

148.853 Legislative findings -- Qualifications for incentives -- Incentives available.

- (1) The General Assembly finds and declares that:
 - (a) The general welfare and material well-being of the citizens of the Commonwealth depend in large measure upon the development of tourism in the Commonwealth;
 - (b) It is in the best interest of the Commonwealth to provide incentives for the creation of new tourism attractions and the expansion of existing tourism attractions within the Commonwealth in order to advance the public purposes of relieving unemployment by preserving and creating jobs that would not exist if not for the incentives offered by the authority to approved companies, and by preserving and creating sources of tax revenues for the support of public services provided by the Commonwealth;
 - (c) The authorities granted by KRS 148.851 to 148.860 are proper governmental and public purposes for which public moneys may be expended; and
 - (d) That the creation or expansion of tourism development projects is of paramount importance mandating that the provisions of KRS 139.536 and KRS 148.851 to 148.860 be liberally construed and applied in order to advance public purposes.
- (2) To qualify for incentives provided in KRS 139.536 and 148.851 to 148.860, the following requirements shall be met:
 - (a) For a tourism attraction project:
 1. The total eligible costs shall exceed one million dollars (\$1,000,000), except for a tourism attraction project located in a county designated as an enhanced incentive county at the time the eligible company becomes an approved company as provided in KRS 148.857(6), the total eligible costs shall exceed five hundred thousand dollars (\$500,000);
 2. In any year, including the first year of operation, the tourism attraction project shall be open to the public at least one hundred (100) days; and
 3. In any year following the third year of operation, the tourism attraction project shall attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth;
 - (b) For an entertainment destination center project:
 1. The total eligible costs shall exceed five million dollars (\$5,000,000);
 2. The facility shall contain a minimum of two hundred thousand (200,000) square feet of building space adjacent or complementary to an existing tourism attraction project or a major convention facility;
 3. The incentives shall be dedicated to a public infrastructure purpose that shall relate to the entertainment destination center project;
 4. In any year, including the first year of operation, the entertainment destination center project shall:
 - a. Be open to the public at least one hundred (100) days per year;
 - b. Maintain at least one (1) major theme restaurant and at least three (3) additional entertainment venues, including but not limited to

live entertainment, multiplex theaters, large-format theater, motion simulators, family entertainment centers, concert halls, virtual reality or other interactive games, museums, exhibitions, or other cultural and leisure-time activities; and

- c. Maintain a minimum occupancy of sixty percent (60%) of the total gross area available for lease with entertainment and food and drink options not including the retail sale of tangible personal property; and
5. In any year following the third year of operation, the entertainment destination center project shall attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth;
- (c) For a theme restaurant destination attraction project:
1. The total eligible costs shall exceed five million dollars (\$5,000,000);
 2. In any year, including the first year of operation, the attraction shall:
 - a. Be open to the public at least three hundred (300) days per year and for at least eight (8) hours per day; and
 - b. Generate no more than fifty percent (50%) of its revenue through the sale of alcoholic beverages;
 3. In any year following the third year of operation, the theme restaurant destination attraction project shall attract a minimum of fifty percent (50%) of its visitors from among persons who are not residents of the Commonwealth; and
 4. The theme restaurant destination attraction project shall:
 - a. At the time of final approval, offer a unique dining experience that is not available in the Commonwealth within a one hundred (100) mile radius of the attraction;
 - b. In any year, including the first year of operation, maintain seating capacity of four hundred fifty (450) guests and offer live music or live musical and theatrical entertainment during the peak business hours that the facility is in operation and open to the public; or
 - c. Within three (3) years of the completion date, the attraction shall obtain a top two (2) tier rating by a nationally accredited service and shall maintain a top two (2) tier rating through the term of the agreement;
- (d) For a lodging facility project:
1.
 - a. The eligible costs shall exceed five million dollars (\$5,000,000) unless the provisions of subdivision b. of this subparagraph apply.
 - b.
 - i. If the lodging facility is an integral part of a major convention or sports facility, the eligible costs shall exceed six million dollars (\$6,000,000); and
 - ii. If the lodging facility includes five hundred (500) or more guest rooms, the eligible costs shall exceed ten million

dollars (\$10,000,000); and

2. In any year, including the first year of operation, the lodging facility shall:
 - a. Be open to the public at least one hundred (100) days; and
 - b. Attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth;
 - (e) Any tourism development project shall not be eligible for incentives if it includes material determined to be lewd, offensive, or deemed to have a negative impact on the tourism industry in the Commonwealth; and
 - (f) An expansion of any tourism development project shall in all cases be treated as a new stand-alone project.
- (3) The incentives offered under the Kentucky Tourism Development Act shall be as follows:
- (a) An approved company may be granted a sales tax incentive based on the Kentucky sales tax imposed on sales generated by or arising at the tourism development project; and
 - (b)
 1. For a tourism development project other than a lodging facility project described in KRS 148.851(14)(e) or (f), or a tourism attraction project described in subparagraph 2. of this paragraph:
 - a. A sales tax incentive shall be allowed to an approved company over a period of ten (10) years, except as provided in subparagraphs 5. and 6. of this paragraph; and
 - b. The sales tax incentive shall not exceed the lesser of the total amount of the sales tax liability of the approved company and its lessees or a percentage of the approved costs as specified by the agreement, not to exceed twenty-five percent (25%);
 2. For a tourism attraction project located in an enhanced incentive county at the time the eligible company becomes an approved company as provided in KRS 148.857(6):
 - a. A sales tax incentive shall be allowed to the approved company over a period of ten (10) years; and
 - b. The sales tax incentive shall not exceed the lesser of the total amount of the sales tax liability of the approved company and its lessees or a percentage of the approved costs as specified by the agreement, not to exceed thirty percent (30%);
 3. For a lodging facility project described in KRS 148.851(14)(e) or (f):
 - a. A sales tax incentive shall be allowed to the approved company over a period of twenty (20) years; and
 - b. The sales tax incentive shall not exceed the lesser of total amount of the sales tax liability of the approved company and its lessees or a percentage of the approved costs as specified by the agreement, not to exceed fifty percent (50%);
 4. Any unused incentives from a previous year may be carried forward to

any succeeding year during the term of the agreement until the entire specified percentage of the approved costs has been received through sales tax incentives;

5. If the approved company is an entertainment destination center that has dedicated at least thirty million dollars (\$30,000,000) of the incentives provided under the agreement to a public infrastructure purpose, the agreement may be amended to extend the term of the agreement up to two (2) additional years if the approved company agrees to:
 - a. Reinvest in the original entertainment destination project one hundred percent (100%) of any incentives received during the extension that were outstanding at the end of the original term of the agreement; and
 - b. Report to the authority at the end of each fiscal year the amount of incentives received during the extension and how the incentives were reinvested in the original entertainment destination project; and
6. The term of a tourism development agreement entered into with a tourism attraction project that was in effect on January 1, 2020, shall be extended for one (1) year if the tourism attraction project:
 - a. Has historically been open to the public on a seasonal basis consisting of less than six (6) months;
 - b. Has previously met the requirement of being open to the public at least one hundred (100) days during the entire term of the tourism development agreement as required under subsection (2)(a)2. of this section;
 - c. Failed to be open to the public at least one hundred (100) days during the calendar year 2020 solely as a result of complying with one (1) or more executive orders issued by the Governor under the authority of KRS 39A.090 that prevented the tourism attraction project from being open to the public for at least one hundred (100) days during its normal operating season; and
 - d. Applied for a sales tax incentive related to the calendar year 2020 operating season and was denied the sales tax incentive solely on the basis that the tourism attraction project was not open to the public for at least one hundred (100) days in calendar year 2020.

Effective: March 24, 2023

History: Amended 2023 Ky. Acts ch. 92, sec. 25, effective March 24, 2023. -- Amended 2017 Ky. Acts ch. 132, sec. 3, effective June 29, 2017. -- Amended 2014 Ky. Acts ch. 104, sec. 2, effective July 15, 2014. -- Amended 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 37, effective June 26, 2009. -- Repealed, reenacted, and amended 2001 Ky. Acts ch. 1, sec. 3, effective June 21, 2001. -- Created 1996 Ky. Acts ch. 335, sec. 2, effective July 15, 1996.

Formerly codified as KRS 154.29-020.

Legislative Research Commission Note (6/27/2019). This statute was amended in 2019 Ky. Acts ch. 151, sec. 60 (HB 354). Although HB 354 was enacted, 2019 Ky. Acts

ch. 196, sec. 16 (HB 458) repealed certain sections of that prior Act, including Section 60, and directed the Reviser of Statutes to not codify them. Therefore, the amendment to this statute in 2019 Ky. Acts ch. 151, sec. 60, was not codified.

Legislative Research Commission Note (6/26/2009). In codification, the Reviser of Statutes has corrected a manifest clerical or typographical error in 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 37, subsection (3)(b)1. and 2. (this statute), by replacing an incorrect reference to "KRS 148.851(13)(e) or (f)" with the correct reference to "KRS 148.851(14)(e) or (f)."

Legislative Research Commission Note (1/25/2009). This is former KRS 154.29-020 as amended by 2001 Ky. Acts ch. 1, sec. 3, and renumbered by the Reviser of Statutes under KRS 7.136(1).