

**CHAPTER 23****( HB 400 )**

AN ACT relating to economic development.

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

➔Section 1. KRS 154.25-010 is amended to read as follows:

As used in this subchapter, unless the context clearly indicates otherwise:

- (1) "Activation date" means a date selected by an approved company and set forth in the jobs retention agreement at any time within a three (3) year period after the date of final approval of the agreement by the authority upon which the required investment shall be made and the jobs retention project completed;
- (2) "Agreement" means a jobs retention agreement entered into pursuant to KRS 154.25-030 on behalf of the authority and an approved company with respect to a jobs retention project;
- (3) "Approved company" means any eligible company approved by the authority pursuant to KRS 154.25-030 for a jobs retention project;
- (4) "Approved costs" means that portion of the eligible costs approved by the authority that an approved company may recover through the inducements authorized by KRS 154.25-030, being a percentage of eligible costs as approved by the authority;
- (5) "Assessment" means the wage assessment fee authorized by KRS 154.25-040;
- (6) "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;
- (7) "Commonwealth" means the Commonwealth of Kentucky;
- (8) "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 **325211, 325510, 326199, 327211, 327212, 327215, 331111, 331221, 331521, 332312, 332813, 33299, 335110, 335911, 335912, 336211, 336111, 336112, or 336120, 423510, 493110, 541614, 551114, or 561439**, that ~~is within the jurisdiction of a consolidated local government containing a city of the first class, employs a minimum of one thousand (1,000) full-time persons engaged in *automobile or automobile parts or supplies* manufacturing, has been operating within the Commonwealth on a continuous basis for at least five (5) years preceding the request for approval by the authority of the project which meets the standards set forth in KRS 154.25-020, and that has been previously approved for economic development incentives from the Commonwealth related to one (1) or more of its facilities;~~
- (9) "Eligible costs" means:
  - (a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, rehabilitation, and installation of a jobs retention project;
  - (b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of a jobs retention project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;
  - (c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation, and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, equipping, rehabilitation, and installation of a jobs retention project;
  - (d) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, rehabilitation, and installation of a jobs retention project;
  - (e) All costs required for the installation of utilities, including but not limited to water, sewer, sewer treatment, gas, electricity, communications, and railroads, and including off-site construction of the facilities paid for by the approved company; and
  - (f) All other costs comparable with those described above;

- (10) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter;
- (11) "Inducements" means the Kentucky tax credit and the wage assessment fee as prescribed in KRS 154.25-030 and 154.25-040;
- (12) "Jobs retention project" or "project" means 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 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 an approved company to allow the approved company to reinvest in its operations and retain a significant number of existing jobs within the Commonwealth;
- (13) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401;
- (14) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401;
- (15) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing that results in a change in the condition of the property and any related activity or function, together with the storage, warehousing, distribution, and related office facilities;
- (16) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements under this subchapter;
- (17) "Supplemental project" means *an additional*~~a second~~ jobs retention project proposed by the approved company or its affiliate during the term of a *previously approved* jobs retention project which may be included in the jobs retention agreement by way of amendment and which may result in increased inducements and an extension of the original project term *as set forth in Section 3 of this Act*; and
- (18) "Transferred credits" means unused approved costs as determined by the Department of Revenue from a previously approved, independent, active project under a different incentive program governed by the Cabinet for Economic Development that may be transferred to a jobs retention project and used by the approved company pursuant to a jobs retention agreement.

➔Section 2. KRS 154.25-030 is amended to read as follows:

- (1) The authority, upon adoption of its final approval, may enter into, with any approved company, an agreement with respect to the jobs retention project. The terms and provisions of each agreement, including the amount of approved costs, the amount of the inducement, the job maintenance requirement, and any limitations the authority may deem necessary, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:
- (a) The amount the approved company may recover through inducements under this subchapter for the initial project, which shall be a negotiated percentage not to exceed fifty percent (50%) of *eligible*~~approved~~ costs. However, the authority may negotiate an increase in the percentage such that both the initial project and *any*~~the~~ supplemental *projects*~~project~~ are eligible for seventy-five percent (75%) of *eligible*~~approved~~ costs upon approval of a supplemental project. The adjustment to the initial project shall be made on the total approved costs and any credits taken prior to the *addition of a* supplemental project shall then be subtracted from that increased amount of approved costs. Neither the initial project nor *any*~~the~~ supplemental project shall ever be eligible for inducements greater than seventy-five percent (75%) of the *eligible*~~approved~~ costs. The authority shall negotiate a maximum allowable inducement for each year of the agreement, and the approved company may not recover inducements above that maximum in any year during the term of the agreement, except that the annual maximum allowable inducement may be exceeded if a carry-forward of unused inducements from previous years exists. Any carry-forward of unused inducements will lapse upon maturity or termination of the agreement;
- (b) A provision that sets the activation date for the initial project within three (3) years of the final approval. Prior to the activation date, the authority may extend the time for the completion of the jobs retention project and compliance with the required investment upon request of the approved company for good cause; however, the ten (10) year period for the term of the agreement shall begin from the activation date. No inducements from the jobs retention project shall be available, other than the

transferred credits provided for under subsection (2) of this section, until activation. Upon activation, the balance of transferred credits shall expire;

- (c) A provision that states that within three (3) months of the completion of the jobs retention project, the approved company shall document the actual cost of the project in a manner acceptable to the authority. The authority may employ an independent consultant or utilize technical resources to verify the cost of the project. The approved company shall reimburse the authority for the cost of the consultant;
- (d) A provision that establishes a minimum required number of full-time jobs that must be maintained at the site of the jobs retention project and filled with residents of the Commonwealth subject to Kentucky income tax and states that the authorized inducements may be suspended at the discretion of the authority from the date of noncompliance until the date compliance is reestablished if the approved company's employment falls below the established minimum employment requirement. If the company does not increase the number of full-time employees at the site who are residents of the Commonwealth and subject to Kentucky income tax sufficiently to meet the minimum employment requirement within one (1) year from the date of the initial suspension, the remaining unused inducements may be terminated at the discretion of the authority;
- (e) A provision that gives the authority discretion to suspend or terminate the authorized inducements for any failure to comply with the terms of the agreement; and
- (f) A provision that provides the term shall not be longer than the earlier of:
  1. The date on which the approved company has received inducements or withheld assessments equal to the amount that the company may recover under paragraph (a) of this subsection; or
  2. Ten (10) years from the activation date.

However, the term may be extended to a period longer than ten (10) years upon the addition of a supplemental project as negotiated and approved by the authority.

- (2) In consideration of the execution of the agreement, during the time the agreement is in effect, which time shall commence on the date of the agreement, the approved company may be permitted the following inducements:
  - (a) Beginning on the effective date of the jobs retention agreement, which shall also be the date of final approval, if the approved company has a balance of unused approved costs on a previously existing and active incentive agreement approved by the authority pursuant to ~~Subchapter 24 or 28 of~~ KRS Chapter 154, the approved company may impose wage assessments on employees whose jobs are at the facility where the project defined in the previously existing incentive agreement was located. The wage assessments may be imposed as provided in KRS 154.25-040, and shall be available in an amount up to the balance of transferred credits from the previously existing project.
    1. The transferred credits shall only be available to the approved company until the activation date, the term from the original incentive agreement expires, or the balance of transferred credits is exhausted, whichever occurs first; and
    2. Should the approved company exercise this option, the incentive agreement from which the credits were transferred shall be terminated upon transfer and all parties shall be released from their obligations thereunder.
  - (b) After the activation date:
    1. A one hundred percent (100%) credit against the taxes imposed by KRS 141.020, 141.040, and 141.0401 that would otherwise be owed by the approved company, in the approved company's taxable year, as determined under KRS 141.402, on the taxable income, Kentucky gross receipts, or Kentucky gross profits of the approved company generated by or arising from the jobs retention project. The ordering of credits shall be as provided in KRS 141.0205;
    2. The aggregate assessment withheld by the approved company as provided in KRS 154.25-040 in each year after the activation date;
  - (c) The tax credits allowed to the approved company shall be equal to the lesser of the total amount of the tax liability or the amount that the company may recover under subsection (1)(a) of this section that has not yet been recovered, reduced by any recovery through the collection of assessments subject to the annual maximum inducements authorized pursuant to subsection (1)(a) of this section. The credit shall be allowed for each taxable year of the approved company during the term of the agreement and for

which a tax return of the approved company is filed until the amount that the company may recover under subsection(1)(a) of this section has been received through a combination of credits and assessments, if the company elects to impose assessments. 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 jobs retention project. One hundred eighty (180) days after the filing of the tax return of the approved company, the Department of Revenue shall certify to the authority the state tax liability for the preceding taxable year of the approved company and the amount of any tax credits taken pursuant to this section;

- (d) Prior to execution of the agreement, the eligible company shall secure from all local governmental authorities responsible for collecting local occupational license fees a resolution or order of the local governmental entities acknowledging and consenting to the termination or partial termination of the receipt of local occupational license fees on wages subject to the agreement paid by the approved company on behalf of its employees to the local government entities;
  - (e) If more than one (1) local occupational license fee is imposed upon the employees of the approved company, the assessment imposed upon the employees shall be credited against the local occupational license fee and shall be apportioned to each local occupational license fee according to each local occupational license fee's proportion to the total of all local occupational license fees for such employees. No credit or portion thereof shall be allowed against any local occupational license fee imposed by or dedicated solely to a local board of education; and
  - (f) If, in any taxable year of the approved company during which the agreement is in effect, the assessment collected from the wages of the employees exceeds the expended portion of the amount that the approved company may recover under paragraph (a) of this subsection, or exceeds the annual maximum negotiated by the authority, the assessment collected from the wages of the employees shall cease for the remainder of that taxable year of the approved company. The approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that taxable year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees' wages next succeeding the first date when the approved company collected excess assessments.
- (3) The jobs retention agreement and inducements available pursuant thereto shall not be transferable or assignable by the approved company without the expressed written consent of the authority.

➔Section 3. KRS 154.25-050 is amended to read as follows:

- (1) If an approved company makes ~~an~~ additional *investments*~~[investment]~~ in the form of *additional*~~[a second]~~ jobs retention *projects*~~[project within the jurisdiction of the same consolidated local government containing a city of the first class]~~ during the term of the initial jobs retention project, the approved company may apply for, and the authority may approve, a supplemental project.
- (2) The authority, upon adoption of its final approval of a supplemental project, may enter into, with any approved company, an amended agreement with respect to both the initial jobs retention project and the supplemental project which shall jointly make up its project. The terms and provisions of each amended agreement, including the amount of approved costs, the amount of the tax credit pursuant to KRS 154.25-030, the job maintenance requirement established by the agreement, and any limitations the authority may deem necessary, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:
  - (a) Upon approval of a supplemental project, the amount the approved company may recover through inducements for *the initial project and any supplemental*~~[both]~~ projects shall be a negotiated percentage not to exceed seventy-five percent (75%) of the *eligible*~~[balance of approved]~~ costs from the initial project and all newly incurred *eligible*~~[approved]~~ costs from *any*~~[the]~~ supplemental *projects*~~[project]~~, subject to the annual maximum negotiated and approved by the authority. At the time ~~a~~~~[the]~~ supplemental project is approved, the recoverable amount and the annual maximum inducement ~~for~~~~[on]~~ the initial jobs retention project *and any previous supplemental projects* may also be increased at the discretion of the authority pursuant to KRS 154.25-030.
  - (b) The activation date for ~~a~~~~[the]~~ supplemental project shall be no more than three (3) years from final approval of the supplemental project. Prior to the activation date, the authority may extend the time for the completion of the jobs retention project and compliance with the required investment upon request

of the approved company for good cause; however, the ten (10) year period for the term of the agreement shall begin from the activation date. Within three (3) months of the completion date for ~~a~~<sup>the</sup> supplemental project, the approved company shall document the actual cost of the project in a manner acceptable to the authority. The authority may employ an independent consultant to verify the cost of the supplemental project subject to reimbursement for the cost of same from the approved company.

- (c) In consideration of the execution of the amended agreement, on the date stated in the agreement, the approved company may be permitted during the term of the amended agreement to take the inducements set forth in KRS 154.25-030(2)(b) and (2)(c), subject to the remaining terms of that section.

**Signed by Governor April 4, 2012.**