

1 AN ACT relating to tourism.

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

3 ➔Section 1. KRS 11A.010 is amended to read as follows:

4 As used in this chapter, unless the context otherwise requires:

- 5 (1) "Business" means any corporation, limited liability company, partnership, limited
6 partnership, sole proprietorship, firm, enterprise, franchise, association,
7 organization, self-employed individual, holding company, joint stock company,
8 receivership, trust, or any legal entity through which business is conducted, whether
9 or not for profit;
- 10 (2) "Commission" means the Executive Branch Ethics Commission;
- 11 (3) "Compensation" means any money, thing of value, or economic benefit conferred
12 on, or received by, any person in return for services rendered, or to be rendered, by
13 himself or another;
- 14 (4) "Family" means spouse and children, as well as a person who is related to a public
15 servant as any of the following, whether by blood or adoption: parent, brother,
16 sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-
17 in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter,
18 stepbrother, stepsister, half brother, half sister;
- 19 (5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or
20 anything of value, unless consideration of equal or greater value is received; "gift"
21 does not include gifts from family members, campaign contributions, ***the waiver of***
22 ***a registration fee for a presenter at a tourism-related conference,*** or door prizes
23 available to the public;
- 24 (6) "Income" means any money or thing of value received or to be received as a claim
25 on future services, whether in the form of a fee, salary, expense allowance,
26 forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other
27 form of compensation or any combination thereof;

- 1 (7) "Officer" means all major management personnel in the executive branch of state
2 government, including the secretary of the cabinet, the Governor's chief executive
3 officers, cabinet secretaries, deputy cabinet secretaries, general counsels,
4 commissioners, deputy commissioners, executive directors, principal assistants,
5 division directors, members and full-time chief administrative officers of the Parole
6 Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems
7 board of trustees, Kentucky Teachers' Retirement System board of trustees, Public
8 Service Commission, Worker's Compensation Board and its administrative law
9 judges, the Kentucky Occupational Safety and Health Review Commission, the
10 Kentucky Board of Education, the Council on Postsecondary Education, and any
11 person who holds a personal service contract to perform on a full-time basis for a
12 period of time not less than six (6) months a function of any position listed in this
13 subsection;
- 14 (8) "Official duty" means any responsibility imposed on a public servant by virtue of
15 his or her position in the state service;
- 16 (9) "Public servant" means:
- 17 (a) The Governor;
- 18 (b) The Lieutenant Governor;
- 19 (c) The Secretary of State;
- 20 (d) The Attorney General;
- 21 (e) The Treasurer;
- 22 (f) The Commissioner of Agriculture;
- 23 (g) The Auditor of Public Accounts; and
- 24 (h) All employees in the executive branch including officers as defined in
25 subsection (7) of this section and merit employees; **"public servant" does not**
26 **include the Tourism, Arts, and Heritage Cabinet or its subdivisions;**
- 27 (10) "Agency" means every state office, cabinet, department, board, commission, public

- 1 corporation, or authority in the executive branch of state government. A public
2 servant is employed by the agency by which his or her appointing authority is
3 employed, unless his or her agency is attached to the appointing authority's agency
4 for administrative purposes only, or unless the agency's characteristics are of a
5 separate independent nature distinct from the appointing authority and it is
6 considered an agency on its own, such as an independent department;
- 7 (11) "Lobbyist" means any person employed as a legislative agent as defined in KRS
8 6.611(23) or any person employed as an executive agency lobbyist as defined in
9 KRS 11A.201(8);
- 10 (12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes,
11 opposes, or acts;
- 12 (13) "Candidate" means those persons who have officially filed candidacy papers or who
13 have been nominated by their political party pursuant to KRS 118.105, 118.115,
14 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to (g) of
15 this section;
- 16 (14) "Does business with" or "doing business with" means contracting, entering into an
17 agreement, leasing, or otherwise exchanging services or goods with a state agency
18 in return for payment by the state, including accepting a grant, but not including
19 accepting a state entitlement fund disbursement;
- 20 (15) "Public agency" means any governmental entity;
- 21 (16) "Appointing authority" means the agency head or any person whom he or she has
22 authorized by law to act on behalf of the agency with respect to employee
23 appointments;
- 24 (17) "Represent" means to attend an agency proceeding, write a letter, or communicate
25 with an employee of an agency on behalf of someone else;
- 26 (18) "Directly involved" means to work on personally or to supervise someone who
27 works on personally;

1 (19) "Sporting event" means any professional or amateur sport, athletic game, contest,
2 event, or race involving machines, persons, or animals, for which admission tickets
3 are offered for sale and that is viewed by the public; and

4 (20) "Person" means an individual, proprietorship, firm, partnership, limited partnership,
5 joint venture, joint stock company, syndicate, business or statutory trust, donative
6 trust, estate, company, corporation, limited liability company, association, club,
7 committee, organization, or group of persons acting in concert.

8 ➔Section 2. KRS 11A.045 is amended to read as follows:

9 (1) No public servant, his spouse, or dependent child knowingly shall accept any gifts
10 or gratuities, including travel expenses, meals, alcoholic beverages, and honoraria,
11 totaling a value greater than twenty-five dollars (\$25) in a single calendar year from
12 any person or business that does business with, is regulated by, is seeking grants
13 from, is involved in litigation against, or is lobbying or attempting to influence the
14 actions of the agency in which the public servant is employed or which he
15 supervises, or from any group or association which has as its primary purpose the
16 representation of those persons or businesses. Nothing contained in this subsection
17 shall prohibit the commission from authorizing exceptions to this subsection where
18 such exemption would not create an appearance of impropriety. *This subsection*
19 *shall not apply to:*

20 *(a) Activities involving sponsorships, naming rights, or similar honoraria*
21 *granted by the Tourism, Arts, and Heritage Cabinet in promoting the*
22 *Commonwealth of Kentucky; or*

23 *(b) Individuals traveling on their own while acting on behalf of the Tourism,*
24 *Arts, and Heritage Cabinet in promoting the Commonwealth of Kentucky.*

25 (2) Nothing in KRS Chapter 11A shall prohibit or restrict the allocation of or
26 acceptance by a public servant of a ticket for admission to a sporting event if the
27 ticket or admission is paid for by the public servant at face value or is paid for at

1 face value by the individual to whom the ticket is allocated.

2 (3) Nothing in KRS 11A.001 to 11A.110 shall prohibit or restrict the acceptance by a
3 public servant of the Cabinet for Economic Development or by any other public
4 servant working directly with the cabinet on an economic incentive package of
5 anything of economic value as a gift or gratuity, if the gift or gratuity:

6 (a) Was not solicited by the public servant;

7 (b) Was accepted by the public servant in the performance of his or her official
8 duties and in compliance with guidelines to be established by the Kentucky
9 Economic Development Partnership which shall include requirements that all
10 gifts or gratuities of a reportable value under KRS 11A.050(3)(k) be registered
11 with the Kentucky Economic Development Partnership and with the
12 Executive Branch Ethics Commission and that all tangible property with a
13 value in excess of twenty-five dollars (\$25), other than food and beverages
14 consumed on the premises, shall be turned over to the Cabinet for Economic
15 Development within thirty (30) days of receipt. In filing reports of gifts or
16 gratuities with the Executive Branch Ethics Commission, the Cabinet for
17 Economic Development may delete information identifying the donors if the
18 cabinet believes identification of the donors would damage economic
19 development; and

20 (c) Was not accepted under circumstances which would create a violation of KRS
21 Chapter 521.

22 ➔Section 3. KRS 11A.055 is amended to read as follows:

23 (1) Any provision of KRS Chapter 11A to the contrary notwithstanding, a state agency
24 or a public servant may raise funds, either individually or as a department or agency,
25 for a charitable nonprofit organization granted a tax exemption by the Internal
26 Revenue Service under Section 501c of the Internal Revenue Code without
27 violating the provisions of this chapter. Raising of funds shall include but not be

1 limited to holding events for the benefit of the charitable organization, contacting
 2 potential donors, providing prizes, and engaging in other forms of fundraising and
 3 providing the funds thus raised to the charitable organization.

4 (2) Any provision of KRS Chapter 11A to the contrary notwithstanding, a state agency
 5 or a public servant may raise funds, either individually or as a department or agency,
 6 for crime prevention, drug and alcohol abuse prevention, tourism promotion, and
 7 traffic safety programs without violating the provisions of this chapter. Raising of
 8 funds shall include but not be limited to holding events for the benefit of a program
 9 specified in this section, contacting potential donors, providing prizes, and engaging
 10 in other forms of fundraising and providing the funds thus raised to the program.

11 (3) Any provision of KRS Chapter 11A to the contrary notwithstanding, any
 12 nonprofit charitable organization organized under 26 U.S.C. sec. 501(c)(3),
 13 affiliated with the Tourism, Arts, and Heritage Cabinet, or whose purpose is the
 14 promotion of tourism in the Commonwealth:

15 (a) Shall not be subject to the provisions of this chapter;

16 (d) May benefit from cabinet employees working on its behalf without the
 17 employees violating the provisions of this chapter; and

18 (e) May make contributions to the cabinet after being solicited by cabinet
 19 employees without the employees violating the provisions of this chapter.

20 ➔Section 4. KRS 45A.095 is amended to read as follows:

21 (1) For purposes of this section:

22 (a) "Emergency condition" means a situation which creates a threat or
 23 impending threat to public health, welfare, or safety such as may arise by
 24 reason of fires, floods, tornadoes, other natural or man-caused disasters,
 25 epidemics, riots, enemy attack, sabotage, explosion, power failure, energy
 26 shortages, transportation emergencies, equipment failures, state or federal
 27 legislative mandates, or similar events. The existence of the emergency

1 condition creates an immediate and serious need for services, construction,
 2 or items of tangible personal property that cannot be met through normal
 3 procurement methods and the lack of which would seriously threaten the
 4 functioning of government, the preservation or protection of property, or
 5 the health or safety of any person; and

6 (b) "Sole source" means a situation in which there is only one (1) known
 7 capable supplier of a commodity or service, occasioned by the unique
 8 nature of the requirement, the supplier, or market conditions.

9 (2) A contract may be made by noncompetitive negotiation only:

10 (a) For sole source purchases; ~~[- or -]~~

11 (b) When competition is not feasible, as determined by the purchasing officer in
 12 writing prior to award, under administrative regulations promulgated by the
 13 secretary of the Finance and Administration Cabinet or the governing boards
 14 of universities operating under KRS Chapter 164A; ~~[- or -]~~

15 (c) When emergency conditions exist; or

16 (d) For sponsorships, naming rights, or other honoraria granted by the
 17 Tourism, Arts, and Heritage Cabinet, at the discretion of the Tourism, Arts,
 18 and Heritage Cabinet. ~~[Sole source is a situation in which there is only one~~
 19 ~~(1) known capable supplier of a commodity or service, occasioned by the~~
 20 ~~unique nature of the requirement, the supplier, or market conditions.]~~

21 (3) Insofar as it is practical, no fewer ~~[less]~~ than three (3) suppliers shall be solicited to
 22 submit written or oral quotations whenever it is determined that competitive sealed
 23 bidding is not feasible. Award shall be made to the supplier offering the best value.
 24 The names of the suppliers submitting quotations and the date and amount of each
 25 quotation shall be placed in the procurement file and maintained as a public record.

26 (4) Competitive bids may not be required:

27 (a) For contractual services where no competition exists, such as telephone

- 1 service, electrical energy, and other public utility services;
- 2 (b) Where rates are fixed by law or ordinance;
- 3 (c) For library books;
- 4 (d) For commercial items that are purchased for resale;
- 5 (e) For interests in real property;
- 6 (f) For visiting speakers, professors, expert witnesses, and performing artists;
- 7 (g) For personal service contracts executed pursuant to KRS 45A.690 to 45A.725;
- 8 and
- 9 (h) For agricultural products in accordance with KRS 45A.645.

10 ~~(5)~~~~(2)~~ The chief procurement officer, the head of a using agency, or a person
11 authorized in writing as the designee of either officer may make or authorize others
12 to make emergency procurements when an emergency condition exists.

13 ~~(6)~~~~(3)~~ ~~[An emergency condition is a situation which creates a threat or impending~~
14 ~~threat to public health, welfare, or safety such as may arise by reason of fires,~~
15 ~~floods, tornadoes, other natural or man caused disasters, epidemics, riots, enemy~~
16 ~~attack, sabotage, explosion, power failure, energy shortages, transportation~~
17 ~~emergencies, equipment failures, state or federal legislative mandates, or similar~~
18 ~~events. The existence of the emergency condition creates an immediate and serious~~
19 ~~need for services, construction, or items of tangible personal property that cannot be~~
20 ~~met through normal procurement methods and the lack of which would seriously~~
21 ~~threaten the functioning of government, the preservation or protection of property,~~
22 ~~or the health or safety of any person.~~

23 ~~(4)~~ The Finance and Administration Cabinet may negotiate directly for the purchase of
24 contractual services, supplies, materials, or equipment in bona fide emergencies
25 regardless of estimated costs. The existence of the emergency shall be fully
26 explained, in writing, by the head of the agency for which the purchase is to be
27 made. The explanation shall be approved by the secretary of the Finance and

1 Administration Cabinet and shall include the name of the vendor receiving the
2 contract along with any other price quotations and a written determination for
3 selection of the vendor receiving the contract. This information shall be filed with
4 the record of all such purchases and made available to the public. Where practical,
5 standard specifications shall be followed in making emergency purchases. In any
6 event, every effort should be made to effect a competitively established price for
7 purchases made by the state.

8 ➔Section 5. KRS 45A.810 is amended to read as follows:

9 (1) (a) One (1) or more architectural services selection committees and one (1) or
10 more engineering or engineering-related services selection committees shall
11 be created in the Finance and Administration Cabinet.

12 (b) One (1) or more engineering and engineering-related services selection
13 committees shall be created in the Transportation Cabinet.

14 (2) Except when an emergency exists as defined by **paragraph (a) of subsection (1) of**
15 **Section 4 of this Act**~~[KRS 45A.095(3)]~~, when architectural, engineering, or
16 engineering-related services are procured under KRS 45A.837 and 45A.838, or
17 when the project is constructed under KRS 45A.045(11)(a) or (b):

18 (a) An architectural services selection committee created in the Finance and
19 Administration Cabinet shall participate in every instance of that cabinet's
20 procuring architectural services;

21 (b) An engineering and engineering-related services selection committee created
22 in the Finance and Administration Cabinet shall participate in every instance
23 of that cabinet's procuring engineering or engineering-related services; and

24 (c) An engineering and engineering-related services selection committee created
25 in the Transportation Cabinet shall participate in every instance of that
26 cabinet's procuring engineering or engineering-related services.

27 (3) An architectural services selection committee created in the Finance and

1 Administration Cabinet shall consist of six (6) or more members selected in the
2 manner specified within each paragraph:

- 3 (a) Two (2) architects. The secretary of the Finance and Administration Cabinet
4 shall appoint a pool of at least six (6) architects who are employees of the
5 cabinet. At least three (3) of the architects shall be merit employees of the
6 cabinet. The secretary, or his designee, under the supervision of the Auditor of
7 Public Accounts, or his designee, shall randomly select architects from the
8 pool. The first employee selected shall be placed on the selection committee.
9 If the first employee selected is a merit employee, the second employee
10 selected shall be placed on the selection committee. If the first employee
11 selected is a nonmerit employee, the selection process shall continue until a
12 merit employee is selected. That merit employee shall be placed on the
13 selection committee;
- 14 (b) One (1) or more additional employees of the Department for Facilities
15 Management, appointed by the commissioner of the Department for Facilities
16 Management, to serve as a nonvoting technical adviser for a given project
17 selection. Advisory members shall serve on a project-by-project basis and
18 shall have the requisite knowledge, training, or experience pertaining to the
19 professional requirements of the project.
- 20 (c) Two (2) merit employees of the user agency appointed by the head of that
21 agency to serve for the duration of the selection committee's participation in
22 the project for which they were appointed by the user agency;
- 23 (d) An individual. The Kentucky Society of Architects shall nominate nine (9)
24 individuals, and the Governor shall appoint three (3) of these individuals to
25 serve in the pool from which the secretary of the Finance and Administration
26 Cabinet, or his designee, under the supervision of the Auditor of Public
27 Accounts, or his designee, shall randomly select one (1) individual to serve on

1 the committee;

2 (e) One (1) or more merit employees of the Auditor of Public Accounts,
3 appointed by the Auditor, who may, at the discretion of the Auditor, serve as
4 nonvoting members of the committee. If one (1) employee is appointed, then
5 that employee may attend any committee proceedings. If more than one (1)
6 employee is appointed, then either of the employees may attend any
7 committee proceeding; and

8 (f) Upon completion of the selection process set forth in this subsection, the
9 commissioner of the Department of Facilities Management shall submit a
10 statement to the Auditor of Public Accounts attesting to full compliance with
11 the selection process for each architectural firm appointed to provide
12 architectural services. In addition, a complete record of the selection process
13 for each project shall be maintained by the department and shall be subject to
14 audit by the Auditor of Public Accounts.

15 (4) The engineering and engineering-related services selection committee created in the
16 Finance and Administration Cabinet shall consist of six (6) or more members
17 selected in the manner specified in each paragraph:

18 (a) Two (2) engineers. The secretary of the Finance and Administration Cabinet
19 shall appoint a pool of at least six (6) engineers who are employees of the
20 cabinet. At least three (3) of the engineers shall be merit employees of the
21 cabinet. The secretary, or his designee, under the supervision of the Auditor of
22 Public Accounts, or his designee, shall randomly select engineers from the
23 pool. The first employee selected shall be placed on the selection committee.
24 If the first employee selected is a merit employee, the second employee
25 selected shall be placed on the selection committee. If the first employee
26 selected is a nonmerit employee, the selection process shall continue until a
27 merit employee is selected. That merit employee shall be placed on the

- 1 selection committee;
- 2 (b) Two (2) merit employees of the user agency appointed by the head of that
3 agency to serve for the duration of the selection committee's participation in
4 the project for which they were appointed by the user agency;
- 5 (c) An individual. The Kentucky Society of Professional Engineers and the
6 Kentucky Consulting Engineers Council shall together nominate nine (9)
7 individuals, and the Governor shall appoint three (3) of these individuals to
8 serve in the pool from which the secretary of the Finance and Administration
9 Cabinet, or his designee, under the supervision of the Auditor of Public
10 Accounts, or his designee, shall randomly select one (1) individual to serve on
11 the committee;
- 12 (d) One (1) or more merit employees of the Auditor of Public Accounts,
13 appointed by the Auditor, who may, at the discretion of the Auditor, serve as
14 nonvoting members of the committee. If one (1) employee is appointed, then
15 that employee may attend any committee proceedings. If more than one (1)
16 employee is appointed, then either of the employees may attend any
17 committee proceeding;
- 18 (e) One (1) or more additional employees of the Department for Facilities
19 Management to serve as nonvoting technical adviser for a specific project
20 selection. Advisory members shall serve on a project-by-project basis and
21 shall have the requisite knowledge, training, or experience pertaining to the
22 professional requirements of the project; and
- 23 (f) Upon completion of the selection process set forth in this subsection, the
24 commissioner of the Department of Facilities Management shall submit a
25 statement to the Auditor of Public Accounts attesting to full compliance with
26 the selection process for each firm appointed to provide engineering or
27 engineering-related services. In addition, a complete record of the selection

1 process for each project shall be maintained by the department and shall be
2 subject to audit by the Auditor of Public Accounts.

3 (5) The engineering and engineering-related services selection committee created in the
4 Transportation Cabinet shall consist of six (6) or more members selected in the
5 manner specified in each paragraph:

6 (a) Two (2) engineers. The secretary of the Transportation Cabinet shall appoint a
7 pool of six (6) engineers who are employees of the cabinet. At least three (3)
8 of the engineers shall be merit employees of the cabinet. The secretary, or his
9 designee, under the supervision of the Auditor of Public Accounts, or his
10 designee, shall randomly select engineers from the pool. The first employee
11 selected shall be placed on the selection committee. If the first employee
12 selected is a merit employee, the second employee selected shall be placed on
13 the selection committee. If the first employee selected is a nonmerit employee,
14 the selection process shall continue until a merit employee is selected. That
15 merit employee shall be placed on the selection committee;

16 (b) Two (2) engineers who are merit employees of the user division appointed by
17 the head of that division to serve for the duration of the selection committee's
18 participation in the project for which they were appointed by the user agency.
19 However, if two (2) user divisions have approximately equal responsibilities
20 or separate responsibilities for the project, each user division head shall
21 appoint one (1) member to the selection committee;

22 (c) An individual. The Kentucky Society of Professional Engineers and the
23 Kentucky Consulting Engineers Council shall together nominate nine (9)
24 individuals, and the Governor shall appoint three (3) of these individuals to
25 serve in the pool from which the secretary of the Transportation Cabinet, or
26 his designee, under the supervision of the Auditor of Public Accounts, or his
27 designee, shall randomly select one (1) individual to serve on the committee;

- 1 (d) One (1) or more merit employees of the Auditor of Public Accounts,
2 appointed by the Auditor, who may, at the discretion of the Auditor, serve as
3 nonvoting members of the committee. If one (1) employee is appointed, then
4 that employee may attend any committee proceedings. If more than one (1)
5 employee is appointed, then either of the employees may attend any
6 committee proceeding; and
- 7 (e) Upon completion of the selection process set forth in this subsection, the
8 commissioner of the Department of Highways shall submit a statement to the
9 Auditor of Public Accounts attesting to full compliance with the selection
10 process for each firm appointed to provide engineering or engineering-related
11 services. In addition, a complete record of the selection process for each
12 project shall be maintained by the department and shall be subject to audit by
13 the Auditor of Public Accounts.
- 14 (6) (a) All selection committee members shall have experience which qualifies them
15 to serve on the committee.
- 16 (b) The same appointment procedures set out in this section apply to any user
17 agency or user division listed in subsection (3), (4), or (5) of this section that
18 does not operate under a merit system.
- 19 (c) Any individual appointed to serve in a pool from which selection committee
20 members are drawn shall serve in the pool for an initial one (1) year term and
21 may be reappointed to succeed himself. He shall serve until his successor is
22 appointed and qualified. A successor or a replacement, in the case of a
23 vacancy in the pool, shall be appointed in the same manner as the initial
24 appointee. If a selection committee member, drawn from a pool, leaves a
25 selection committee, his replacement shall be drawn from the pool in the same
26 manner as he. The replacement shall have the merit or nonmerit status of his
27 predecessor.

- 1 (d) Any individual appointed by the Auditor of Public Accounts to serve on
2 selection committees shall serve an initial one (1) year term and may be
3 reappointed to succeed himself. He shall serve until his successor is appointed
4 and qualified. A successor or a replacement, in the case of a vacancy, shall be
5 appointed in the same manner as the initial appointee.
- 6 (e) The selection committee members appointed by the head of a user agency or
7 user division shall serve on a project-by-project basis. These members shall
8 participate only in committee action related to the project for which they were
9 appointed. A replacement, in the case of a vacancy, shall be appointed in the
10 same manner as the initial appointee.