

1 AN ACT relating to tourism.

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

3 ➔Section 1. KRS 148.850 is amended to read as follows:

- 4 (1) The Tourism Development Finance Authority is created within the Tourism, Arts  
5 and Heritage Cabinet. The authority shall consist of nine (9)~~seven (7)~~ members  
6 appointed by the Governor, at least one (1) of whom shall represent the film  
7 industry and at least one (1) of whom shall represent individuals with  
8 professional experience in financial management or economic development. The  
9 members of the authority shall serve without compensation but shall be entitled to  
10 reimbursement for their necessary expenses incurred in performing their duties. Of  
11 the members initially appointed to the authority, two (2) members shall be  
12 appointed for terms of one (1) year, three (3) members shall be appointed for terms  
13 of two (2) years, and two (2) members shall be appointed for terms of three (3)  
14 years. Thereafter, the members of the authority shall be appointed for terms of four  
15 (4) years.
- 16 (2) The Governor shall appoint one (1) member as chairperson of the Tourism  
17 Development Finance Authority. The members of the authority may elect other  
18 officers as they deem necessary.
- 19 (3) No member of the Tourism Development Finance Authority shall either directly or  
20 indirectly be a party to, or be in any manner interested in, any contract or agreement  
21 with the authority for any matter, cause, or thing that creates any liability or  
22 indebtedness against the authority.
- 23 (4) The Tourism Development Finance Authority shall have the powers necessary to  
24 carry out the purposes of this section, KRS 139.536, and KRS 148.851 to 148.860,~~f~~  
25 ~~and the Tourism Development Loan Program created by 2000 Ky. Acts ch. 549,~~  
26 ~~Part IX, Section 47,~~ including but not limited to the power to:
- 27 (a) ~~[Make and condition all loans from the Tourism Development Loan Program;~~

1       ~~(b)~~—Employ fiscal consultants, attorneys, appraisers, and other agents on behalf of  
2           the authority whom the authority deems necessary or convenient for the  
3           preparation and administration of agreements and documents necessary or  
4           incidental to any project. The fees for the services provided by persons  
5           employed on behalf of the authority shall be paid by the beneficiary of a loan  
6           under this program directly to the person providing consultation, advisory,  
7           legal, or other services; and

8       ~~(b)~~~~(c)~~     Impose and collect fees and charges in connection with any transaction  
9           and provide for reasonable penalties for delinquent payment of fees and  
10          charges.

11       ➔Section 2. KRS 148.853 is amended to read as follows:

12       (1) The General Assembly finds and declares that:

13           (a) The general welfare and material well-being of the citizens of the  
14           Commonwealth depend in large measure upon the development of tourism in  
15           the Commonwealth;

16           (b) It is in the best interest of the Commonwealth to provide incentives for the  
17           creation of new tourism attractions and the expansion of existing tourism  
18           attractions within the Commonwealth in order to advance the public purposes  
19           of relieving unemployment by preserving and creating jobs that would not  
20           exist if not for the incentives offered by the authority to approved companies,  
21           and by preserving and creating sources of tax revenues for the support of  
22           public services provided by the Commonwealth;

23           (c) The authorities granted by KRS 148.851 to 148.860 are proper governmental  
24           and public purposes for which public moneys may be expended; and

25           (d) That the creation or expansion of tourism development projects is of  
26           paramount importance mandating that the provisions of KRS 139.536 and  
27           KRS 148.851 to 148.860 be liberally construed and applied in order to

1 advance public purposes.

2 (2) To qualify for incentives provided in KRS 139.536 and 148.851 to 148.860, the  
3 following requirements shall be met:

4 (a) For a tourism attraction project:

5 1. The total eligible costs shall exceed one million dollars (\$1,000,000),  
6 except for a tourism attraction project located in a county designated as  
7 an enhanced incentive county at the time the eligible company becomes  
8 an approved company as provided in KRS 148.857(6), the total eligible  
9 costs shall exceed five hundred thousand dollars (\$500,000);

10 2. In any year, including the first year of operation, the tourism attraction  
11 project shall be open to the public at least one hundred (100) days; and

12 3. In any year following the third year of operation, the tourism attraction  
13 project shall attract at least twenty-five percent (25%) of its visitors from  
14 among persons who are not residents of the Commonwealth;

15 (b) For an entertainment destination center project:

16 1. The total eligible costs shall exceed five million dollars (\$5,000,000);

17 2. The facility shall contain a minimum of two hundred thousand (200,000)  
18 square feet of building space adjacent or complementary to an existing  
19 tourism attraction project or a major convention facility;

20 3. The incentives shall be dedicated to a public infrastructure purpose that  
21 shall relate to the entertainment destination center project;

22 4. In any year, including the first year of operation, the entertainment  
23 destination center project shall:

24 a. Be open to the public at least one hundred (100) days per year;

25 b. Maintain at least one (1) major theme restaurant and at least three  
26 (3) additional entertainment venues, including but not limited to  
27 live entertainment, multiplex theaters, large-format theater, motion

- 1                   simulators, family entertainment centers, concert halls, virtual  
2                   reality or other interactive games, museums, exhibitions, or other  
3                   cultural and leisure-time activities; and
- 4                   c.    Maintain a minimum occupancy of sixty percent (60%) of the total  
5                   gross area available for lease with entertainment and food and  
6                   drink options not including the retail sale of tangible personal  
7                   property; and
- 8                   5.    In any year following the third year of operation, the entertainment  
9                   destination center project shall attract at least twenty-five percent (25%)  
10                  of its visitors from among persons who are not residents of the  
11                  Commonwealth;
- 12                  (c)   For a theme restaurant destination attraction project:
- 13                   1.    The total eligible costs shall exceed five million dollars (\$5,000,000);
- 14                   2.    In any year, including the first year of operation, the attraction shall:
- 15                   a.    Be open to the public at least three hundred (300) days per year  
16                   and for at least eight (8) hours per day; and
- 17                   b.    Generate no more than fifty percent (50%) of its revenue through  
18                   the sale of alcoholic beverages;
- 19                   3.    In any year following the third year of operation, the theme restaurant  
20                   destination attraction project shall attract a minimum of fifty percent  
21                   (50%) of its visitors from among persons who are not residents of the  
22                   Commonwealth; and
- 23                   4.    The theme restaurant destination attraction project shall:
- 24                   a.    At the time of final approval, offer a unique dining experience that  
25                   is not available in the Commonwealth within a one hundred (100)  
26                   mile radius of the attraction;
- 27                   b.    In any year, including the first year of operation, maintain seating

1 capacity of four hundred fifty (450) guests and offer live music or  
2 live musical and theatrical entertainment during the peak business  
3 hours that the facility is in operation and open to the public; or

4 c. Within three (3) years of the completion date, the attraction shall  
5 obtain a top two (2) tier rating by a nationally accredited service  
6 and shall maintain a top two (2) tier rating through the term of the  
7 agreement;

8 (d) For a lodging facility project:

9 1. a. The eligible costs shall exceed five million dollars (\$5,000,000)  
10 unless the provisions of subdivision b. of this subparagraph apply.

11 b. i. If the lodging facility is an integral part of a major  
12 convention or sports facility, the eligible costs shall exceed six  
13 million dollars (\$6,000,000); and

14 ii. If the lodging facility includes five hundred (500) or more  
15 guest rooms, the eligible costs shall exceed ten million  
16 dollars (\$10,000,000); and

17 2. In any year, including the first year of operation, the lodging facility  
18 shall:

19 a. Be open to the public at least one hundred (100) days; and

20 b. Attract at least twenty-five percent (25%) of its visitors from  
21 among persons who are not residents of the Commonwealth; ~~and~~

22 (e) **Any tourism development project shall not be eligible for incentives if it**  
23 **includes material determined to be lewd, offensive, or deemed to have a**  
24 **negative impact on the tourism industry in the Commonwealth; and**

25 (f) An expansion of any tourism development project shall in all cases be treated  
26 as a new stand-alone project.

27 (3) The incentives offered under the Kentucky Tourism Development Act shall be as

1 follows:

2 (a) An approved company may be granted a sales tax incentive based on the  
3 Kentucky sales tax imposed on sales generated by or arising at the tourism  
4 development project; and

5 (b) 1. For a tourism development project other than a lodging facility project  
6 described in KRS 148.851(14)(e) or (f), or a tourism attraction project  
7 described in subparagraph 2. of this paragraph:

8 a. A sales tax incentive shall be allowed to an approved company  
9 over a period of ten (10) years, except as provided in subparagraph  
10 5. of this paragraph; and

11 b. The sales tax incentive shall not exceed the lesser of the total  
12 amount of the sales tax liability of the approved company and its  
13 lessees or a percentage of the approved costs as specified by the  
14 agreement, not to exceed twenty-five percent (25%);

15 2. For a tourism attraction project located in an enhanced incentive county  
16 at the time the eligible company becomes an approved company as  
17 provided in KRS 148.857(6):

18 a. A sales tax incentive shall be allowed to the approved company  
19 over a period of ten (10) years; and

20 b. The sales tax incentive shall not exceed the lesser of the total  
21 amount of the sales tax liability of the approved company and its  
22 lessees or a percentage of the approved costs as specified by the  
23 agreement, not to exceed thirty percent (30%);

24 3. For a lodging facility project described in KRS 148.851(14)(e) or (f):

25 a. A sales tax incentive shall be allowed to the approved company  
26 over a period of twenty (20) years; and

27 b. The sales tax incentive shall not exceed the lesser of total amount

1 of the sales tax liability of the approved company and its lessees or  
2 a percentage of the approved costs as specified by the agreement,  
3 not to exceed fifty percent (50%);

4 4. Any unused incentives from a previous year may be carried forward to  
5 any succeeding year during the term of the agreement until the entire  
6 specified percentage of the approved costs has been received through  
7 sales tax incentives; and

8 5. If the approved company is an entertainment destination center that has  
9 dedicated at least thirty million dollars (\$30,000,000) of the incentives  
10 provided under the agreement to a public infrastructure purpose, the  
11 agreement may be amended to extend the term of the agreement up to  
12 two (2) additional years if the approved company agrees to:

13 a. Reinvest in the original entertainment destination project one  
14 hundred percent (100%) of any incentives received during the  
15 extension that were outstanding at the end of the original term of  
16 the agreement; and

17 b. Report to the authority at the end of each fiscal year the amount of incentives  
18 received during the extension and how the incentives were reinvested in the  
19 original entertainment destination project.

20 ➔Section 3. The General Assembly confirms Executive Order 2016-210, dated  
21 April 20, 2016, to the extent that it is not otherwise confirmed or superseded by this Act.