpose of paying the costs of one (1) or more projects;
- (19) "Incremental revenues" means:
- (a) The amount of revenues received by a taxing district, as determined by subtracting old revenues from new revenues in a calendar year with respect to a development area, or a project within a development area; or
  - (b) The amount of revenues received by the Commonwealth as determined by subtracting old revenues from new revenues in a calendar year with respect to the footprint;
- (20) "Local participation agreement" means the agreement entered into under KRS 65.7063;
- (21) "Local tax revenues" has the same meaning as in KRS 65.7045;
- (22) "New revenues" means:
- (a) The amount of local tax revenues received by a taxing district with respect to a development area in any calendar year beginning with the year in which the activation date occurred; or
  - (b) The amount of state tax revenues received by the Commonwealth with respect to the footprint in any calendar year beginning with the year in which the activation date occurred;
- (23) "Old revenues" means:
- (a) The amount of local tax revenues received by a taxing district with respect to a development area during the last calendar year prior to the commencement date; or
  - (b) 1. The amount of state tax revenues received by the Commonwealth within the footprint during the last calendar year prior to the commencement date. If the authority determines that the amount of state tax revenues received during the last calendar year prior to the commencement date does not represent a true and accurate depiction of revenues, the authority may consider revenues for a period of no longer than three (3) calendar years prior to the commencement date, so as to determine a fair representation of state tax revenues. The amount determined by the authority shall be specified in the tax incentive agreement. If state tax revenues were derived from the footprint prior to the commencement date, old revenues shall increase each calendar year by:
    - a. The percentage increase, if any, of the CPI or a comparable index; or
    - b. An alternative percentage increase that is determined to be appropriate by the authority.The method for increasing old revenues shall be set forth in the tax incentive agreement;
  2. If state revenues were derived from the footprint prior to the commencement date, the calculation of incremental revenues shall be based on the value of old revenues as increased using the method prescribed in subparagraph 1. of this paragraph to reflect the same calendar year as is used in the determination of new revenues.
- (24) "Outstanding" means increment bonds that have been issued, delivered, and paid for by the purchaser, except any of the following:
- (a) Increment bonds canceled upon surrender, exchange, or transfer, or upon payment or redemption;
  - (b) Increment bonds in replacement of which or in exchange for which other increment bonds have been issued; or

- (c) Increment bonds for the payment, redemption, or purchase for cancellation prior to maturity, of which sufficient moneys or investments, in accordance with the ordinance or other proceedings or any applicable law, by mandatory sinking fund redemption requirements, or otherwise, have been deposited, and credited in a sinking fund or with a trustee or paying or escrow agent, whether at or prior to their maturity or redemption, and, in the case of increment bonds to be redeemed prior to their stated maturity, notice of redemption has been given or satisfactory arrangements have been made for giving notice of that redemption, or waiver of that notice by or on behalf of the affected bond holders has been filed with the issuer or its agent;
- (25) "Project" means any property, asset, or improvement located in a development area and certified by the governing body as:
- (a) Being for a public purpose; and
  - (b) Being for the development of facilities for residential, commercial, industrial, public, recreational, or other uses, or for open space, including the development, rehabilitation, renovation, installation, improvement, enlargement, or extension of real estate and buildings; and
  - (c) Contributing to economic development or tourism; and
  - (d) Meeting the additional requirements established by KRS 154.30-040, 154.30-050, or 154.30-060;
- (26) "Signature project" means a project approved under KRS 154.30-050;
- (27) "State real property ad valorem tax" means real property ad valorem taxes levied under KRS 132.020(1)(a);
- (28) "State tax revenues" means revenues received by the Commonwealth from one (1) or more of the following sources:
- (a) State real property ad valorem taxes;
  - (b) Individual income taxes levied under KRS 141.020, other than individual income taxes that have already been pledged to support an economic development project within the development area;
  - (c) Corporation income taxes levied under KRS 141.040, other than corporation income taxes that have already been pledged to support an economic development project within the development area;
  - (d) Limited liability entity taxes levied under KRS 141.0401, other than limited liability entity taxes that have already been pledged to support an economic development project within the development area; and
  - (e) Sales taxes levied under KRS 139.200, excluding sales taxes already pledged for:
    1. Approved tourism attraction projects, as defined in KRS 148.851, within the development area; and
    2. Projects which are approved for sales tax refunds under Subchapter 20 of KRS Chapter 154 within the development area;
- (29) "Tax incentive agreement" means an agreement entered into in accordance with KRS 154.30-070; and
- (30) "Termination date" means:
- (a) For a tax incentive agreement satisfying the requirements of KRS 154.30-040 or 154.30-060, a date established by the tax incentive agreement that is no more than twenty (20) years from the activation date. However, the termination date for a tax incentive agreement shall in no event be more than forty (40) years from the establishment date of the development area to which the tax incentive agreement relates; and
  - (b) For a project grant agreement satisfying the requirements of KRS 154.30-050, a date established by the tax incentive agreement that is no more than thirty (30) years from the activation date. However, the termination date for a tax incentive agreement shall in no event be more than forty (40) years from the establishment date of the development area to which the tax incentive agreement relates.

➔Section 103. Notwithstanding KRS 65.7044(6), the provisions of Section 102 this Act shall apply retroactively and any agreements entered into prior to the effective date of this Act for projects approved under KRS 154.30-050(2)(a) that have not been activated as of the effective date of this Act shall be amended to reflect the revised activation date provided for in Section 102 this Act.

➔SECTION 104. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*
- (a) *"Approved time" means three hundred sixty-five (365) days beginning thirty (30) days after the effective date of this Act;*
  - (b) *"New home tax credit cap" means a maximum of twenty-five million dollars (\$25,000,000) allocated to qualified buyers on a first come, first served basis;*
  - (c) *"Purchase" means a point within the approved time when escrow closes between the qualified buyer and the seller of the qualified principal residence;*
  - (d) *"Qualified buyer" means a resident who:*
    - 1. *Purchases a qualified principal residence; and*
    - 2. *Is not eligible to receive the first-time homebuyer credit allowable under Section 36 of the Internal Revenue Code; and*
  - (e) *"Qualified principal residence" means a single-family dwelling which is:*
    - 1. *Either detached or attached;*
    - 2. *Certified by the seller as having never been occupied; and*
    - 3. *Purchased to be the principal residence of the qualified buyer for a minimum of two (2) years.*
- (2) (a) *There is hereby created a one (1) time, nonrefundable new home tax credit against the tax imposed by KRS 141.020, with the ordering of credits as provided in Section 30 of this Act.*
- (b) *The credit shall apply to the tax liability of a qualified buyer who purchases a qualified principal residence within the approved time.*
- (c) *Within seven (7) calendar days after the purchase of a qualified principal residence, the qualified buyer shall submit via fax a completed application for the new home tax credit on forms provided by the department.*
- (d) 1. *The new home tax credit allowable to the qualified buyer shall be equal to five thousand dollars (\$5,000), unless the new home tax credit cap has been reached.*
2. *If the new home tax credit cap has been reached, the qualified buyer shall not receive a credit.*
- (e) *The new home tax credit is not refundable and any unused amount in the taxable year of the purchase cannot be carried forward or back to another taxable year.*
- (f) *Any credit that reduced the tax imposed by KRS 141.020 shall be repaid in total if the qualified buyer does not occupy the new home for at least two (2) years immediately following the purchase.*
- (3) *To administer the new home tax credit and new home tax credit cap, the department shall:*
- (a) *Create the application required to be filed by a qualified buyer;*
  - (b) *Promulgate administrative regulations to administer the new home tax credit, including but not limited to:*
    - 1. *The process of recapture of the credit if the qualified buyer does not maintain the new home as his or her principal residence for two (2) years; and*
    - 2. *How to allocate the new home tax credit between unmarried co-purchasers or between married individuals who file separate returns;*
  - (c) *Create a Web site containing the amount of the total credit allocated to date, the date the last processed application was received, and the remaining credit available to qualified buyers;*
  - (d) *Establish a dedicated telephone line to receive faxed applications;*
  - (e) *Allow the date and time stamp from the faxed application as the order within which the application was received; and*

*(f) Notify the qualified buyer of the allowable credit available to the qualified buyer by a credit allocation letter, which shall be submitted by the qualified buyer with his or her return.*

**(4) The application for the new home tax credit shall be void if:**

*(a) The home has been previously occupied;*

*(b) The application is not received within seven (7) calendar days from the purchase; or*

*(c) The application is received after the new home tax credit cap has been reached.*

➔Section 105. KRS 141.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Commissioner" means the commissioner of the Department of Revenue;
- (2) "Department" means the Department of Revenue;
- (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2006, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2006, that would otherwise terminate, and as modified by KRS 141.0101, except that for property placed in service after September 10, 2001, only the depreciation and expense deductions allowed under Sections 168 and 179 of the Internal Revenue Code in effect on December 31, 2001, exclusive of any amendments made subsequent to that date, shall be allowed, and including the provisions of the Military Family Tax Relief Act of 2003, Pub. L. No. 108-121, effective on the dates specified in that Act;
- (4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;
- (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;
- (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (7) "Individual" means a natural person;
- (8) "Modified gross income" means the greater of:
  - (a) Adjusted gross income as defined in Section 62 of the Internal Revenue Code of 1986, including any subsequent amendments in effect on December 31 of the taxable year, and adjusted as follows:
    1. Include interest income derived from obligations of sister states and political subdivisions thereof; and
    2. Include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or
  - (b) Adjusted gross income as defined in subsection (10) of this section and adjusted to include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);
- (9) "Gross income," in the case of taxpayers other than corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code;
- (10) "Adjusted gross income," in the case of taxpayers other than corporations, means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
  - (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;
  - (b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;
  - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
  - (d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;

- (e) Exclude Social Security and railroad retirement benefits subject to federal income tax;
- (f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;
- (g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;
- (h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the Armed Forces of the United States or any dependent of such person who served in Vietnam;
- (i) 1. For taxable years ending prior to December 31, 2005, exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.  
The "applicable amount" shall be:
  - a. Twenty-five percent (25%), but not more than six thousand two hundred fifty dollars (\$6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;
  - b. Fifty percent (50%), but not more than twelve thousand five hundred dollars (\$12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;
  - c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars (\$18,750), for taxable years beginning after December 31, 1996, and before January 1, 1998; and
  - d. One hundred percent (100%), but not more than thirty-five thousand dollars (\$35,000), for taxable years beginning after December 31, 1997.
- 2. For taxable years beginning after December 31, 2005, exclude up to forty-one thousand one hundred ten dollars (\$41,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
- 3. As used in this paragraph:
  - a. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;
  - b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and
  - c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code;
- (j) 1. a. Exclude the portion of the distributive share of a shareholder's net income from an S corporation subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300; and
  - b. Exclude the portion of the distributive share of a shareholder's net income from an S corporation related to a qualified subchapter S subsidiary subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300.
- 2. The shareholder's basis of stock held in a S corporation where the S corporation or its qualified subchapter S subsidiary is subject to the franchise tax imposed under KRS 136.505 or the capital

stock tax imposed under KRS 136.300 shall be the same as the basis for federal income tax purposes;

- (k) Exclude for taxable years beginning after December 31, 1998, to the extent not already excluded from gross income, any amounts paid for health insurance, or the value of any voucher or similar instrument used to provide health insurance, which constitutes medical care coverage for the taxpayer, the taxpayer's spouse, and dependents during the taxable year. Any amounts paid by the taxpayer for health insurance that are excluded pursuant to this paragraph shall not be allowed as a deduction in computing the taxpayer's net income under subsection (11) of this section;
  - (l) Exclude income received for services performed as a precinct worker for election training or for working at election booths in state, county, and local primary, regular, or special elections;
  - (m) Exclude any amount paid during the taxable year for insurance for long-term care as defined in KRS 304.14-600;
  - (n) Exclude any capital gains income attributable to property taken by eminent domain;
  - (o) Exclude any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;
  - (p) Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;
  - (q) Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted;
  - (r) Exclude any amount received as a result of a tobacco quota buydown program that all quota owners and growers are eligible to participate in;
  - (s) Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner;~~and~~
  - (t) Exclude all income from all sources for active duty and reserve members and officers of the Armed Forces of the United States or National Guard who are killed in the line of duty, for the year during which the death occurred and the year prior to the year during which the death occurred. For the purposes of this paragraph, "all income from all sources" shall include all federal and state death benefits payable to the estate or any beneficiaries; *and*
  - (u) ***For taxable years beginning on or after January 1, 2010, exclude all military pay received by active duty members of the Armed Forces of the United States, members of reserve components of the Armed Forces of the United States, and members of the National Guard, including compensation for state active duty as described in KRS 38.205;***
- (11) "Net income," in the case of taxpayers other than corporations, means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction allowed by KRS 141.0202, minus any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families, and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
- (a) Any deduction allowed by the Internal Revenue Code for state or foreign taxes measured by gross or net income, including state and local general sales taxes allowed in lieu of state and local income taxes under the provisions of Section 164(b)(5) of the Internal Revenue Code;
  - (b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);
  - (c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and

- (d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
- (12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:
- (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;
  - (b) Exclude all dividend income received after December 31, 1969;
  - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
  - (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;
  - (e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;
  - (f) Include the amount calculated under KRS 141.205;
  - (g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income;
  - (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);
  - (i) Exclude any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;
  - (j) Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;
  - (k) Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted;
  - (l) Exclude any amount received as a result of a tobacco quota buydown program that all quota owners and growers are eligible to participate in;
  - (m) For taxable years beginning after December 31, 2004, and before January 1, 2007, exclude the distributive share income or loss received from a corporation defined in subsection (24)(b) of this section whose income has been subject to the tax imposed by KRS 141.040. The exclusion provided in this paragraph shall also apply to a taxable year that begins prior to January 1, 2005, if the tax imposed by KRS 141.040 is paid on the distributive share income by a corporation defined in subparagraphs 2. to 8. of subsection (24)(b) of this section with a return filed for a period of less than twelve (12) months that begins on or after January 1, 2005, and ends on or before December 31, 2005. This paragraph shall not be used to delay payment of the tax imposed by KRS 141.040; and
  - (n) Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner;
- (13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202, minus any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families, and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:

- (a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;
  - (b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;
  - (c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;
  - (d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;
  - (e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);
  - (f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
  - (g) Any deduction prohibited by KRS 141.205; and
  - (h) Any dividends-paid deduction of any captive real estate investment trust;
- (14) (a) "Taxable net income," in the case of corporations that are taxable in this state, means "net income" as defined in subsection (13) of this section;
- (b) "Taxable net income," in the case of corporations that are taxable in this state and taxable in another state, means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120. A corporation is taxable in another state if, in any state other than Kentucky, the corporation is required to file a return for or pay a net income tax, franchise tax measured by net income, franchise tax for the privilege of doing business, or corporate stock tax;
- (c) "Taxable net income," in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year; and
- (d) "Taxable net income," in the case of a corporation that meets the requirements established under Section 856 of the Internal Revenue Code to be a real estate investment trust, means "real estate investment trust taxable income" as defined in Section 857(b)(2) of the Internal Revenue Code, except that a captive real estate investment trust shall not be allowed any deduction for dividends paid;
- (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;
- (16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the commissioner, "taxable year" means the period for which the return is made;
- (17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;
- (18) "Nonresident" means any individual not a resident of this state;
- (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;
- (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;

- (21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;
- (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
- (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;
- (24) (a) For taxable years beginning before January 1, 2005, and after December 31, 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of the Internal Revenue Code; and
- (b) For taxable years beginning after December 31, 2004, and before January 1, 2007, "corporations" means:
1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;
  2. S corporations as defined in Section 1361(a) of the Internal Revenue Code;
  3. A foreign limited liability company as defined in KRS 275.015;
  4. A limited liability company as defined in KRS 275.015;
  5. A professional limited liability company as defined in KRS 275.015;
  6. A foreign limited partnership as defined in KRS 362.2-102(9);
  7. A limited partnership as defined in KRS 362.2-102(14);
  8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-101(7) or (8);
  9. A real estate investment trust as defined in Section 856 of the Internal Revenue Code;
  10. A regulated investment company as defined in Section 851 of the Internal Revenue Code;
  11. A real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code;
  12. A financial asset securitization investment trust as defined in Section 860L of the Internal Revenue Code; and
  13. Other similar entities created with limited liability for their partners, members, or shareholders.
- For purposes of this paragraph, "corporation" shall not include any publicly traded partnership as defined by Section 7704(b) of the Internal Revenue Code that is treated as a partnership for federal tax purposes under Section 7704(c) of the Internal Revenue Code or its publicly traded partnership affiliates. As used in this paragraph, "publicly traded partnership affiliates" shall include any limited liability company or limited partnership for which at least eighty percent (80%) of the limited liability company member interests or limited partner interests are owned directly or indirectly by the publicly traded partnership;
- (25) "Doing business in this state" includes but is not limited to:
- (a) Being organized under the laws of this state;
  - (b) Having a commercial domicile in this state;
  - (c) Owning or leasing property in this state;
  - (d) Having one (1) or more individuals performing services in this state;
  - (e) Maintaining an interest in a pass-through entity doing business in this state;
  - (f) Deriving income from or attributable to sources within this state, including deriving income directly or indirectly from a trust doing business in this state, or deriving income directly or indirectly from a single-member limited liability company that is doing business in this state and is disregarded as an entity separate from its single member for federal income tax purposes; or

(g) Directing activities at Kentucky customers for the purpose of selling them goods or services.

Nothing in this subsection shall be interpreted in a manner that goes beyond the limitations imposed and protections provided by the United States Constitution or Pub. L. No. 86-272;

- (26) "Pass-through entity" means any partnership, S corporation, limited liability company, limited liability partnership, limited partnership, or similar entity recognized by the laws of this state that is not taxed for federal purposes at the entity level, but instead passes to each partner, member, shareholder, or owner their proportionate share of income, deductions, gains, losses, credits, and any other similar attributes;
- (27) "S corporation" means "S corporation" as defined in Section 1361(a) of the Internal Revenue Code;
- (28) "Limited liability pass-through entity" means any pass-through entity that affords any of its partners, members, shareholders, or owners, through function of the laws of this state or laws recognized by this state, protection from general liability for actions of the entity; and
- (29) "Captive real estate investment trust" means a real estate investment trust as defined in Section 856 of the Internal Revenue Code that meets the following requirements:
- (a)
    1. The shares or other ownership interests of the real estate investment trust are not regularly traded on an established securities market; or
    2. The real estate investment trust does not have enough shareholders or owners to be required to register with the Securities and Exchange Commission; and
  - (b)
    1. The maximum amount of stock or other ownership interest that is owned or constructively owned by a corporation equals or exceeds:
      - a. Twenty-five percent (25%), if the corporation does not occupy property owned, constructively owned, or controlled by the real estate investment trust; or
      - b. Ten percent (10%), if the corporation occupies property owned, constructively owned, or controlled by the real estate investment trust.

The total ownership interest of a corporation shall be determined by aggregating all interests owned or constructively owned by a corporation;
    2. For the purposes of this paragraph:
      - a. "Corporation" means a corporation taxable under KRS 141.040, and includes an affiliated group as defined in KRS 141.200, that is required to file a consolidated return pursuant to the provisions of KRS 141.200; and
      - b. "Owned or constructively owned" means owning shares or having an ownership interest in the real estate investment trust, or owning an interest in an entity that owns shares or has an ownership interest in the real estate investment trust. Constructive ownership shall be determined by looking across multiple layers of a multilayer pass-through structure; and
  - (c) The real estate investment trust is not owned by another real estate investment trust.

➔SECTION 106. A NEW SECTION OF KRS CHAPTER 138.510 TO 138.550 IS CREATED TO READ AS FOLLOWS:

*As used in KRS 138.510 to 138.550:*

- (1) *"Authority" means the Kentucky Horse Racing Authority;*
- (2) *"Association" has the same meaning as in KRS 230.210;*
- (3) *"Daily average live handle" means the total amount wagered at a track on live racing and does not include money wagered:*
  - (a) *At a receiving track;*
  - (b) *At a simulcast facility;*
  - (c) *On telephone account wagering;*
  - (d) *Through advance deposit account wagering; or*

- (e) *At a track participating as a receiving track or simulcast facility displaying simulcasts and conducting interstate wagering as permitted by KRS 230.3771 and 230.3773;*
- (4) *"Department" means the Department of Revenue;*
- (5) *"Fiscal year" means a time frame beginning 12:01 a.m. July 1, and ending 12 midnight June 30;*
- (6) *"Host track" has the same meaning as in KRS 230.210;*
- (7) *"Intertrack wagering" has the same meaning as in KRS 230.210;*
- (8) *"Interstate wagering" has the same meaning as in KRS 230.210;*
- (9) *"Receiving track" has the same meaning as in KRS 230.210;*
- (10) *"Simulcast facility" has the same meaning as in KRS 230.210;*
- (11) *"Telephone account wagering" has the same meaning as in KRS 230.210; and*
- (12) *"Track" has the same meaning as in KRS 230.210.*

➔Section 107. KRS 138.510 is amended to read as follows:

- (1) (a) Except as *provided in paragraphs (b) and (d) of this subsection* ~~for the conduct of harness racing at a county fair~~, an excise tax is imposed on all tracks conducting pari-mutuel *wagering on live* racing under the jurisdiction of the ~~Kentucky Horse Racing~~ authority.
1. For each track with a daily average *live* handle of one million two hundred thousand dollars (\$1,200,000) or above, the tax shall be in the amount of three and one-half percent (3.5%) of all money wagered *on live races at the track* during the fiscal year. ~~A fiscal year as used in this subsection and subsection (3) of this section shall begin at 12:01 a.m. July 1 and end at 12 midnight June 30.~~
  2. For each track with a daily average *live* handle under one million two hundred thousand dollars (\$1,200,000), the tax shall be ~~an amount equal to~~ one and one-half percent (1.5%) of all money wagered *on live races at the track* during the fiscal year.
- (b) 1. ~~However, Effective January 1, 2006, If:~~
- a. A ~~host~~ track located in this state is the *host track for* ~~location for the conduct of~~ a *live* one (1) *or two* (2) day international horse racing event *in 2010* that distributes in excess of a total of ~~fifteen~~ *ten* million dollars ~~(\$15,000,000)~~ *(\$10,000,000)* in purses *during the international horse racing event; and*
  - b. *The organization responsible for selecting the location of the same international horse racing event in subsequent years contractually agrees to conduct the international horse racing event at a host track in this state in calendar year 2011 or 2012 or calendar years 2011 and 2012;*
- ~~then the~~ ~~an~~ excise tax *imposed by paragraph (a) of this subsection* shall not be imposed on pari-mutuel wagering on *any live racing conducted during the one (1) or two (2) day international horse racing event held at a host track within this state in calendar years 2010 through 2012* ~~that day at the race track~~.
2. *Beginning January 1, 2013, if the requirements of subparagraph 1. of this paragraph are satisfied, the* ~~This~~ tax exemption *established by subparagraph 1. of this paragraph* shall remain in effect for any succeeding one (1) *or two* (2) day international horse racing event if the event returns within three (3) years of ~~a~~ *the* previously-held *international horse racing* event.
  3. *A minimum of five hundred thousand dollars (\$500,000) of the amount that would have been paid to the Commonwealth but for the exemption provided by this paragraph shall be used by the host track to fund undercard races during each international horse racing event* ~~For the purposes of this subsection, the daily average handle shall be computed from the amount wagered only at the host track on live racing and shall not include money wagered:~~
- (a) ~~At a receiving track;~~

- (b) ~~At a simulcast facility;~~
- (c) ~~On telephone account wagering; or~~
- (d) ~~At a track participating as a receiving track or simulcast facility displaying simulcasts and conducting interstate wagering as permitted by KRS 230.3771 and 230.3773].~~
- (c) Money shall be deducted from the tax paid *under paragraph (a) of this subsection* ~~[by host tracks]~~ and deposited *as follows*: ~~[to the respective development funds]~~
1. *An amount equal to* ~~[in the amount of]~~ three-quarters of one percent (0.75%) of *all money wagered on live races at the track* ~~[the total live racing handle]~~ for thoroughbred racing *shall be deposited in the thoroughbred development fund established in KRS 230.400;* ~~[and]~~
  2. *An amount equal to* one percent (1%) of *all money wagered on live races at the track* ~~[the total live handle]~~ for harness racing *shall be deposited in the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund established in KRS 230.770;*
  3. *An amount equal to two-tenths of one percent (0.2%) of all money wagered on live races at the track shall be deposited in the equine industry program trust and revolving fund established by KRS 230.550 to support the Equine Industry Program at the University of Louisville;*
  4.
    - a. *An amount equal to one-tenth of one percent (0.1%) of all money wagered on live races at the track shall be deposited in a trust and revolving fund to be used for the construction, expansion, or renovation of facilities or the purchase of equipment for equine programs at state universities.*
    - b. *These funds shall not be used for salaries or for operating funds for teaching, research, or administration. Funds allocated under this subparagraph shall not replace other funds for capital purposes or operation of equine programs at state universities.*
    - c. *The Kentucky Council on Postsecondary Education shall serve as the administrative agent and shall establish an advisory committee of interested parties, including all universities with established equine programs, to evaluate proposals and make recommendations for the awarding of funds.*
    - d. *The Kentucky Council on Postsecondary Education may promulgate administrative regulations to establish procedures for administering the program and criteria for evaluating and awarding grants; and*
  5. *An amount equal to one-tenth of one percent (0.1%) of all money wagered on live races shall be distributed to the authority to support equine drug testing as provided in subsection (3) of Section 110 of this Act.*
- (d) *The excise tax imposed by paragraph (a) of this subsection shall not apply to pari-mutuel wagering on live harness racing at a county fair.*
- (2) (a) *Except as provided in paragraphs (c) and (d) of this subsection,* an excise tax is imposed on:
1. ~~[(a)]~~ All ~~[licensed]~~ tracks conducting telephone account wagering;
  2. ~~[(b)]~~ All tracks participating as receiving tracks in intertrack wagering under the jurisdiction of the ~~[Kentucky Horse Racing]~~ authority; and
  3. ~~[(c)]~~ All tracks participating as receiving tracks displaying simulcasts and conducting interstate wagering thereon.
- (b) ~~[(3)]~~ The tax ~~[imposed in subsection (2) of this section]~~ shall be ~~[in the amount of]~~ three percent (3%) of all money wagered *on races as provided in paragraph (a) of this* ~~[under]~~ subsection ~~[(2) of this section]~~ during the fiscal year.
- (c) A noncontiguous track facility approved by the ~~[Kentucky Horse Racing]~~ authority on or after January 1, 1999, shall be exempt from the tax imposed under this subsection, if the facility is established and operated by a licensed track which has a total annual handle on live racing of two hundred fifty thousand dollars (\$250,000) or less. The amount of money exempted under this *paragraph* ~~[subsection]~~ shall be retained by the noncontiguous track facility, KRS 230.3771 and 230.378 notwithstanding.

- (d) *A track located in this state shall be exempt from the excise tax imposed by paragraph (b) of this subsection on wagers placed on all races conducted at a one (1) or two (2) day international horse racing event if:*
1. *The international horse racing event is conducted at a host track in this state; and*
  2. *The host track is exempt from the excise tax during the international horse racing event under subsection (1)(b) of this section.*
- (e) *Money shall be deducted from the tax paid under paragraphs (a) and (b) of this subsection as follows:*
1. ~~{(4)}~~An amount equal to two percent (2%) of the amount wagered shall be ~~deducted from the tax imposed in subsection (2) of this section and~~ deposited as follows:
    - a. ~~{(a) If the money is deducted from taxes imposed under subsection (2)(a) and (b) of this section, it shall be deposited}~~In the thoroughbred development fund *established in KRS 230.400* if the host track is conducting a thoroughbred race meeting *or the interstate wagering is conducted on a thoroughbred race meeting*; or
    - b. *In the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund established in KRS 230.770*, if the host track is conducting a harness race meeting *or the interstate wagering is conducted on a harness race meeting*;
  2. *An amount equal to one-twentieth of one percent (0.05%) of the amount wagered shall be allocated to the equine industry program trust and revolving fund established by KRS 230.550 to be used to support the Equine Industry Program at the University of Louisville;*
  3. *An amount equal to one-tenth of one percent (0.1%) of the amount wagered shall be deposited in a trust and revolving fund to be used for the construction, expansion, or renovation of facilities or the purchase of equipment for equine programs at state universities, as detailed in subsection (1)(c)4. of this section; and*
  4. *An amount equal to one-tenth of one percent (0.1%) of the amount wagered shall be distributed to the authority to support equine drug testing as provided in subsection (3) of Section 110 of this Act*~~;~~ ~~or~~
  - ~~(b) If the money is deducted from taxes imposed under subsection (2)(c) of this section, to the thoroughbred development fund if interstate wagering is conducted on a thoroughbred race meeting or to the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund if interstate wagering is being conducted on a harness race meeting}.~~
- (3) *The taxes imposed by this section shall be paid, collected, and administered as provided in Section 108 of this Act.*
- ~~{(5) Two tenths of one percent (0.2%) of the total amount wagered on live racing in Kentucky shall be deducted from the pari-mutuel tax levied in subsection (1) of this section, and one twentieth of one percent (0.05%) of the total amount wagered on intertrack wagering shall be deducted for the pari-mutuel tax levied in subsection (2) of this section, and allocated to the equine industry program trust and revolving fund to be used for funding the equine industry program at the University of Louisville.~~
- ~~{(6) One tenth of one percent (0.1%) of the total amount wagered in Kentucky shall be deducted from the pari-mutuel tax levied in subsections (1), (2), and (3) of this section and deposited to a trust and revolving fund to be used for the construction, expansion, or renovation of facilities or the purchase of equipment for equine programs at state universities. These funds shall not be used for salaries or for operating funds for teaching, research, or administration. Funds allocated under this subsection shall not replace other funds for capital purposes or operation of equine programs at state universities. The Kentucky Council on Postsecondary Education shall serve as the administrative agent and shall establish an advisory committee of interested parties, including all universities with established equine programs, to evaluate proposals and make recommendations for the awarding of funds. The Kentucky Council on Postsecondary Education may by administrative regulation establish procedures for administering the program and criteria for evaluating and awarding grants.}~~

➔Section 108. KRS 138.530 is amended to read as follows:

- (1) The department~~[of Revenue]~~ shall enforce the provisions of and collect the tax and penalties imposed and other payments required by KRS 138.510 to 138.550, and in doing so it shall have the general powers and duties granted it in KRS ~~Chapters~~~~[Chapter]~~ 131 and ~~135~~~~[KRS 135.050]~~, including the power to enforce, by an action in the Franklin Circuit Court, the collection of the tax, penalties and other payments imposed or required by KRS 138.510 to 138.550.
- (2) (a) The remittance of the ~~taxes~~~~[tax]~~ imposed by KRS 138.510 shall be made weekly to the department~~[of Revenue]~~ no later than the fifth business day, excluding Saturday and Sunday, following the close of each week of racing, during each race meeting and *shall be* accompanied by reports as prescribed by the department.
- (b) All funds received by the department~~[of Revenue]~~ shall be paid into the State Treasury and shall be credited to the general expenditure fund.
- (3) The supervisor of pari-mutuel betting appointed by the ~~[Kentucky Horse Racing]~~ authority shall weekly, during each race meeting, report to the department~~[of Revenue]~~ the total amount bet or handled the preceding week and the amount of tax due the state thereon, under the provisions of KRS 138.510 to 138.550.
- (4) The supervisor of pari-mutuel betting appointed by the ~~[Kentucky Horse Racing]~~ authority or his *or her* duly authorized representatives shall, at all reasonable times, have access to all books, records, issuing or vending machines, adding machines, and all other pari-mutuel equipment for the purpose of examining and checking the same and ascertaining whether or not the proper amount or amounts due the state are being or have been paid.
- (5) Every person, corporation, or association required to pay the tax imposed by KRS 138.510 shall keep its books and records so as to clearly show by a separate record the total amount of money contributed to every pari-mutuel pool~~[, including daily double pools, if any].~~

➔Section 109. KRS 138.550 is amended to read as follows:

In addition to all other penalties provided in KRS 138.510 to 138.540, when the pari-mutuel system of betting is operated at a track licensed under *KRS Chapter 230*~~[the provisions of KRS 137.170]~~, said license may be suspended, revoked or renewal refused by the ~~[Kentucky Horse Racing]~~ authority upon the failure of the operator to comply with ~~[the provisions of]~~ KRS 138.510 to 138.540 or the rules and regulations promulgated by the department ~~[of Revenue]~~ pursuant thereto, even though the pari-mutuel system of betting and the track are operated by different persons, corporations, or associations.

➔Section 110. KRS 230.265 is amended to read as follows:

- (1) (a) There is hereby created a panel, to be known as the Kentucky Equine Drug Research Council, to advise the authority on the conduct of equine drug research and testing commissioned by the Kentucky Horse Racing Authority.
- (b) The council shall consist of nine (9) members appointed by the Governor. It is recommended that the Governor appoint one (1) *person from each of the following groups, organizations, or professions*:
  1. A veterinarian, *selected* from a list of three (3) submitted by the Kentucky Association of Equine Veterinarians;~~;~~
  2. A~~[one (1)]~~ horseman, *selected* from a list of three (3) submitted by the Kentucky division of the Horsemen's Benevolent and Protective Association;~~;~~
  3. A~~[one (1)]~~ pharmacologist, *selected* from a list of three (3) submitted by the University of Kentucky;~~;~~
  4. A~~[one (1)]~~ thoroughbred breeder, *selected* from a list of three (3) submitted by the Kentucky Thoroughbred Owners and Breeders, Inc.;~~;~~
  5. A~~[one (1)]~~ legislator, *selected* from a list of three (3) submitted by the Legislative Research Commission;~~;~~
  6. A~~[one (1)]~~ representative of a licensed racing association, chosen by the Governor;~~;~~
  7. A~~[one (1)]~~ member of the harness racing industry, *selected* from a list of three (3) submitted by the chairman of the Kentucky Horse Racing Authority;~~;~~

8. A~~one (1)~~ member *selected* from a list of three (3) submitted by the Kentucky Harness Horsemen's Association;~~;~~ and
  9. A~~one (1)~~ member of the Kentucky Horse Racing Authority, *selected* from a list of three (3) submitted by the chairman of the Kentucky Horse Racing Authority, to serve as chairman.
- (c) The council shall meet at the call of the chairman, a majority of the council, or at the request of the authority. Members shall serve at the pleasure of their respective sponsoring organizations and shall receive no compensation for serving.
- (2) The Kentucky Equine Drug Research Council shall:
- (a) Review equine drug research and testing research being conducted at the University of Kentucky, or with state funds;
  - (b) ~~and shall~~ Review and report to the authority on drug research and testing research being conducted elsewhere;~~;~~~~The council shall~~
  - (c) Advise the authority and make recommendations for establishing an effective drug regulatory policy for Kentucky racing; *and*~~;~~~~In addition, the council shall~~
  - (d) Report to the General Assembly any needed changes regarding the regulation of drugs in horse racing in the Commonwealth of Kentucky.
- (3) *The funds received by the authority pursuant to Section 107 of this Act*~~The authority shall receive one-tenth of one percent (0.1%) of the total amount wagered and subject to the pari-mutuel tax levied in KRS 138.510. This money shall be deducted from the pari-mutuel tax levied in KRS 138.510 and~~ shall be used in Kentucky for financing drug research, testing research, equine medical research, and equine health research issues, or any regulatory or administrative activity of the authority that is related to the research and issues described in this subsection. Any expenditure under this subsection shall relate to the racing industry in Kentucky. The money received under this subsection shall be in addition to any funds appropriated to the authority for these purposes in the executive budget.

➔Section 111. KRS 138.450 is amended to read as follows:

As used in KRS 138.455 to 138.470, unless the context requires otherwise:

- (1) "Current model year" means a motor vehicle of either the model year corresponding to the current calendar year or of the succeeding calendar year, if the same model and make is being offered for sale by local dealers;
- (2) "Dealer" means "motor vehicle dealer" as defined in KRS 190.010;
- (3) "Dealer demonstrator" means a new motor vehicle or a previous model year motor vehicle with an odometer reading of least one thousand (1,000) miles that has been used either by representatives of the manufacturer or by a licensed Kentucky dealer, franchised to sell the particular model and make, for demonstration;
- (4) "Historic motor vehicle" means a motor vehicle registered and licensed pursuant to KRS 186.043;
- (5) "Motor vehicle" means any vehicle that is propelled by other than muscular power and that is used for transportation of persons or property over the public highways of the state, except road rollers, mopeds, vehicles that travel exclusively on rails, and vehicles propelled by electric power obtained from overhead wires;
- (6) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour;
- (7) "New motor vehicle" means a motor vehicle of the current model year which has not previously been registered in any state or country;
- (8) "Previous model year motor vehicle" means a motor vehicle not previously registered in any state or country which is neither of the current model year nor a dealer demonstrator;

- (9) "Total consideration given" means the amount given, valued in money, whether received in money or otherwise, at the time of purchase or at a later date, including consideration given for all equipment and accessories, standard and optional. "Total consideration given" shall not include:
- (a) Any amount allowed as a manufacturer or dealer rebate if the rebate is provided at the time of purchase and is applied to the purchase of the motor vehicle;
  - (b) Any interest payments to be made over the life of a loan for the purchase of a motor vehicle; and
  - (c) The value of any items that are not equipment or accessories including but not limited to extended warranties, service contracts, and items that are given away as part of a promotional sales campaign;
- (10) "Trade-in allowance" means:
- (a) The value assigned by the seller of a motor vehicle to a motor vehicle registered to the purchaser and offered in trade by the purchaser as part of the total consideration given by the purchaser and included in the notarized affidavit attesting to total consideration given; or
  - (b) In the absence of a notarized affidavit, the value of the vehicle being offered in trade as established by the department through the use of the reference manual;
- (11) "Used motor vehicle" means a motor vehicle which has been previously registered in any state or country;
- (12) (a) "Retail price" for:
1. New motor vehicles;
  2. Dealer demonstrator vehicles;
  3. Previous model year motor vehicles; and
  4. U-Drive-It motor vehicles that have been transferred within one hundred eighty (180) days of being registered as a U-Drive-It and that have less than five thousand (5,000) miles;
- means the total consideration given, *as determined in Section 112 of this Act* ~~including any trade-in allowance, as attested to in a notarized affidavit.~~
- ~~(b) If a notarized affidavit is not available, "retail price" means:~~
- ~~1. Ninety percent (90%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges; or~~
  - ~~2. Eighty one percent (81%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges in the case of new trucks of gross weight in excess of ten thousand (10,000) pounds.~~
- ~~(c) "Retail price" shall not include that portion of the price of the vehicle attributable to equipment or adaptive devices necessary to facilitate or accommodate an operator or passenger with physical disabilities;~~
- (13) "Retail price" for historic motor vehicles shall be one hundred dollars (\$100);
- (14) "Retail price" for used motor vehicles being titled or registered by a new resident for the first time in Kentucky whose values appear in the reference manual means the trade-in value given in the reference manual;
- (15) "Retail price" for older used motor vehicles being titled or registered by a new resident for the first time in Kentucky whose values no longer appear in the reference manual shall be one hundred dollars (\$100);
- (16) (a) "Retail price" for:
1. Used motor vehicles, except those vehicles for which the retail price is established in subsection (13), (14), (15), (17), or (19) of this section; and
  2. U-Drive-It motor vehicles that are not transferred within one hundred eighty (180) days of being registered as a U-Drive-It or that have more than five thousand (5,000) miles;
- means the total consideration given, excluding any amount allowed as a trade-in allowance by the seller, as attested to in a notarized affidavit, provided that the retail price established by the notarized affidavit shall not be less than fifty percent (50%) of the difference between the trade-in value, as established by

the reference manual, of the motor vehicle offered for registration and the trade-in value, as established by the reference manual, of any motor vehicle offered in trade as part of the total consideration given.

- (b) The trade-in allowance shall also be disclosed in the notarized affidavit.
  - (c) If a notarized affidavit is not available, "retail price" shall be established by the department through the use of the reference manual;
- (17) Except as provided in KRS 138.470(6), if a motor vehicle is received by an individual as a gift and not purchased or leased by the individual, "retail price" shall be the trade-in value given in the reference manual;
  - (18) If a dealer transfers a motor vehicle which he has registered as a loaner or rental motor vehicle within one hundred eighty (180) days of the registration, and if less than five thousand (5,000) miles have been placed on the vehicle during the period of its registration as a loaner or rental motor vehicle, then the "retail price" of the vehicle shall be the same as the retail price determined by paragraph (a) of subsection (12) of this section computed as of the date on which the vehicle is transferred;
  - (19) "Retail price" for motor vehicles titled pursuant to KRS 186A.520, 186A.525, 186A.530, or 186A.555 means the total consideration given as attested to in a notarized affidavit;
  - (20) "Loaner or rental motor vehicle" means a motor vehicle owned or registered by a dealer and which is regularly loaned or rented to customers of the service or repair component of the dealership;
  - (21) "Department" means the Department of Revenue;
  - (22) "Notarized affidavit" means a dated affidavit signed by the buyer and the seller on which the signature of the buyer and the signature of the seller are individually notarized; and
  - (23) "Reference manual" means the automotive reference manual prescribed by the department.

➔SECTION 112. A NEW SECTION OF KRS CHAPTER 138.455 TO 138.470 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Effective for sales on or after September 1, 2009, of:*
    - 1. *New motor vehicles;*
    - 2. *Dealer demonstrator vehicles;*
    - 3. *Previous model year motor vehicles; and*
    - 4. *U-Drive-It motor vehicles that have been transferred within one hundred eighty (180) days of being registered as a U-Drive-It and that have less than five thousand (5,000) miles;*

*the retail price shall be determined by reducing the amount of total consideration given by the trade-in allowance of any motor vehicle traded in by the seller. The value of the purchased motor vehicle and the amount of the trade-in allowance shall be determined as provided in subsection (2) of this section, and the availability of the trade-in allowance shall be subject to subsection (3) of this section.*
  - (b) *The retail price shall not include that portion of the price of the vehicle attributable to equipment or adaptive devices necessary to facilitate or accommodate an operator or passenger with physical disabilities.*
- (2) (a) *The value of the purchased motor vehicle offered for registration and the value of the vehicle offered in trade shall be attested to in a notarized affidavit, provided that the retail price established by the notarized affidavit shall not be less than fifty percent (50%) of the difference between the applicable value of the purchased motor vehicle, as determined under the method described in paragraph (b) of this subsection, and the trade-in value of any motor vehicle offered in trade, as established by the reference manual.*
  - (b) *If a notarized affidavit is not available:*
    - 1. *The retail price of the purchased motor vehicle offered for registration shall be determined as follows:*
      - a. *Ninety percent (90%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges; or*



- (b) The sales and use tax collected by the county clerk under subsection (3) of this section shall be reported and remitted to the department on forms which the department shall prescribe and provide at no cost. The county clerk shall, for his or her services in collecting the tax, be entitled to retain an amount equal to three percent (3%) of the tax collected and accounted for.
  - (c) Motor vehicle dealers licensed pursuant to KRS Chapter 190 shall not owe or be responsible for the collection of sales and use tax due under subsection (3) of this section.
- (5) A county clerk or other officer shall not title, register or issue any license tags to the owner of any motor vehicle subject to the tax imposed by subsection (1) of this section or the tax imposed by KRS Chapter 139, when the vehicle is being offered for titling or registration for the first time, or transfer the title of any motor vehicle previously registered in this state, unless the owner or his agent pays the tax levied under subsection (1) of this section or the tax imposed by KRS Chapter 139, if applicable, in addition to any title, registration, or license fees.
- (6) (a) When a person offers a motor vehicle:
- 1. For titling on or after July 1, 2005; or
  - 2. For registration;
- for the first time in this state which was registered in another state that levied a tax substantially identical to the tax levied under this section, the person shall be entitled to receive a credit against the tax imposed by this section equal to the amount of tax paid to the other state. A credit shall not be given under this subsection for taxes paid in another state if that state does not grant similar credit for substantially identical taxes paid in this state.
- (b) When a resident of this state offers a motor vehicle for registration for the first time in this state:
- 1. Upon which the Kentucky sales and use tax was paid by the resident offering the motor vehicle for registration at the time of titling under subsection (3) of this section; and
  - 2. For which the resident provides proof that the tax was paid;
- a nonrefundable credit shall be given against the tax imposed by subsection (1) of this section for the sales and use tax paid.
- (7) (a) A county clerk or other officer shall not title, register, or issue any license tags to the owner of any motor vehicle subject to this tax, when the vehicle is then being offered for titling or registration for the first time, unless the seller or his agent delivers to the county clerk a notarized affidavit, if required, and available under KRS 138.450 attesting to the total and actual consideration paid or to be paid for the motor vehicle.
- (b) If a notarized affidavit is not available, the clerk shall follow the procedures under KRS 138.450(12)~~(13)~~ for new vehicles, and KRS 138.450(14) or (15) for used vehicles.
- (c) The clerk shall attach the notarized affidavit, if available, or other documentation attesting to the retail price of the vehicle as the department may prescribe by administrative regulation promulgated under KRS Chapter 13A to the copy of the certificate of registration and application for title mailed to the department.
- (8) Notwithstanding the provisions of KRS 138.450, the tax shall not be less than six dollars (\$6) upon titling or first registration of a motor vehicle in this state, except where the vehicle is exempt from tax under KRS 138.470 or 154.45-090.
- (9) Where a motor vehicle is sold by a dealer in this state and the purchaser returns the vehicle for any reason to the same dealer within sixty (60) days for a vehicle replacement or a refund of the purchase price, the purchaser shall be entitled to a refund of the amount of usage tax received by the department as a result of the registration of the returned vehicle. In the case of a new motor vehicle, the registration of the returned vehicle shall be canceled and the vehicle shall be considered to have not been previously registered in Kentucky when resold by the dealer.
- (10) When a manufacturer refunds the retail purchase price or replaces a new motor vehicle for the original purchaser within ninety (90) days because of malfunction or defect, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the department as a result of the first titling or

registration. A person shall not be entitled to a refund unless the person has filed with the department a report from the manufacturer identifying the vehicle that was replaced and stating the date of replacement.

- (11) Notwithstanding the time limitations of subsections (9) and (10) of this section, when a dealer or manufacturer refunds the retail purchase price or replaces a motor vehicle for the purchaser as a result of formal arbitration or litigation, or, in the case of a manufacturer, because ordered to do so by a dispute resolution system established under KRS 367.865 or 16 C.F.R. 703, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the department as a result of the titling or registration. A person shall not be entitled to a refund unless the person files with the department a report from the dealer or manufacturer identifying the vehicle that was replaced.
- (12) (a) An owner who has paid the tax levied under this section on a used motor vehicle or U-Drive-It vehicle based upon the retail price as defined in KRS 138.450(16)(a) shall be entitled to a refund of any tax overpayment, plus applicable interest as provided in KRS 131.183, if the owner:
1. Files for a refund with the department within four (4) years from the date the tax was paid as provided in KRS 134.580; and
  2. Documents to the satisfaction of the department that the condition of the vehicle merits a retail price lower than the retail price as defined in KRS 138.450(16)(a).
- (b) The department shall promulgate administrative regulations to develop the forms and the procedures by which the owner can apply for a refund and document the condition of the vehicle. The department shall provide the information to each county clerk.
- (c) The refund shall be based upon the difference between the tax paid and the tax determined to be due by the department at the time the owner titled or registered the vehicle.

➔Section 114. The following KRS sections are repealed:

- 141.416 Credit on license tax liability for approved company.
- 154.34-020 Legislative findings.
- 154.34-030 Staff of authority.
- 154.34-040 Personal liability of director or officer.
- 154.34-050 Funding for authority.
- 154.34-060 Interest in contract with authority by director, officer, or employee.
- 181.850 Bridge commissions in cities of first class or consolidated local government.
- 181.851 Definitions for KRS 181.850 to 181.869.
- 181.852 General grant of powers.
- 181.853 Acquisition of property.
- 181.854 Bridge revenue bonds.
- 181.855 Trust agreement.
- 181.856 Revenues.
- 181.857 Trust funds.
- 181.858 Remedies of bond or coupon holders.
- 181.859 Bridge commission property and bonds exempt from taxation.
- 181.860 Bonds eligible for investment.
- 181.861 Maintenance of bridges.
- 181.862 Restoration of or compensation for private property damaged or destroyed.
- 181.863 Authority of counties, cities and other political subdivisions to lease, lend or sell property to commission.
- 181.864 Annual report and audit.

- 181.865 Commission officer or employee not to have interest in sale or purchase of bonds.
- 181.866 Bridge revenue refunding bonds.
- 181.867 Credit of city not pledged.
- 181.868 Reversion of existing bridges.
- 181.869 Provisions of KRS 181.850 to 181.869 deemed to prescribe alternative method of providing bridges.

→Section 115. The provisions of Sections 111 to 113 of this Act take effect September 1, 2009.

→Section 116. Whereas the Commonwealth is in need of enhanced programs to support economic recovery in general, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved and signed by the Governor June 26, 2009.**