

CHAPTER 129

(HB 114)

AN ACT relating to TVA in-lieu-of-tax payments, making an appropriation therefor, and declaring an emergency.

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

➔Section 1. KRS 96.895 is amended to read as follows:

(1) *As used in this section, unless the context requires otherwise:*

- (a) *"Book value" means original cost unadjusted for depreciation as reflected in the TVA's books of account;*
- (b) *"Department" means the Department for Local Government;*
- (c) *"Fund" means the regional development agency assistance fund established in subsection (4) of this section;*
- (d) *"Fund-eligible county" means one (1) of Adair, Allen, Ballard, Barren, Bell, Butler, Caldwell, Calloway, Carlisle, Christian, Clinton, Cumberland, Edmonson, Fulton, Graves, Grayson, Harlan, Hart, Henderson, Hickman, Livingston, Logan, Lyon, Marshall, McCracken, McCreary, Metcalfe, Monroe, Muhlenberg, Ohio, Russell, Simpson, Todd, Trigg, Union, Warren, Wayne, Webster, or Whitley Counties;*
- (e) *"Regional development agency" or "agency" means a local industrial development authority established under KRS 154.50-301 to 154.50-346 that is designated by a fiscal court to receive a payment pursuant to this section;*
- (f) *"TVA" means the Tennessee Valley Authority; and*
- (g) *"TVA property" means land owned by the United States and in the custody of the TVA, together with improvements that have a fixed situs on the land, including work in progress but excluding temporary construction facilities, if these improvements either:*
 - 1. *Were in existence when title to the land on which they are situated was acquired by the United States; or*
 - 2. *Are allocated by the TVA or determined by it to be allocable to power. However, manufacturing machinery as interpreted by the department for franchise tax determination; ash disposal systems; and coal handling facilities, including railroads, cranes and hoists, and crushing and conveying equipment, shall be excluded.*

(2) *Book value shall be determined, for purposes of applying this section, as of the June 30 used by the TVA in computing the annual payment to the Commonwealth that is subject to redistribution by the Commonwealth.*

(3)~~(4)~~ Except for payments made directly by the TVA~~{Tennessee Valley Authority}~~ to counties, the total fiscal year payment received by the Commonwealth of Kentucky from the TVA~~{Tennessee Valley Authority}~~, as authorized by Section 13 of the Tennessee Valley Authority Act, as amended, shall be prorated thirty percent (30%) to the general fund of the Commonwealth and seventy percent (70%) among counties, cities, and school districts, as provided in *subsections (6) and (7)*~~{subsection (2)}~~ of this section.

- (4) (a) *The regional development agency assistance fund is hereby established in the State Treasury.*
- (b) *The fund shall be administered by the department for the purpose of providing funding to agencies that are designated to receive funding in a given fiscal year by the fiscal court of each fund-eligible county through the Regional Development Agency Assistance Program established in Section 2 of this Act.*
- (c) *The fund shall only receive the moneys transferred from the general fund pursuant to subsection (5) of this section.*

- (d) *Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year. Any interest earnings of the fund shall become a part of the fund and shall not lapse.*
- (5) *For fiscal years beginning on or after July 1, 2018, a portion of the total fiscal year payment received by the Commonwealth that is allocated to the general fund shall be transferred from the general fund to the regional development agency assistance fund established in subsection (4) of this section. This portion shall be equal to:*
- (a) *In fiscal year 2018-2019, two million dollars (\$2,000,000);*
- (b) *In fiscal year 2019-2020, four million dollars (\$4,000,000); and*
- (c) *In each fiscal year, beginning with the 2020-2021 fiscal year, six million dollars (\$6,000,000).*
- ~~(6)(2)~~ The payment to each county, city, and school district shall be determined by the proportion that the book value of ~~TVA~~~~Tennessee Valley Authority~~ property in such taxing district, multiplied by the current tax rate, bears to the total of the book values of ~~TVA~~~~Tennessee Valley Authority~~ property in all such taxing districts in the Commonwealth, multiplied by their respective tax rates. ~~provided,~~ However, *for purposes of this calculation*, each public school district ~~for the purposes of this calculation~~ shall have ~~its~~~~their~~ tax rate increased by thirty cents (\$0.30).
- ~~(7)(3)~~ As soon as practicable after the amount of payment to be made to the Commonwealth ~~of Kentucky~~ is finally determined by the ~~TVA~~~~Tennessee Valley Authority~~, the ~~Kentucky~~ department ~~of Revenue~~ shall determine the book value of ~~TVA~~~~Tennessee Valley Authority~~ property in each county, city, and school district and shall prorate the *payments allocated to counties, cities, and school districts under subsection (3) of this section*~~total payments received from the Tennessee Valley Authority, except payments received directly from the Tennessee Valley Authority,~~ among the distributees as provided in subsection ~~(6)(2)~~ of this section. The department ~~of Revenue~~ shall certify the payment due each taxing district to the Finance and Administration Cabinet which shall make the payment to such district.
- (8) *In each fiscal year, after the department has calculated the prorated payment amount that is due to each county pursuant to subsection (7) of this section, the department shall then make a written request to the fiscal court of each fund-eligible county for the name and address of the agency the fiscal court designates to receive a payment from the fund pursuant to subsection (5) of this section.*
- (9) *Within sixty (60) days of the date of the department's request, each fiscal court shall designate in writing one (1) agency that shall receive a share of the total amount of funds transferred to the fund in that fiscal year pursuant to subsection (5) of this section. Each agency's share shall be calculated as the total amount of funds transferred to the fund in that fiscal year divided by the total number of agencies designated to receive funds by fiscal courts of fund-eligible counties. Once the amount is determined by the department, the payment shall be paid by the Finance and Administration Cabinet directly to the designated agency. No amount shall be taken from the fund to pay administrative expenses by the department.*
- (10) *If a fiscal court does not respond to the department within sixty (60) days of the date of the department's request, the payment otherwise due to an agency designated by that fiscal court shall be reallocated equally among the agencies that have been designated to receive payments by the other fiscal courts.*
- (11) *All agencies receiving funds under this section shall provide a written report annually, no later than October 1, to the fiscal court that designated it for payment and to the Interim Joint Committee on Appropriations and Revenue. The report shall describe how the funds were expended and the results of the use of funds in terms of economic development and job creation.*
- ~~(4)~~ As used in subsections (2) and (3) of this section, "~~Tennessee Valley Authority Property~~" means land owned by the United States and in the custody of the Tennessee Valley Authority, together with such improvements (including work in progress but excluding temporary construction facilities) as have a fixed situs thereon if and to the extent that such improvements either:
- (a) ~~Were in existence when title to the land on which they are situated was acquired by the United States;~~
- ~~or~~
- (b) ~~Are allocated by the Tennessee Valley Authority or determined by it to be allocable to power; provided, however, that manufacturing machinery as interpreted by the Department of Revenue for franchise tax determination shall be excluded along with ash disposal systems and, coal handling facilities, including railroads, cranes and hoists, crushing and conveying equipment. As used in said subsections "book~~

~~value" means original cost unadjusted for depreciation as reflected in Tennessee Valley Authority's books of account. "Book value" shall be determined, for purposes of applying said subsections, as of the June 30 used by the Tennessee Valley Authority in computing the annual payment to the Commonwealth which is subject to redistribution by the Commonwealth.]~~

- ~~(12)(5)~~ This section shall be applicable to all payments received after *the effective date of this Act*~~{September 30, 1985,}~~ from the TVA~~{Tennessee Valley Authority}~~ under Section 13 of the Tennessee Valley Authority Act as amended.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 96 IS CREATED TO READ AS FOLLOWS:

- (1) *A Regional Development Agency Assistance Program is established to consist of a system of grants to agencies designated by fiscal courts of counties designated in Section 1 of this Act. Grants shall be administered by the Department for Local Government.*
- (2) (a) *Grants obtained under this program shall be used for:*
 1. *Economic development and job creation activities that the agency is empowered to undertake in that county;*
 2. *Acquiring federal, state, or private matching funds to the extent possible; and*
 3. *Debt service for approved projects.*
- (b) *Grants obtained under this program shall not be used for salaries or consulting fees.*
- (3) *Applications for grants from funds provided for in Section 1 of this Act shall be made by the legislative bodies of one (1) or more counties entitled to receive money from the regional development agency assistance fund.*
- (4) *The Department for Local Government shall review and approve grant applications from counties for agencies that operate in, or serve the interest of, the county whose fiscal court designated it to receive funding. Multiple counties may also submit a joint application requesting that part of their allotted funds be directed to an agency for a project that affects the counties.*
- (5) *By October 1 of each year, the commissioner of the Department for Local Government shall provide, in writing, to each the Governor and the Legislative Research Commission a listing of all applications for grants received pursuant to this section since the last report, a listing of all grants awarded, the amount of the award, the recipient agency, and the related project.*
- (6) *The Department for Local Government shall require that any funds granted under this section include an agreement that the recipient agency shall certify that the funds were expended for the purpose intended. The department shall determine whether the certification should be an independent annual audit or an internal certification, taking into account the size of the agency and the financial burden an independent annual audit may impose on the agency. In the case of an independent annual audit, the audit report shall include a certification that the funds were expended for the purpose intended. A copy of the audit or certification of compliance shall be forwarded to the Department for Local Government within eighteen (18) months after the end of the fiscal year.*

➔Section 3. Whereas economic development and job creation initiatives at the local level are of vital importance to the improvement of the quality of life for all Kentuckians, and increased funding is greatly needed to support those initiatives as soon as possible, 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.

Signed by Governor April 10, 2018.