

CHAPTER 134

(HB 17)

AN ACT relating to reporting on economic incentive programs.

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

➔SECTION 1. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall maintain a searchable electronic database on its Web site containing information on the cost and status of the programs listed in subsection (3)(a) of this section. The database shall include all projects approved at any time in the last five (5) years and shall include for each, where applicable, the following information:*
- (a) *The name of the program, the recipient or participant, the type of project, and its location by county;*
 - (b) *Total and approved costs of the project or investment, and the amount of incentives or other benefits authorized;*
 - (c) *For the Kentucky Business Investment Program and the Kentucky Enterprise Initiative Act, the amount of incentives or other benefits actually recovered as self-reported by the recipient;*
 - (d) *The number of new jobs estimated and for the Kentucky Business Investment Program and the Kentucky Enterprise Initiative Act, actually created, along with wage information for those jobs;*
 - (e) *Project status and the date and nature of the most recent activity; and*
 - (f) *Any other comparable data or information necessary to achieve transparency and accountability for the specified programs.*
- (2) *In addition to the electronic database required in subsection (1) of this section, the cabinet shall submit a single annual report on the programs listed in subsection (3)(b) of this section to the Governor and the Legislative Research Commission by November 1 of each year. The report shall include all projects approved in the preceding fiscal year and shall provide for these projects the information specified in subsection (1) of this section plus aggregate data for each program, summary evaluations of program activity and effectiveness, and anything required by statute to be reported for any particular program. The report shall also list all projects that were approved in prior years but active at any time in the preceding fiscal year, although for these projects the report need not provide further data.*
- (3) *The following programs shall be subject to the reporting requirements of this section:*
- (a) *The electronic database required in subsection (1) of this section shall include the Bluegrass State Skills Corporation, Grants-in-Aid and Skills Training Investment Credit; Kentucky Business Investment Program; Kentucky Enterprise Initiative Act; Department of Commercialization and Innovation programs; Incentives for Energy Independence Act; Kentucky Economic Development Finance Authority small business and direct loan programs; Kentucky Environmental Stewardship Act; Kentucky Industrial Revitalization Act; Kentucky Reinvestment Act; Small Business Investment Credit; Economic Development Bonds; Kentucky Industrial Development Act; Kentucky Jobs Development Act; Kentucky Jobs Retention Act; and the Kentucky Rural Economic Development Act.*
 - (b) *The single annual report required by subsection (2) of this section shall include all programs listed in paragraph (a) of this subsection plus the Kentucky Investment Fund Act, the Tourism Development Act, Film Production Industry Incentives, and Tax Increment Financing, state participation projects.*
- (4) *The cabinet shall coordinate with the Tourism, Arts and Heritage Cabinet and any other agency necessary to supply the information required by this section.*

➔Section 2. KRS 148.546 is amended 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 KRS 148.542 to 148.546, 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) (a) 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.
- (b) 1. The total amount of tax credits authorized by the Tourism Development Finance Authority during fiscal year 2010-2011 shall not exceed five million dollars (\$5,000,000).
 - 2. The total amount of tax credits authorized by the Tourism Development Finance Authority during the fiscal year 2011-2012 shall not exceed seven million five hundred thousand dollars (\$7,500,000).
- (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 KRS 141.383 and 148.544 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 KRS 141.383 and 148.544;
 - (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 KRS 45A.705 for review, as provided in KRS 45A.695, 45A.705, and 45A.725.
 - (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 KRS 141.383 and 148.542 to 148.546; and
 - (c) The amount of tax incentives approved under KRS 139.538, 141.383, and 148.542 to 148.546.
- (12) (a) By ~~November~~~~{October 1, 2010, and on or before October}~~ 1 of each year~~{thereafter}~~, the authority shall file an annual report with the **Governor and the** Legislative Research Commission. ***The report shall be submitted in cooperation with the Cabinet for Economic Development and included in the single annual report required in Section 1 of this Act.*** 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 KRS 141.383 and 148.542 to 148.546 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 3. KRS 148.8591 is amended to read as follows:

- (1) By ~~November~~~~{October 1, 2010, and on or before October}~~ 1 of each year~~{thereafter}~~, the authority shall file an annual report with the **Governor and the** Legislative Research Commission. ***The report shall be submitted in cooperation with the Cabinet for Economic Development and included in the single annual report required in Section 1 of this Act.*** 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 June 26, 2009.
- (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 4. KRS 154.12-100 is amended to read as follows:

- (1) "Economic development bonds" means the bond program authorized by the General Assembly for the purpose of promoting economic development within the state.
- (2) The economic development bond program shall be administered by the secretary of the Cabinet for Economic Development. The board shall promulgate administrative regulations in accordance with KRS Chapter 13A for project selection criteria. The project selection criteria shall include, but not be limited to, the following:
- (a) Potential job creation or job retention;
 - (b) Degree of public or private and local involvement;
 - (c) Degree and conditions of project payback; and
 - (d) Provision of child care assistance for employees' dependents aged twelve (12) years and younger. For the purpose of this section, child care assistance means onsite child care, child care information and referral, the purchasing of child care through vouchers or contracts, and any other form of child care assistance deemed applicable by the secretary.
- (3) Prior to submission of an economic development bond project to the Capital Projects and Bond Oversight Committee, the secretary of the Cabinet for Economic Development shall receive a written commitment from the public or private organization which has requested state bonds outlining projected job creation and retention, an investment breakdown, and overall project description. This shall be submitted by the secretary to the Capital Projects and Bond Oversight Committee. Subsequently, the secretary of the Cabinet for Economic Development shall execute a written agreement with the public or private organizations involved expressing in detail the respective obligations on the parties, which shall thereafter be automatically forwarded to the committee for its records.
- (4) Projects of state agencies as defined in KRS 42.005 shall not be eligible for funding from the economic development bond program, unless expressly provided in a branch budget bill. Airport construction and renovation projects shall be eligible for funding under this section. The secretary of the Cabinet for Economic Development shall consult with the secretary of the Finance and Administration Cabinet on the terms and conditions relating to the use of state economic development bonds before any commitment is made on any project to any public or private organization. Before any economic development bonds are issued, the proposed bond issue shall be approved by the board, and the State Property and Buildings Commission, under the provisions of KRS 56.450.
- (5) Following the approval by the board, the project shall be presented by the secretary of the Cabinet for Economic Development or his designee with supporting documentation for review and approval at the next regularly scheduled meeting of the Capital Projects and Bond Oversight Committee pursuant to KRS 45.810 and at the next regularly scheduled meeting of the State Property and Buildings Commission.
- (6) Notwithstanding the provisions of KRS 56.872(3), the amount of economic development bonds issued during any biennium shall not exceed the amount stated in the biennial budget.
- (7) The Cabinet for Economic Development shall submit an annual report to the Capital Projects and Bond Oversight Committee, **and to the Governor and Legislative Research Commission as required in Section 1 of this Act**, showing the economic development bonds issued during the previous fiscal year and the amounts paid back and the balance still owing with respect to loans made by the Cabinet for Economic Development with proceeds of economic development bonds during the previous five (5) fiscal years.

➔Section 5. KRS 154.12-208 is amended to read as follows:

The corporation shall annually submit a complete and detailed report of its activities **by November 1 of each year** ~~within one hundred twenty (120) days after the end of each fiscal year~~ to the Legislative Research Commission and to the Governor, **as required in Section 1 of this Act**. The annual report shall include, but not be limited to,

descriptions of all programs funded, an evaluation of the performance of each program, a summary of expenditures, and a detailed description of the participants.

➔Section 6. KRS 154.12-278 is amended to read as follows:

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

➔Section 7. KRS 154.20-150 is amended to read as follows:

- (1) On or before October 1, 1992, and on or before the first day of every third month thereafter, the authority shall provide a written project status report to the Legislative Research Commission, and the authority shall be compelled to send a representative to testify on the project status report and the authority shall provide

additional information on any projects upon request by the Legislative Research Commission. The written project status report shall include but is not limited to:

- (a) The current status of each project under consideration by the authority, the proposed cost of a project, for each project under consideration, including any proposed financial obligations of the authority, the number of jobs to be created or retained by each project under consideration, and a description of the applicants with respect to each project under consideration; and
 - (b) The current status of each project, along with an updated cost for each project in progress, including any financial obligations of the authority and a description of the principals with respect to each project in progress.
- (2) On or before *November 1*~~the first day~~ of each ~~fiscal~~ year, the authority shall submit an overview report to the Legislative Research Commission **and the Governor as required in Section 1 of this Act**, on the success or failure of each completed project, in order to determine the effectiveness of the Kentucky Economic Development Finance Authority.
 - (3) In addition to the project status report, all construction, reconstruction, or alteration, financed or facilitated in whole or in part by the authority shall be reported to the Office of Employment and Training within the Department of Workforce Investment in the Education and Workforce Development Cabinet and to the Kentucky Legislative Research Commission not later than fifteen (15) days following the end of the month in which the agreement or contract facilitating or permitting such activity was executed. This construction activity report shall be subject to public information requests as provided by KRS 61.878. Reports shall list subject construction activity by location of project site, and shall specify the type of construction, project owner, estimated cost of project, and estimated starting and completion dates if known.

➔Section 8. KRS 154.27-050 is amended to read as follows:

- (1) The department may release to an approved company any sales tax incentives under KRS 139.517 and 154.27-070 after review of the request for incentives required by KRS 139.517 and determination of the amount due regardless of whether the minimum capital investment has been made as required by the tax incentive agreement.
- (2) The authority shall monitor all tax incentive agreements. The authority may seek assistance from the Department for Energy Development and Independence, the Department of Revenue, the Center for Applied Energy Research, or other entities or individuals in performing its monitoring functions.
- (3) The department shall track the amount of revenues released and incentives received for each eligible project under each tax incentive agreement and shall provide the authority the information upon request.
- (4) **By November 1 of each year**~~On or before December 1, 2008, and every December 1 thereafter~~, the authority and the department shall jointly prepare a report for the **Governor and the** Legislative Research Commission, **as required in Section 1 of this Act**. The report shall include a list of all companies with which tax incentive agreements have been entered into and a summary of the terms of each agreement, including the type of facility approved, product to be produced, estimated output upon completion, required minimum capital investment and maximum recovery, incentives approved by type of tax and amount, activation date, and termination date.

➔Section 9. KRS 154.31-030 is amended 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 KRS 139.535, and shall, during the project term, submit all information required by the department as provided in KRS 139.535.
- (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 **by November 1 of each year** ~~within one hundred twenty (120) days after the end of each fiscal year~~ to the Legislative Research Commission and to the Governor, **as required in Section 1 of this Act.**

Signed by Governor April 25, 2014.

