CHAPTER 98

(HB 570)

AN ACT relating to interlocal cooperation agreements.

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

➔Section 1. KRS 65.220 is amended to read as follows:

It is the purpose of KRS 65.210 to 65.300 to permit ***public agencies***~~[local governmental units and the sheriff upon approval of the fiscal court]~~ to make the most efficient use of their powers by enabling them to cooperate with ***each other***~~[other localities]~~ on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

➔Section 2. KRS 65.230 is amended to read as follows:

As used in KRS 65.210 to 65.300, unless the context otherwise requires

(1) "Interlocal agency" means a separate legal or administrative entity with a governing board that is created in an agreement entered into by public agencies pursuant to the provisions of KRS 65.210 to 65.300;

(2) "Local government" means any:

(a) City;

(b) County;

(c) Consolidated local government;

(d) Urban-county government;

(e) Charter county government; or

(f) Unified local government;~~[,]~~

(3) "Public agency" means***:***~~[any]~~

(a) Any local government;

(b) Any political subdivision of this state ***or of another state;***~~[,]~~

(c) Any agency, board instrumentality, or commission created by a local government;~~[any]~~

(d) Any taxing district as defined by KRS 65.180;

(e) Any special purpose government entity as defined in KRS 65A.010(9)(a) to (c), including those entities that are exempt from the definition of special purpose governmental entity under the provisions of KRS 65A.010(9)(d)7. to 9.;

(f) Any interlocal agency;

(g) The Commonwealth or any agency ***or instrumentality*** of the state government or of the United States***, including but not limited to a state-supported institution of higher education***~~[, a sheriff, any]~~

(h) Any county ***school district*** or independent school district***; and***~~[, and any political subdivision of another state. It also means a]~~

(i) Any ~~[state-supported or]~~private institution of higher education ***entering into an agreement authorized by subsection (4) of Section 4 of this Act with another public agency***~~[and a county or independent public school district for the purposes of entering into a joint agreement to establish and operate a program or facility, including a center for child learning and study, designed to help one (1) or more schools meet any of the goals set forth in KRS 158.6451, or for the investment of funds. If a private institution of higher education proposes to participate in an agreement pursuant to the Interlocal Cooperation Act, the Attorney General shall determine if the proposal is compatible with the United States Constitution, as part of the review of the agreement provided in KRS 65.260(2)]~~.

➔Section 3. A NEW SECTION OF KRS 65.210 TO 65.300 IS CREATED TO READ AS FOLLOWS:

(1) A public agency as defined in subsection (3)(c) to (f) of Section 2 of this Act shall provide written notification to the governing body of each of its establishing local governments of its intent to enter into an interlocal agreement pursuant to the provisions of KRS 65.210 to 65.300 that includes a:

(a) Written description and purpose of the proposed agreement;

(b) Copy of the proposed agreement; and

(c) Statement that the governing body of the establishing local government may either approve or disapprove the public agency's entry into the proposed agreement by sending a written response of its approval or disapproval within thirty (30) days of the receipt of the notification from the public agency. The statement shall also note that if an establishing local government does not respond within that thirty (30) day period, the establishing local government shall be deemed to have approved the proposed entry into the agreement.

(2) In order for a public agency as defined in subsection (3)(c) to (f) of Section 2 of this Act to enter into an agreement pursuant to the provisions of KRS 65.210 to 65.300, each governing body of the local government establishing that public agency, if more than one (1), shall:

(a) Notify the public agency of its approval in writing within thirty (30) days of receipt of the notification as set out in subsection (1) of this section; or

(b) Make no response. If the governing body of the local government makes no response within thirty (30) days of the notification as set out in subsection (1) of this section, the nonresponse shall be deemed to be approval of the proposal.

➔Section 4. KRS 65.240 is amended to read as follows:

(1) Any ~~[power or]~~powers, privileges***,*** or ***authorities***~~[authority]~~ exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state, and jointly with any public agency of any other state or of the United States to the extent that the laws of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by KRS 65.210 to 65.300 upon a public agency.

(2) Any two (2) or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of KRS 65.210 to 65.300***, including but not limited to for the sharing of revenues and physical assets***. Appropriate action by ordinance, resolution or otherwise pursuant to law, of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(3) Any public agency may enter into agreements with another public agency or agencies pursuant to KRS 65.210 to 65.300 to acquire by purchase or lease, any real or personal property, or any interest, right, easement, or privilege therein, outside of its municipal or jurisdictional boundaries, in connection with the acquisition, construction, operation, repair, or maintenance of any ***water,*** sewage, wastewater, or storm water facilities, notwithstanding any other provision of the Kentucky Revised Statutes restricting, qualifying, or limiting their authority to do so, except as set forth in KRS Chapter 278.

(4) A ***private***~~[state-supported]~~ institution of higher education and one (1) or more county ***school districts*** or independent ~~[public]~~school districts may enter into agreements under KRS 65.210 to 65.300 for the purposes ***of establishing and operating a program or facility, including a center for child learning and study, designed to help one (1) or more schools meet the goals set out in KRS 158.6451, or for the investment of funds if the Attorney General determines that the proposal is compatible with the United States Constitution as part of the review of the agreement provided in subsection (2) of Section 9 of this Act***~~[specified in KRS 65.230]~~, notwithstanding any other provision of the statutes restricting, qualifying or limiting their authority to do so.

➔Section 5. KRS 65.242 is amended to read as follows:

(1) Provided that the terms of the agreement are not being substantively changed, whenever an existing agreement that complies with the requirements of KRS 65.210 to 65.300 is amended ***solely*** to join new parties or to remove existing parties, approval of the Attorney General or the Department for Local Government under KRS 65.260 and approval of the agency or officer with jurisdiction under KRS 65.300 shall not be required for the amendment to be effective.

(2) In lieu of the requirements of KRS 65.290, when an agreement is amended pursuant to subsection (1) of this section, each public agency subject to the agreement ***or the interlocal agency created by the agreement shall file a copy of the amended agreement with***~~[, including any public agency withdrawing from the agreement, shall send the following to the county clerk of the county in which it is located, to]~~ the Secretary of State~~[, and to either the Attorney General or the Department for Local Government, if either agency would have had the responsibility for review under KRS 65.260:~~

~~(a) A copy of the full agreement, including any amendments;~~

~~(b) A statement containing the effective date and subject of the original agreement;~~

~~(c) A list of the parties being added to or removed from the agreement; and~~

~~(d) A certification signed by each party being added to the agreement that confirms that the party is:~~

~~1. A public agency as defined in KRS 65.230; and~~

~~2. Eligible under KRS 65.240 to join the interlocal agreement with the existing parties to the agreement]~~.

(3) Public agencies may, by the terms of an agreement made pursuant to KRS 65.210 to 65.300, specify the manner in which parties may be added to or removed from the agreement pursuant to this section. The language may authorize the addition of new parties or the removal of existing parties with or without the requirement of action by ~~[the legislative body of]~~each public agency that is a party to the existing agreement or with a requirement of action by a minimum percentage of the legislative bodies of the public agencies that are parties to the agreement.~~[In the absence of this language, action by the legislative body of each public agency that is a party to the existing agreement shall be required to amend the agreement to add new parties or remove existing parties.]~~

➔Section 6. KRS 65.250 is amended to read as follows:

(1) Any ~~[such]~~agreement ***entered into under KRS 65.210 to 65.300*** shall specify the following:

(a) The ***purpose and*** duration of the agreement;

(b) ***If the agreement creates an interlocal agency:***

1. The ~~[precise]~~organization, composition***, authority,*** and nature of ***the interlocal agency, including the term and qualifications of the members of the governing authority and their manner of appointment or selection;***~~[any separate legal or administrative entity created thereby together with]~~

2. A statement of the powers delegated ***to the interlocal agency or any restrictions, limitations, or conditions the contracting parties wish to place on those powers***~~[thereto; provided such legal entity may be legally created]~~; ***and***

3. A general statement of any responsibilities of the interlocal agency to the parties that established it;

(c) ~~[The purpose or purposes of such legal or administrative entity;~~

~~(d)]~~The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor; said agreement for financing the joint or cooperative undertaking shall include agreements relative to the respective responsibilities of the ***public agencies***~~[units of government]~~ involved for the payment of the employer's share involved in any pertinent pension plan or plans, if any, provided for by KRS 65.280;

(d)~~[(e)]~~ The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement***, including the method***~~[and]~~ for disposing of property upon such partial or complete termination; ***and***

(e)~~[(f)]~~ Any other necessary and proper matters.

(2) In the event that the agreement does not establish ***an interlocal agency***~~[a separate legal or administrative entity]~~ to conduct the joint or cooperative undertaking, the agreement shall, in addition to paragraphs (a), (c), (d), ***and*** (e)~~[and (f)]~~ enumerated in subsection (1) of this section, contain the following:

(a) Provision for an administrator~~[or joint board]~~ responsible for~~[administering]~~the joint or cooperative undertaking~~[. In the event that a joint board is established, the public agencies party to the agreement shall be represented thereon]~~; ***and***

(b) The manner of acquiring, holding***,*** and disposing of real and personal property used in the joint or cooperative undertaking.

➔Section 7. A NEW SECTION OF KRS 65.210 TO 65.300 IS CREATED TO READ AS FOLLOWS:

(1) An interlocal agency created by the interlocal agreement shall constitute an agency and instrumentality of the public agencies party to the interlocal agreement for the purpose of performing the essential governmental functions and the public purposes authorized by the interlocal agreement.

(2) Unless restricted, limited, or otherwise conditioned under the terms of the interlocal agreement, an interlocal agency is authorized to exercise any powers not in conflict with local, state, or federal law or in conflict with the interlocal agreement that are necessary and convenient to accomplish the purposes for which the interlocal agency was created.

(3) To the extent that any of the provisions of the interlocal agreement are more restrictive, or limit the powers, privileges, or authority of the interlocal agency that are otherwise allowed by KRS 65.210 to 65.300, the provisions of the interlocal agreement shall control.

(4) The status and authorities of an interlocal agency granted in this section, unless limited by the interlocal agreement, is cumulative and in addition to the powers and authority of an interlocal agency that may otherwise exist and that are granted or implied under any other laws of the Commonwealth to a specific type of public body that may also function as an interlocal agency under KRS 65.210 to 65.300.

(5) Nothing in this section shall be construed to grant an interlocal agency the ability to levy a tax.

(6) An interlocal agency created by an interlocal agreement shall be deemed to be a public agency as defined in KRS 61.805 and 61.870, and as such shall be subject to KRS 61.800 to 61.850 and 61.870 to 61.884.

➔Section 8. KRS 65.255 is amended to read as follows:

If an agreement entered into under the authority of KRS 65.210 to 65.300 provides for cooperative action in the utilization of peace officers, ***those peace officers,*** ~~[police department members,]~~while in the performance of their duties under ***the***~~[such an]~~ agreement outside their own city***,***~~[or]~~ county, ***or other jurisdiction,*** shall have the full power of arrest and all other powers they possess in their own city***,***~~[or]~~ county***, or other jurisdiction,*** and shall have the same immunities and privileges as if the duties were performed in their own city***,***~~[or]~~ county***, or other jurisdiction***.

➔Section 9. KRS 65.260 is amended to read as follows:

(1) No agreement made pursuant to KRS 65.210 to 65.300 shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by ***an interlocal agency***~~[a joint board or other legal or administrative entity created by an agreement made pursuant to KRS 65.210 to 65.300]~~, that performance may be offered in satisfaction of the obligation or responsibility.

(2) Except as provided in subsections (3) and (4) of this section, every agreement made pursuant to KRS 65.210 to 65.300 shall, prior to and as a condition precedent to its entry into force, be submitted to the Attorney General who shall determine whether the agreement is in proper form and compatible with the laws of this state~~[, except for interlocal agreements between cities, counties, charter counties, urban-county governments, and sheriffs upon approval of the fiscal court, which shall be submitted to the Department for Local Government]~~. The Attorney General ~~[or the Department for Local Government]~~shall approve any agreement submitted to ***his or her office***~~[them]~~ under this subsection unless ***he or she finds***~~[they find]~~ that it does not meet the ***requirements***~~[conditions]~~ set forth in KRS 65.210 to 65.300. If the agreement does not meet these ***requirements***~~[conditions]~~, the Attorney General ~~[or the Department for Local Government]~~shall detail in writing, addressed to the ~~[governing bodies of the]~~public agencies concerned, the specific respects in which the proposed agreement fails to meet the requirements of law. ***The*** failure ***of the Attorney General*** to disapprove an agreement submitted ***under this subsection***~~[hereunder]~~ within ***thirty (30)***~~[sixty (60)]~~ days of its submission shall constitute approval thereof.

(3) ***(a) In lieu of the requirements of subsection (2) of this section, agreements involving only local governments, an agency, board, instrumentality, or commission created exclusively by one (1) or more local governments, or any combination thereof, shall prior to and as a condition precedent to its entry into force, be submitted to the Department for Local Government. The department shall***

determine whether the agreement is in proper form and shall approve any agreement submitted to it under this subsection unless it finds that the agreement does not meet the requirements set out in KRS 65.210 to 65.300. If the agreement does not meet these requirements, the department shall detail, in writing, addressed to the public agencies concerned, the specific respects in which the proposed agreement fails to meet the requirements of KRS 65.210 to 65.300. The failure of the department to disapprove an agreement submitted under this subsection within thirty (30) days of its submission shall constitute approval thereof.

(b) The approval of an agreement by the Department for Local Government under paragraph (a) of this subsection shall be deemed final and conclusive that the agreement meets the requirements of KRS 65.210 to 65.300, and the agreement shall not thereafter be subject to challenge as to the validity of its formation.

(4) The submission of an interlocal cooperative agreement to the Attorney General or the Department for Local Government as provided in ***subsections (2) and (3)***~~[subsection (2)]~~ of this section shall not be required for any cooperative agreement which involves***:***~~[.]~~

(a) Only the construction, reconstruction, or maintenance of a municipal road or bridge, provided a written agreement is approved by each of the affected governing bodies~~[.]~~ ***of the public agencies, or the administrative head of a public agency if there is no governing body; or***

(b) ~~[(4)]~~Interlocal cooperative agreements between school boards and ***local governments***~~[counties shall be exempt from the provisions of subsection (2) of this section]~~.

➔Section 10. KRS 65.270 is amended to read as follows:

(1) Whenever any two (2) or more public agencies, as defined in KRS 65.230, enter into an agreement for joint or cooperative action pursuant to the provisions of KRS 65.210 to 65.300, any public agency acting separately or jointly with one (1) or more of any other ***public*** agencies, may acquire, construct, maintain, add to, and improve the necessary property, real and personal, which is required in order to perform the functions under the agreement, and for the purpose of defraying the costs incident to the performance of the agreement, may borrow money and issue negotiable revenue bonds.

(2) Any public agency or agencies may borrow money and issue bonds under this section pursuant to an order, resolution, or ordinance of its or their legislative or administrative body or bodies, which order, resolution, or ordinance shall set forth the terms of the agreement in full, the amount of the revenue bonds to be issued, and the maximum rate of interest. In every instance the order, resolution, or ordinance shall provide that the joint or cooperative action is being undertaken pursuant to the provisions of KRS 65.210 to 65.300.

(3) The bonds may be issued to bear interest at a rate or rates or method of determining rates as the public agency or agencies determines, payable at ***the times***~~[least annually, and shall be executed in a manner and be payable at times not exceeding thirty (30) years from the date of issuance]~~ and at a place or places as the public agency or agencies determines.

(4) The bonds may provide that they or any of them may be called for redemption prior to maturity~~[, on interest payment dates not earlier than one (1) year from the date of issuance of the bonds]~~.

(5) Any public agency is empowered to accept donations or gifts to the joint or cooperative action from any source and to accept appropriations and grants to the joint or cooperative action from the federal government or its agencies and appropriations from the state or any county, city, or other political subdivision and, at the option of the public agency or agencies, to pledge any donations, gifts, or appropriations to the payment of revenue bonds issued to finance the cost of a joint or cooperative action.

(6) Bonds issued pursuant to this section shall be negotiable and shall not be subject to taxation. If any officer whose signature or countersignature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature or countersignature shall be valid and sufficient for all purposes the same as if he had remained in office until delivery. The bonds shall be sold in a manner and upon terms as the public agency or agencies deem best. The bonds shall be payable solely from the revenue derived from the joint or cooperative action and shall not constitute an indebtedness of the state, county, city, or political subdivision. It shall be plainly stated on the face of each bond that it has been issued under the provisions of KRS 65.210 to 65.300.

(7) All money received from the bonds shall be applied solely for the acquisition, construction, maintenance, improvement, or operation of the joint or cooperative action, and the necessary expense of preparing, printing,

and selling the bonds, or to advance the payment of interest on the bonds during the first three (3) years following the date of the issuance of the bonds.

(8) ~~[Before the issuance of the bonds the public agencies party to the agreement shall, by orders, resolutions, or ordinances of their respective legislative bodies, set aside and pledge the income and revenue of the joint or cooperative action including rents, royalties, fees, and proceeds of sales of property and from rates and charges for services derived or rendered by the joint or cooperative action into a separate and special fund to be used and applied in payment of the cost of the maintenance, operation, and depreciation incident to the joint or cooperative action. The orders, resolutions, or ordinances shall determine and fix the amount of revenue necessary to be set apart and applied to the payment of principal and interest of the bonds, and the proportion of the balance of the income and revenue to be set aside as a proper and adequate depreciation account. The remaining proportion of the balance shall be set aside for the reasonable and proper operation and maintenance of the joint or cooperative action.~~

~~(9)]~~The rents, royalties, fees, rates, and charges for the service or sale of the joint or cooperative action shall be fixed and revised from time to time so as to be sufficient to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal of the bonds when due, and to provide for the operation and maintenance of the joint or cooperative action and an adequate depreciation account.

➔Section 11. KRS 65.290 is amended to read as follows:

(1) Before any agreement made pursuant to KRS 65.210 to 65.300 shall become operative or have force and effect, a certified copy thereof shall be filed with the ~~[county clerk of the county which is party to the agreement, the county clerk of the county wherein any other political subdivision of the state is located which is party to such agreement, and with the]~~Secretary of State. ***After the original filing of an agreement as provided in this section, no additional filing is required for agreements amended solely for the addition or removal of parties as provided under Section 5 of this Act.***

(2) ***If***~~[In the event that]~~ an agreement entered into pursuant to KRS 65.210 to 65.300 is between or among one ***(1)*** or more public agencies of this state and one ***(1)*** or more public agencies of another state or of the United States, ***that***~~[said]~~ agreement ***may***~~[shall]~~ have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. ***An***~~[Such]~~ action shall be maintainable against any public agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state.

➔Section 12. KRS 65.300 is amended to read as follows:

If~~[In the event that]~~ an agreement made pursuant to KRS 65.210 to 65.300 ***deals***~~[shall deal]~~ in whole or in part with the provisions of services or facilities ***over***~~[with regard to]~~ which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having ***that***~~[such]~~ power of control and shall be approved or disapproved by ***the***~~[such]~~ officer or agency as to all matters within the jurisdiction of ***the***~~[such]~~ officer or agency in the same manner and subject to the requirements governing the action of the Attorney General pursuant to subsection (2) of KRS 65.260. The requirement of this section shall be in addition to and not in substitution for the requirement of submission to and approval by the Attorney General under subsection (2) of KRS 65.260.

➔Section 13. KRS 68.200 is amended to read as follows:

(1) As used in this section, unless the context clearly indicates otherwise:

(a) Motor vehicle means "vehicle" as defined in KRS 186.010(8)(a);

(b) Retailer means "retailer" as defined in KRS 139.010; and

(c) Gross rental charge means "gross rental charge" as defined in KRS 138.462~~[(4)]~~.

(2) A county containing a designated city, consolidated local government, or urban-county government may levy a license fee on the rental of motor vehicles which shall not exceed three percent (3%) of the gross rental charges from rental agreements for periods of thirty (30) days or less. The license fee shall apply to retailers who receive more than seventy-five percent (75%) of their gross revenues generated in the county from gross rental charges. Any license fee levied pursuant to this subsection shall be collected by the retailer from the renters of the motor vehicles.

(3) Revenues from rental of motor vehicles shall not be included in the gross rental charges on which the license fee is based if:

(a) The declared gross weight of the motor vehicle exceeds eleven thousand (11,000) pounds; or

(b) The rental is part of the services provided by a funeral director for a funeral; or

(c) The rental is exempted from the state sales and use tax pursuant to KRS 139.470.

(4) A fiscal court or the legislative body of an urban-county government shall provide for collection of the license fee in the ordinance by which the license fee is levied. The revenues shall be deposited in an account to be known as the motor vehicle license fee account. The revenues may be shared among local governments pursuant to ***KRS 65.210 to 65.300***~~[KRS 65.245]~~.

(5) The county shall use the proceeds of the license fee for economic development activities. It shall distribute semiannually, by June 30 and December 31, all revenues not shared pursuant to ***KRS 65.210 to 65.300***~~[KRS 65.245]~~, to one (1) or more of the following entities if it has established, or contracted with, the entity for the purposes of economic development and is satisfied that the entity is promoting satisfactorily the county's economic development activities:

(a) A riverport authority established by the county pursuant to KRS 65.520; or

(b) An industrial development authority established by the county pursuant to KRS 154.50-316; or

(c) A nonprofit corporation as defined in KRS 273.161(4) which has been organized for the purpose of promoting economic development.

The entity shall make a written request for funds from the motor vehicle license fee account by May 31 and November 30, respectively.

(6) (a) As used in this section, "designated city" means a city on the registry maintained by the Department for Local Government under this subsection.

(b) On or before January 1, 2015, the Department for Local Government shall create and maintain a registry of cities that, as of August 1, 2014, were classified as cities of the first, second, and third class. The Department for Local Government shall make the information included on the registry available to the public by publishing it on its Web site.

➔Section 14. KRS 154.22-040 is amended to read as follows:

(1) Each year, the authority shall, under its Rural Economic Development Assistance Program, on the basis of the final unemployment figures calculated by the Department of Workforce Investment in the Education and Workforce Development Cabinet, determine which counties have had a countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth in the most recent five (5) consecutive calendar years, or which have had an average countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth by two hundred percent (200%) in the most recent calendar year, and shall certify those counties as qualified counties. A county not certified on the basis of final unemployment figures may also be certified as a qualified county if the authority determines the county is one (1) of the sixty (60) most distressed counties in the Commonwealth based on the following criteria with equal weight given to each criterion:

(a) The average countywide rate of unemployment in the most recent three (3) consecutive calendar years, on the basis of final unemployment figures calculated by the Department of Workforce Investment in the Education and Workforce Development Cabinet;

(b) In each county the percentage of adults twenty-five (25) years of age and older who have attained at least a high school education or equivalent, on the basis of the most recent data available from the United States Department of Commerce, Bureau of the Census; and

(c) Road quality, as quantified by the access within a county to roads ranked in descending order from best quality to worst quality as follows: two (2) or more interstate highways, one (1) interstate highway, a state four (4) lane parkway, four (4) lane principal arterial access to an interstate highway, state two (2) lane parkway and none of the preceding road types, as certified by the Kentucky Transportation Cabinet to the authority.

If the authority determines that a county which has previously been certified as a qualified county no longer meets the criteria of this subsection, the authority shall decertify that county. The authority shall not provide inducements for any facilities in that county and an approved company shall not be eligible for the inducements offered by KRS 154.22-010 to 154.22-070 unless the tax incentive agreements required herein are entered into by all parties prior to July 1 of the year following the calendar year in which the authority decertified that county. In addition, the authority shall certify coal-producing counties, not otherwise certified as qualified counties in this subsection, for economic development projects involving the new construction of electric generation facilities. A coal-producing county shall mean a county in the Commonwealth of Kentucky that has produced coal upon which the tax imposed under KRS 143.020 was paid at any time. For economic development projects undertaken in a regional industrial park, as defined in KRS 42.4588, or in an industrial park created pursuant to an interlocal agreement in which revenues are shared as provided in ***KRS 65.210 to 65.300*** ~~[KRS 65.245]~~, where the physical boundaries of the industrial park lie within two (2) or more counties of which at least one (1) of the counties is a qualified county under this section, an eligible company undertaking an economic development project within the physical boundaries of the industrial park may be approved for the inducements under KRS 154.22-010 to 154.22-080.

(2) The authority shall establish the procedures and standards for the determination and approval of eligible companies and their economic development projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A. The criteria for approval of eligible companies and economic development projects shall include but not be limited to the creditworthiness of eligible companies; the number of new jobs to be provided by an economic development project to residents of the Commonwealth; and the likelihood of the economic success of the economic development project.

(3) The economic development project shall involve a minimum investment of one hundred thousand dollars ($100,000) by the eligible company and shall result in the creation by the eligible company, within two (2) years from the date of the final approval authorizing the economic development project, of a minimum of fifteen (15) new full-time jobs at the site of the economic development project for Kentucky residents to be employed by the eligible company and to be held by persons subject to the personal income tax of the Commonwealth. The authority may extend this two (2) year period upon the written application of an eligible company requesting an extension.

(4) (a) Within six (6) months after the activation date, the approved company shall compensate a minimum of ninety percent (90%) of its full-time employees whose jobs were created with base hourly wages equal to either:

1. Seventy-five percent (75%) of the average hourly wage for the Commonwealth; or

2. Seventy-five percent (75%) of the average hourly wage for the county in which the project is to be undertaken.

(b) If the base hourly wage calculated in paragraph (a)1. or 2. of this subsection is less than one hundred fifty percent (150%) of the federal minimum wage, then the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage. However, for projects receiving preliminary approval of the authority prior to July 1, 2008, the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage existing on January 1, 2007. In addition to the applicable base hourly wage calculated above, the eligible company shall provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage; however, if the eligible company does not provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage, the eligible company may qualify under this section if it provides the employees hired by the eligible company as a result of the economic development project total hourly compensation equal to or greater than one hundred fifteen percent (115%) of the applicable base hourly wage through increased hourly wages combined with employee benefits.

(c) The requirements of this subsection shall not apply to eligible companies which are nonprofit corporations established under KRS 273.163 to 273.387 and whose employees are handicapped and sheltered workshop workers employed at less than the established minimum wage as authorized by KRS 337.295.

For an eligible company, within a regional industrial park which lies within two (2) or more counties, the calculation of the wage and benefit requirement shall be determined by averaging the average county hourly wage for all counties within the regional industrial park.

(5) No economic development project which will result in the replacement of agribusiness, manufacturing, or electric generation facilities existing in the state shall be approved by the authority; however, the authority may approve an economic development project that:

(a) Rehabilitates an agribusiness, manufacturing, or electric generation facility:

1. Which has not been in operation for a period of ninety (90) or more consecutive days;

2. For which the current occupant of the facility has published a notice of closure so long as the eligible company intending to acquire the facility is not an affiliate of the current occupant; or

3. The title to which is vested in other than the eligible company or an affiliate of the eligible company and that is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction;

(b) Replaces an agribusiness, manufacturing, or electric generation facility existing in the Commonwealth:

1. The title to which shall have been taken under the exercise of the power of eminent domain, or the title to which shall be the subject of a nonappealable judgment granting the authority to exercise the power of eminent domain, in either event to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

2. Which has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

(c) Replaces an existing agribusiness, manufacturing, or electric generation facility located in the same qualified county, and the existing agribusiness, manufacturing, or electric generation facility to be replaced cannot be expanded due to the unavailability of real estate at or adjacent to the agribusiness, manufacturing, or electric generation facility to be replaced. Any economic development project satisfying the requirements of this subsection shall only be eligible for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the agribusiness, manufacturing, or electric generation facility to be replaced. No economic development project otherwise satisfying the requirements of this subsection shall be approved by the authority which results in a lease abandonment or lease termination by the approved company without the consent of the lessor.

(6) With respect to each eligible company making an application to the authority for inducements, and with respect to the economic development project described in the application, the authority shall request materials and make inquiries of the applicant as necessary or appropriate. Upon review of the application and completion of initial inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and authorizing the undertaking of the economic development project. After preliminary approval, the authority may by final approval designate an eligible company to be an approved company.

➔Section 15. KRS 154.32-050 is amended to read as follows:

(1) The authority shall identify and certify or decertify enhanced incentive counties on an annual basis as provided in this section.

(2) Each fiscal year, the authority shall:

(a) Obtain from the Department of Workforce Investment in the Education and Workforce Development Cabinet, the final unemployment figures for the prior calendar year for each county and for the Commonwealth as a whole;

(b) Identify those counties which have had:

1. A countywide unemployment rate that exceeds the statewide unemployment rate in the most recent five (5) consecutive calendar years; or

2. An average countywide rate of unemployment exceeding the statewide unemployment rate by two hundred percent (200%) in the most recent calendar year; and

(c) Certify the counties identified in paragraph (b) of this subsection as enhanced incentive counties.

(3) A county not certified under subsection (2) of this section may also be certified by the authority as an enhanced incentive county if the authority determines the county is one (1) of the sixty (60) most distressed counties in the Commonwealth based on the following criteria with equal weight given to each criterion:

(a) The average countywide rate of unemployment in the most recent three (3) consecutive calendar years, using the information obtained under subsection (2)(a) of this section;

(b) The percentage of adults twenty-five (25) years of age and older who have attained at least a high school education or equivalent, on the basis of the most recent data available from the United States Department of Commerce, Bureau of the Census; and

(c) The quality of the roads in the county. Quality of roads shall be determined by the access within a county to roads, ranked in descending order from best quality to worst quality, as certified to the authority by the Kentucky Transportation Cabinet as follows:

1. Two (2) or more interstate highways;

2. One (1) interstate highway;

3. A state four (4) lane parkway;

4. A four (4) lane principal arterial access to an interstate highway;

5. A state two (2) lane parkway; and

6. None of the preceding road types.

(4) (a) If the authority determines that an enhanced incentive county no longer meets the criteria to be certified as an enhanced incentive county under this section, the authority shall decertify that county.

(b) Any economic development project located in an enhanced incentive county that was decertified by the authority after May 1, 2009, shall have until July 1 of the third year following the fiscal year in which the county was decertified to obtain final approval from the authority.

(5) (a) As used in this subsection, "industrial park" means a regional industrial park as defined in KRS 42.4588, or an industrial park created pursuant to an interlocal agreement in which revenues are shared as provided in ***KRS 65.210 to 65.300***~~[KRS 65.245]~~.

(b) An economic development project undertaken in an industrial park that is located in two (2) or more counties, one (1) of which is an enhanced incentive county, may be approved for the enhanced incentive county incentives set forth in this subchapter.

➔Section 16. KRS 65.280 is amended to read as follows:

(1) In the event that a public agency or agencies determine to transfer any of its employees to the joint or cooperative action, which employees are subject to any civil service laws or regulations, such employees shall not lose any rights or benefits which have accrued prior to such transfer. Such employees, when transferred, to the joint or cooperative action from a public agency or agencies that are subject to any civil service laws or regulations, and who have completed probationary appointments with the public agency or agencies prior to the date of transfer, shall be considered as having satisfied all of the qualifications of the joint or cooperative action and shall be given full and regular appointments as defined in such laws or regulations as of the date they are transferred to the joint or cooperative action.

(2) In the event that the joint or cooperative action is such that its employees would be afforded civil service rights or benefits if they were employees of a county or city, such employees shall be afforded the protection of civil service laws or regulations; provided, however, that such protection is available under the laws of this state.

(3) In the event the joint or cooperative action employs a person employed immediately prior thereto by a component city or county, or by a special district, such employee shall be deemed to remain an employee of such city, county or special district for the purposes of any pension plan of such city, county, or special district, and shall continue to be entitled to all rights and benefits thereunder as if he had remained as an employee of the city, county, or special district, until the joint or cooperative action has provided a pension plan to which such employee is eligible and such employee has elected, in writing, to participate therein. Until such election, the joint or cooperative action shall deduct from the remuneration of such employee the amount which such employee is or may be required to pay in accordance with the provisions of the plan of such city, county, or special district and the joint or cooperative action shall pay to the city, county, or special district any amounts required to be paid under the provisions of such plan by employer and employee, unless an agreement, not adversely affecting the employee's interest, or expectancy, has been made pursuant to KRS 65.250 (1)***(c)***~~[(d)]~~ for the payment of the employer's pension obligation.

➔Section 17. Nothing in Sections 1 to 16 of this Act shall be construed to invalidate any interlocal agreement entered into pursuant to KRS 65.210 to 65.300 prior to the effective date of this Act.

➔Section 18. The following KRS section is repealed:

65.245 Cooperative interlocal agreements for the sharing of revenues.

Signed by Governor April 24, 2020.