

1 AN ACT relating to the establishment of a tax credit to promote investments in  
2 Kentucky businesses.

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

4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO  
5 READ AS FOLLOWS:

6 *The General Assembly hereby finds and declares that:*

7 *(1) Businesses in the rural areas of this state have found it difficult to attract capital*  
8 *necessary to make investments that would stimulate economic development*  
9 *activity and create new jobs for the residents of the rural areas; therefore, a need*  
10 *exists to attract capital to rural areas that promotes the retention and expansion*  
11 *of existing jobs, stimulates the creation of new jobs, attracts new business and*  
12 *industry to the state, stimulates growth in businesses, and fosters job creation in*  
13 *this state; and*

14 *(2) Through the establishment of a rural growth fund program under Sections 5 to*  
15 *11 of this Act and the tax credit under Section 2 of this Act, the Commonwealth*  
16 *will attract capital to stimulate business development in rural areas, retain and*  
17 *attract new business and industry to the rural areas, create high-paying jobs for*  
18 *residents of rural areas, and stimulate growth in businesses in rural areas.*

19 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO  
20 READ AS FOLLOWS:

21 *(1) As used in this section:*

22 *(a) "Affiliate" has the same meaning as in Section 5 of this Act; and*

23 *(b) "Closing date" has the same meaning as in Section 5 of this Act;*

24 *(c) "Growth business" has the same meaning as in Section 5 of this Act; and*

25 *(d) "Growth fund" has the same meaning as in Section 5 of this Act.*

26 *(2) There is hereby allowed a nonrefundable credit for taxpayers that, as investors,*  
27 *make an investor contribution to a growth fund and were issued a tax credit*

1 certificate under subsection (7)(b) of Section 6 of this Act. The credit may be  
2 claimed against the tax imposed by:

3 (a) KRS 136.320;

4 (b) KRS 136.330;

5 (c) KRS 136.340;

6 (d) KRS 136.350;

7 (e) KRS 136.370;

8 (f) KRS 136.390; or

9 (g) KRS 304.3-270;

10 with the ordering of the credit as provided in Section 3 of this Act.

11 (3) The credit may not be sold, transferred, or allocated to any other taxpayer other  
12 than an affiliate that was an affiliate at the time of the submission of the  
13 investor's affidavit included in the growth fund's application and is itself subject  
14 to the tax imposed by KRS 136.320, 136.330, 136.340, 136.350, 136.370, 136.390,  
15 or 304.3-270.

16 (4) (a) On the closing date, the taxpayer shall earn a vested credit equal to the  
17 amount of the taxpayer's investor contribution made to a growth fund as  
18 specified on the tax credit certificate.

19 (b) A taxpayer may claim no more than twenty percent (20%) of the credit  
20 allowed by this section in each of the years that include the second, third,  
21 fourth, fifth, and sixth anniversaries of the closing date, exclusive of  
22 amounts carried forward pursuant to subsection (5) of this section.

23 (5) If the amount of the credit allowed for a taxable year under subsection (4) of this  
24 section exceeds the tax otherwise due for that year, the excess shall be carried  
25 forward to succeeding taxable years until fully used, for a period not to exceed  
26 ten (10) years.

27 (6) A taxpayer claiming a credit under this section shall submit a copy of the tax

1 credit certificate with the taxpayer's return filed for each taxable year for which  
 2 the credit is claimed.

3 (7) On or before December 1, 2023, and annually thereafter as long as the credit is  
 4 claimed by a taxpayer, the department shall submit a written report to the Interim  
 5 Joint Committee on Appropriations and Revenue, providing cumulative  
 6 information by taxable year:

7 (a) The number of taxpayers claiming a credit under this section, and the total  
 8 value of credits claimed;

9 (b) The total value of initial investment authority and investor contributions  
 10 approved by the Cabinet for Economic Development since the initial  
 11 creation of the credit by fiscal year, listed by the date on which the  
 12 approvals were issued; and

13 (c) The number and total value of any tax credit certificates revoked by the  
 14 Cabinet for Economic Development during the fiscal year, with an  
 15 explanation of the reason for each revocation.

16 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO  
 17 READ AS FOLLOWS:

18 (1) If a taxpayer is entitled to more than one (1) of the tax credits permitted against  
 19 the taxes imposed by KRS 136.320, 136.330, 136.340, 136.350, 136.370, 136.390,  
 20 or 304.3-270, the credits shall be taken in the following order:

21 (a) The credit permitted by KRS 154.20-258;

22 (b) The New Markets Development Program credit permitted by KRS 141.434;  
 23 and

24 (c) The rural growth fund credit permitted by Section 2 of this Act.

25 (2) A taxpayer claiming a credit against any of the insurance premiums taxes  
 26 imposed by KRS 136.320, 136.330, 136.340, 136.350, 136.370, or 136.390 shall  
 27 not be required to pay additional retaliatory tax imposed by KRS 304.3-270.

1           ➔Section 4. KRS 131.190 is amended to read as follows:

2       (1) No present or former commissioner or employee of the department, present or  
3       former member of a county board of assessment appeals, present or former property  
4       valuation administrator or employee, present or former secretary or employee of the  
5       Finance and Administration Cabinet, former secretary or employee of the Revenue  
6       Cabinet, or any other person, shall intentionally and without authorization inspect or  
7       divulge any information acquired by him of the affairs of any person, or information  
8       regarding the tax schedules, returns, or reports required to be filed with the  
9       department or other proper officer, or any information produced by a hearing or  
10      investigation, insofar as the information may have to do with the affairs of the  
11      person's business.

12     (2) The prohibition established by subsection (1) of this section shall not extend to:

13       (a) Information required in prosecutions for making false reports or returns of  
14       property for taxation, or any other infraction of the tax laws;

15       (b) Any matter properly entered upon any assessment record, or in any way made  
16       a matter of public record;

17       (c) Furnishing any taxpayer or his properly authorized agent with information  
18       respecting his own return;

19       (d) Testimony provided by the commissioner or any employee of the department  
20       in any court, or the introduction as evidence of returns or reports filed with the  
21       department, in an action for violation of state or federal tax laws or in any  
22       action challenging state or federal tax laws;

23       (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or  
24       energy resources assessed under KRS 132.820, or owners of surface land  
25       under which the unmined minerals lie, factual information about the owner's  
26       property derived from third-party returns filed for that owner's property, under  
27       the provisions of KRS 132.820, that is used to determine the owner's

- 1 assessment. This information shall be provided to the owner on a confidential  
2 basis, and the owner shall be subject to the penalties provided in KRS  
3 131.990(2). The third-party filer shall be given prior notice of any disclosure  
4 of information to the owner that was provided by the third-party filer;
- 5 (f) Providing to a third-party purchaser pursuant to an order entered in a  
6 foreclosure action filed in a court of competent jurisdiction, factual  
7 information related to the owner or lessee of coal, oil, gas reserves, or any  
8 other mineral resources assessed under KRS 132.820. The department may  
9 promulgate an administrative regulation establishing a fee schedule for the  
10 provision of the information described in this paragraph. Any fee imposed  
11 shall not exceed the greater of the actual cost of providing the information or  
12 ten dollars (\$10);
- 13 (g) Providing information to a licensing agency, the Transportation Cabinet, or  
14 the Kentucky Supreme Court under KRS 131.1817;
- 15 (h) Statistics of gasoline and special fuels gallonage reported to the department  
16 under KRS 138.210 to 138.448;
- 17 (i) Providing any utility gross receipts license tax return information that is  
18 necessary to administer the provisions of KRS 160.613 to 160.617 to  
19 applicable school districts on a confidential basis;
- 20 (j) Providing documents, data, or other information to a third party pursuant to an  
21 order issued by a court of competent jurisdiction; or
- 22 (k) Providing information to the Legislative Research Commission under:
- 23 1. KRS 139.519 for purposes of the sales and use tax refund on building  
24 materials used for disaster recovery;
  - 25 2. KRS 141.436 for purposes of the energy efficiency products credits;
  - 26 3. KRS 141.437 for purposes of the ENERGY STAR home and the  
27 ENERGY STAR manufactured home credits;

- 1           4.    KRS 148.544 for purposes of the film industry incentives;
- 2           5.    KRS 154.26-095 for purposes of the Kentucky industrial revitalization
- 3                 tax credits and the job assessment fees;
- 4           6.    KRS 141.068 for purposes of the Kentucky investment fund;
- 5           7.    KRS 141.396 for purposes of the angel investor tax credit;
- 6           8.    KRS 141.389 for purposes of the distilled spirits credit;
- 7           9.    KRS 141.408 for purposes of the inventory credit; ~~and~~
- 8           10.   KRS 141.390 for purposes of the recycling and composting credit; **and**
- 9           **11. Section 2 of this Act for purposes of the growth fund credit.**

10   (3)   The commissioner shall make available any information for official use only and on  
11         a confidential basis to the proper officer, agency, board or commission of this state,  
12         any Kentucky county, any Kentucky city, any other state, or the federal government,  
13         under reciprocal agreements whereby the department shall receive similar or useful  
14         information in return.

15   (4)   Access to and inspection of information received from the Internal Revenue Service  
16         is for department use only, and is restricted to tax administration purposes.  
17         Information received from the Internal Revenue Service shall not be made available  
18         to any other agency of state government, or any county, city, or other state, and shall  
19         not be inspected intentionally and without authorization by any present secretary or  
20         employee of the Finance and Administration Cabinet, commissioner or employee of  
21         the department, or any other person.

22   (5)   Statistics of crude oil as reported to the Department of Revenue under the crude oil  
23         excise tax requirements of KRS Chapter 137 and statistics of natural gas production  
24         as reported to the Department of Revenue under the natural resources severance tax  
25         requirements of KRS Chapter 143A may be made public by the department by  
26         release to the Energy and Environment Cabinet, Department for Natural Resources.

27   (6)   Notwithstanding any provision of law to the contrary, beginning with mine-map

1 submissions for the 1989 tax year, the department may make public or divulge only  
 2 those portions of mine maps submitted by taxpayers to the department pursuant to  
 3 KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-  
 4 out parcel areas. These electronic maps shall not be relied upon to determine actual  
 5 boundaries of mined-out parcel areas. Property boundaries contained in mine maps  
 6 required under KRS Chapters 350 and 352 shall not be construed to constitute land  
 7 surveying or boundary surveys as defined by KRS 322.010 and any administrative  
 8 regulations promulgated thereto.

9 ➔SECTION 5. SUBCHAPTER 21 OF KRS CHAPTER 154 IS ESTABLISHED,  
 10 AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

11 *As used in this subchapter:*

12 *(1) (a) "Affiliate" means a person or entity that directly, or indirectly through one*  
 13 *(1) or more intermediaries, controls, is controlled by, or is under common*  
 14 *control with another person or entity.*

15 *(b) For the purposes of this subsection, an entity is controlled by another entity*  
 16 *if the controlling person holds, directly or indirectly, the majority voting or*  
 17 *ownership interest in the controlled person or has control over the day-to-*  
 18 *day operations of the controlled person by contract or by law;*

19 *(2) "Cabinet" means the Cabinet for Economic Development;*

20 *(3) "Closing date" means the date on which a growth fund has collected all of the*  
 21 *amounts specified by subsection (8)(a) of Section 6 of this Act;*

22 *(4) "Department" means the Department of Revenue;*

23 *(5) "Growth business" means a business that, at the time of the initial investment in*  
 24 *the company by a growth fund:*

25 *(a) Has fewer than two hundred fifty (250) employees;*

26 *(b) Has its principal business operations in one (1) or more growth zones in*  
 27 *this state; and*

- 1        (c) 1. Is engaged in the industries described in North American Industry  
2                                    Classification System codes 11, 21, 22, 23, 31-33, 48, 49, 54, or 62; or  
3        2. If not engaged in those industries, the cabinet determines that the  
4                                    industry within which the business is engaged will be beneficial to the  
5                                    growth zone and the economic growth of this state;

6        (6) "Growth fund" means an entity that:

7                    (a) Has applied to the cabinet and received an application determination  
8                                    granting the application under subsection (2) of Section 6 of this Act; and

9                    (b) Is licensed, or is an affiliate of an entity that is licensed, as a rural business  
10                                    investment company under 7 U.S.C. sec. 2009cc-3 or as a small business  
11                                    investment company under 15 U.S.C. sec. 681, provided that an affiliate of  
12                                    the entity used to meet this requirement has been an affiliate of the entity  
13                                    for at least four (4) years, and that the entity or affiliate of the entity have at  
14                                    least one (1) principal who is, or has been for at least four (4) years, an  
15                                    employee or officer of the entity or its affiliates;

16        (7) (a) "Growth investment" means any capital or equity investment in a growth  
17                                    business or any loan to a growth business with a stated maturity at least one  
18                                    (1) year after the date of issuance. A secured loan or the provision of a  
19                                    revolving line of credit to a rural business concern shall only qualify as a  
20                                    rural growth investment if the rural growth fund obtains an affidavit from  
21                                    an officer of the rural business concern attesting that the rural business  
22                                    concern applied for and was denied similar financing from a commercial  
23                                    bank prior to the date of issuance of the secured loan or revolving line of  
24                                    credit.

25        (b) "Growth investment" excludes any amount of any investment or loan  
26                                    which is also qualified as an investment under:

27                    1. The Kentucky New Markets Development Program, pursuant to KRS



- 1                   141.432 to 141.434;
- 2                   2. The Kentucky Angel Investment Act, pursuant to KRS 154.20-230 to
- 3                   154.20-240; or
- 4                   3. The Kentucky Investment Fund Act, pursuant to KRS 154.20-250 to
- 5                   154.20-284;
- 6 (8) "Growth zone" means the following geographic areas within this state:
- 7                   (a) A rural county;
- 8                   (b) An underemployment zone; or
- 9                   (c) An opportunity zone;
- 10 (9) "High wage" means a wage that is at least one hundred percent (100%) of the
- 11 county average as calculated by the United States Department of Labor, Bureau
- 12 of Labor Statistics;
- 13 (10) "Initial investment authority" means the amount stated on the notice issued
- 14 under subsection (7) of Section 6 of this Act certifying the growth fund, seventy-
- 15 five percent (75%) of which shall be composed of an amount equal to the
- 16 authorized investor contributions;
- 17 (11) "Investor contribution" means an investment of cash in a growth fund by an
- 18 entity with a state premium tax liability that shall:
- 19                   (a) Equal the amount specified in the cabinet's approval of a growth fund
- 20                   related to the entity under subsection (7)(b) of Section 6 of this Act; and
- 21                   (b) Purchase an equity interest in the growth fund or purchase, at par value or
- 22                   premium, a debt instrument that has a maturity date at least five (5) years
- 23                   from the closing date;
- 24 (12) "Jobs retained" means the number of employment positions at a growth business
- 25 paying a high wage and requiring at least thirty-five (35) hours of work each
- 26 week, or any other period of time generally accepted by custom, industry, or
- 27 practice as full-time employment, that existed before the initial growth investment

1 and for which the growth business's chief executive officer or similar officer  
2 certifies that the employment position would have been eliminated but for the  
3 initial growth investment. The retained jobs of a growth business shall be  
4 calculated each year based on the monthly average of high wage employment  
5 positions. The reported number of retained jobs may not exceed the number  
6 reported on the initial report under subsection (1) of Section 11 of this Act;

7 (13) "New annual jobs" means the difference between:

8 (a) 1. The monthly average of employment positions at a growth business  
9 paying a high wage and requiring at least thirty-five (35) hours of  
10 work each week for the preceding calendar year, or any other period  
11 of time generally accepted by custom, industry, or practice as full-time  
12 employment; or

13 2. If the preceding calendar year contains the initial growth investment,  
14 the monthly average of employment positions at a growth business  
15 paying a high wage and requiring at least thirty-five (35) hours of  
16 work each week, or any other period of time generally accepted by  
17 custom, industry, or practice as full-time employment, for the months  
18 including and after the initial growth investment and before the end of  
19 the preceding calendar year; and

20 (b) The number of full-time high wage employment positions at the growth  
21 business on the date of the initial growth investment; but

22 (c) If the amount calculated in paragraph (a)1. of this subsection is less than  
23 zero, the new annual jobs amount is equal to zero;

24 (14) "Opportunity Zone" means a qualified opportunity zone as defined by 26 U.S.C.  
25 sec. 1400Z-1;

26 (15) "Principal business operations" means the location where:

27 (a) At least sixty percent (60%) of a business entity's employees work; or

1        (b) At least sixty percent (60%) of the business entity's payroll works.  
 2        A business that has agreed to relocate employees using the proceeds of a growth  
 3        investment to establish its principal business operations in a new location shall be  
 4        deemed to have its principal business operations in this new location if it satisfies  
 5        those requirements no later than one hundred eighty (180) days after receiving  
 6        the growth investment;

7        (16) "Rural county" means all Kentucky counties with a population of less than fifty  
 8        thousand (50,000) based upon the most recent federal decennial census. The  
 9        cabinet shall publish a list of rural counties;

10       (17) "State premium tax liability" means any liability incurred by any entity under  
 11       KRS 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, or 304.3-270; and

12       (18) "Underemployment zone" means a county with a labor force participation rate,  
 13       as calculated by the United States Department of Labor, Bureau of Labor  
 14       Statistics, below the national average for six (6) of the twelve (12) months prior to  
 15       a growth fund's closing date.

16       ➔SECTION 6. A NEW SECTION OF SUBCHAPTER 21 OF KRS CHAPTER  
 17       154 IS CREATED TO READ AS FOLLOWS:

18       (1) Beginning October 1, 2020, the cabinet shall accept applications from entities  
 19       seeking approval as a growth fund. The application shall be made on standard  
 20       forms prescribed by the cabinet, incorporated by reference within an  
 21       administrative regulation according to KRS Chapter 13A, and shall include all of  
 22       the following:

23       (a) The total investment authority sought by the applicant as part of its business  
 24       plan;

25       (b) Documents and other evidence sufficient to prove, to the satisfaction of the  
 26       cabinet and department, that the applicant meets all of the following  
 27       criteria:

- 1           1. The applicant or an affiliate of the applicant, has at least one (1)  
2           principal in a rural business investment company under 7 U.S.C. sec.  
3           2009cc-3, or a small business investment company under 15 U.S.C.  
4           sec. 681, who is, and has been for at least four (4) years, an officer or  
5           employee of the applicant or the affiliate, and in the case of an  
6           affiliate, the affiliate has been an affiliate of the applicant for at least  
7           four (4) years;
- 8           2. As of the date the application is submitted, the applicant, or affiliate of  
9           the applicant, has invested:
- 10           a. More than one hundred million dollars (\$100,000,000) in  
11           nonpublic companies located in non-metropolitan counties as  
12           defined by the Office of Management and Budget within the  
13           Office of the President of the United States on the basis of  
14           county or county-equivalent units; and
- 15           b. At least one hundred million dollars (\$100,000,000) in nonpublic  
16           companies located in low-income communities as defined in 26  
17           U.S.C. sec. 45D; and
- 18           3. The applicant and all affiliates of the applicant are, as of the date the  
19           application is submitted, in compliance with applicable state and  
20           federal securities laws and regulations and are current and in good  
21           standing on all taxes owed to the Commonwealth;
- 22           (c) An estimate of the number of new annual jobs and jobs retained in this  
23           state as a result of the applicant's proposed growth investments;
- 24           (d) A business plan that describes in detail the applicant's investment strategy  
25           and includes a revenue impact assessment that projects state and local tax  
26           revenue to be generated by the applicant's proposed growth investments, as  
27           well as reduced state expenditures prepared by a nationally recognized

1 third-party independent economic forecasting firm using a dynamic  
2 economic forecasting model that analyzes the applicant's business plan over  
3 the ten (10) years following the date the application is submitted to the  
4 cabinet;

5 (e) A signed affidavit from each investor stating the amount of investor  
6 contributions each investor commits to make;

7 (f) A letter of good standing issued by the cabinet for each investor, which  
8 letter shall not be unreasonably withheld and shall be issued within thirty  
9 (30) days of receipt of a request for the letter from applicant;

10 (g) A representation that the applicant shall remain in compliance with  
11 applicable state and federal securities laws and regulations; and

12 (h) A nonrefundable application fee of five thousand dollars (\$5,000).

13 (2) The cabinet shall review applications on a first-come, first-served basis, and shall  
14 make an application determination either granting or denying an application  
15 within sixty (60) days of receipt. The cabinet shall deem applications received on  
16 the same day to have been received simultaneously.

17 (3) (a) The cabinet shall not approve initial investment authority that would allow  
18 more than fifteen million dollars (\$15,000,000) in tax credits to be taken in  
19 any one (1) year, excluding any credits that are carried forward pursuant to  
20 subsection (5) of Section 2 of this Act.

21 (b) If applications for initial investment authority being reviewed by the cabinet  
22 exceed the limitations provided in paragraph (a) of this subsection, the  
23 cabinet shall proportionally reduce the initial investment authority and the  
24 investor contributions for each approved application as necessary to avoid  
25 exceeding the limits.

26 (c) The cabinet shall not issue approval for any amount of investment  
27 authority, or any amount of investor contributions, on or after October 1,

1           2023.

2   (4) The cabinet shall deny an application submitted under this section if any of the  
3   following are true:

4       (a) The application is incomplete, or the application fee is not paid in full;

5       (b) The applicant does not satisfy all the criteria provided in subsection (1)(b)  
6       of this section;

7       (c) The investor contributions that investors have committed to make, as  
8       described in affidavits submitted pursuant to subsection (1)(e) of this  
9       section, do not equal seventy-five percent (75%) of the total amount of  
10      initial investment authority sought by the applicant;

11      (d) The cabinet has already approved the maximum amount of initial  
12      investment authority and investor contributions allowed under subsection  
13      (3)(a) of this section; or

14      (e) The application is received by the cabinet on or after August 1, 2023, in  
15      which case the cabinet would not have the full sixty (60) day period allowed  
16      for review of applications prior to reaching the sunset date limitation  
17      provided in subsection (3)(c) of this section.

18   (5) If the cabinet denies an application, the applicant may provide additional  
19   information to the cabinet to complete, clarify, or cure defects in the application  
20   identified by the cabinet, except for a denial under subsection (4)(c) of this  
21   section, within fifteen (15) days of the notice of denial and resubmit the  
22   application for reconsideration. The cabinet shall review resubmitted applications  
23   within thirty (30) days, and prior to reviewing any pending application submitted  
24   after the original submission date of the reconsidered application.

25   (6) The cabinet shall not deny a growth fund application or reduce the requested  
26   initial investment authority for reasons other than those provided in subsections  
27   (1) and (4) of this section.

1 (7) Upon approval of an application, the cabinet shall issue:

2 (a) A written approval to the applicant certifying it as a growth fund and  
3 specifying the amount of the applicant's initial investment authority; and

4 (b) A written tax credit certificate to each investor whose affidavit was included  
5 in the application, specifying the amount of each investor credit  
6 contribution.

7 (8) After receiving the approval issued under subsection (7) of this section, a growth  
8 fund shall:

9 (a) Within sixty (60) days:

10 1. Collect the investor contributions from each investor issued a tax  
11 credit certificate under subsection (7)(b) of this section; and

12 2. Collect one (1) or more investments of cash that, when added to the  
13 investor capital contributions collected under subparagraph 1. of this  
14 paragraph, equal the growth fund's entire approved initial investment  
15 authority. At least ten percent (10%) of the growth fund's initial  
16 investment authority shall be composed of equity investments  
17 contributed directly or indirectly by affiliates of the growth fund,  
18 including employees, officers, and directors of those affiliates;

19 (b) Within sixty-five (65) days, submit to the cabinet written documentation  
20 sufficient to prove that the amounts described in paragraph (a) of this  
21 subsection have been collected; and

22 (c) Within two (2) years of the closing date, invest one hundred percent (100%)  
23 of its initial investment authority in growth investments in this state,  
24 including at least seventy-five percent (75%) of its initial investment  
25 authority in growth businesses located in rural counties, and maintain that  
26 level of investment until the sixth anniversary of the closing date.

27 (9) (a) If the growth fund fails to fully comply with subsection (8)(a) and (b) of this

1 section, the growth fund's approval shall lapse and the corresponding  
2 initial investment authority and investor contributions shall not count  
3 toward the limits on total initial investment authority and investor  
4 contributions prescribed by subsection (3) of this section.

5 (b) The cabinet shall first award lapsed initial investment authority and  
6 investor contribution amounts pro rata to each growth fund that was  
7 awarded less than its requested initial investment authority and investor  
8 contribution amounts under subsection (3)(b) of this section. A growth fund  
9 receiving awards under this paragraph may allocate investor contribution  
10 amounts to its investors in its discretion, upon the submission of written  
11 notification to the cabinet detailing the investor to which the amount  
12 approved for investor contributions has been allocated.

13 (c) Any remaining initial investment authority and investor contributions may  
14 be awarded by the cabinet to new applications submitted pursuant to  
15 subsection (1) of this section, subject to the sunset date limitation provided  
16 in subsection (3)(c) of this section.

17 (10) Following the making of each growth investment, the growth fund shall within  
18 sixty (60) days submit to the cabinet written documentation listing the following  
19 information:

20 (a) The name, address, and industry of the business entity receiving the growth  
21 investment;

22 (b) The amount of the growth investment;

23 (c) A detailed description of the business activities engaged in by the business  
24 entity; and

25 (d) Any other information required by the cabinet.

26 (11) Nonrefundable application fees submitted to the cabinet pursuant to subsection  
27 (1)(h) of this section shall be retained by the cabinet to offset the costs of



1 administering this subchapter.

2 (12) The cabinet shall review the applications received under subsection (1) of this  
3 section and documents received pursuant to subsections (8) and (10) of this  
4 section to ensure compliance with this subchapter.

5 (13) The cabinet may promulgate administrative regulations as necessary to  
6 administer this subchapter.

7 ➔SECTION 7. A NEW SECTION OF SUBCHAPTER 21 OF KRS CHAPTER  
8 154 IS CREATED TO READ AS FOLLOWS:

9 (1) The cabinet shall revoke a tax credit certificate issued under subsection (7)(b) of  
10 Section 6 of this Act if any of the following occur with respect to a growth fund  
11 before it exits the program in accordance with subsection (5) of this section:

12 (a) The growth fund in which the investor contribution associated with the tax  
13 credit certificate was made does not invest one hundred percent (100%) of  
14 its initial investment authority in growth investments in this state within two  
15 (2) years of the closing date;

16 (b) 1. The growth fund, after investing one hundred percent (100%) of its  
17 investment authority in growth investments in this state, fails to  
18 maintain that investment until the sixth anniversary of the closing  
19 date.

20 2. For the purposes of this paragraph, a growth investment shall be  
21 considered to have been maintained even if the investment is sold or  
22 repaid if the growth fund reinvests an amount equal to the capital  
23 returned or recovered by the growth fund from the original  
24 investment, exclusive of any profits realized, in other growth  
25 investments in this state within twelve (12) months of the receipt of the  
26 returned capital. Amounts received periodically by a growth fund shall  
27 be treated as continually invested in growth investments if the

1                   amounts are reinvested in one (1) or more rural growth investments by  
2                   the end of the following calendar year.

3                   3. A growth fund shall not be required to reinvest capital returned from  
4                   growth investments after the fifth anniversary of the closing date, and  
5                   those amounts shall be considered to be held continuously by the  
6                   growth fund through the sixth anniversary of the closing date;

7                   (c) The growth fund, before exiting the program in accordance with subsection  
8                   (5) of this section, makes a distribution or payment that results in the  
9                   growth fund having less than one hundred percent (100%) of its initial  
10                  investment authority invested in growth investments in this state or  
11                  available for investment in growth investments and held in cash and other  
12                  marketable securities;

13                  (d) The growth fund invests more than twenty percent (20%) of its initial  
14                  investment authority or more than five million dollars (\$5,000,000),  
15                  whichever is greater, in the same growth business, including amounts  
16                  invested in affiliates of the growth business; or

17                  (e) 1. The growth fund makes a growth investment in a growth business that  
18                  directly or indirectly through an affiliate owns, has the right to  
19                  acquire an ownership interest in, makes a loan to, or makes an  
20                  investment in the growth fund, an affiliate of the growth fund, or an  
21                  investor in the growth fund.

22                  2. This paragraph shall not apply to investments in publicly traded  
23                  securities made by a growth business or an owner or affiliate of that  
24                  growth business.

25                  3. For purposes of this paragraph, a growth fund shall not be considered  
26                  an affiliate of a growth business solely as a result of its growth  
27                  investment.

1 (2) Before revoking one (1) or more tax credit certificates under this section, the  
2 cabinet shall notify the growth fund of the reasons for the pending revocation.  
3 The growth fund shall have ninety (90) days from the date of the notice to correct  
4 any violation outlined in the notice to the satisfaction of the cabinet and to avoid  
5 revocation of the tax credit certificate.

6 (3) Upon revocation of a tax credit certificate, any taxpayer that has received the tax  
7 credit certificate shall not be allowed to claim any amount of credit not yet  
8 claimed.

9 (4) (a) If tax credit certificates are revoked under this section, the corresponding  
10 initial investment authority and investor capital contributions shall not  
11 count toward the limits on total investment authority and credit-eligible  
12 capital contributions prescribed by subsection (3)(a) of Section 6 of this Act.

13 (b) The cabinet shall first award reverted initial investment authority and  
14 investor contribution amounts pro rata to each growth fund that was  
15 awarded less than its requested initial investment authority and investor  
16 contribution amounts under subsection (3)(b) of Section 6 of this Act. A  
17 growth fund receiving awards under this paragraph may allocate investor  
18 contribution amounts to its investors in its discretion, upon the submission  
19 of written notification to the cabinet detailing the investor to which the  
20 amount approved for investor contributions has been allocated.

21 (c) The cabinet may award any remaining initial investment authority and  
22 investor contributions to new applications submitted pursuant to subsection  
23 (1) of Section 6 of this Act, subject to the sunset date limitation provided in  
24 subsection (3)(c) of Section 6 of this Act.

25 (5) (a) On or after the sixth anniversary of the closing date, a growth fund that has  
26 not committed any of the acts described in subsection (1) of this section may  
27 submit a written request to the cabinet to exit the program and to no longer

1           be subject to regulation under this subchapter, except as described in  
2           subsection (6) of this section.

3           (b) The cabinet shall respond to the request within sixty (60) days. In  
4           evaluating the request, the fact that no tax credit certificates have been  
5           revoked and that the growth fund has not received a notice of revocation,  
6           which has not been cured pursuant to subsection (2) of this section, shall be  
7           sufficient evidence to prove that the growth fund is eligible for exit.

8           (c) The cabinet shall not unreasonably deny a request submitted under this  
9           subsection. If the request is denied, the notice of denial shall include the  
10           reasons for the determination.

11           (6) After its exit from the program in accordance with of subsection (5)(a) of this  
12           section, a growth fund shall not be permitted to make distributions to its equity  
13           holders unless and until it has made growth investments equal to at least one  
14           hundred fifty percent (150%) of its initial investment authority. Each growth fund  
15           shall continue to report the amount of growth investments made to the cabinet  
16           annually until it has made growth investments equal to at least one hundred fifty  
17           percent (150%) of its initial investment authority.

18           (7) At any time the growth fund proposes to make a distribution to its equity holders  
19           that, when added to all previous distributions to its equity holders, would be in  
20           excess of its initial investment authority, the growth fund shall remit to the  
21           cabinet, if applicable, a payment equal to the product of the proposed distribution  
22           and a fraction, the numerator of which is the aggregate number of new annual  
23           jobs and jobs retained reported to the cabinet pursuant to subsection (1) of  
24           Section 11 of this Act and the denominator of which is the number of new annual  
25           jobs and jobs retained projected in the growth fund's application, as prorated  
26           based on the amount of initial investment authority received by the growth fund.  
27           No payment shall be due if the aggregate number of new annual jobs and jobs

1 retained as of the date of the proposed distribution equal or exceed the number of  
2 new annual jobs and jobs retained projected in the growth fund's application, as  
3 prorated based on the amount of initial investment authority received.

4 (8) The cabinet shall not revoke a tax credit certificate after the associated growth  
5 fund exits the program under subsection (5) of this section.

6 ➔SECTION 8. A NEW SECTION OF SUBCHAPTER 21 OF KRS CHAPTER  
7 154 IS CREATED TO READ AS FOLLOWS:

8 (1) (a) A growth fund may, prior to making a growth investment, request from the  
9 cabinet a written determination as to whether the business entity in which it  
10 proposes to invest qualifies as a growth business under this subchapter.

11 (b) Within twenty (20) days after receiving a request under this section, the  
12 cabinet shall notify the growth fund of its determination. If the cabinet fails  
13 to notify the growth fund of its determination by this deadline, the business  
14 entity in which the growth fund proposes to invest shall be considered a  
15 growth business.

16 (c) To enable the cabinet to make a determination under this section, the  
17 growth fund shall supply information concerning the business entity and  
18 the proposed investment as requested by the cabinet. If the growth fund does  
19 not, or is unable to, supply information requested by the cabinet, the cabinet  
20 may refuse to issue a determination under this section, in which case  
21 paragraph (b) of this subsection and subsection (2) of this section shall not  
22 apply.

23 (2) Each person required to provide documentation confirming that the person is in  
24 good standing on all taxes owed the Commonwealth in accordance with  
25 subsection (1) of Section 6 of this Act shall apply for a letter of good standing  
26 from the department. Within ten (10) days after receiving a request, the  
27 department shall notify the person of its determination. If the department fails to

1 notify the person of its determination by this deadline, it shall be presumed that  
 2 the person is in good standing on all taxes owed the Commonwealth for purposes  
 3 of this subchapter.

4 ➔SECTION 9. A NEW SECTION OF SUBCHAPTER 21 OF KRS CHAPTER  
 5 154 IS CREATED TO READ AS FOLLOWS:

6 (1) The cabinet may examine, under oath, the growth fund manager regarding the  
 7 affairs and business of the growth fund. The cabinet may issue subpoenas and  
 8 subpoenas duces tecum and administer oaths. Refusal to obey a subpoena or  
 9 subpoena duces tecum may be reported to the Franklin Circuit Court, which  
 10 shall enforce the subpoena or subpoena duces tecum according to the rules of  
 11 civil or criminal procedure, as applicable.

12 (2) The cabinet may audit one (1) or more growth funds in any year on a random  
 13 basis or for cause. The cabinet may also audit, for cause, any business entity in  
 14 which a growth fund has made a growth investment. Nothing in this section shall  
 15 be construed to prohibit the department from conducting any audit relating to the  
 16 administration or enforcement of the tax laws of the Commonwealth which the  
 17 department determines to be appropriate.

18 ➔SECTION 10. A NEW SECTION OF SUBCHAPTER 21 OF KRS CHAPTER  
 19 154 IS CREATED TO READ AS FOLLOWS:

20 The Commonwealth, or any officer, director, official, employee, or agent of the  
 21 Commonwealth, shall not be liable to any growth fund or any investor making an  
 22 investor contribution to growth fund as a result of the provisions of this subchapter.  
 23 This limitation of liability includes without limitation:

24 (1) Losses or damages investors incurred in connection with any committed or  
 25 contributed investor contributions made to a growth fund or any growth  
 26 investments made by a growth fund in any business entity; and

27 (2) Any claim, liability, obligation, loss, damage, assessment, judgment, cost, and

1 expense of any kind or character relating to federal or state securities laws, rules,  
2 regulations, or orders.

3 ➔SECTION 11. A NEW SECTION OF SUBCHAPTER 21 OF KRS CHAPTER  
4 154 IS CREATED TO READ AS FOLLOWS:

5 To enable the General Assembly to evaluate and measure the effectiveness of the tax  
6 credit allowed by Section 2 of this Act in addressing the needs and achieving the goals  
7 as stated in Section 1 of this Act, the following reporting requirements shall apply:

8 (1) Each growth fund shall submit a written report to the cabinet and the Interim  
9 Joint Committee on Appropriations and Revenue on or before the fifth business  
10 day following the anniversary of the closing date and on or before the fifth  
11 business day following each subsequent anniversary of the closing date prior to  
12 the growth fund's exit from the program as set forth in in subsection (5) of  
13 Section 7 of this Act. The report shall provide detailed documentation as to the  
14 growth fund's growth investments made to date and shall include:

15 (a) A bank statement evidencing each growth investment;

16 (b) 1. The name, address, and industry of each growth business receiving a  
17 growth investment;

18 2. Either a determination letter issued by the cabinet pursuant to Section  
19 6 of this Act relating to the growth business, or evidence that it  
20 qualified as a growth business at the time the investment was made;  
21 and

22 3. A detailed description of the business activities engaged in by the  
23 growth business;

24 (c) The location, by county, of each growth business;

25 (d) The number of employment positions at each growth business on the date of  
26 the growth fund's initial growth investment;

27 (e) The number of new annual jobs created or jobs retained during the year by

- 1           *the growth business;*
- 2           *(f) The average annual salary of new annual jobs and jobs retained at each*
- 3           *growth business during the year;*
- 4           *(g) The cumulative amount of growth investments made in each growth*
- 5           *business;*
- 6           *(h) Whether any tax certificates have been revoked by the cabinet; and*
- 7           *(i) Any other information required by the cabinet to provide evidence that the*
- 8           *program is valuable to the Commonwealth and meeting the goals of the*
- 9           *program; and*
- 10          *(2) The growth fund is not required to provide the annual report set forth in*
- 11          *subsection (1) of this section for growth investments that have been redeemed or*
- 12          *repaid but shall provide the information, if available.*

13           ➔Section 12. Sections 5 to 11 of this Act may be cited as the Kentucky Rural  
14 Jobs Act of 2020.