

1 AN ACT relating to tourism development.

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

3 ➔Section 1. KRS 148.851 is amended to read as follows:

4 As used in 148.851 to 148.860, unless the context clearly indicates otherwise:

- 5 (1) "Agreement" means the tourism development agreement entered into between the  
6 authority and an approved company;
- 7 (2) "Approved company" means any eligible company that has received final approval  
8 to receive incentives provided under KRS 148.853;
- 9 (3) "Approved costs" means the amount of eligible costs approved by the authority  
10 upon completion of the project;
- 11 (4) "Authority" means the Kentucky Tourism Development Finance Authority as set  
12 forth in KRS 148.850;
- 13 (5) "Cabinet" means the Tourism, Arts and Heritage Cabinet;
- 14 (6) "Crafts and products center" means a facility primarily devoted to the display,  
15 promotion, and sale of Kentucky products, and at which a minimum of eighty  
16 percent (80%) of the sales occurring at the facility are of Kentucky arts, crafts, or  
17 agricultural products;
- 18 (7) "Eligible company" means any corporation, limited liability company, partnership,  
19 limited partnership, sole proprietorship, business trust, or any other entity operating  
20 or intending to operate a tourism development project;
- 21 (8) "Eligible costs" means:
- 22 (a) Obligations incurred for labor and amounts paid to vendors, contractors,  
23 subcontractors, builders, suppliers, deliverymen, and materialmen in  
24 connection with the acquisition, construction, equipping, and installation of a  
25 tourism development project;
- 26 (b) The costs of acquiring real property or rights include the acquisition of real  
27 property by a leasehold interest with a minimum term of ten (10) years, and

- 1           any costs incidental thereto;
- 2           (c) The cost of contract bonds and of insurance of all kinds that may be required  
3           or necessary during the course of the acquisition, construction, equipping, and  
4           installation of a tourism development project which is not paid by the vendor,  
5           supplier, deliveryman, contractor, or otherwise provided;
- 6           (d) All costs of architectural and engineering services, including but not limited to  
7           estimates, plans and specifications, preliminary investigations, and  
8           supervision of construction and installation, as well as for the performance of  
9           all the duties required by or consequent to the acquisition, construction,  
10          equipping, and installation of a tourism development project;
- 11          (e) All costs required to be paid under the terms of any contract for the  
12          acquisition, construction, equipping, and installation of a tourism  
13          development project;
- 14          (f) All costs required for the installation of utilities, including but not limited to  
15          water, sewer, sewer treatment, gas, electricity and communications, and  
16          including off-site construction of the facilities paid for by the approved  
17          company; and
- 18          (g) All other costs comparable with those described in this subsection, excluding  
19          costs subject to refund under KRS 154.20-202, 154.20-204, 154.20-206,  
20          154.20-208, and 154.20-210 or Subchapter 31 of KRS Chapter 154;
- 21       (9) "Enhanced incentive county" has the same meaning as in KRS 154.32-010;
- 22       (10) "Entertainment destination center project" means a facility that meets the  
23       requirements of KRS 148.853(2)(b);
- 24       (11) "Final approval" means the action taken by the authority authorizing the eligible  
25       company to receive incentives under KRS 139.536 and 148.851 to 148.860;
- 26       (12) "Full-service lodging facility" means a facility that provides overnight sleeping  
27       accommodations, including private bathrooms and all of the following:

- 1 (a) On-site dining facilities;
- 2 (b) Room service;
- 3 (c) Catering; and
- 4 (d) Meeting space;
- 5 (13) "Incentives" means the Kentucky sales tax refund as prescribed in KRS 139.536;
- 6 (14) "Kentucky sales tax" means the sales tax imposed by KRS 139.200;
- 7 (15) "Lodging facility project" means a full-service lodging facility that:
- 8 (a) Is located on recreational property owned or leased by the Commonwealth or
- 9 the federal government;
- 10 (b) Involves the restoration or rehabilitation of a structure that:
- 11 1. Is listed individually on the National Register of Historic Places; or
- 12 2. Is located in the National Register Historic District; and
- 13 is certified by the Kentucky Heritage Council as contributing to the historic
- 14 significance of the district, and the rehabilitation or restoration of the structure
- 15 has been approved in advance by the Kentucky Heritage Council;
- 16 (c) Is an integral part of a major convention or sports facility;
- 17 (d) Is located:
- 18 1. Within a fifty (50) mile radius of a property listed on the National
- 19 Register of Historic Places with a current function of recreation and
- 20 culture; and
- 21 2. In any of the one hundred (100) least-populated counties in the
- 22 Commonwealth, in terms of population density, according to the most
- 23 recent census;
- 24 (e) Is located on property:
- 25 1. Owned by the Commonwealth, or leased by the Commonwealth from
- 26 the federal government;
- 27 2. Acquired for use in the state park system pursuant to KRS 148.028; and

- 1           3.    Operated by the Kentucky Department of Parks pursuant to KRS  
2           148.021 or the Kentucky Horse Park Commission pursuant to KRS  
3           148.258 to 148.320;
- 4           (f)   Is located on property:
- 5           1.    Owned or leased by the federal government and under the control of the  
6           Department of the Interior; or
- 7           2.    Owned by the Commonwealth and in the custody of the State Fair Board  
8           as provided in KRS 247.140;
- 9           (g)   Is part of a tourism attraction project, entertainment destination center project,  
10          or theme restaurant destination attraction project and the full-service lodging  
11          facility represents less than fifty percent (50%) of the total eligible costs; or
- 12          (h)   Has not less than five hundred (500) guest rooms:
- 13       (16) "Net positive fiscal impact" means the amount by which increased state tax  
14          revenues will exceed the incentives given;
- 15       (17) "Preliminary approval" means the action taken by the authority conditionally  
16          approving an eligible company for the incentives under KRS 139.536 and 148.851  
17          to 148.860;
- 18       (18) "Recreational facility" means a structure or outdoor area that:
- 19          (a)   Provides visitors recreational opportunities, including but not limited to  
20          amusement parks, boating, hiking, horseback riding, hunting, fishing,  
21          camping, wildlife viewing, live theater, rock climbing, and all-terrain vehicle  
22          trails; and
- 23          (b)   Serves as a likely destination where individuals who are not residents of the  
24          Commonwealth would remain overnight in commercial lodging at or near the  
25          recreational facility;
- 26       (19) "Theme restaurant destination attraction project" means a restaurant facility that  
27          meets the requirements for incentives under KRS 148.853(2)(c);

1 (20) (a) "Tourism attraction project" means:

- 2 1. A cultural or historical site;
- 3 2. A recreational facility;
- 4 3. An entertainment facility;
- 5 4. An area of natural phenomenon or scenic beauty; or
- 6 5. A Kentucky crafts and products center;

7 (b) "Tourism attraction project" includes such projects as are located on  
 8 property:

- 9 1. Owned by the Commonwealth, or leased by the Commonwealth from  
 10 the federal government;
- 11 2. Acquired for use in the state park system pursuant to KRS 148.028;
- 12 3. Operated by the Kentucky Department of Parks pursuant to KRS  
 13 148.258 to 148.320;
- 14 4. Owned or leased by the federal government and under the control of  
 15 the Department of the Interior; or
- 16 5. Owned by the Commonwealth and in the custody of the State Fair  
 17 Board as provided in KRS 247.140; and

18 (c) "Tourism attraction project" does not include facilities that are primarily  
 19 devoted to the retail sale of goods, other than a Kentucky crafts and products  
 20 center, or a tourism attraction where the sale of goods is a secondary and  
 21 subordinate component of the attraction; and

22 (21) "Tourism development project" means:

- 23 (a) A tourism attraction project;
- 24 (b) A theme restaurant destination attraction project;
- 25 (c) An entertainment destination center project; or
- 26 (d) A lodging facility project.

27 ➔Section 2. KRS 148.855 is amended to read as follows:

- 1 (1) The cabinet shall promulgate administrative regulations in accordance with KRS  
2 Chapter 13A to establish standards for the making of applications for incentives and  
3 the recommendation of eligible companies and their tourism development projects  
4 to the authority.
- 5 (2) The cabinet shall consult with the authority when establishing standards to ensure  
6 that standards established pursuant to subsection (1) of this section and KRS  
7 148.857(1) do not conflict.
- 8 (3) (a) The application for incentives shall be filed with the cabinet and shall include:  
9 1. The name of the applicant;  
10 2. Marketing plans for the tourism development project that target  
11 individuals who are not residents of the Commonwealth;  
12 3. A description and location of the tourism development project;  
13 4. Capital and other anticipated expenditures for the tourism development  
14 project that indicate that the total cost of the project shall exceed the  
15 minimum required costs as provided in KRS 148.853, and the  
16 anticipated sources of funding therefor;  
17 5. The anticipated employment and wages to be paid at the tourism  
18 development project;  
19 6. Business plans which indicate the average number of days in a year in  
20 which the tourism development project will be in operation and open to  
21 the public;  
22 7. The anticipated revenues and expenses generated by the tourism  
23 development project;  
24 8. If the tourism development project is an entertainment destination center  
25 project, the application shall include the public infrastructure purpose;  
26 and  
27 9. Any other information as required by the cabinet.

- 1 (b) Based upon a review of these materials, if the cabinet determines that the  
2 eligible company and the proposed tourism development project appears to  
3 meet the requirements established by KRS 148.853, and that the proposed  
4 tourism development project may reasonably satisfy the criteria for final  
5 approval in subsection (4) of this section, the secretary of the cabinet may  
6 submit a written request to the authority for a preliminary approval of the  
7 eligible company and the tourism development project.
- 8 (4) The authority may review the request submitted by the secretary, including all  
9 relevant materials, and may, based upon that review, grant preliminary approval to  
10 an eligible company. Upon a preliminary approval by the authority, the cabinet shall  
11 engage the services of a competent consulting firm to analyze the data made  
12 available by the eligible company and to collect and analyze additional information  
13 necessary to determine that, in the independent judgment of the consultant, the  
14 proposed tourism development project:
- 15 (a) Will attract, in all years following the third year of operation, at least twenty-  
16 five percent (25%) of its visitors from among persons who are not residents of  
17 the Commonwealth, except for a theme restaurant destination attraction  
18 project, which shall attract, in all years following the third year of operation, a  
19 minimum of fifty percent (50%) of its visitors from among persons who are  
20 not residents of the Commonwealth;
- 21 (b) Will have costs in excess of the minimum amount required by KRS 148.853;
- 22 (c) 1. Will have a net positive fiscal impact on the Commonwealth  
23 considering, among other factors, the extent to which the proposed  
24 tourism development project will compete directly with existing tourism  
25 attractions or previously approved tourism development projects in the  
26 Commonwealth and the amount by which increased tax revenues from  
27 the tourism development project will exceed the incentives given to the

- 1 approved company at the maximum level of recovery of approved costs  
 2 as provided in KRS 148.853; or
- 3 2. If the independent consultant determines that the proposed tourism  
 4 development project cannot produce a net positive fiscal impact to the  
 5 Commonwealth at the maximum level of recovery of approved costs as  
 6 provided in KRS 148.853, the independent consultant shall determine  
 7 the level of recovery, if any, at which the proposed tourism development  
 8 project can meet those standards;
- 9 (d) Will produce sufficient revenues and public demand to be operating and open  
 10 to the public for a minimum of one hundred (100) days per year, except for a  
 11 theme restaurant destination attraction, which shall be operating and open to  
 12 the public for a minimum of three hundred (300) days per year;
- 13 (e) Will not adversely affect existing employment in the Commonwealth; and
- 14 (f) Meets all other requirements of KRS 148.851 and 148.853.
- 15 (5) ~~The~~ **Except in the case of lodging facility projects under KRS 148.851(15)(e) and**  
 16 **(f) or tourism attraction projects under KRS 148.851(20)(b), The** independent  
 17 consultant, in determining the amount of net positive fiscal impact to the  
 18 Commonwealth for a new proposed tourism development project that is an  
 19 expansion of an existing tourism development project shall not consider positive  
 20 fiscal impacts from the following sources:
- 21 (a) Increased operations at the previously approved tourism development project  
 22 that is being expanded by the proposed tourism development project;
- 23 (b) Increased operations at any other tourism development project approved for  
 24 incentives provided under KRS 148.853; or
- 25 (c) Increased operations at any project approved for tax increment financing that  
 26 includes state revenues approved pursuant to Subchapter 30 of KRS Chapter  
 27 154.



- 1 (6) For lodging facility projects under KRS 148.851(15)(e) and (f) or tourism  
2 attraction projects under KRS 148.851(20)(b), the independent consultant shall  
3 consider, the following:
- 4 (a) The positive impact that the project will have on an existing tourism  
5 attraction project;
- 6 (b) The relative importance of the long term success of the project on the total  
7 return to the Commonwealth, including, but not limited to, lease payments  
8 and other considerations set forth in the existing agreement between the  
9 Commonwealth and the applicant as well as the potential cost to the  
10 Commonwealth attendant to the failure of the project;
- 11 (c) The impact the project will have on other tourism attractions in the area;
- 12 (d) Whether positive impacts warrant a departure from the causation finding  
13 required by KRS 148.853(1)(b); and
- 14 (e) Any other positive impacts that will accrue to the economy of the  
15 Commonwealth.
- 16 (Z) (a) The independent consultant shall consult with the authority, the Office of the  
17 State Budget Director and the Finance and Administration Cabinet in the  
18 development of a report on the proposed tourism development project.
- 19 (b) The Office of the State Budget Director and the Finance and Administration  
20 Cabinet shall agree as to the methodology to be used and assumptions to be  
21 made by the independent consultant in preparing its report.
- 22 (c) On the basis of the independent consultant's report and prior to any final  
23 approval of a project by the authority, the Office of the State Budget Director  
24 and the Finance and Administration Cabinet shall certify to the authority  
25 whether there is a projected net positive fiscal impact to the Commonwealth  
26 and the expected amount of incremental state revenues from the tourism  
27 development project. A final approval shall not be granted if it is determined

1           that there is no projected net positive fiscal impact to the Commonwealth.

2   ~~(8)~~~~(7)~~   The eligible company shall pay for the cost of the consultant's report and shall  
3           cooperate with the consultant and provide all of the data that the consultant deems  
4           necessary to make its determination under subsection (4) of this section.

5   ~~(9)~~~~(8)~~   In lieu of the independent consultant analysis required in subsection (4) of this  
6           section, if the eligible company is exempt from income tax under Section 501(c)(3)  
7           of the Internal Revenue Code and the estimated approved costs are less than ten  
8           million dollars (\$10,000,000), the cabinet shall have the option of performing an  
9           interagency review to analyze the data made available by the eligible company and  
10          to collect and analyze additional information necessary to determine that the  
11          proposed tourism development project meets the requirements set forth in  
12          subsection (4)(a) of this section. The cabinet shall comply with the same consulting  
13          and reporting requirements as an independent consultant.

14   ~~(10)~~~~(9)~~   After a review of relevant materials, the consultant's report, and completion of  
15          other inquiries, the secretary shall, by written notification to the authority, provide a  
16          recommendation to the authority regarding final approval of the tourism  
17          development project.