

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM  
2021 REGULAR SESSION  
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Amend printed copy of **HB 320/GA**

On page 4, after line 1, insert:

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

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

- (1) Businesses in the rural and economically underserved areas of this state have found it difficult to attract capital necessary to make investments that would stimulate economic development activity and create new jobs for the residents of those areas; therefore, a need exists to attract capital to rural areas that promotes the retention and expansion of existing jobs, stimulates the creation of new jobs, attracts new business and industry to the state, stimulates growth in businesses, and fosters job creation in this state; and**
- (2) Through the establishment of a rural growth fund program under Sections 7 to 13 of this Act and the tax credit under Section 4 of this Act, the Commonwealth will attract capital to stimulate business development in rural areas, opportunity zones, and communities with chronic underemployment, retain and attract new business and industry, create high-paying jobs for residents of rural areas, and stimulate growth in businesses in those areas.**

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

Amendment No. SFA

Rep. Sen. Gerald A. Neal

Committee Amendment

Signed: \_\_\_\_\_

Floor Amendment

LRC Drafter: \_\_\_\_\_

Adopted: \_\_\_\_\_

Date: \_\_\_\_\_

Rejected: \_\_\_\_\_

Doc. ID: XXXX

**Not for Filing**

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

- (a) "Affiliate" has the same meaning as in Section 7 of this Act; and**
- (b) "Closing date" has the same meaning as in Section 7 of this Act;**
- (c) "Growth business" has the same meaning as in Section 7 of this Act; and**
- (d) "Growth fund" has the same meaning as in Section 7 of this Act.**

**(2) There is hereby allowed a nonrefundable credit for taxpayers that, as investors, make an investor contribution to a growth fund and were issued a tax credit certificate under subsection (7)(b) of Section 8 of this Act. The credit may be claimed against the tax imposed by:**

- (a) KRS 136.320;**
- (b) KRS 136.330;**
- (c) KRS 136.340;**
- (d) KRS 136.350;**
- (e) KRS 136.370;**
- (f) KRS 136.390; or**
- (g) KRS 304.3-270;**

**with the ordering of the credit as provided in Section 5 of this Act.**

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

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

- (b) A taxpayer may claim no more than twenty percent (20%) of the credit allowed by**

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*this section in each of the years that include the third, fourth, fifth, and sixth anniversaries of the closing date, exclusive of amounts carried forward pursuant to subsection (5) of this section.*

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

*(6) A taxpayer claiming a credit under this section shall submit a copy of the tax credit certificate with the taxpayer's return filed for each taxable year for which the credit is claimed.*

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

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

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

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

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

*(1) If a taxpayer is entitled to more than one (1) of the tax credits permitted against the taxes imposed by KRS 136.320, 136.330 136.340, 136.350, 136.370, 136.390, or 304.3-270, the*

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**credits shall be taken in the following order:**

- (a) The Kentucky Investment Fund Act credit permitted by KRS 154.20-258;**
- (b) The New Markets Development Program credit permitted by KRS 141.434; and**
- (c) The rural growth fund credit permitted by Section 4 of this Act.**

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

➔Section 6. KRS 131.190 is amended to read as follows:

- (1) No present or former commissioner or employee of the department, present or former member of a county board of assessment appeals, present or former property valuation administrator or employee, present or former secretary or employee of the Finance and Administration Cabinet, former secretary or employee of the Revenue Cabinet, or any other person, shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the department or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business.
- (2) The prohibition established by subsection (1) of this section shall not extend to:
  - (a) Information required in prosecutions for making false reports or returns of property for taxation, or any other infraction of the tax laws;
  - (b) Any matter properly entered upon any assessment record, or in any way made a matter of public record;
  - (c) Furnishing any taxpayer or his properly authorized agent with information respecting his own return;
  - (d) Testimony provided by the commissioner or any employee of the department in any

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court, or the introduction as evidence of returns or reports filed with the department, in an action for violation of state or federal tax laws or in any action challenging state or federal tax laws;

- (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or energy resources assessed under KRS 132.820, or owners of surface land under which the unmined minerals lie, factual information about the owner's property derived from third-party returns filed for that owner's property, under the provisions of KRS 132.820, that is used to determine the owner's assessment. This information shall be provided to the owner on a confidential basis, and the owner shall be subject to the penalties provided in KRS 131.990(2). The third-party filer shall be given prior notice of any disclosure of information to the owner that was provided by the third-party filer;
- (f) Providing to a third-party purchaser pursuant to an order entered in a foreclosure action filed in a court of competent jurisdiction, factual information related to the owner or lessee of coal, oil, gas reserves, or any other mineral resources assessed under KRS 132.820. The department may promulgate an administrative regulation establishing a fee schedule for the provision of the information described in this paragraph. Any fee imposed shall not exceed the greater of the actual cost of providing the information or ten dollars (\$10);
- (g) Providing information to a licensing agency, the Transportation Cabinet, or the Kentucky Supreme Court under KRS 131.1817;
- (h) Statistics of gasoline and special fuels gallonage reported to the department under KRS 138.210 to 138.448;
- (i) Providing any utility gross receipts license tax return information that is necessary to administer the provisions of KRS 160.613 to 160.617 to applicable school districts on

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a confidential basis;

(j) Providing documents, data, or other information to a third party pursuant to an order issued by a court of competent jurisdiction; or

(k) Providing information to the Legislative Research Commission under:

1. KRS 139.519 for purposes of the sales and use tax refund on building materials used for disaster recovery;
2. KRS 141.436 for purposes of the energy efficiency products credits;
3. KRS 141.437 for purposes of the ENERGY STAR home and the ENERGY STAR manufactured home credits;
4. KRS 148.544 for purposes of the film industry incentives;
5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization tax credits and the job assessment fees;
6. KRS 141.068 for purposes of the Kentucky investment fund;
7. KRS 141.396 for purposes of the angel investor tax credit;
8. KRS 141.389 for purposes of the distilled spirits credit;
9. KRS 141.408 for purposes of the inventory credit;
10. KRS 141.390 for purposes of the recycling and composting credit;
11. KRS 141.3841 for purposes of the selling farmer tax credit;~~and~~
12. KRS 141.4231 for purposes of the renewable chemical production tax credit;

**and**

**13. Section 4 of this Act for purposes of the growth fund credit.**

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

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return.

- (4) Access to and inspection of information received from the Internal Revenue Service is for department use only, and is restricted to tax administration purposes. Information received from the Internal Revenue Service shall not be made available to any other agency of state government, or any county, city, or other state, and shall not be inspected intentionally and without authorization by any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the department, or any other person.
- (5) Statistics of crude oil as reported to the Department of Revenue under the crude oil excise tax requirements of KRS Chapter 137 and statistics of natural gas production as reported to the Department of Revenue under the natural resources severance tax requirements of KRS Chapter 143A may be made public by the department by release to the Energy and Environment Cabinet, Department for Natural Resources.
- (6) Notwithstanding any provision of law to the contrary, beginning with mine-map submissions for the 1989 tax year, the department may make public or divulge only those portions of mine maps submitted by taxpayers to the department pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-out parcel areas. These electronic maps shall not be relied upon to determine actual boundaries of mined-out parcel areas. Property boundaries contained in mine maps required under KRS Chapters 350 and 352 shall not be construed to constitute land surveying or boundary surveys as defined by KRS 322.010 and any administrative regulations promulgated thereto.

➔SECTION 7. SUBCHAPTER 21 OF KRS CHAPTER 154 IS ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

**As used in this subchapter:**

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

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- another person or entity.
- (b) For the purposes of this subsection, an entity is controlled by another entity if the controlling person holds, directly or indirectly, the majority voting or ownership interest in the controlled person or has control over the day-to-day operations of the controlled person by contract or by law;
- (2) "Cabinet" means the Cabinet for Economic Development;
- (3) "Closing date" means the date on which a growth fund has collected all of the amounts specified by subsection (8)(a) of Section 8 of this Act;
- (4) "Department" means the Department of Revenue;
- (5) "Growth business" means a business that, at the time of the initial investment in the company by a growth fund:
- (a) Has fewer than two hundred fifty (250) employees;
- (b) Has its principal business operations in one (1) or more growth zones in this state;
- and
- (c) 1. Is engaged in the industries described in North American Industry Classification System codes 11, 21, 22, 23, 31-33, 48, 49, 54, or 62; or
2. If not engaged in those industries, the cabinet determines that the industry within which the business is engaged will be beneficial to the growth zone and the economic growth of this state;
- (6) "Growth fund" means an entity that:
- (a) Has applied to the cabinet and received an application determination granting the application under subsection (2) of Section 8 of this Act; and
- (b) Is licensed, or is an affiliate of an entity that is licensed, as a rural business investment company under 7 U.S.C. sec. 2009cc-3 or as a small business investment company under 15 U.S.C. sec. 681, provided that an affiliate of the

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- entity used to meet this requirement has been an affiliate of the entity for at least four (4) years, and that the entity or affiliate of the entity have at least one (1) principal who is, or has been for at least four (4) years, an employee or officer of the entity or its affiliates;
- (7) (a) "Growth investment" means any capital or equity investment in a growth business or any loan to a growth business with a stated maturity at least one (1) year after the date of issuance. A secured loan or the provision of a revolving line of credit to a rural business concern shall only qualify as a rural growth investment if the rural growth fund obtains an affidavit from an officer of the rural business concern attesting that the rural business concern applied for and was denied similar financing from a commercial bank prior to the date of issuance of the secured loan or revolving line of credit.
- (b) "Growth investment" excludes any amount of any investment or loan which is also qualified as an investment under:
1. The Kentucky New Markets Development Program, pursuant to KRS 141.432 to 141.434;
  2. The Kentucky Angel Investment Act, pursuant to KRS 154.20-230 to 154.20-240; or
  3. The Kentucky Investment Fund Act, pursuant to KRS 154.20-250 to 154.20-284;
- (8) "Growth zone" means the following geographic areas within this state:
- (a) A rural county;
  - (b) An underemployment zone; or
  - (c) An opportunity zone;
- (9) "High wage" means a wage that is at least one hundred percent (100%) of the county

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average as calculated by the United States Department of Labor, Bureau of Labor Statistics;

(10) "Initial investment authority" means the amount stated on the notice issued under subsection (7) of Section 8 of this Act certifying the growth fund, sixty percent (60%) of which shall be composed of an amount equal to the authorized investor contributions;

(11) "Investor contribution" means an investment of cash in a growth fund by an entity with a state premium tax liability that shall:

(a) Equal the amount specified in the cabinet's approval of a growth fund related to the entity under subsection (7)(b) of Section 8 of this Act; and

(b) Purchase an equity interest in the growth fund or purchase, at par value or premium, a debt instrument that has a maturity date at least five (5) years from the closing date;

(12) "Jobs retained" means the number of employment positions at a growth business paying a high wage and requiring at least thirty-five (35) hours of work each week, or any other period of time generally accepted by custom, industry, or practice as full-time employment, that existed before the initial growth investment and for which the growth business's chief executive officer or similar officer certifies that the employment position would have been eliminated but for the initial growth investment. The retained jobs of a growth business shall be calculated each year based on the monthly average of high wage employment positions. The reported number of retained jobs may not exceed the number reported on the initial report under subsection (1) of Section 13 of this Act;

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

(a) 1. The monthly average of employment positions at a growth business paying a high wage and requiring at least thirty-five (35) hours of work each week for the preceding calendar year, or any other period of time generally accepted by

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custom, industry, or practice as full-time employment; or

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

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

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

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

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

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

(b) At least sixty percent (60%) of the business entity's payroll works.

A business that has agreed to relocate employees using the proceeds of a growth investment to establish its principal business operations in a new location shall be deemed to have its principal business operations in this new location if it satisfies those requirements no later than one hundred eighty (180) days after receiving the growth investment;

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

(17) "State premium tax liability" means any liability incurred by any entity under KRS

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136.320, 136.330, 136.340, 136.350, 136.370, 136.390, or 304.3-270; and

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

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

(1) Beginning October 1, 2021, the cabinet shall accept applications from entities seeking approval as a growth fund. The application shall be made on standard forms prescribed by the cabinet, incorporated by reference within an administrative regulation according to KRS Chapter 13A, and shall include all of the following:

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

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

1. The applicant or an affiliate of the applicant, has at least one (1) principal in a rural business investment company under 7 U.S.C. sec. 2009cc-3, or a small business investment company under 15 U.S.C. sec. 681, who is, and has been for at least four (4) years, an officer or employee of the applicant or the affiliate, and in the case of an affiliate, the affiliate has been an affiliate of the applicant for at least four (4) years;

2. As of the date the application is submitted, the applicant, or affiliate of the applicant, has invested:

a. More than one hundred million dollars (\$100,000,000) in nonpublic companies located in non-metropolitan counties as defined by the Office of Management and Budget within the Office of the President of the

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United States on the basis of county or county-equivalent units; and

b. At least one hundred million dollars (\$100,000,000) in nonpublic companies located in low-income communities as defined in 26 U.S.C. sec. 45D; and

3. The applicant and all affiliates of the applicant are, as of the date the application is submitted, in compliance with applicable state and federal securities laws and regulations and are current and in good standing on all taxes owed to the Commonwealth;

(c) An estimate of the number of new annual jobs and jobs retained in this state as a result of the applicant's proposed growth investments;

(d) A business plan that describes in detail the applicant's investment strategy and includes a revenue impact assessment that projects state and local tax revenue to be generated by the applicant's proposed growth investments, as well as reduced state expenditures prepared by a nationally recognized third-party independent economic forecasting firm using a dynamic economic forecasting model that analyzes the applicant's business plan over the ten (10) years following the date the application is submitted to the cabinet;

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

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

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

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

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- (2) The cabinet shall review applications on a first-come, first-served basis, and shall make an application determination either granting or denying an application within sixty (60) days of receipt. The cabinet shall deem applications received on the same day to have been received simultaneously.
- (3) (a) The cabinet shall not approve initial investment authority that would allow more than fifteen million dollars (\$15,000,000) in tax credits to be taken in any one (1) year, excluding any credits that are carried forward pursuant to subsection (5) of Section 4 of this Act.
- (b) If applications for initial investment authority being reviewed by the cabinet exceed the limitations provided in paragraph (a) of this subsection, the cabinet shall proportionally reduce the initial investment authority and the investor contributions for each approved application as necessary to avoid exceeding the limits.
- (c) The cabinet shall not issue approval for any amount of investment authority, or any amount of investor contributions, on or after October 1, 2024.
- (4) The cabinet shall deny an application submitted under this section if any of the following are true:
- (a) The application is incomplete, or the application fee is not paid in full;
- (b) The applicant does not satisfy all the criteria provided in subsection (1)(b) of this section;
- (c) The revenue impact assessment under subsection (1)(d) of this section does not demonstrate that the applicant's business plan will result in a positive impact on the general fund over a ten (10) year period that exceeds the cumulative amount of tax credits that would be issued to the applicant's investors.
- (d) The investor contributions that investors have committed to make, as described in

- affidavits submitted pursuant to subsection (1)(e) of this section, do not equal sixty percent (60%) of the total amount of initial investment authority sought by the applicant;
- (e) The cabinet has already approved the maximum amount of initial investment authority and investor contributions allowed under subsection (3)(a) of this section; or
- (f) The application is received by the cabinet on or after August 1, 2024, in which case the cabinet would not have the full sixty (60) day period allowed for review of applications prior to reaching the sunset date limitation provided in subsection (3)(c) of this section.
- (5) If the cabinet denies an application, the applicant may provide additional information to the cabinet to complete, clarify, or cure defects in the application identified by the cabinet, except for a denial under subsection (4)(c) of this section, within fifteen (15) days of the notice of denial and resubmit the application for reconsideration. The cabinet shall review resubmitted applications within thirty (30) days, and prior to reviewing any pending application submitted after the original submission date of the reconsidered application.
- (6) The cabinet shall not deny a growth fund application or reduce the requested initial investment authority for reasons other than those provided in subsections (1) and (4) of this section.
- (7) Upon approval of an application, the cabinet shall issue:
- (a) A written approval to the applicant certifying it as a growth fund and specifying the amount of the applicant's initial investment authority; and
- (b) A written tax credit certificate to each investor whose affidavit was included in the application, specifying the amount of each investor credit contribution.

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

(a) Within sixty (60) days:

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

2. Collect one (1) or more investments of cash that, when added to the investor capital contributions collected under subparagraph 1. of this paragraph, equal the growth fund's entire approved initial investment authority;

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

(c) Within two (2) years of the closing date, invest one hundred percent (100%) of its initial investment authority in growth investments in this state, including at least fifty percent (50%) of its initial investment authority in growth businesses located in rural counties, and maintain that level of investment until the sixth anniversary of the closing date.

(9) (a) If the growth fund fails to fully comply with subsection (8)(a) and (b) of this section, the growth fund's approval shall lapse and the corresponding initial investment authority and investor contributions shall not count toward the limits on total initial investment authority and investor contributions prescribed by subsection (3) of this section.

(b) The cabinet shall first award lapsed initial investment authority and investor contribution amounts pro rata to each growth fund that was awarded less than its requested initial investment authority and investor contribution amounts under subsection (3)(b) of this section. A growth fund receiving awards under this

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- paragraph may allocate investor contribution amounts to its investors in its discretion, upon the submission of written notification to the cabinet detailing the investor to which the amount approved for investor contributions has been allocated.
- (c) Any remaining initial investment authority and investor contributions may be awarded by the cabinet to new applications submitted pursuant to subsection (1) of this section, subject to the sunset date limitation provided in subsection (3)(c) of this section.
- (10) Following the making of each growth investment, the growth fund shall within sixty (60) days submit to the cabinet written documentation listing the following information:
- (a) The name, address, and industry of the business entity receiving the growth investment;
- (b) The amount of the growth investment;
- (c) A detailed description of the business activities engaged in by the business entity;
- and
- (d) Any other information required by the cabinet.
- (11) Nonrefundable application fees submitted to the cabinet pursuant to subsection (1)(h) of this section shall be retained by the cabinet to offset the costs of administering this subchapter.
- (12) The cabinet shall review the applications received under subsection (1) of this section and documents received pursuant to subsections (8) and (10) of this section to ensure compliance with this subchapter.
- (13) The cabinet may promulgate administrative regulations as necessary to administer this subchapter.

➔SECTION 9. A NEW SECTION OF SUBCHAPTER 21 OF KRS CHAPTER 154 IS

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CREATED TO READ AS FOLLOWS:

(1) The cabinet shall revoke a tax credit certificate issued under subsection (7)(b) of Section 8 of this Act if any of the following occur with respect to a growth fund before it exits the program in accordance with subsection (5) of this section:

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

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

2. For the purposes of this paragraph, a growth investment shall be considered to have been maintained even if the investment is sold or repaid if the growth fund reinvests an amount equal to the capital returned or recovered by the growth fund from the original investment, exclusive of any profits realized, in other growth investments in this state within twelve (12) months of the receipt of the returned capital. Amounts received periodically by a growth fund shall be treated as continually invested in growth investments if the amounts are reinvested in one (1) or more rural growth investments by the end of the following calendar year.

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

(c) The growth fund, before exiting the program in accordance with subsection (5) of

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- this section, makes a distribution or payment that results in the growth fund having less than one hundred percent (100%) of its initial investment authority invested in growth investments in this state or available for investment in growth investments and held in cash and other marketable securities;*
- (d) The growth fund invests more than twenty percent (20%) of its initial investment authority or more than five million dollars (\$5,000,000), whichever is greater, in the same growth business, including amounts invested in affiliates of the growth business; or*
- (e) 1. The growth fund makes a growth investment in a growth business that directly or indirectly through an affiliate owns, has the right to acquire an ownership interest in, makes a loan to, or makes an investment in the growth fund, an affiliate of the growth fund, or an investor in the growth fund.*
- 2. This paragraph shall not apply to investments in publicly traded securities made by a growth business or an owner or affiliate of that growth business.*
- 3. For purposes of this paragraph, a growth fund shall not be considered an affiliate of a growth business solely as a result of its growth investment.*
- (2) Before revoking one (1) or more tax credit certificates under this section, the cabinet shall notify the growth fund of the reasons for the pending revocation. The growth fund shall have ninety (90) days from the date of the notice to correct any violation outlined in the notice to the satisfaction of the cabinet and to avoid revocation of the tax credit certificate.*
- (3) Upon revocation of a tax credit certificate, any taxpayer that has received the tax credit certificate shall not be allowed to claim any amount of credit not yet claimed.*
- (4) (a) If tax credit certificates are revoked under this section, the corresponding initial investment authority and investor capital contributions shall not count toward the*

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- limits on total investment authority and credit-eligible capital contributions prescribed by subsection (3)(a) of Section 8 of this Act.
- (b) The cabinet shall first award reverted initial investment authority and investor contribution amounts pro rata to each growth fund that was awarded less than its requested initial investment authority and investor contribution amounts under subsection (3)(b) of Section 8 of this Act. A growth fund receiving awards under this paragraph may allocate investor contribution amounts to its investors in its discretion, upon the submission of written notification to the cabinet detailing the investor to which the amount approved for investor contributions has been allocated.
- (c) The cabinet may award any remaining initial investment authority and investor contributions to new applications submitted pursuant to subsection (1) of Section 8 of this Act, subject to the sunset date limitation provided in subsection (3)(c) of Section 8 of this Act.
- (5) (a) On or after the sixth anniversary of the closing date, a growth fund that has not committed any of the acts described in subsection (1) of this section may submit a written request to the cabinet to exit the program and to no longer be subject to regulation under this subchapter.
- (b) The cabinet shall respond to the request within sixty (60) days. In evaluating the request, the fact that no tax credit certificates have been revoked and that the growth fund has not received a notice of revocation, which has not been cured pursuant to subsection (2) of this section, shall be sufficient evidence to prove that the growth fund is eligible for exit.
- (c) The cabinet shall not unreasonably deny a request submitted under this subsection. If the request is denied, the notice of denial shall include the reasons for the

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determination.

- (6) At any time the growth fund proposes to make a distribution to its equity holders that, when added to all previous distributions to its equity holders, would be in excess of its initial investment authority, the growth fund shall remit to the cabinet, if applicable, a payment equal to the product of the proposed distribution and a fraction, the numerator of which is the aggregate number of new annual jobs and jobs retained reported to the cabinet pursuant to subsection (1) of Section 13 of this Act and the denominator of which is the number of new annual jobs and jobs retained projected in the growth fund's application, as prorated based on the amount of initial investment authority received by the growth fund. No payment shall be due if the aggregate number of new annual jobs and jobs retained as of the date of the proposed distribution equal or exceed the number of new annual jobs and jobs retained projected in the growth fund's application, as prorated based on the amount of initial investment authority received.
- (7) The cabinet shall not revoke a tax credit certificate after the associated growth fund exits the program under subsection (5) of this section.

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

- (1) (a) A growth fund may, prior to making a growth investment, request from the cabinet a written determination as to whether the business entity in which it proposes to invest qualifies as a growth business under this subchapter.
- (b) Within twenty (20) days after receiving a request under this section, the cabinet shall notify the growth fund of its determination. If the cabinet fails to notify the growth fund of its determination by this deadline, the business entity in which the growth fund proposes to invest shall be considered a growth business.
- (c) To enable the cabinet to make a determination under this section, the growth fund

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

(2) Each person required to provide documentation confirming that the person is in good standing on all taxes owed the Commonwealth in accordance with subsection (1) of Section 8 of this Act shall apply for a letter of good standing from the department. Within ten (10) days after receiving a request, the department shall notify the person of its determination. If the department fails to notify the person of its determination by this deadline, it shall be presumed that the person is in good standing on all taxes owed the Commonwealth for purposes of this subchapter.

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

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

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

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➔SECTION 12. A NEW SECTION OF SUBCHAPTER 21 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

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

- (1) Losses or damages investors incur in connection with any committed or contributed investor contributions made to a growth fund or any growth investments made by a growth fund in any business entity; and*
- (2) Any claim, liability, obligation, loss, damage, assessment, judgment, cost, and expense of any kind or character relating to federal or state securities laws, rules, regulations, or orders.*

➔SECTION 13. A NEW SECTION OF SUBCHAPTER 21 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

*To enable the General Assembly to evaluate and measure the effectiveness of the tax credit allowed by Section 4 of this Act in addressing the needs and achieving the goals as stated in Section 3 of this Act, the following reporting requirements shall apply:*

- (1) Each growth fund shall submit a written report to the cabinet and the Interim Joint Committee on Appropriations and Revenue on or before the fifth business day following the anniversary of the closing date and on or before the fifth business day following each subsequent anniversary of the closing date prior to the growth fund's exit from the program as set forth in subsection (5) of Section 9 of this Act. The report shall provide detailed documentation as to the growth fund's growth investments made to date and shall include:*
  - (a) A bank statement evidencing each growth investment;*

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- (b) 1. The name, address, and industry of each growth business receiving a growth investment;**
- 2. Either a determination letter issued by the cabinet pursuant to Section 8 of this Act relating to the growth business, or evidence that it qualified as a growth business at the time the investment was made; and**
- 3. A detailed description of the business activities engaged in by the growth business;**
- (c) The location, by county, of each growth business;**
- (d) The number of employment positions at each growth business on the date of the growth fund's initial growth investment;**
- (e) The number of new annual jobs created or jobs retained during the year by the growth business;**
- (f) The average annual salary of new annual jobs and jobs retained at each growth business during the year;**
- (g) The cumulative amount of growth investments made in each growth business;**
- (h) Whether any tax certificates have been revoked by the cabinet; and**
- (i) Any other information required by the cabinet to provide evidence that the program is valuable to the Commonwealth and meeting the goals of the program; and**
- (2) The growth fund is not required to provide the annual report set forth in subsection (1) of this section for growth investments that have been redeemed or repaid but shall provide the information, if available.**

➔Section 14. Sections 7 to 13 of this Act may be cited as the Kentucky Rural Jobs Act of 2021."