

CHAPTER 172

(SB 246)

AN ACT relating to economic development and declaring an emergency.

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

➔Section 1. KRS 154.12-100 is amended to read as follows:

- (1) "Economic development ~~fund~~~~[bonds]~~" means the ~~fund~~~~[bond program]~~ authorized by the General Assembly for the purpose of promoting economic development within the state.
- (2) ***The economic development fund shall be funded through the issuance of bonds by the State Properties and Buildings Commission or other appropriation by the General Assembly.***
- (3) The economic development ~~fund~~~~[bond program]~~ shall be administered by the secretary of the Cabinet for Economic Development. The ~~authority~~~~[board]~~ shall promulgate administrative regulations in accordance with KRS Chapter 13A for project selection criteria ***and administration of the economic development fund.*** 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) ***Amount of investment***~~[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].~~
- ~~(4)~~~~(3)~~ Prior to submission of an economic development ~~fund~~~~[bond]~~ project to the ~~authority~~~~[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 ~~funds~~~~[state bonds]~~ outlining projected job creation and retention, an investment breakdown, and overall project description. This shall be submitted by the secretary to the ~~authority~~~~[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.~~
- ~~(5)~~~~(4)~~ Projects of state agencies as defined in KRS 42.005 shall not be eligible for funding from the economic development ~~fund~~~~[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 ~~funds pursuant to this section~~~~[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.]~~
- ~~(6)~~~~(5)~~ Following the approval by the ~~authority~~~~[board]~~, the project shall be presented by the secretary of the Cabinet for Economic Development or his ***or her*** 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 ***pursuant to KRS 56.450.***
- ~~(7)~~~~(6)~~ Notwithstanding the provisions of KRS 56.872(3), the amount of economic development ~~funds~~~~[bonds]~~ issued during any biennium shall not exceed the ***balance of the fund, and any funds authorized in the biennial budget shall carry forward and shall not lapse***~~[amount stated in the biennial budget].~~
- ~~(8)~~~~(7)~~ By November 1 of each year, the Cabinet for Economic Development shall prepare and post an annual report to the cabinet's Web site as required in KRS 154.12-2035, showing the economic development ~~funds~~~~[bonds]~~ issued during the previous fiscal year, ***funds disbursed***, the amounts paid back, and the balance

still owing with respect to **grants or** loans made by the Cabinet for Economic Development with proceeds of economic development ~~fund[s]~~ during the previous five (5) fiscal years.

➔Section 2. KRS 154.25-010 is amended to read as follows:

As used in this subchapter:

- (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) **"Agribusiness" has the same meaning as in KRS 154.32-010;**
- (4) "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, 333415, 335110, 335221, 335222, 335224, 335228, 335911, 335912, 336211, 336111, 336112, 336120, 423510, 493110, 541614, 551114, or 561439,~~ that **has been operating within the Commonwealth on a continuous basis for at least sixty (60) months preceding the request for approval by the authority of the project which meets the standards set forth in KRS 154.25-020, has been previously approved for economic development incentives from the Commonwealth related to one (1) or more of its facilities, and** employs a minimum of one thousand (1,000) full-time persons engaged in **one (1) or more of the following activities:**
 - (a) **Manufacturing;**
 - (b) **Agribusiness;**
 - (c) **Nonretail service or technology; or**
 - (d) **Headquarters operations, regardless of the underlying business activity of the company.**

"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 ~~automobile, automobile parts or supplies, household appliance, or household appliance 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;
- (11)~~(10)~~ "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter;
- (12) **"Headquarters" has the same meaning as in KRS 154.32-010;**
- (13)~~(11)~~ "Inducements" means the Kentucky tax credit and the wage assessment fee as prescribed in KRS 154.25-030 and 154.25-040;
- (14)~~(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;
- (15)~~(13)~~ "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401;
- (16)~~(14)~~ "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401;
- (17)~~(15)~~ "Manufacturing" **has the same meaning as in KRS 154.32-010**~~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~~;
- (18) **"Non-retail service or technology" has the same meaning as in KRS 154.32-010;**
- (19)~~(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;
- (20)~~(17)~~ "Supplemental project" means an additional 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 KRS 154.25-050; and
- (21)~~(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 3. KRS 154.32-020 is amended 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, headquarters operations, alternative fuel production facilities, gasification production facilities, energy-efficient alternative fuel production facilities, renewable energy production facilities, and carbon dioxide transmission pipelines 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:
- (a) ~~[1.]~~Incur eligible costs of at least one hundred thousand dollars (\$100,000);
 - (b) ~~[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
 - (c) ~~1. [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
 2. ~~[b.]~~ Provide employee benefits for all new full-time jobs equal to at least fifteen percent (15%) of the minimum wage requirement established by ~~[subdivision a. of this]~~subparagraph **1. of this paragraph**. If the eligible company does not provide employee benefits equal to at least fifteen percent (15%) of the minimum wage requirement established by ~~[subdivision a. of this]~~subparagraph **1. of this paragraph**, 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 requirement established in ~~[subdivision a. of this]~~subparagraph **1. of this paragraph** through increased hourly wages combined with employee benefits.
- ~~[(b)]~~ To qualify for the advance disbursement provided by KRS 154.32-080, 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 KRS 141.415 and 154.32-070;
 - (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 KRS 154.32-090; and
 - (c) ***Notwithstanding any provision of law to the contrary, for any economic development project with an eligible investment of more than two hundred million dollars (\$200,000,000), the authority may authorize approval to the economic development project based upon terms and incentives applicable to economic development project locating in an enhanced incentive county***~~[For economic development projects with an investment of more than five hundred million dollars (\$500,000,000), an advance disbursement as provided in KRS 154.32-080].~~
- (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 4. KRS 154.32-030 is amended 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 KRS 154.32-080];~~
- (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 KRS 154.32-040. 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 KRS 154.32-020 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 KRS 154.32-020 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 KRS 154.32-020, 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 KRS 154.32-020, 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 KRS 154.32-020, 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 KRS 154.32-020, then the economic development project may be suspended automatically or, with approval of the authority, terminated.

➔Section 5. KRS 154.32-090 is amended 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:
- (a) Is located in a local jurisdiction that 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; or
 - (b) Is located in a local jurisdiction that does impose a local occupational license fee, the jurisdiction may request that the authority waive the local occupational license fee requirements established by subsection (3), (4), (5), or (6) of this section if the local jurisdiction offers alternative inducements of similar value satisfactory to the authority. The authority shall review all requests for a waiver, and may waive the local occupational license fee requirements and instead require the local jurisdiction to provide alternative inducements of similar value if the authority determines that the circumstances warrant an alternative contribution by the local jurisdiction.
- (8) Each employee paying the assessment shall simultaneously be entitled to a credit against the Kentucky individual income tax required to be withheld under KRS 141.310 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 KRS 154.32-080, 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 6. KRS 154.60-020 is amended to read as follows:

- (1) The authority shall develop a small business development credit program in consultation with the Office of Entrepreneurship 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 KRS 141.0205.
- (2) The authority shall determine the terms, conditions, and requirements for application for the credit, in consultation with the Office of Entrepreneurship, 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, 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 authority *and shared between the Small Business Tax Credit program and the Farmer Small Business Tax Credit* shall be capped at three million dollars (\$3,000,000).
 - (b) In order to be eligible to receive final approval for a credit, a small business shall, within the twenty-four (24) month period immediately preceding the application submission date:
 1. Create and fill one (1) or more eligible positions over the base employment; and
 2. Invest five thousand dollars (\$5,000) or more in qualifying equipment or technology.
 - (c) Each eligible position that is created and filled shall be maintained for twelve (12) months. If a full-time employee filling a newly created eligible position ceases to be employed by the small business for any reason, that employee shall be replaced within forty-five (45) days in order for the eligible position to maintain its eligible status, in addition to meeting all other applicable requirements.
 - (d) The small business shall submit all information necessary for the authority to determine credit eligibility for each year, and the amount of credit for which the small business is eligible.
 - (e) The maximum amount of credit for each small business for each year shall not exceed twenty-five thousand dollars (\$25,000).
 - (f) 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 7. A NEW SECTION OF SUBCHAPTER 60 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *In order to be eligible to receive approval for a tax credit, a selling farmer shall have, at a minimum:*
- (a) *1. Demonstrated the active use, management, and operation of real and personal property for the production of a farm product;*
 - 2. Executed and effectuated a purchase contract to sell agricultural land with a beginning farmer for an amount evidenced by an appraisal; and*
 - (b) *Sold, conveyed, and transferred ownership of related agricultural land and assets to a beginning farmer.*
- (2) *The selling farmer shall submit an application after consummation of the sale, transfer of title, and conveyance of a farm and farming assets together with all information necessary for the authority to determine eligibility for the tax credit.*
- (3) *An application for the Farmer Small Business Tax Credit shall contain, at a minimum, information about the:*
- (a) *Selling farmer and purchasing beginning farmer eligibility;*
 - (b) *Purchase contract and closing statement;*
 - (c) *Documentation, such as a deed, title conveyance for the transfer of assets, including verification of Kentucky residency; and*
 - (d) *Any other information the authority may require to determine eligibility for the credit.*
- (4) (a) *The maximum amount of the Farmer Small Business Tax Credit for an approved selling farmer in each calendar year shall not exceed twenty-five thousand dollars (\$25,000) and shall be prorated based on factors determined by the authority.*
- (b) *The maximum amount of credit an individual may claim over a lifetime shall not exceed one hundred thousand dollars (\$100,000).*
- (c) *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.*
- (5) *Beginning January 1, 2020, the authority may approve Farmer Small Business Tax Credits for selling farmers.*

➔Section 8. Whereas, it is essential to immediately secure economic development projects and fully compete with other states to bring jobs and tax dollars to the Commonwealth, therefore, 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.

➔Section 9. The following KRS section is repealed:

154.32-080 Advance disbursement of portion of incentives -- Eligibility -- Computation of maximum amount -- Loan agreement -- Repayment.

Signed by Governor March 26, 2019.