

AN ACT relating to tax credits promoting land conservation.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Conservation easement" means a permanent restriction on the use of land or real property in accordance with 26 U.S.C. sec. 170(h);

(b) "Qualified conservation agency" means:

1. A Kentucky governmental body; or

2. A private entity that has tax exempt status as a public charity under 26 U.S.C. sec. 501(c)(3) and meets the definition of a qualified organization in 26 U.S.C. sec. 170(h)(3);

that is eligible to hold land and interests in land for conservation or preservation purposes;

(c) "Qualified conservation contribution" has the same meaning as in 26 U.S.C. sec. 170(h)(1); and

(d) "Qualified real property interest" means a qualified real property interest as defined in 26 U.S.C. sec. 170(h)(2), as it relates to open areas, natural habitat, farms, farmland, and forest land.

(2) (a) For taxable years beginning on or after January 1, 2017, there shall be allowed as a nonrefundable credit against the taxes imposed by KRS 141.020 or 141.040, and 141.0401, with the ordering of credits as prescribed in Section 2 of this Act, an amount equal to forty percent (40%) of the qualified conservation contribution of a qualified real property interest to a qualified conservation agency.

(b) The maximum combined credit for all taxable years that may be claimed by each taxpayer is one hundred thousand dollars (\$100,000), except that in

the case of spouses filing separate returns or filing separately on a combined return, the credit may either be taken entirely by one (1) spouse or may be divided equally, with the combined credit not exceeding one hundred thousand dollars (\$100,000) in total for all taxable years. Unused credits may be carried forward for up to fifteen (15) years.

(c) The maximum amount of credits that may be awarded by the department to all taxpayers shall be two million dollars (\$2,000,000) per year.

(3) A qualified real property interest that meets the value thresholds established in 26 U.S.C. sec. 170 for donated property shall be substantiated pursuant to the requirements of 26 U.S.C. sec. 170(f)(11).

(4) (a) A taxpayer applying for the tax credit for any year as provided under this section shall submit an application to the department by no later than January 7 of the following year.

(b) The application required by this section shall include an appraisal, completed at the donor's expense, which shall determine the fair market value of the qualified conservation contribution. The appraisal shall be completed and signed by a real estate appraiser who is certified under KRS Chapter 324A and is approved pursuant to administrative regulations promulgated under this section. Any reviews of appraisals shall be completed in accordance with administrative regulations promulgated under this section.

(c) If an appraiser fraudulently overstates the value of the qualified conservation contribution in an appraisal attested to and signed by the appraiser, the department may disallow further appraisals signed by the appraiser and shall refer the appraiser to the Real Estate Appraisers Board for appropriate disciplinary action pursuant to KRS Chapter 324A and to the Internal Revenue Service.

- (d) The department may review an appraisal during the evaluation of an application or at any time thereafter. If the department determines that an appraisal may be overvalued, the department shall select an appraiser acceptable to the department to provide a second appraisal of the property. The excess value between the two (2) appraisals shall be deemed an over-credit. The full value of any over-credit shall be counted against the donor's tax credit in the next tax year.
- (e) If an over-credit is determined by the department to have been fraudulently claimed, the donor of the qualified conservation contribution shall be liable for repayment of treble the full value of the over-credit.
- (5) Applications received pursuant to this section shall be under the control of the commissioner, who shall ensure that applications are complete, and shall affix a date-stamp to each complete application to identify the time and date of receipt.
- (6) No later than February 28 of each year, the commissioner shall:
- (a) Evaluate and approve, in conjunction with the Kentucky Heritage Land Conservation Fund Board chairman or designee and the Purchase of Agricultural Conservation Easements Corporation, applications received in the prior year, pursuant to the following:
1. The commissioner shall determine whether the application is consistent with 26 U.S.C. sec. 170(h);
  2. a. The Kentucky Heritage Land Conservation Fund Board chairman or designee shall determine whether the application meets the purposes of KRS 146.560, which shall be deemed to satisfy the conservation purposes of 26 U.S.C. sec. 170(h)(4)(A);  
or  
b. The Purchase of Agricultural Conservation Easements Corporation shall determine whether an application meets the

purposes of KRS 262.908, which shall be deemed to satisfy the conservation purposes of 26 U.S.C. sec. 170(h)(4)(A);

(b) Determine the maximum amount of tax credit for which each qualified conservation contribution may be eligible; and

(c) Determine the amount of credit to be awarded to each taxpayer, pursuant to the order in which the approved applications were received and date-stamped, and subject to the maximum credit limit contained in subsection (2) of this section. Applications otherwise eligible for credits but not issued credits because the maximum credit limit has been reached for a year shall be placed in line for issuance of credits in the following year, in the order in which the applications were received.

(7) No later than March 15 of each year, the commissioner shall notify each taxpayer approved for credit and the amount of any approved credit.

(8) A taxpayer that is a pass-through entity as defined in KRS 141.010 shall distribute the amount of approved credit to each partner, owner, or shareholder based on the partner's, owner's, or shareholder's distributive share of the income of the pass-through entity. Each pass-through entity shall notify the department electronically of all partners, owners, or shareholders who may claim any amount of the approved credit. Failure to provide information to the department in a manner prescribed by administrative regulation may constitute the forfeiture of available credits to all partners, owners, or shareholders associated with the pass-through entity.

(9) The department shall promulgate administrative regulations as needed to:

(a) Establish the method for appraising a property being considered for a qualified conservation contribution, and the manner in which the department gathers and records the full value of tax credits taken by donors under this section;

- (b) Establish the parameters and criteria for qualified conservation contributions. The criteria shall include the method for determining that the qualified conservation contribution meets the provisions of 26 U.S.C. sec. 170(h) and any other steps necessary to ensure compliance with those provisions; and
- (c) Administer any other provisions of this section.
- (10) A property that meets any of the following conditions shall not be eligible for the tax credit provided under this section:
- (a) The property donated is contiguous to a golf course, and the donor has a financial interest in the golf course;
- (b) The property donated is part of an open-space requirement to fulfill density requirements for subdivision or similar building permits;
- (c) The proposed contribution is part of a local, state, or federal regulatory requirement;
- (d) The landowner holds, for less than two (2) years, the property to which the proposed contribution would apply;
- (e) The appraisal is based on preferential zoning or future real estate development; or
- (f) The property donated includes land with disputed boundaries until the dispute is legally resolved.
- (11) The taxes imposed by KRS 141.020 or 141.040, and 141.0401, shall apply to any consideration received for the transfer, sale, or assignment of a tax credit approved under this section, but shall not apply to the use of tax credits approved under this section.
- (12) (a) Upon donation of less than the full interest in a property, the landowner shall maintain the property to comply with 26 U.S.C. sec. 170(h).
- (b) The holder of a qualified conservation contribution that is less than a full

interest in a property and for which a tax credit was issued under this section shall be responsible for the ongoing compliance monitoring of the conservation easement, and shall submit by January 31 of each year, an annual report to the department, attesting to the landowner's continued compliance with the terms of the conservation easement or detail any violation or other issues and include a plan for their acceptable resolution. The annual report shall be in a format prescribed by the department and promulgated in administrative regulations.

(13) An action affecting a conservation easement shall be brought in Franklin Circuit

Court and may be brought by:

- (a) An owner of an interest in the real property restricted by the conservation easement;
- (b) A holder of the conservation easement;
- (c) A person having a third-party right of enforcement; or
- (d) A person authorized by another law.

(14) By July 1 of each year, the department shall report to the Legislative Research Commission, the number, acreage, and dollar amount of qualified conservation contributions and corresponding tax credits approved for the preceding taxable year under this section.

➔Section 2. KRS 141.0205 is amended to read as follows:

If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of the credits shall be determined as follows:

- (1) The nonrefundable business incentive credits against the tax imposed by KRS 141.020 shall be taken in the following order:
  - (a) 1. For taxable years beginning after December 31, 2004, and before January 1, 2007, the corporation income tax credit permitted by KRS

- 141.420(3)(a);
2. For taxable years beginning after December 31, 2006, the limited liability entity tax credit permitted by KRS 141.0401;
- (b) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-2088, and 154.27-080;
  - (c) The qualified farming operation credit permitted by KRS 141.412;
  - (d) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
  - (e) The health insurance credit permitted by KRS 141.062;
  - (f) The tax paid to other states credit permitted by KRS 141.070;
  - (g) The credit for hiring the unemployed permitted by KRS 141.065;
  - (h) The recycling or composting equipment credit permitted by KRS 141.390;
  - (i) The tax credit for cash contributions in investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
  - (j) The coal incentive credit permitted under KRS 141.0405;
  - (k) The research facilities credit permitted under KRS 141.395;
  - (l) The employer GED incentive credit permitted under KRS 164.0062;
  - (m) The voluntary environmental remediation credit permitted by KRS 141.418;
  - (n) The biodiesel and renewable diesel credit permitted by KRS 141.423;
  - (o) The environmental stewardship credit permitted by KRS 154.48-025;
  - (p) The clean coal incentive credit permitted by KRS 141.428;
  - (q) The ethanol credit permitted by KRS 141.4242;
  - (r) The cellulosic ethanol credit permitted by KRS 141.4244;
  - (s) The energy efficiency credits permitted by KRS 141.436;
  - (t) The railroad maintenance and improvement credit permitted by KRS 141.385;
  - (u) The Endow Kentucky credit permitted by KRS 141.438;

- (v) The New Markets Development Program credit permitted by KRS 141.434;
  - (w) The food donation credit permitted by KRS 141.392;
  - (x) The distilled spirits credit permitted by KRS 141.389; and
  - (y) The angel investor credit permitted by KRS 141.396.
- (2) After the application of the nonrefundable credits in subsection (1) of this section, the nonrefundable personal tax credits against the tax imposed by KRS 141.020 shall be taken in the following order:
- (a) The individual credits permitted by KRS 141.020(3);
  - (b) The credit permitted by KRS 141.066;
  - (c) The tuition credit permitted by KRS 141.069;
  - (d) The household and dependent care credit permitted by KRS 141.067;~~and~~
  - (e) The new home credit permitted by KRS 141.388; **and**
  - (f) **The qualified conservation contribution credit permitted by Section 1 of this Act.**
- (3) After the application of the nonrefundable credits provided for in subsection (2) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
- (a) The individual withholding tax credit permitted by KRS 141.350;
  - (b) The individual estimated tax payment credit permitted by KRS 141.305;
  - (c) For taxable years beginning after December 31, 2004, and before January 1, 2007, the corporation income tax credit permitted by KRS 141.420(3)(c);
  - (d) The certified rehabilitation credit permitted by KRS 171.3961 and 171.397(1)(b); and
  - (e) The film industry tax credit allowed by KRS 141.383.
- (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the tax imposed by KRS 141.040.
- (5) The following nonrefundable credits shall be applied against the sum of the tax



imposed by KRS 141.040 after subtracting the credit provided for in subsection (4) of this section, and the tax imposed by KRS 141.0401 in the following order:

- (a) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-2088, and 154.27-080;
- (b) The qualified farming operation credit permitted by KRS 141.412;
- (c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
- (d) The health insurance credit permitted by KRS 141.062;
- (e) The unemployment credit permitted by KRS 141.065;
- (f) The recycling or composting equipment credit permitted by KRS 141.390;
- (g) The coal conversion credit permitted by KRS 141.041;
- (h) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods ending prior to January 1, 2008;
- (i) The tax credit for cash contributions to investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
- (j) The coal incentive credit permitted under KRS 141.0405;
- (k) The research facilities credit permitted under KRS 141.395;
- (l) The employer GED incentive credit permitted under KRS 164.0062;
- (m) The voluntary environmental remediation credit permitted by KRS 141.418;
- (n) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- (o) The environmental stewardship credit permitted by KRS 154.48-025;
- (p) The clean coal incentive credit permitted by KRS 141.428;
- (q) The ethanol credit permitted by KRS 141.4242;
- (r) The cellulosic ethanol credit permitted by KRS 141.4244;
- (s) The energy efficiency credits permitted by KRS 141.436;
- (t) The ENERGY STAR home or ENERGY STAR manufactured home credit

permitted by KRS 141.437;

- (u) The railroad maintenance and improvement credit permitted by KRS 141.385;
- (v) The railroad expansion credit permitted by KRS 141.386;
- (w) The Endow Kentucky credit permitted by KRS 141.438;
- (x) The New Markets Development Program credit permitted by KRS 141.434;
- (y) The food donation credit permitted by KRS 141.392;~~and~~
- (z) The distilled spirits credit permitted by KRS 141.389; **and**

**(aa) The qualified conservation contribution credit permitted by Section 1 of this Act.**

- (6) After the application of the nonrefundable credits in subsection (5) of this section, the refundable credits shall be taken in the following order:
  - (a) The corporation estimated tax payment credit permitted by KRS 141.044;
  - (b) The certified rehabilitation credit permitted by KRS 171.3961 and 171.397(1)(b); and
  - (c) The film industry tax credit allowed in KRS 141.383.

➔Section 3. KRS 146.560 is amended to read as follows:

- (1) There is hereby established a Kentucky Heritage Land Conservation Fund Board, referred to hereafter as "the board", which shall administer the Kentucky Heritage Land Conservation fund established in KRS 146.570 and shall review and approve all grants payable from the fund. The board shall consist of the following members:
  - (a) The commissioner of the Department of Parks or a designee;
  - (b) The director of the Kentucky Nature Preserves Commission or a designee;
  - (c) The commissioner of the Department for Natural Resources or a designee;
  - (d) The commissioner of the Department of Fish and Wildlife Resources or a designee;
  - (e) The chairperson of the Kentucky Environmental Education Council or a designee;

- (f) One (1) person appointed by the Governor, from two (2) persons nominated by the Kentucky Chapter of the Nature Conservancy;
- (g) One (1) person appointed by the Governor, from two (2) persons nominated by the League of Kentucky Sportsmen;
- (h) Two (2) persons appointed by the Governor, from four (4) persons recognized for their expertise in natural resource issues and nominated by the Kentucky Academy of Sciences;
- (i) One (1) person appointed by the Governor, from three (3) persons nominated, one (1) by the Kentucky Farm Bureau, one (1) by the Commissioner of the Department of Agriculture, and one (1) by the Kentucky Association of Conservation Districts;
- (j) One (1) person appointed by the Governor, from three (3) persons nominated, one (1) by the Kentucky Audubon Council, one (1) by the Cumberland Chapter of the Sierra Club, and one (1) by the Kentucky Conservation Committee; and
- (k) One (1) person appointed by the Governor with at least five (5) years of experience in natural resources land acquisition.

The board shall receive staff support from the Energy and Environment Cabinet and the Department of Fish and Wildlife Resources. Of the seven (7) members identified in paragraphs (f) to (k) of this subsection and first appointed, two (2) shall continue in office for terms of one (1) year, two (2) for terms of two (2) years, and three (3) for terms of three (3) years, as the Governor designates. At the expiration of the original terms and for all succeeding terms, the Governor shall appoint a successor to the board for a term of three (3) years in each case. Members may be reappointed. A vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term. The Governor shall appoint a chairperson for the board.

- (2) The board shall promulgate in accordance with the provisions of KRS Chapter 13A administrative regulations as are deemed necessary for application for funds from the agencies and private, nonprofit land trust organizations identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. Grants shall be made in amounts, for purposes, and to the agencies and private, nonprofit land trust organizations identified in KRS 146.570 as meet the priorities for acquisition which are:
- (a) Natural areas that possess unique features such as habitat for rare and endangered species;
  - (b) Areas important to migratory birds;
  - (c) Areas that perform important natural functions that are subject to alteration or loss; or
  - (d) Areas to be preserved in their natural state for public use, outdoor recreation and education.

The board shall promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A on acquisition based on these priorities and property costs seeking to maximize the greatest public benefit by taking advantage of those priority areas available below fair market value and where public or private funds are available on a matching basis. Additionally, private, nonprofit land trust organizations, in order to be eligible to receive grants, shall match dollar-for-dollar any funds approved by the board. The board shall expend the whole or any part of the principal and interest as needed. KRS 146.550 to 146.570 shall not allow the use of condemnation powers and shall only allow acquisition of land from willing sellers.

- (3) The board, pursuant to Section 1 of this Act and in conjunction with the Purchase of Agricultural Conservation Easements Corporation established in KRS 262.906, shall assist the Department of Revenue in evaluating and**

**approving applications for conservation easement tax credits.**

→Section 4. KRS 262.908 is amended to read as follows:

- (1) The PACE board shall have the following responsibilities:
  - (a) Implementing a Purchase of Agricultural Conservation Easement Program in the Commonwealth as provided by this section, including the development and promulgation of any administrative regulations required;
  - (b) Making decisions in connection with each specific easement purchase to be made with Commonwealth funds from the agricultural enhancement fund;
  - (c) Evaluating, as necessary, potential sites within the Commonwealth on which agricultural conservation easements or other property interests are to be acquired, applying the criteria set forth in this section and administrative regulations; and
  - (d) Employing the staff necessary to implement the provisions of this section.
- (2)
  - (a) The PACE board shall establish fair, equitable, objective, nondiscriminatory procedures for determining easement purchase priorities.
  - (b) The board shall promulgate administrative regulations establishing policies and procedures for determining easement purchase priorities and for purchasing easements.
  - (c) The program criteria shall be designed to ensure that land is selected for easement purchase because it will make a significant contribution to agricultural production.
- (3) **The board, pursuant to Section 1 of this Act and in conjunction with the Kentucky Heritage Land Conservation Fund Board established in Section 3 of this Act, shall assist the Department of Revenue in evaluating and approving applications for conservation easement tax credits.**