

1 AN ACT relating to economic development incentives.

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

3 ➔Section 1. KRS 154.20-234 is amended to read as follows:

4 The requirements for small businesses, investors, and investments to be qualified for
5 participation in the Angel Investor Program are as follows:

6 (1) To be certified as a qualified small business, the business shall demonstrate to the
7 authority that it is an entity which, at the time the small business requests
8 certification:

9 (a) Has a net worth of ten million dollars (\$10,000,000) or less or net income
10 after federal income taxes for each of the two (2) preceding fiscal years of
11 three million dollars (\$3,000,000) or less;

12 (b) Is actively and principally engaged in a qualified activity within the
13 Commonwealth, or will be actively and principally engaged in a qualified
14 activity within the Commonwealth after the receipt of a qualified investment
15 by a qualified investor;

16 (c) Has no more than one hundred (100) full-time employees;

17 (d) Has more than fifty percent (50%) of its assets, operations, and employees
18 located in the Commonwealth; and

19 (e) Has at no time received an aggregate amount of qualified investments that has
20 allowed qualified investors to receive more than one million dollars
21 (\$1,000,000) in angel investor credits;

22 (2) To be certified as a qualified investor, an individual investor shall demonstrate to
23 the authority that he or she:

24 (a) Is an individual natural person;

25 (b) Qualifies as an accredited investor pursuant to Regulation D of the United
26 States Securities and Exchange Commission, 17 C.F.R. sec. 230.501, in effect
27 as of the date the individual investor requests certification;

- 1 (c) Does not hold in excess of twenty percent (20%) ownership interest in, and is
 2 not employed by, the qualified small business prior to making the qualified
 3 investment in that qualified small business;
- 4 (d) Is not closely related to an individual who holds in excess of twenty percent
 5 (20%) ownership interest in, or who is employed by, the qualified small
 6 business prior to making the qualified investment in that qualified small
 7 business. For purposes of this paragraph, "closely related" means **any of the**
 8 **following in relation to the owner or owners or spouse of the owner or**
 9 **owners:**
- 10 **1. Parents or grandparents;**
 11 **2. Children or their spouses; or**
 12 **3. Siblings or their spouses**~~[the parent, spouse, or child of an individual];~~
 13 and
- 14 (e) Seeks a financial return from the investment made in the qualified small
 15 business;
- 16 (3) To be certified as a qualified investment, the investment shall:
- 17 (a) Be a cash investment of at least ten thousand dollars (\$10,000), in a qualified
 18 small business by a qualified investor; and
- 19 (b) Be offered and executed in compliance with applicable state and federal
 20 securities laws and regulations; and
- 21 (4) The authority may establish additional requirements and guidelines for the efficient
 22 implementation and administration of the Kentucky Angel Investment Act and to
 23 carry out its purposes.
- 24 ➔Section 2. KRS 154.20-236 is amended to read as follows:
- 25 (1) The total amount of credit that may be awarded by the authority in each calendar
 26 year, pursuant to KRS 154.20-230 to 154.20-240, to:
- 27 (a) All qualified investors shall be no more than three million dollars

- 1 (\$3,000,000); and
- 2 (b) Any individual qualified investor shall be no more than two hundred thousand
3 dollars (\$200,000).
- 4 (2) (a) The total amount of credit that may be awarded by the authority to:
- 5 1. All qualified investors pursuant to KRS 154.20-230 to 154.20-240; and
6 2. All investors in all investment funds pursuant to KRS 154.20-250 to
7 154.20-284;
- 8 shall be no more than forty million dollars (\$40,000,000) in total for all years
9 prior to December 31, 2020.
- 10 (b) Beginning on or after January 1, 2021, the amount of credit that may be
11 awarded by the authority in each calendar year shall be equal to the amount
12 provided in subsection (1) of this section.
- 13 (c) The authority shall not grant preliminary or final approval for applications
14 received for the Kentucky Angel Investment Act on or after January 1, 2019,
15 but may resume approving applications received on or after January 1, 2021.
- 16 (3) The authority shall, by promulgation of an administrative regulation, develop a
17 standard procedure for:
- 18 (a) Small businesses and investors to request certification for participation in the
19 program;
- 20 (b) Qualified investors to request certification of a planned investment as being a
21 qualified investment, and to apply for a credit; and
- 22 (c) The award of credits to qualified investors making qualified investments.
- 23 (4) At a minimum, the procedure shall:
- 24 (a) Require small businesses and investors to demonstrate to the authority that
25 they, and any planned investment, satisfy all requirements provided in KRS
26 154.20-234;
- 27 (b) Provide small businesses and investors with a standard written application

1 form to request certification and apply for a credit;

2 (c) Require the payment of a fee; and

3 (d) Mandate a time period for the duration of certifications granted to small
4 businesses and investors, and the procedures for recertification thereof.

5 (5) The amount of credit awarded shall not exceed~~be equal to~~:

6 (a) Twenty-five percent (25%)~~Forty percent (40%)~~ of the amount of the
7 qualified investment, if the principal place of business of the qualified small
8 business is outside an enhanced incentive county; or

9 (b) Forty percent (40%)~~Fifty percent (50%)~~ of the amount of the qualified
10 investment, if the principal place of business of the qualified small business is
11 in an enhanced incentive county.

12 (6) Upon approval of a credit, the authority shall reduce the amount of available credit
13 by the amount of credit approved to the qualified investor.

14 (7) The authority may, in effectuating this section, contract with a science and
15 technology organization as defined in KRS 164.6011 to administer and manage the
16 certification and application procedure established by the authority. However, the
17 final approval of all credits shall be made solely by the authority.

18 ➔Section 3. KRS 154.20-240 is amended to read as follows:

19 (1) On or before February 1 of the calendar year succeeding the year in which a credit
20 was awarded, and continuing for four (4) years thereafter, a qualified small business
21 that has received a qualified investment shall file an annual report with the
22 authority.

23 (2) (a) This report shall demonstrate that the small business:

24 1. Continues to have more than fifty percent (50%) of its assets, operations,
25 and employees in the Commonwealth;

26 2. Has at no time received an aggregate amount of qualified investments
27 that has allowed qualified investors to receive more than one million

- 1 dollars (\$1,000,000) in credits; and
- 2 3. Continues to be actively and principally engaged in a qualified activity.
- 3 (b) The report shall also provide additional information related to the success of
- 4 the small business attributable to the investment, including but not limited to:
- 5 1. New jobs created;
- 6 2. Increased sales or other economic activity conducted;
- 7 3. The degree of other private investment attracted; and
- 8 4. Any other information requested by the authority.

- 9 (3) If a qualified small business either:
- 10 (a) Fails to submit the report mandated by this section in any year; or
- 11 (b) Fails to meet any of the criteria listed in subsection (2)(a) of this section at any
- 12 time during any year of the reporting period;

13 the authority shall notify the department, which shall recapture any portion, or the

14 full amount, of the credit awarded for qualified investments in that qualified small

15 business from the qualified investor that received the credit award or any taxpayer

16 receiving the credit through a valid transfer. Any amounts collected from the

17 recapture shall be deposited in the general fund.

- 18 (4) If a qualified small business becomes insolvent and ceases operations at any time
- 19 before the final required annual report is due, it shall file a written report with the
- 20 authority attesting to that fact and shall thereafter be exempt from the annual report
- 21 required by this section, and credits awarded **and already claimed** for qualified
- 22 investments in that qualified small business shall not be subject to any recapture.
- 23 **Any credits not claimed as of the date the company became insolvent and ceased**
- 24 **operations shall be considered expired and shall not be claimed.**

25 ➔Section 4. KRS 154.60-010 is amended to read as follows:

26 As used in this subchapter:

- 27 (1) "Authority" means the Kentucky Economic Development Finance Authority;

- 1 (2) (a) "Average hourly wage" means the per-hour wage earned by a full-time
2 employee, including wages, tips, overtime, bonuses, and commissions, as
3 reflected on the employee's federal form W-2 wage and tax statement.
- 4 (b) "Average hourly wage" does not include employee benefits as defined in KRS
5 154.32-010, including health insurance and reimbursements;
- 6 (3) "Base employment" means:
- 7 (a) For the first application for which credits are approved, the number of full-
8 time employees employed on the day prior to the work start~~hire~~ date of the
9 new employee filling the earliest eligible position identified on the
10 application; and
- 11 (b) For subsequent applications, the number of full-time employees employed on
12 the day prior to the work start~~hire~~ date of the new employee filling the
13 earliest eligible position identified on the initial approved application plus
14 each eligible position for which a credit has been approved; and
- 15 (c) For applications from businesses involved in mergers, acquisitions, or
16 federal tax identification number changes, base employment may be
17 adjusted by the Cabinet for Economic Development;
- 18 (4) "Eligible position" means each position that:
- 19 (a) Is filled by a full-time employee and that increases the total employment of the
20 small business above its base employment; and
- 21 (b) Carries an average hourly wage of no less than one hundred fifty percent
22 (150%) of the federal minimum wage;
- 23 (5) "Full-time employee" means a person employed by a small business for at least an
24 average of thirty-five (35) hours per week and subject to the state tax imposed by
25 KRS 141.020;
- 26 (6) "Qualifying equipment or technology" means equipment or technology that has
27 been approved by the Office of Entrepreneurship; and

1 (7) "Small business" means any business entity organized for profit that has been
2 approved by the Office of Entrepreneurship, including a sole proprietorship,
3 partnership, limited partnership, corporation, limited liability company, joint
4 venture, association, or cooperative, that has fifty (50) or fewer ~~full-time~~
5 employees working more than thirty-five (35) hours per week, whether within or
6 outside the Commonwealth, at the time it applies.

7 ➔Section 5. KRS 103.220 is amended to read as follows:

8 (1) The bonds may be issued to bear interest at any rate or rates, either fixed or variable,
9 in accordance with such method as shall be set by the governing body of the issuer,
10 payable either annually or at shorter intervals, may be of such terms and maturities,
11 may bear such conversion privileges, may be executed by the manual or facsimile
12 signatures of such officers of the issuer and shall be executed in such manner and at
13 such time or times or from time to time and be payable at such times not exceeding
14 forty (40)~~thirty (30)~~ years from the date thereof, or if commercial paper, from the
15 date of issuance thereof, and at such place or places as the governing body of the
16 issuer determines.

17 (2) The bonds may provide that they or any of them may be called for redemption prior
18 to maturity under conditions set by the governing body of the issuer before issuing
19 the bonds.

20 (3) (a) Any bonds issued and outstanding hereunder may, at any time on or after the
21 earliest redemption date provided therefor at the time of their issuance, be
22 refunded by the issuer or any other city, county or authority, with the consent
23 of the lessee, industrial concern or utility company, in such amount as the
24 governing body may deem necessary to refund the principal of the bonds to be
25 refunded, together with any unpaid interest thereon, to create any necessary
26 debt service reserve fund, and to pay the costs of any improvements or
27 additions to the project, and of any premiums, expenses and commissions

1 required to be paid in connection therewith. Any refunding bonds issued under
2 the authority of this section shall be payable from the revenues out of which
3 the bonds to be refunded were payable.

4 (b) At the time of the initial issuance of the bonds, the issuer may designate
5 individual officials of its governing body as agent for purposes of approving
6 the principal amount, the interest rate, the discount, if any, and the maturity
7 date of bonds being issued later to refund the maturing bonds; provided,
8 however, that, at the time of the initial issuance of such bonds, the governing
9 body of the issuer shall set the maximum principal amount, the maximum
10 interest rate, and the maximum discount, if any, of the refunding bonds plus
11 the final maturity date of the last issue of such refunding bonds; and provided
12 further that the issuer shall retain the right to revoke any such agent's authority
13 at any time and for any reason whatsoever. Individual issues of commercial
14 paper, issued as part of a continuing financing program, may be refunded by
15 the approvals of such agent of the issuer and separate proceedings of the issuer
16 pursuant to KRS 103.210 shall not be required.

17 (c) At the time of issuance of bonds which bear interest at a variable rate or rates,
18 the governing body of the issuer may designate individuals or institutions who
19 in the sole judgment of such governing body have financial market expertise
20 to serve as agent for the issuer for establishing and changing from time to time
21 while such bonds remain outstanding the rate of interest to be borne by and
22 the price to be paid for the bonds; provided, however, that the rate-setting
23 procedures and authority of each such agent shall be set forth in writing, and
24 may include a formula or an index or indices based upon market factors, and
25 shall be established by the issuer at the time of issuance of such bonds; and
26 provided further that at the time of the issuance of the bonds, the governing
27 body of the issuer shall establish the maximum interest rate to be borne by the

1 bonds; and provided further that the issuer shall retain the right to remove or
2 replace any such agent at any time and for any reason whatsoever.

3 (4) Any bonds issued and outstanding hereunder and the coupons appertaining to such
4 bonds shall prior to the maturity or redemption date thereof be deemed to have been
5 paid to the same extent as if they had actually been paid in cash and retired, if:

6 (a) In case any of such bonds are to be redeemed on any date prior to their
7 maturity, the issuer of such bonds shall have given a trustee appointed for the
8 holders of such bonds in connection with their issuance, in form satisfactory
9 to such trustee and in conformity with the requirements of the ordinance or
10 resolution authorizing their issuance, irrevocable instructions to give notice of
11 redemption of such bonds to the holders thereof by publication or by other
12 method which is satisfactory to such trustee;

13 (b) There shall have been deposited with the trustee either money in an amount
14 which shall be sufficient, or direct obligations of or obligations guaranteed by
15 the United States of America, the principal of and the interest on which, when
16 due, will provide money which, together with the money, if any, deposited
17 with the trustee at the same time, shall be sufficient to pay when due the
18 principal and the interest due and to become due on such bonds on and prior
19 to redemption date or maturity date thereof, as the case may be; and

20 (c) In the event that such bonds are not to be redeemed within the next succeeding
21 sixty (60) days, the issuer shall have given the trustee in form satisfactory to it
22 irrevocable instructions to give, as soon as practicable, in a manner
23 satisfactory to it, a notice to the holders of such bonds and coupons that the
24 deposit required by paragraph (b) of this subsection has been made with the
25 trustee, that such bonds and coupons are deemed to have been paid in
26 accordance with the provisions hereof and stating such maturity or redemption
27 date upon which money is to be available for the payment of the principal of

1 and interest on such bonds. Any deposits made under paragraph (b) of this
2 subsection, to the extent not secured by the Federal Deposit Insurance
3 Corporation, shall be secured by the pledging of direct obligations of or
4 obligations guaranteed by the United States of America.

5 (5) It is hereby declared and determined that the issuance of any and all refunding
6 bonds as provided herein will be for a public purpose if the legislative body of the
7 issuer authorizing such bonds so declares in the proceedings authorizing same, it
8 being hereby declared and determined that the ability of any domestic or foreign
9 corporation renting or leasing any facilities financed by the bonds to cause
10 refunding bonds to be issued will be an inducement for such domestic or foreign
11 corporation to establish in Kentucky the facilities provided for in KRS 103.210 and
12 will tend to further the purposes of KRS 103.200 to 103.285.

13 (6) No bonds shall be issued hereunder in violation of federal statutes or regulations
14 prohibiting arbitrage profits.

15 ➔Section 6. KRS 103.246 is amended to read as follows:

16 (1) (a) The term "pollution control facilities" means any land, building, structure,
17 machinery, equipment, device, system or facility functionally related thereto
18 designed for the control, containment, reduction, prevention or abatement of
19 atmospheric pollutants or contaminants, solid waste, noise, radiation, or water
20 pollution produced by industrial concerns and utility companies, including,
21 but not by way of limitation, any such facilities used in whole or in part to
22 control, contain, reduce, prevent or abate atmospheric, solid waste, noise,
23 radiation, or water pollution by removing, altering, containing, disposing or
24 storing pollutants, contaminants, wastes, whether gaseous, solid or liquid,
25 thermal or radioactive. Said term includes all pollution control facilities
26 whenever constructed, reconstructed, purchased, leased or otherwise acquired
27 and placed in use, which may legally be financed by issuance of bonds

1 determined to be tax-exempt pursuant to the provisions of Section 103(b) of
2 the Internal Revenue Code of 1954, as amended, and regulations promulgated
3 thereunder. Pollution control facilities may be constructed as part of, and may
4 include, facilities also designed for the recovery of chemicals or other by-
5 products or to serve other purposes which also contribute to the control of or
6 abatement of atmospheric, solid waste and water pollution.

7 (b) The term "industrial concern" means any domestic or foreign corporation,
8 company, partnership, association, rural electric cooperative corporation, or
9 any other legal entity.

10 (2) It is hereby determined and declared that the acquisition and financing of pollution
11 control facilities for utilization by industrial concerns and utility companies by the
12 issuance of bonds of cities and counties amortized by payments made by such
13 industrial concerns and utility companies inures to the public interest, and
14 constitutes the performance of a proper governmental purpose. It is the intent of this
15 section to afford to cities and counties alternative methods of financing pollution
16 control facilities to the end that atmospheric, solid waste and water pollution in the
17 Commonwealth may be abated and controlled to the maximum possible extent.

18 (3) As an alternative to the procedure set forth in KRS 103.200 to 103.285, inclusive,
19 any city or county, for the purpose of financing the acquisition of pollution control
20 facilities for any industrial concern or utility company, may issue negotiable bonds
21 pursuant to KRS 103.200 to 103.285, inclusive, and either (a) loan the proceeds
22 from the sale of such bonds to an industrial concern or utility company to finance
23 the acquisition of such pollution control facilities, (b) sell such pollution control
24 facilities to an industrial concern or utility company pursuant to agreement, or (c)
25 lease such pollution control facilities from an industrial concern or utility company
26 and sublease same to such industrial concern or utility company. In the event of use
27 of such alternative financing procedure, such bonds shall not constitute an

1 indebtedness of such city or county within the meaning of the Constitution of
2 Kentucky, but shall be payable as to principal and interest solely from the revenues
3 derived from payments, repayments, or sublease payments made by such industrial
4 concern or utility company to such city or county in respect of such loan, sale or
5 sublease.

6 (4) In the event that an alternate procedure authorized by this section is to be utilized in
7 the financing of pollution control facilities, (i) the provisions of KRS 103.200 to
8 103.285, inclusive, shall apply, except that the proceedings and procedures therein
9 described shall contemplate and authorize a transaction in the form of (a) a loan of
10 the proceeds from the sale of such bonds by such city or county to an industrial
11 concern or utility company for the acquisition of such pollution control facilities, (b)
12 a sale of such pollution control facilities to an industrial concern or utility company
13 pursuant to agreement, or (c) a lease of such pollution control facilities from an
14 industrial concern or utility company and sublease of same to such industrial
15 concern or utility company; and (ii) the loan, sale, lease and sublease and any
16 agreement or contract with respect thereto may include such provisions as such city
17 or county shall deem appropriate to effect the securing of the financing undertaken
18 in respect of such pollution control facilities, including, but not by way of
19 limitation, (a) the pledge of the general credit of any such industrial concern or
20 utility company, (b) the making of guarantees to an indenture trustee or to such city
21 or county in respect of amortization of such bonds by any such industrial concern or
22 utility company, (c) the creation of liens of security interests on any property or
23 portion thereof of any such industrial concern or utility company, either senior or
24 junior to, or ranking equally with, any other lien, security interest or rights of others,
25 including any party or parties to any agreement in connection with such financing
26 and/or its or their respective security holders and indenture trustees or mortgage
27 trustees, and (d) the pledge of other direct securities of such industrial concern or

1 utility company in respect of such bonds.

- 2 (5) In the event any city or county shall finance pollution control facilities pursuant to
3 the express authority contained in this section, title to such pollution control
4 facilities shall not be acquired by such city or county in the case of a loan or lease
5 transaction, and, in the case of a sale transaction, title may pass at any time, and the
6 statutory mortgage lien for which provision is made in KRS 103.250 shall not apply
7 to any such pollution control facilities.
- 8 (6) Bonds issued by cities and counties pursuant to the authority contained in this
9 section may be caused to mature as to principal in term or serial maturities not to
10 exceed forty (40)~~thirty (30)~~ years from date of issue.