

HOUSE OF REPRESENTATIVES

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2021 REGULAR SESSION
Unofficial Document

Amend printed copy of **SB 162/GA**

On page 6, after line 18, insert:

"➔Section 4. KRS 11.175 is amended to read as follows:

- (1) Each cabinet secretary on the Governor's Executive Cabinet, established pursuant to KRS 11.065, shall designate a small business ombudsman from among their respective existing cabinet employees.
- (2) The small business ombudsman shall:
 - (a) Respond to inquiries from small businesses on administrative regulations and other regulatory matters; and
 - (b) Provide information regarding the procedure for submitting comments on administrative regulations as provided by KRS 13A.270(1).
- (3) Each cabinet shall provide contact information for the cabinet's small business ombudsman on the cabinet's Web site, including the ombudsman's name, telephone number, mailing address, and e-mail address.
- (4) No later than December 1 of each year, each small business ombudsman shall submit a report to the Commission on Small Business **Innovation and** Advocacy, established pursuant to KRS 11.200, summarizing the number and nature of inquiries that the ombudsman has received from small businesses during the previous twelve (12) months.

➔Section 5. KRS 11.200 is amended to read as follows:

Amendment No. HFA

Rep. Rep. Steven Rudy

Committee Amendment

Signed: _____

Floor Amendment

LRC Drafter: _____

Adopted: _____

Date: _____

Rejected: _____

Doc. ID: XXXX

Not for Filing

- Unofficial Document
- (1) There is created the Commission on Small Business **Innovation and** Advocacy. The commission shall be a separate administrative body of state government within the meaning of KRS 12.010(8).
 - (2) It shall be the purpose of the Commission on Small Business **Innovation and** Advocacy to:
 - (a) Address matters of small business as it relates to government affairs;
 - (b) Promote a cooperative and constructive relationship between state agencies and the small business community to ensure coordination and implementation of statewide strategies that benefit small business in the Commonwealth;
 - (c) Coordinate and educate the small business community of federal, state, and local government initiatives of value and importance to the small business community;
 - (d) Create a process by which the small business community is consulted in the development of public policy as it affects their industry sector;
 - (e) Aid the small business community in navigating the regulatory process, when that process becomes cumbersome, time consuming, and bewildering to the small business community; and
 - (f) Advocate for the small business, as necessary when regulatory implementation is overly burdensome, costly, and harmful to the success and growth of small businesses in the Commonwealth.
 - (3) The Commission on Small Business **Innovation and** Advocacy shall consist of thirteen (13) members:
 - (a) Two (2) members representing each congressional district; and
 - (b) One (1) at-large member.
 - (4) All members shall be appointed by the Governor for a term of four (4) years, except that the original appointments shall be staggered so that three (3) appointments shall expire at one (1) year, three (3) appointments shall expire at two (2) years, and three (3) appointments

shall expire at three (3) years, and four (4) appointments shall expire at four (4) years from the dates of initial appointment.

- (5) The Governor shall appoint the chair and vice chair of the commission from the appointed membership.
- (6) The commission shall meet quarterly and at other times upon call of the chair or a majority of the commission.
- (7) A quorum shall be a majority of the membership of the commission.
- (8) Members of the commission shall serve without compensation but shall be reimbursed for their necessary travel expenses actually incurred in the discharge of their duties on the commission, subject to Finance and Administration Cabinet administrative regulations.
- (9) The *executive director of the Office of Entrepreneurship and Small Business Innovation*~~[commissioner of the Department for Business Development]~~ shall be the administrative head and chief executive officer of the commission. The secretary of the Cabinet for Economic Development shall have authority to hire staff, contract for services, expend funds, and operate the normal business activities of the commission.
- (10) The Commission on Small Business *Innovation and* Advocacy shall be administratively attached to the Office of Entrepreneurship *and Small Business Innovation* within the Cabinet for Economic Development.

➔Section 6. KRS 11.202 is amended to read as follows:

- (1) The duties of the Commission on Small Business *Innovation and* Advocacy shall include, but not be limited to:
 - (a) Coordinate and promote the awareness of the Federal Small Business Regulatory Enforcement Fairness Act of 1996, and its subsequent amendments within the small business community of the Commonwealth;
 - (b) Develop a process by which the small business community is made aware of state

legislation and administrative regulations affecting it, both prior to its enactment and during its implementation;

- (c) Advocate for the small business sectors when state legislation and administrative regulations are overly burdensome, costly, or harmful to the success and growth of the sector;
 - (d) Collect information and research those public policies and government practices which are helpful or detrimental to the success and growth of the small business community; and
 - (e) Review administrative regulations that may impact small business. The commission may seek input from other agencies, organizations, or interested parties. In acting as an advocate for small business, the commission may submit a written report to the promulgating administrative body to be considered as comments received during the public comment period required by KRS 13A.270(1)(c). The report may specify the commission's findings regarding the administrative regulation, including an identification and estimate of the number of small businesses subject to the administrative regulation, the projected reporting, recordkeeping, and other administrative costs required for compliance with the administrative regulation, and any suggestions the commission has for reducing the regulatory burden on small businesses through the use of tiering or exemptions, in accordance with KRS 13A.210. A copy of the report shall be filed with the regulations compiler of the Legislative Research Commission.
- (2) By September 1 of each year, the commission shall submit a report to the Governor and the Interim Joint Committee on Economic Development and Workforce Investment~~[Tourism]~~ detailing its work in the prior fiscal year, including, but not limited to the following:
- (a) Activities and achievements of the commission in accomplishing its purposes and

Unofficial Document

duties;

- (b) Findings of the commission related to its collection of information and research on public policies and government practices affecting small businesses, including specific legislation and administrative regulations that are helpful or detrimental to the success of small businesses; and
 - (c) Specific recommendations of ways state government could better promote the economic development efforts of small businesses in the Commonwealth.
- (3) Beginning December 1, 2012, and on every December 1 thereafter, the commission shall submit an annual report to the Secretary of State and the Legislative Research Commission setting forth an analysis of how the one-stop electronic business portal established in KRS 14.250 may be improved to make the business portal more user friendly for businesses.

➔Section 7. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

- (1) The Governor.
- (2) Lieutenant Governor.

- (3) Department of State.
 - (a) Secretary of State.
 - (b) Board of Elections.
 - (c) Registry of Election Finance.
- (4) Department of Law.
 - (a) Attorney General.
- (5) Department of the Treasury.
 - (a) Treasurer.
- (6) Department of Agriculture.
 - (a) Commissioner of Agriculture.
 - (b) Kentucky Council on Agriculture.
- (7) Auditor of Public Accounts.

II. Program cabinets headed by appointed officers:

- (1) Justice and Public Safety Cabinet:
 - (a) Department of Kentucky State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Office of Drug Control Policy.
 - (g) Office of Legal Services.
 - (h) Office of the Kentucky State Medical Examiner.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Office of Legislative and Intergovernmental Services.

- (l) Office of Management and Administrative Services.
- (m) Department of Public Advocacy.
- (2) Education and Workforce Development Cabinet:
 - (a) Office of the Secretary.
 - 1. Governor's Scholars Program.
 - 2. Governor's School for Entrepreneurs Program.
 - 3. Office of the Kentucky Workforce Innovation Board.
 - 4. Foundation for Adult Education.
 - 5. Early Childhood Advisory Council.
 - (b) Office of Legal and Legislative Services.
 - 1. Client Assistance Program.
 - (c) Office of Communication.
 - (d) Office of Administrative Services.
 - 1. Division of Human Resources.
 - 2. Division of Operations and Support Services.
 - 3. Division of Fiscal Management.
 - (e) Office of Technology Services.
 - (f) Office of Educational Programs.
 - (g) Office of the Kentucky Center for Statistics.
 - (h) Board of the Kentucky Center for Statistics.
 - (i) Board of Directors for the Center for School Safety.
 - (j) Department of Education.
 - 1. Kentucky Board of Education.
 - 2. Kentucky Technical Education Personnel Board.
 - (k) Department for Libraries and Archives.

- Unofficial Document
-
- (l) Department of Workforce Investment.
 - 1. Office of Vocational Rehabilitation.
 - a. Division of Kentucky Business Enterprise.
 - b. Division of the Carl D. Perkins Vocational Training Center.
 - c. Division of Blind Services.
 - d. Division of Field Services.
 - e. Statewide Council for Vocational Rehabilitation.
 - 2. Office of Unemployment Insurance.
 - 3. Office of Employer and Apprenticeship Services.
 - a. Division of Apprenticeship.
 - 4. Office of Career Development.
 - 5. Office of Adult Education.
 - 6. Unemployment Insurance Commission.
 - 7. Kentucky Apprenticeship Council.
 - (m) Foundation for Workforce Development.
 - (n) Kentucky Workforce Investment Board.
 - (o) Education Professional Standards Board.
 - 1. Division of Educator Preparation.
 - 2. Division of Certification.
 - 3. Division of Professional Learning and Assessment.
 - 4. Division of Legal Services.
 - (p) Kentucky Commission on the Deaf and Hard of Hearing.
 - (q) Kentucky Educational Television.
 - (r) Kentucky Environmental Education Council.
- (3) Energy and Environment Cabinet:

Unofficial Document

- (a) Office of the Secretary.
 - 1. Office of Legislative and Intergovernmental Affairs.
 - 2. Office of Legal Services.
 - a. Legal Division I.
 - b. Legal Division II.
 - 3. Office of Administrative Hearings.
 - 4. Office of Communication.
 - 5. Mine Safety Review Commission.
 - 6. Office of Kentucky Nature Preserves.
 - 7. Kentucky Public Service Commission.
- (b) Department for Environmental Protection.
 - 1. Office of the Commissioner.
 - 2. Division for Air Quality.
 - 3. Division of Water.
 - 4. Division of Environmental Program Support.
 - 5. Division of Waste Management.
 - 6. Division of Enforcement.
 - 7. Division of Compliance Assistance.
- (c) Department for Natural Resources.
 - 1. Office of the Commissioner.
 - 2. Division of Mine Permits.
 - 3. Division of Mine Reclamation and Enforcement.
 - 4. Division of Abandoned Mine Lands.
 - 5. Division of Oil and Gas.
 - 6. Division of Mine Safety.

- 7. Division of Forestry.
- 8. Division of Conservation.
- 9. Office of the Reclamation Guaranty Fund.
- (d) Office of Energy Policy.
 - 1. Division of Energy Assistance.
- (e) Office of Administrative Services.
 - 1. Division of Human Resources Management.
 - 2. Division of Financial Management.
 - 3. Division of Information Services.
- (4) Public Protection Cabinet.
 - (a) Office of the Secretary.
 - 1. Office of Communications and Public Outreach.
 - 2. Office of Legal Services.
 - a. Insurance Legal Division.
 - b. Charitable Gaming Legal Division.
 - c. Alcoholic Beverage Control Legal Division.
 - d. Housing, Buildings and Construction Legal Division.
 - e. Financial Institutions Legal Division.
 - f. Professional Licensing Legal Division.
 - 3. Office of Administrative Hearings.
 - 4. Office of Administrative Services.
 - a. Division of Human Resources.
 - b. Division of Fiscal Responsibility.
 - (b) Kentucky Claims Commission.
 - (c) Kentucky Boxing and Wrestling Commission.

Unofficial Document

- (d) Kentucky Horse Racing Commission.
 - 1. Office of Executive Director.
 - a. Division of Pari-mutuel Wagering and Compliance.
 - b. Division of Stewards.
 - c. Division of Licensing.
 - d. Division of Enforcement.
 - e. Division of Incentives and Development.
 - f. Division of Veterinary Services.
- (e) Department of Alcoholic Beverage Control.
 - 1. Division of Distilled Spirits.
 - 2. Division of Malt Beverages.
 - 3. Division of Enforcement.
- (f) Department of Charitable Gaming.
 - 1. Division of Licensing and Compliance.
 - 2. Division of Enforcement.
- (g) Department of Financial Institutions.
 - 1. Division of Depository Institutions.
 - 2. Division of Non-Depository Institutions.
 - 3. Division of Securities.
- (h) Department of Housing, Buildings and Construction.
 - 1. Division of Fire Prevention.
 - 2. Division of Plumbing.
 - 3. Division of Heating, Ventilation, and Air Conditioning.
 - 4. Division of Building Code Enforcement.
- (i) Department of Insurance.

- 1. Division of Insurance Product Regulation.
- 2. Division of Administrative Services.
- 3. Division of Financial Standards and Examination.
- 4. Division of Agent Licensing.
- 5. Division of Insurance Fraud Investigation.
- 6. Division of Consumer Protection.
- (j) Department of Professional Licensing.
 - 1. Real Estate Authority.
- (5) Labor Cabinet.
 - (a) Office of the Secretary.
 - 1. Office of General Counsel.
 - a. Workplace Standards Legal Division.
 - b. Workers' Claims Legal Division.
 - 2. Office of Administrative Services.
 - a. Division of Human Resources Management.
 - b. Division of Fiscal Management.
 - c. Division of Professional Development and Organizational Management.
 - d. Division of Information Technology and Support Services.
 - 3. Office of Inspector General.
 - (b) Department of Workplace Standards.
 - 1. Division of Occupational Safety and Health Compliance.
 - 2. Division of Occupational Safety and Health Education and Training.
 - 3. Division of Wages and Hours.
 - (c) Department of Workers' Claims.

1. Division of Workers' Compensation Funds.
2. Office of Administrative Law Judges.
3. Division of Claims Processing.
4. Division of Security and Compliance.
5. Division of Information Services.
6. Division of Specialist and Medical Services.
7. Workers' Compensation Board.
- (d) Workers' Compensation Funding Commission.
- (e) Occupational Safety and Health Standards Board.
- (f) State Labor Relations Board.
- (g) Employers' Mutual Insurance Authority.
- (h) Kentucky Occupational Safety and Health Review Commission.
- (i) Workers' Compensation Nominating Committee.
- (6) Transportation Cabinet:
 - (a) Department of Highways.
 1. Office of Project Development.
 2. Office of Project Delivery and Preservation.
 3. Office of Highway Safety.
 4. Highway District Offices One through Twelve.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Aviation.
 - (d) Department of Rural and Municipal Aid.
 1. Office of Local Programs.
 2. Office of Rural and Secondary Roads.
 - (e) Office of the Secretary.

- 1. Office of Public Affairs.
- 2. Office for Civil Rights and Small Business Development.
- 3. Office of Budget and Fiscal Management.
- 4. Office of Inspector General.
- (f) Office of Support Services.
- (g) Office of Transportation Delivery.
- (h) Office of Audits.
- (i) Office of Human Resource Management.
- (j) Office of Information Technology.
- (k) Office of Legal Services.
- (7) Cabinet for Economic Development:
 - (a) Office of the Secretary.
 - 1. Office of Legal Services.
 - 2. Department for Business Development.
 - 3. Department for Financial Services.
 - a. Kentucky Economic Development Finance Authority.
 - b. Finance and Personnel Division.
 - c. IT and Resource Management Division.
 - d. Compliance Division.
 - e. Incentive Administration Division.
 - f. Bluegrass State Skills Corporation.
 - 4. Office of Marketing and Public Affairs.
 - a. Communications Division.
 - b. Graphics Design Division.
 - 5. Office of Workforce, Community Development, and Research.

6. Office of Entrepreneurship *and Small Business Innovation*.
 - a. Commission on Small Business *Innovation and* Advocacy.
- (8) Cabinet for Health and Family Services:
 - (a) Office of the Secretary.
 1. Office of the Ombudsman and Administrative Review.
 2. Office of Public Affairs.
 3. Office of Legal Services.
 4. Office of Inspector General.
 5. Office of Human Resource Management.
 6. Office of Finance and Budget.
 7. Office of Legislative and Regulatory Affairs.
 8. Office of Administrative Services.
 9. Office of Application Technology Services.
 - (b) Department for Public Health.
 - (c) Department for Medicaid Services.
 - (d) Department for Behavioral Health, Developmental and Intellectual Disabilities.
 - (e) Department for Aging and Independent Living.
 - (f) Department for Community Based Services.
 - (g) Department for Income Support.
 - (h) Department for Family Resource Centers and Volunteer Services.
 - (i) Office for Children with Special Health Care Needs.
 - (j) Office of Health Data and Analytics.
- (9) Finance and Administration Cabinet:
 - (a) Office of the Secretary.
 - (b) Office of the Inspector General.

- (c) Office of Legislative and Intergovernmental Affairs.
 - (d) Office of General Counsel.
 - (e) Office of the Controller.
 - (f) Office of Administrative Services.
 - (g) Office of Policy and Audit.
 - (h) Department for Facilities and Support Services.
 - (i) Department of Revenue.
 - (j) Commonwealth Office of Technology.
 - (k) State Property and Buildings Commission.
 - (l) Office of Equal Employment Opportunity and Contract Compliance.
 - (m) Kentucky Employees Retirement Systems.
 - (n) Commonwealth Credit Union.
 - (o) State Investment Commission.
 - (p) Kentucky Housing Corporation.
 - (q) Kentucky Local Correctional Facilities Construction Authority.
 - (r) Kentucky Turnpike Authority.
 - (s) Historic Properties Advisory Commission.
 - (t) Kentucky Tobacco Settlement Trust Corporation.
 - (u) Kentucky Higher Education Assistance Authority.
 - (v) Kentucky River Authority.
 - (w) Kentucky Teachers' Retirement System Board of Trustees.
 - (x) Executive Branch Ethics Commission.
- (10) Tourism, Arts and Heritage Cabinet:
- (a) Kentucky Department of Tourism.
 - 1. Division of Tourism Services.

Unofficial Document

2. Division of Marketing and Administration.
3. Division of Communications and Promotions.
- (b) Kentucky Department of Parks.
 1. Division of Information Technology.
 2. Division of Human Resources.
 3. Division of Financial Operations.
 4. Division of Facilities Management.
 5. Division of Facilities Maintenance.
 6. Division of Customer Services.
 7. Division of Recreation.
 8. Division of Golf Courses.
 9. Division of Food Services.
 10. Division of Rangers.
 11. Division of Resort Parks.
 12. Division of Recreational Parks and Historic Sites.
- (c) Department of Fish and Wildlife Resources.
 1. Division of Law Enforcement.
 2. Division of Administrative Services.
 3. Division of Engineering, Infrastructure, and Technology.
 4. Division of Fisheries.
 5. Division of Information and Education.
 6. Division of Wildlife.
 7. Division of Marketing.
- (d) Kentucky Horse Park.
 1. Division of Support Services.

Unofficial Document

2. Division of Buildings and Grounds.
3. Division of Operational Services.
- (e) Kentucky State Fair Board.
 1. Office of Administrative and Information Technology Services.
 2. Office of Human Resources and Access Control.
 3. Division of Expositions.
 4. Division of Kentucky Exposition Center Operations.
 5. Division of Kentucky International Convention Center.
 6. Division of Public Relations and Media.
 7. Division of Venue Services.
 8. Division of Personnel Management and Staff Development.
 9. Division of Sales.
 10. Division of Security and Traffic Control.
 11. Division of Information Technology.
 12. Division of the Louisville Arena.
 13. Division of Fiscal and Contract Management.
 14. Division of Access Control.
- (f) Office of the Secretary.
 1. Office of Finance.
 2. Office of Government Relations and Administration.
 3. Office of Film and Tourism Development.
- (g) Office of Legal Affairs.
- (h) Office of Human Resources.
- (i) Office of Public Affairs and Constituent Services.
- (j) Office of Arts and Cultural Heritage.

- Unofficial Document
-
- (k) Kentucky African-American Heritage Commission.
 - (l) Kentucky Foundation for the Arts.
 - (m) Kentucky Humanities Council.
 - (n) Kentucky Heritage Council.
 - (o) Kentucky Arts Council.
 - (p) Kentucky Historical Society.
 - 1. Division of Museums.
 - 2. Division of Oral History and Educational Outreach.
 - 3. Division of Research and Publications.
 - 4. Division of Administration.
 - (q) Kentucky Center for the Arts.
 - 1. Division of Governor's School for the Arts.
 - (r) Kentucky Artisans Center at Berea.
 - (s) Northern Kentucky Convention Center.
 - (t) Eastern Kentucky Exposition Center.
- (11) Personnel Cabinet:
- (a) Office of the Secretary.
 - (b) Department of Human Resources Administration.
 - (c) Office of Employee Relations.
 - (d) Kentucky Public Employees Deferred Compensation Authority.
 - (e) Office of Administrative Services.
 - (f) Office of Legal Services.
 - (g) Governmental Services Center.
 - (h) Department of Employee Insurance.
 - (i) Office of Diversity, Equality, and Training.

(j) Office of Public Affairs.

III. Other departments headed by appointed officers:

- (1) Council on Postsecondary Education.
- (2) Department of Military Affairs.
- (3) Department for Local Government.
- (4) Kentucky Commission on Human Rights.
- (5) Kentucky Commission on Women.
- (6) Department of Veterans' Affairs.
- (7) Kentucky Commission on Military Affairs.
- (8) Office of Minority Empowerment.
- (9) Governor's Council on Wellness and Physical Activity.
- (10) Kentucky Communications Network Authority.

➔Section 8. KRS 13A.270 is amended to read as follows:

- (1) (a) In addition to the public comment period required by paragraph (c) of this subsection, following publication in the Administrative Register of the text of an administrative regulation, the administrative body shall, unless authorized to cancel the hearing pursuant to subsection (7) of this section, hold a hearing, open to the public, on the administrative regulation.
- (b) The public hearing shall not be held before the twenty-first day or later than the last workday of the month following the month in which the administrative regulation is published in the Administrative Register.
- (c) The administrative body shall accept written comments regarding the administrative regulation during the comment period. The comment period shall begin on the date the administrative regulation is filed with the regulations compiler and shall run until 11:59 p.m. on the last day of the calendar month following the month in which the

administrative regulation was published in the Administrative Register.

(2) Each administrative regulation shall state:

- (a) The place, time, and date of the scheduled public hearing;
- (b) The manner in which interested persons shall submit their:
 - 1. Notification of attending the public hearing; and
 - 2. Written comments;
- (c) That notification of attending the public hearing shall be transmitted to the administrative body no later than five (5) workdays prior to the date of the scheduled public hearing;
- (d) The deadline for submitting written comments regarding the administrative regulation in accordance with subsection (1)(c) of this section; and
- (e) The name, position, mailing address, e-mail address, and telephone and facsimile numbers of the person to whom a notification and written comments shall be transmitted.

(3) (a) A person who wishes to be notified that an administrative body has filed an administrative regulation shall:

- 1. Contact the administrative body by telephone or written letter to request that the administrative body send the information required by paragraph (c) or (d) of this subsection to the person; or
- 2. Complete an electronic registration form located on a centralized state government Web site developed and maintained by the Commonwealth Office of Technology.

(b) A registration submitted pursuant to paragraph (a) of this subsection shall:

- 1. Indicate whether the person wishes to receive notification regarding:
 - a. All administrative regulations promulgated by an administrative body; or

- b. Each administrative regulation that relates to a specified subject area. The subject areas shall be provided by the administrative bodies and shall be listed on the centralized state government Web site in alphabetical order;
 2. Include a request for the person to provide an e-mail address in order to receive regulatory information electronically;
 3. Be valid for a period of four (4) years from the date the registration is submitted, or until the person submits a written request to be removed from the notification list, whichever occurs first; and
 4. Be transmitted to the promulgating administrative body, if the registration was made through the centralized state government Web site. The collected e-mail addresses shall be used solely for the purposes of this subsection and shall not be sold, transferred, or otherwise made available to third parties, other than the promulgating administrative body.
- (c) A copy of the administrative regulation as filed, and all attachments required by KRS 13A.230(1), shall be e-mailed:
 1. To every person who has:
 - a. Registered pursuant to paragraph (a) of this subsection; and
 - b. Provided an e-mail address as part of the registration request;
 2. Within five (5) working days after the date the administrative regulation is filed with the Commission; and
 3. With a request from the administrative body that affected individuals, businesses, or other entities submit written comments that identify the anticipated effects of the proposed administrative regulation.
- (d) Within five (5) working days after the date the administrative regulation is filed with the Commission, the administrative body shall mail the following information to

every person who has registered pursuant to paragraph (a) of this subsection but did not provide an e-mail address:

1. A cover letter from the administrative body requesting that affected individuals, businesses, or other entities submit written comments that identify the anticipated effects of the proposed administrative regulation;
 2. A copy of the regulatory impact analysis required by KRS 13A.240 completed in detail sufficient to put the individual on notice as to the specific contents of the administrative regulation, including all proposed amendments to the administrative regulation; and
 3. A statement that a copy of the administrative regulation may be obtained from the Commission's Web site, which can be accessed on-line through public libraries or any computer with Internet access. The Commission's Web site address shall be included in the statement.
- (e) An administrative body shall not be required to send a copy of an administrative regulation that was amended after comments in accordance with KRS 13A.280 to persons who have registered pursuant to paragraph (a) of this subsection, unless the person requested a copy pursuant to KRS 13A.280(8).
- (4) (a) If small business may be impacted by an administrative regulation, the administrative body shall e-mail a copy of the administrative regulation as filed, and all attachments required by KRS 13A.230(1), to the chief executive officer of the Commission on Small Business **Innovation and** Advocacy within one (1) working day after the date the administrative regulation is filed with the Commission.
- (b) The e-mail shall include a request from the administrative body that the Commission on Small Business **Innovation and** Advocacy review the administrative regulation in accordance with KRS 11.202(1)(e) and submit its report or comments in accordance

with the deadline established in subsection (1)(c) of this section. A copy of the report shall be filed with the regulations compiler.

- (c) An administrative body shall not be required to send a copy of an administrative regulation that was amended after comments in accordance with KRS 13A.280 to the Commission on Small Business **Innovation and** Advocacy, unless its chief executive officer requested a copy pursuant to KRS 13A.280(8).
- (5) (a) If a local government may be impacted by an administrative regulation, the administrative body shall send, by e-mail if the local government has an e-mail address, a copy of the administrative regulation as filed and all attachments required by KRS 13A.230(1) to each local government in the state within one (1) working day after the date the administrative regulation is filed with the Commission. If the local government does not have an e-mail address, the material shall not be sent.
- (b) The e-mail shall include a request from the administrative body that the local government review the administrative regulation in the same manner as would the Commission on Small Business **Innovation and** Advocacy under KRS 11.202(1)(e), and submit its report or comments in accordance with the deadline established in subsection (1)(c) of this section. A copy of the report or comments shall be filed with the regulations compiler.
- (c) An administrative body shall not be required to send a copy of an administrative regulation that was amended after comments in accordance with KRS 13A.280 to a local government, unless its contact person requested a copy pursuant to KRS 13A.280(8).
- (6) Persons desiring to be heard at the hearing shall notify the administrative body in writing as to their desire to appear and testify at the hearing not less than five (5) workdays before the scheduled date of the hearing.

- (7) The administrative body shall immediately notify the regulations compiler by letter if:
- (a) No written notice of intent to attend the public hearing is received by the administrative body at least five (5) workdays before the scheduled hearing, and it chooses to cancel the public hearing; and
 - (b) No written comments have been received by the close of the last day of the public comment period.
- (8) (a) 1. Upon receipt from interested persons of their intent to attend a public hearing, the administrative body shall notify the regulations compiler by letter that the public hearing shall be held.
2. If the public hearing is held but no comments are received during the hearing, the administrative body shall notify the regulations compiler by letter that the public hearing was held and that no comments were received.
- (b) Upon receipt of written comments, the administrative body shall notify the regulations compiler by letter that written comments have been received.
- (9) If the notifications required by subsections (7) and (8) of this section are not received by the regulations compiler by close of business on the second workday of the calendar month following the end of the public comment period, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee.
- (10) The notifications required by subsections (7) and (8) of this section shall be made by letter. The letter may be sent by e-mail if the administrative body uses an electronic signature and letterhead for the e-mailed document.
- (11) Every hearing shall be conducted in such a manner as to guarantee each person who wishes to offer comment a fair and reasonable opportunity to do so, whether or not such person has given the notice contemplated by subsection (6) of this section. No transcript need be taken of the hearing, unless a written request for a transcript is made, in which case the person

requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This section shall not preclude an administrative body from making a transcript or making a recording if it so desires.

- (12) Nothing in this section shall be construed as requiring a separate hearing on each administrative regulation. Administrative regulations may be grouped at the convenience of the administrative body for purposes of hearings required by this section.

➔Section 9. KRS 13A.280 is amended to read as follows:

- (1) Following the last day of the comment period, the administrative body shall give consideration to all comments received at the public hearing and all written comments received during the comment period, including any report filed by the Commission on Small Business **Innovation and** Advocacy in accordance with KRS 11.202(1)(e) and 13A.270(4), or by a local government in accordance with KRS 11.202(1)(e) and 13A.270(5).
- (2) (a) Except as provided in paragraph (b) of this subsection, the administrative body shall file with the commission on or before 12 noon, eastern time, on the fifteenth day of the calendar month following the end of the public comment period the statement of consideration relating to the administrative regulation and, if applicable, the amended after comments version.
- (b) If the administrative body has received a significant number of public comments, it may extend the time for filing the statement of consideration and, if applicable, the amended after comments version by notifying the regulations compiler in writing on or before 12 noon, eastern time, on the fifteenth day of the calendar month following the end of the public comment period. The administrative body shall file the statement of consideration and, if applicable, the amended after comments version,

with the Commission on or before 12 noon, eastern time, no later than the fifteenth day of the second calendar month following the end of the public comment period.

- (3) (a) If the administrative regulation is amended as a result of the hearing or written comments received, the administrative body shall forward the items specified in this paragraph to the regulations compiler by 12 noon, eastern time, on the applicable deadline specified in subsection (2) of this section:
1. The original and five (5) copies of the administrative regulation indicating any amendments in the original wording resulting from comments received at the public hearing and during the comment period;
 2. The original and five (5) copies of the statement of consideration as required by subsection (2) of this section, attached to the back of the original and each copy of the administrative regulation; and
 3. The regulatory impact analysis, tiering statement, federal mandate comparison, or fiscal note on local government. These documents shall reflect changes resulting from amendments made after the public hearing.
- (b) The original and four (4) copies of the amended after comments version, the statement of consideration, and the attachments required by paragraph (a)3. of this subsection shall be stapled in the top left corner. The fifth copy shall not be stapled.
- (c) At the same time as, or prior to, filing the paper version, the administrative body shall file an electronic version of the amended after comments version, the statement of consideration, and the required attachments saved as a single document for each amended after comments administrative regulation in an electronic format approved by the regulations compiler.
- (4) (a) If the administrative regulation is not amended as a result of the public hearing, or written comments received, the administrative body shall file the original and five (5)

copies of the statement of consideration with the regulations compiler by 12 noon, eastern time, on the deadline established in subsection (2) of this section. The original and four (4) copies of the statement of consideration shall be stapled in the top left corner. The fifth copy of each statement of consideration shall not be stapled.

- (b) If the statement of consideration covers multiple administrative regulations, as authorized by subsection (6)(g) of this section, the administrative body shall file with the regulations compiler:
 - 1. The original and five (5) copies of the statement of consideration as required by paragraph (a) of this subsection; and
 - 2. Two (2) additional unstapled copies of the statement of consideration for each additional administrative regulation included in the group of administrative regulations.
- (c) At the same time as, or prior to, filing the paper version, the administrative body shall file an electronic version of the statement of consideration saved as a single document for each statement of consideration in an electronic format approved by the regulations compiler.
- (5) If comments are received either at the public hearing or during the public comment period, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee following the month in which the statement of consideration is due.
- (6) The format for the statement of consideration shall be as follows:
 - (a) The statement shall be typewritten on white paper, size eight and one-half (8-1/2) by eleven (11) inches. Copies of the statement may be mechanically reproduced;
 - (b) The first page of the statement of consideration shall have a two (2) inch top margin;
 - (c) The heading of the statement shall consist of the words "STATEMENT OF CONSIDERATION RELATING TO" followed by the number of the administrative

regulation that was the subject of the public hearing and comment period and the name of the promulgating administrative body. The heading shall be centered. This shall be followed by the words "Not Amended After Comments" or "Amended After Comments," whichever is applicable;

- (d) If a hearing has been held or written comments received, the heading is to be followed by:
 - 1. A statement setting out the date, time and place of the hearing, if the hearing was held;
 - 2. A list of those persons who attended the hearing or who submitted comments and the organization, agency, or other entity represented, if applicable; and
 - 3. The name and title of the representative of the promulgating administrative body;
- (e) Following the general information, the promulgating administrative body shall summarize the comments received at the public hearing and during the comment period and the response of the promulgating administrative body. Each subject commented upon shall be summarized in a separate numbered paragraph. Each numbered paragraph shall contain two (2) subsections:
 - 1. Subsection (a) shall be labeled "Comment," shall identify the name of the person, and the organization represented if applicable, who made the comment, and shall contain a summary of the comment; and
 - 2. Subsection (b) shall be labeled "Response" and shall contain the response to the comment by the promulgating administrative body;
- (f) Following the summary and comments, the promulgating administrative body shall:
 - 1. Summarize the statement and the action taken by the administrative body as a result of comments received at the public hearing and during the comment

period; and

2. If amended after the comment period, list the changes made to the administrative regulation in the format prescribed by KRS 13A.320(2)(c) and (d); and
- (g) If administrative regulations were considered as a group at a public hearing, one (1) statement of consideration may include the group of administrative regulations. If a comment relates to one (1) or more of the administrative regulations in the group, the summary of the comment and response shall specify each administrative regulation to which it applies.
- (7) If the administrative regulation is amended pursuant to subsection (3) of this section, the full text of the administrative regulation shall be published in the Administrative Register. The changes made to the administrative regulation shall be typed in bold and made in the format prescribed by KRS 13A.222(2). The administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee after such publication.
- (8) If requested, copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available by the promulgating administrative body to persons attending the hearing or submitting comments or who specifically request a copy from the administrative body.

➔Section 10. KRS 65.7047 is amended to read as follows:

- (1) Any city or county may establish a local development area pursuant to this section, subject to the following conditions:
 - (a) A local development area shall be on previously undeveloped land;
 - (b) No more than one thousand (1,000) acres shall be approved for a local development area in any twelve (12) month period in any county;
 - (c) The establishment or expansion of the local development area shall not cause the

Unofficial Document

assessed value of taxable real property within all local development areas and development areas of the city or county establishing the local development area to exceed twenty percent (20%) of the assessed value of all taxable real property within its jurisdiction. For the purpose of determining whether the twenty percent (20%) threshold has been met, the assessed value of taxable real property within all of the local development areas and development areas shall be valued as of the establishment date; and

- (d) Unless the ordinance establishing a local development area requires an earlier termination date, a local development area shall cease to exist on the termination date.
- (2) A city or county shall take the following steps to establish or modify a local development area:

- (a) *The city or county shall engage the services of a qualified independent outside consultant or financial adviser to analyze the data related to the project and the development area and prepare a report. The report shall include the following:*
 - 1. The estimated approved public infrastructure costs for the project and, if relevant, project costs, financing costs, and costs associated with land preparation, demolition, and clearance;*
 - 2. The feasibility of the project, taking into account the scope and location of the project;*
 - 3. The estimated amount of local tax revenues, as applicable, that would be generated by the project over the period, which may be up to forty (40) years, as applicable, from the development area's established date;*
 - 4. The estimated amount of local tax revenues, as applicable, that would be displaced within the city or county, for the purpose of quantifying economic activity which is being shifted over the same period as that set forth in*

Unofficial Document

- subparagraph 3. of this paragraph. The projections for displaced activity shall include economic activity that is lost to the local jurisdiction as a result of the project, as well as economic activity that is diverted to the project that formerly took place at existing establishments within the local jurisdiction prior to the commencement date of the project;
5. The estimated amount of old revenues that would have been generated in the development area of the project in the absence of the project, computed over the same time period as set forth in subparagraph 3. of this paragraph;
6. In the process of estimating the revenues and impacts prescribed in subparagraphs 3. and 4. of this paragraph, the independent outside consultant shall not consider any of the following:
- a. Revenues or economic impacts associated with any projects within the development area where the new project will be located; or
- b. Revenues or economic impacts associated with economic development projects and approved Kentucky Tourism Development Act projects under KRS Chapter 148;
7. The relationship of the estimated incremental revenues to the financing needs, including any increment bonds, of the project;
8. When estimating the fiscal impact of the project, the consultant shall evaluate the amount of revenue estimated in subparagraph 3. of this paragraph and shall deduct the amounts estimated in subparagraphs 4. and 5. of this paragraph. The resulting difference shall be compared to the estimated incremental revenues to determine the presence or absence of a positive fiscal impact; and
9. A determination that the project will not occur if not for the designation of

Unofficial Document

the development area, the granting of incremental revenues by the taxing district or districts, and the granting of the local tax incremental revenues.

(b) The city or county shall hold a public hearing to solicit input from the public regarding the local development area. The city or county shall advertise the hearing by causing to be published, in accordance with KRS 424.130, notice of the time, place, and purpose of the hearing and a general description of the boundaries of the proposed local development area. The notice shall include a summary of the projects proposed for the local development area;

(c)~~(b)~~ After the public hearing, the city or county shall adopt an ordinance which shall include the following provisions:

1. A description of the boundaries of the local development area;
2. The establishment date and the termination date;
3. A name for the local development area for identification purposes;
4. Approval of any agreements relating to the local development area;
5. A provision establishing a special fund for the local development area or any project within the local development area;
6. A requirement that any entity other than the governing body that receives financial assistance under the local development area ordinance, whether in the form of a grant, loan, or loan guarantee, shall make periodic accounting to the governing body;
7. A provision for periodic analysis and review by the governing body of the development activity in the local development area;
8. Designation of the agency or agencies responsible for oversight, administration, and implementation of the local development ordinance; ~~and~~
9. **The estimated net positive fiscal impact as calculated in paragraph (a)8. of**

this subsection in the required independent consultant report; and

10. Any other provisions, findings, limitations, rules, or procedures regarding the proposed local development area or a project within the local development area and its establishment or maintenance deemed necessary by the city or county; and

~~(d)(e)}~~ If incremental revenues or other resources are to be pledged from taxing districts other than the city or county establishing the local development area, a local development area agreement shall be executed in accordance with the provisions of subsection (4) of this section.

(3) Funding for projects in a local development area shall be provided in accordance with KRS 65.7057.

(4) A local development area agreement shall be executed among the agencies and taxing districts involved in administering, providing financing, or pledging incremental revenues within the local development area. The local development area agreement shall be adopted by a city or county by ordinance and by any other taxing district or agency by resolution, and shall include but not be limited to the following provisions:

(a) Identification of the parties to the local development area agreement and the duties and responsibilities of each entity under the agreement;

(b) Specific identification of the tax increments released or pledged by type of tax by each taxing district;

(c) The anticipated benefit to be received by each taxing district for the release or pledge, including:

1. A detailed summary of old revenues collected and projected new revenues for each taxing district on an annual basis for the term of the local development area agreement; and

2. The maximum amount of incremental revenue to be paid by each taxing district and the maximum number of years the payment will be effective;
 - (d) A detailed description of the local development area;
 - (e) A description of each proposed project, including an estimate of the costs of construction, acquisition, and development;
 - (f) A requirement that pledged incremental revenues will be deposited in a special fund pursuant to KRS 65.7061, including the timing and procedure for depositing incremental revenues and other pledged amounts into the special fund;
 - (g) Terms of default and remedies, provided that no remedy shall permit the withholding by any party to the local development area agreement of any incremental revenues pledged to the special fund if increment bonds are outstanding that are secured by a pledge of those incremental revenues;
 - (h) The commencement date, activation date, and termination date; and
 - (i) Any other provisions not inconsistent with KRS 65.7041 to 65.7083 deemed necessary or appropriate by the parties to the agreement.
- (5) Any pledge of incremental revenues in a local development area agreement shall be superior to any other pledge of revenues for any other purpose and shall, from the activation date to the termination date set forth in the local area development agreement, supersede any statute, ordinance, or resolution regarding the application or use of incremental revenues. No ordinance in conflict with a local development area agreement shall be adopted while any increment bonds secured by that pledge remain outstanding. Ordinances or resolutions pledging incremental revenues on a subordinate basis to any existing pledges may be adopted.

➔Section 11. KRS 141.403 is amended to read as follows:

- (1) **If an eligible company has not yet received preliminary approval on or before June 30,**

2021, the eligible company shall not receive final approval by the authority to become an approved company and receive tax credits under Subchapter 26 of KRS Chapter 154. Approved companies and outstanding eligible companies with preliminary approval granted on or before June 30, 2021, shall continue to be governed by Subchapter 26 of KRS Chapter 154 and this section.

(2) As used in this section, unless the context requires otherwise:

- (a) "Approved company" **has**~~[shall have]~~ the same meaning as ~~[set forth]~~ in KRS 154.26-010;
- (b) "Economic revitalization project" **has**~~[shall have]~~ the same meaning as ~~[set forth]~~ in KRS 154.26-010;
- (c) **"Eligible company" has the same meaning as in KRS 154.26-010**~~[Tax credit"~~
means the tax credit allowed in KRS 154.26-090];
- (d) "Final approval" has the same meaning as in KRS 154.26-010;**
- ~~(e)~~~~(d)~~ "Kentucky gross receipts" **has the same meaning as**~~[means Kentucky gross receipts as defined]~~ in KRS 141.0401; and
- ~~(f)~~~~(e)~~ "Kentucky gross profits" **has the same meaning as**~~[means Kentucky gross profits as defined]~~ in KRS 141.0401
- (g) "Preliminary approval" has the same meaning as in KRS 154.26-010; and**
- (h) "Tax credit" means the tax credit allowed in KRS 154.26-090.**

~~(3)~~~~(2)~~ An approved company shall determine the income tax credit as provided in this section.

~~(4)~~~~(3)~~ An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation or pass-through entity treated as a corporation for federal income tax purposes subject to tax under KRS 141.040 shall:

- (a) 1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or

- 141.040 on net income or taxable net income, including income from the economic revitalization project;
2. Compute the limited liability entity tax imposed under KRS 141.0401, including Kentucky gross profits or Kentucky gross receipts from the economic revitalization project; and
 3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.
- (b) 1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income or taxable net income, excluding net income attributable to the economic revitalization project;
2. Using the same method used under subparagraph 2. of paragraph (a) of this subsection, compute the limited liability entity tax imposed under KRS 141.0401, excluding Kentucky gross profits or Kentucky gross receipts from the economic revitalization project; and
 3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.
- (c) The tax credit shall be the amount by which the net tax computed under paragraph (a)3. of this subsection exceeds the tax computed under paragraph (b)3. of this subsection; however, the credit shall not exceed the limits set forth in KRS 154.26-090.
- ~~(5)(4)~~ (a) Notwithstanding any other provisions of this chapter, an approved company which is a pass-through entity not subject to the tax imposed by KRS 141.040 or trust not subject to the tax imposed KRS 141.040 shall be subject to income tax on the net

income attributable to an economic revitalization project at the rates provided in KRS 141.020.

- (b) The amount of the tax credit shall be determined as provided in subsection ~~(4)~~~~(3)~~ of this section. Upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this paragraph shall be in satisfaction of the tax liability of the partners, members, shareholders, or beneficiaries of the pass-through entity or trust, and shall be paid on behalf of the partners, members, shareholders, or beneficiaries.
- (c) The tax credit or estimated payment shall not exceed the limits set forth in KRS 154.26-090.
- (d) If the tax computed in this section exceeds the tax credit, the difference shall be paid by the pass-through entity or trust at the times provided by KRS 141.160 for filing the returns.
- (e) Any estimated tax payment made by the pass-through entity or trust in satisfaction of the tax liability of partners, members, shareholders, or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the partner, member, shareholder, or beneficiary.

~~(6)~~~~(5)~~ Notwithstanding any other provisions of this chapter, the net income subject to tax, the tax credit, and the estimated tax payment determined under subsection ~~(5)~~~~(4)~~ of this section shall be excluded in determining each partner's, member's, shareholder's, or beneficiary's distributive share of net income or credit of a pass-through entity or trust.

~~(7)~~~~(6)~~ If the economic revitalization project is a totally separate facility:

- (a) Net income attributable to the project for the purposes of subsections ~~(3)~~, ~~(4)~~, ~~and~~ ~~(5)~~, and (6) of this section shall be determined under the separate accounting method

reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility; and

- (b) Kentucky gross receipts or Kentucky gross profits attributable to the project for purposes of subsection (4)~~[(3)]~~ of this section shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility.

(8)~~[(7)]~~ If the economic revitalization project is an expansion to a previously existing facility:

- (a) Net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility, and the net income attributable to the economic revitalization project for the purposes of subsections ~~[(3), (4), and]~~ (5), and (6) of this section shall be determined by apportioning the separate accounting net income of the entire facility to the economic revitalization project by a formula approved by the department~~[-of Revenue]~~; and
- (b) Kentucky gross receipts or Kentucky gross profits attributable to the entire facility shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility. Kentucky gross receipts or Kentucky gross profits attributable to the economic revitalization project for purposes of subsection (4)~~[(3)]~~ of this section shall be determined by apportioning the separate accounting Kentucky gross receipts or Kentucky gross profits of the entire facility to the economic revitalization project pursuant to a formula approved by the department~~[-of Revenue]~~.

(9)~~[(8)]~~ If an approved company can show to the satisfaction of the department~~[-of Revenue]~~

that the nature of the operations and activities of the approved company are such that it is not practical to use the separate accounting method to determine the net income, Kentucky gross receipts, or Kentucky gross profits from the facility at which the economic revitalization project is located, the approved company shall determine net income, Kentucky gross receipts, or Kentucky gross profits from the economic revitalization project using an alternative method approved by the department~~[of Revenue]~~.

~~(10)~~~~(9)~~ The department~~[of Revenue]~~ may issue administrative regulations and require the filing of forms designed by the department~~[of Revenue]~~ to reflect the intent of KRS 154.26-010 to 154.26-100 and the allowable income tax credit which an approved company may retain under KRS 154.26-010 to 154.26-100.

➔Section 12. KRS 154.12-204 is amended to read as follows:

As used in KRS 154.12-205 to 154.12-208, unless the context requires otherwise:

(1) **"Agribusiness" has the same meaning as in Section 28 of this Act;**

(2) **"Alternative fuel production" has the same meaning as in Section 28 of this Act;**

(3) "Applicant" means a~~[an educational institution,]~~ business~~[,]~~ or industry that has made application for a grant-in-aid or skills training investment credit as authorized by KRS 154.12-205 to 154.12-208;

~~(4)~~~~(2)~~ "Approved company" means any qualified company seeking to sponsor an occupational upgrade training program or skills upgrade training program for the benefit of one (1) or more of its employees, which is approved by the corporation to receive grant-in-aid or skills training investment credits as provided by KRS 154.12-205 to 154.12-208;

~~(5)~~~~(3)~~ "Approved costs" means **costs confirmed as eligible by the corporation, including:**

(a) Fees or salaries required to be paid to instructors who are employees of the approved company, instructors who are full-time, part-time, or adjunct instructors with an educational institution, and instructors who are consultants on contract with an

approved company in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company;

- (b) The cost of supplies and materials used exclusively in an occupational upgrade training program or skills upgrade training program sponsored by an approved company;
- (c) Employee wages to be paid in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company; and
- (d) All other costs of a nature comparable to those described in this subsection;

~~(6)(4)~~ "Board" means the board of directors of the Bluegrass State Skills Corporation;

~~(7)~~ **"Carbon dioxide transmission pipeline" has the same meaning as in Section 28 of this Act;**

~~(8)~~ **"Coal severing and processing" has the same meaning as in Section 28 of this Act;**

~~(9)(5)~~ "Corporation" means the Bluegrass State Skills Corporation, or BSSC;

~~(10)(6)~~ "Educational institution" means a public or nonpublic secondary or postsecondary institution or an independent provider within the Commonwealth authorized by law to provide a program of skills training or education beyond the secondary school level or to adult persons without a high school diploma or its equivalent;

~~(11)(7)~~ "Employee" means any person:

- (a) Who is currently a permanent full-time employee of the qualified company;
- (b) Who is a resident of Kentucky, as that term is defined in KRS 141.010; and
- (c) Who is paid the minimum base hourly wage plus employee benefits equal to or greater than fifteen percent (15%) of the minimum base hourly wage. If the qualified company does not provide employee benefits equal to at least fifteen percent (15%) of the minimum base hourly wage, the qualified company may still qualify if it provides the full-time employee total hourly compensation equal to or greater than one hundred

fifteen percent (115%) of the minimum base hourly wage through increased hourly wages combined with at least one (1) company-paid employee benefit;

(12) "Energy-efficient alternative fuel production" has the same meaning as in Section 28 of this Act;

(13) "Gasification production" has the same meaning as in Section 28 of this Act;

(14)~~(8)~~ "Grant-in-aid" means funding that is provided to ~~an educational institution and~~ qualified companies by the BSSC for the development or expansion of a program as provided in this chapter;

(15) "Headquarters" has the same meaning as in Section 28 of this Act;

(16) "Hospital" has the same meaning as in Section 28 of this Act ;

(17) "Manufacturing" has the same meaning as in Section 28 of this Act;

(18)~~(9)~~ "Minimum base hourly wage" means the minimum wage amount paid to an employee by a qualified company, which shall not be less than one hundred fifty percent (150%) of the federal minimum wage;

(19) "Nonretail service or technology" means the same as in Section 28 of this Act;

(20)~~(10)~~ "Occupational upgrade training" means employee training sponsored by a qualified company that is designed to qualify the employee for a promotional opportunity with the qualified company;

(21)~~(11)~~ "Program" or "program of skills training or education consistent with employment needs" means a coordinated course of instruction which is designed to prepare individuals for employment in a specific trade, occupation, or profession. Such instruction may include:

- (a) Classroom instruction;
- (b) Classroom-related field, shop, factory, office, or laboratory work; and
- (c) Basic skills, entry level training, job upgrading, retraining, and advance training;

Unofficial Document

~~(22)~~~~(12)~~ (a) "Qualified company" means any~~[-person,]~~ corporation, limited liability company, partnership, limited partnership, sole proprietorship,~~[-firm, enterprise, franchise, association, organization, holding company, joint stock company, professional services corporation]~~ **business trust**, or any other legal entity through which business is conducted that ~~has been or is~~ ~~planning to be actively~~ engaged in **or is planning to be engaged in** one (1) or more of the following activities within the Commonwealth:

1. Manufacturing;
2. Agribusiness;
3. Nonretail service or technology;
4. **Headquarter**~~[National or regional headquarter]~~ operations, regardless of the underlying business activity of the company; ~~{or}~~
5. **Alternative fuel, gasification, energy-efficient alternative fuel, or renewable energy production**; ~~[Health care.]~~
6. **Carbon dioxide transmission pipeline**;
7. **Coal severing and processing; or**
8. **Hospital operations**.

(b) "Qualified company" does not include companies where the primary activity to be conducted within the Commonwealth is forestry, fishing,~~[-mining, coal or mineral processing,]~~ the provision of utilities, construction, wholesale trade, retail trade, real estate, rental and leasing, accommodation and food services, or public administration services;~~[-]~~

~~{(c) Other qualified companies may be included if specific funds for grants in aid to retail business and industry are appropriated by the General Assembly;}~~

(23) "Renewable energy production" means the same as in Section 28 of this Act;

~~(24)~~~~(13)~~ "Skills upgrade training" means employee training sponsored by a qualified company that is designed to provide the employee with new skills necessary to enhance productivity, improve performance, or retain employment, including but not limited to technical and interpersonal skills, and training that is designed to enhance computer skills, communication skills, problem solving, reading, writing, or math skills of employees who are unable to function effectively on the job due to deficiencies in these areas, are unable to advance on the job, or who risk displacement because their skill deficiencies inhibit their training potential for new technology;

~~(25)~~~~(14)~~ "Skills training investment credit" means the credit against Kentucky income tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by KRS 141.0401, as provided in this subchapter; and

~~(26)~~~~(15)~~ "Technical assistance" means professional and any other assistance provided by qualified companies to an educational institution, which is reasonably calculated to support directly the development and expansion of a particular program as defined herein.

➔Section 13. KRS 154.12-206 is amended to read as follows:

The corporation shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, but not limited to the following:

- (1) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations, and policies in connection with the performance of its function and duties;
- (2) To adopt an official seal;
- (3) To sue and be sued in its own name;
- (4) To make contracts and execute all instruments necessary or convenient for the conduct of its business;
- (5) To make, execute, and effectuate all agreements with any federal or state agency or any

person, corporation, association, partnership, or other organization or entity necessary to accomplish the purposes of this chapter;

- (6) To procure sufficient insurance coverage against any losses in connection with its property;
- (7) To accept any and all donations, grants, bequests, and devices, conditional or otherwise, of money, property, service, or other things of value which may be received from the United States, or any agency thereof, any governmental agency, an institution, person, firm, or corporation, public and private, to be held, used, or applied solely for the purposes specified in KRS 154.12-204 to 154.12-208. Receipt of each donation or grant shall be detailed in the annual report of the corporation. Such reports shall include the identity of the donor and the nature of the transaction;
- (8) To collect and disseminate to interested individuals, in cooperation with and through any agencies of federal, state, and municipal government, information concerning areas of present and projected employment need, programs of skills training and education consistent therewith, and any other relevant information;
- (9) To provide grants-in-aid to educational institutions and approved companies to encourage and facilitate the formation of comprehensive cooperative relationships between the public and private sectors which secure for such institutions the information, technical assistance, and financial support necessary for the development and significant expansion of programs of skills training and education consistent with employment need;
- (10) To prepare, publish, and distribute, with or without charge as the corporation may determine, such technical studies, reports, bulletins, and other materials as it deems appropriate; and
- (11) To organize, conduct, or sponsor special institutes, conferences, demonstrations, and studies to effectuate the purposes of KRS 154.12-204 to 154.12-208; ~~and~~
- ~~(12) To certify or decertify skills training providers, both public and private, including their~~

~~teachers and instructors as approved providers of skills training services for a grant-in-aid].~~

➔Section 14. KRS 154.12-207 is amended to read as follows:

- (1) The corporation may, subject to appropriation from the General Assembly or from funds made available to the corporation from any other public or private source, provide grants-in-aid to ~~[educational institutions, and]~~ qualified companies, not in excess of two hundred thousand dollars (\$200,000) per grant-in-aid. Such grants-in-aid shall be used exclusively for programs which are consistent with the provisions of this chapter.
- (2) The corporation may, in accordance with KRS 154.12-204 to 154.12-208, award a skills training investment credit to an approved company. The amount of the skills training investment credit awarded by the corporation shall be an amount not to exceed~~[equal to]~~ fifty percent (50%) of the amount of approved costs incurred by the approved company in connection with its program of occupational upgrade training or skills upgrade training, the credit amount not to exceed two thousand~~[five hundred]~~ dollars (\$2,000)~~[(\$500)]~~ per trainee~~[employee]~~ and, in the aggregate, not to exceed two~~[one]~~ hundred thousand dollars (\$200,000)~~[(\$100,000)]~~ for each approved company per fiscal year~~[biennium]~~. The corporation shall only approve one (1) application per fiscal year~~[biennium]~~ for each approved company.
- (3) ~~[(a)]~~ To apply for a grant-in-aid or a skills training investment credit, a qualified company shall submit an application to the Bluegrass State Skills Corporation before commencing its program of skills upgrade or occupational upgrade training. Each application shall contain information the corporation requires, including but not limited to:
 - (a)~~[(1)]~~ A proposal for a program of skills upgrade training, occupational upgrade training, and education;
 - (b)~~[(2)]~~ A description of each component of the proposed training program and the

Unofficial Document

number of employee training hours requested;

~~(c)[3.]~~ A statement of the total anticipated costs and expenses of the program, including a breakdown of the costs associated with equipment, personnel, facilities, and materials~~]; and~~

~~4. With respect to educational institutions only, a statement of the technical assistance and financial support for the program received or pledged from a qualified company.~~

~~(b) To qualify for a grant-in-aid or a skills training investment credit in which an educational institution will provide training, an educational institution and a qualified company shall submit a joint application to the corporation. To qualify for a grant-in-aid or a skills training investment credit in which a provider other than an educational institution will provide training, the qualified company may independently submit a proposal to the corporation containing the same information as set forth in this subsection].~~

(4) Approval of the grant-in-aid and skills training investment credit application by the board shall be based upon the following criteria:

- (a) The program must be within the scope of KRS 154.12-204 to 154.12-208;
- (b) Participants in the program must qualify as an employee as defined by KRS 154.12-204;
- (c) The program must involve an area of skills upgrade training, occupational upgrade training, and education which is needed by a qualified company and for which a shortage of qualified individuals exists within the Commonwealth; and
- (d) The grant-in-aid and skills training investment credit must be essential to the success of the program as the resources ~~[of the educational institution]~~ are inadequate to attract the technical assistance and financial support necessary from a qualified

- company];
- ~~(e) The educational institution must have obtained a firm commitment from a qualified company for the information, technical assistance, and financial support which, together with the grant-in-aid or skills investment credit, the resources of the applicant, and support from any other source, is sufficient to ensure the success of the program. In addition, the commitment of financial support from an approved company shall be equal to or greater than the amount of the requested grant-in-aid or skills training investment credit; and~~
- ~~(f) The educational institution must have established adequate auditing procedures and reporting methods for the submission of information and data as required by the corporation].~~
- (5) After a review of applications for grant-in-aid and skills training investment credits, the corporation may designate the qualified company as an approved company and approve the maximum amount of grants and skills training investment credits the approved company is eligible to receive. The maximum amount of skills training investment credits approved for all qualified companies by the corporation~~[for fiscal year 1998-1999 and fiscal year 1999-2000 shall not exceed one million dollars (\$1,000,000) and]~~ shall not exceed two million five hundred thousand dollars (\$2,500,000) for each fiscal year~~[thereafter]~~. Skills training investment credits that remain unallocated by the corporation at the end of its fiscal year shall lapse and shall not be carried forward to a new fiscal year.
- (6) The approved company shall complete all programs of skills upgrade training or occupational upgrade training within one (1) year from the date of approval by the corporation and shall certify the completion of these programs to the corporation. Once they are completed and certified and all required documentation is provided and received by the corporation, the corporation shall disburse the grant funds or notify the approved

company of the final authorized skills training investment credit.

➔Section 15. KRS 154.12-277 is amended to read as follows:

- (1) There is created in the Cabinet for Economic Development the Office of Entrepreneurship **and Small Business Innovation**. The office shall be headed by an executive director appointed by the secretary pursuant to KRS 154.10-050. The office shall be responsible for various forms of **entrepreneurship and** small business assistance, including but not limited to providing customer service and project management with small and minority businesses, assisting export development, administering the innovation assistance set forth in KRS 154.12-278, introducing entrepreneurs to individual investors and to investment capital firms interested in start-up and early-stage financing, and collecting, summarizing, and disseminating information helpful to small businesses, including information on market research, federal, state, and local minority business programs, government procurement opportunities, and the availability of managerial assistance.
- (2) The office shall include the Commission on Small Business **Innovation and** Advocacy established in KRS 11.200.

➔Section 16. KRS 154.12-278 is amended to read as follows:

- (1) As used in this section, "cluster" and "knowledge-based" shall have the same meaning as in KRS 164.6011.
- (2) The Office of Entrepreneurship **and Small Business Innovation** shall:
 - (a) Implement the Kentucky Innovation and Commercialization Center Program as set forth in KRS 154.12-300 to 154.12-310;
 - (b) Monitor the return on investments and effectiveness of the Kentucky Innovation Act initiatives as set forth in the Strategic Plan for the New Economy and prepare an annual report by November 1 of each year. The report shall be available on the Cabinet for Economic Development Web page as required by KRS 154.12-2035;

- (c) Oversee the modernization initiative in KRS 154.12-274;
 - (d) Assist the cabinet in the recruitment of research and development companies;
 - (e) Assist the cabinet in the attraction of high-technology research and development centers;
 - (f) Support growth and creation of knowledge-based, innovative companies;
 - (g) Build the infrastructure for innovative businesses and promote networks of technology-driven clusters and research intensive industries;
 - (h) Administer the high-tech construction pool and the high-tech investment pool;
 - (i) Recommend projects to the Kentucky Economic Development Finance Authority for funding through the high-tech construction pool and high-tech investment pool; and
 - (j) Review and approve the annual plan which details the annual allocation of funds from the Science and Technology Funding Program~~[, prior to the Council on Postsecondary Education executing a contract with the science and technology organization to administer science and technology funding programs]~~. As used in this paragraph, the Science and Technology Funding Program means the Kentucky enterprise fund~~[Enterprise Fund Program]~~, the Rural Innovation Program, the Kentucky Commercialization Program, The Regional Technology Corporations/Innovation and Commercialization Center Satellites, ~~and~~ the Experimental Program to Stimulate Competitive Research/Kentucky Science and Engineering Foundation, Small Business Innovation Research and Small Business Technology Transfer grants, and other government grant programs and funding programs as determined by the executive director of the Office of Entrepreneurship and Small Business Innovation.
- (3) The high-tech construction pool shall be used for projects with a special emphasis on the creation of high-technology jobs and knowledge-based companies. The executive director,

in administering the high-tech construction pool, shall recommend distribution of funds and projects to the Kentucky Economic Development Finance Authority for its approval. The executive director shall recommend any designated amount of pool funds to be set aside for any match requirements. Any funds used for matching purposes may include public and private funds.

- (4) The high-tech investment pool shall be used to build and promote technology-driven industries and research-intensive industries, as well as their related suppliers, with the goal of creating clusters of innovation-driven industries in Kentucky. The executive director, in administering the high-tech investment pool, shall be authorized to recommend funds to be used to support loans and grants, or to secure an equity or related position.
- (5) The Kentucky Economic Development Finance Authority shall assure in their approval of funding of projects that the highest priority is given to knowledge-based companies in fulfillment of the purposes and intentions of the purposes of this section.

➔Section 17. KRS 154.12-310 is amended to read as follows:

- (1) The Kentucky Innovation and Commercialization Centers are private-public partnerships, operating as a cohesive statewide infrastructure to support the implementation of key Kentucky Innovation Act initiatives.
- (2) The organization of the ICCs shall **be a statewide network of Kentucky innovative hubs, with the location and services provided for each hub determined by the executive director of the Office of Entrepreneurship and Small Business Innovation**~~[include a central statewide headquarters and up to twelve (12) affiliate centers]~~.
 - (a) The **Office of Entrepreneurship and Small Business Innovation shall be the** central headquarters **for the Kentucky innovative hubs and** has primary responsibility for the following:
 - 1. Managing and administering the ICC Program;

2. Establishing uniform program application, protocol, and operating guidelines when appropriate;
 3. Supporting the protocol by creating and funding centralized services to be distributed throughout the network; and
 4. Identifying those issues, opportunities, and challenges that have statewide implications.
- (b) The regional affiliates are responsible for fulfilling the duties as set forth in KRS 154.12-305 relating to the implementation of the region's innovation strategic plan and supporting the implementation of the Kentucky Innovation Act initiatives in the region or subregion;
- (c) The satellites are responsible for generating technology business development in their assigned geographic area, acting as a bridge between individuals and businesses needing critical early state concept and development work and the affiliate centers that can provide this support.

The affiliates and satellites provide a valuable assurance for equal access to the Kentucky Innovation Act initiatives and funding, and provide an opportunity for full participation in rural and remote, as well as metropolitan, areas of the state.

- (3) The *executive director of the Office of Entrepreneurship and Small Business Innovation*~~[commissioner]~~ shall have all the powers and authority, not explicitly prohibited by statute, necessary and convenient to carry out and effectuate the purposes of KRS 154.12-300 to 154.12-310.
- (4) The *executive director of the Office of Entrepreneurship and Small Business Innovation*~~[commissioner]~~ may, in effectuating the provisions of KRS 154.12-300 to 154.12-310, contract with a science and technology organization as defined in KRS 164.6011 to administer and manage the ICC Program.

➔Section 18. KRS 154.12-2035 is amended to read as follows:

- (1) The cabinet shall maintain a searchable electronic database on its Web site containing information on the cost and status of the programs listed in subsection (3)(a) of this section. The database shall include all projects approved at any time in the last five (5) years and shall include for each, where applicable, the following information:
 - (a) The name of the program, the recipient or participant, the type of project, and its location by county;
 - (b) Total and approved costs of the project or investment, and the amount of incentives or other benefits authorized;
 - (c) For the Kentucky Business Investment Program and the Kentucky Enterprise Initiative Act, the amount of incentives or other benefits actually recovered as self-reported by the recipient;
 - (d) The number of new jobs estimated and, for the Kentucky Business Investment Program, actually created, along with wage information for those jobs;
 - (e) Project status and the date and nature of the most recent activity; and
 - (f) Any other comparable data or information necessary to achieve transparency and accountability for the specified programs.
- (2) In addition to the electronic database required in subsection (1) of this section, the cabinet shall prepare an annual report on the programs listed in subsection (3) of this section and make it available on the Cabinet for Economic Development Web site by November 1 of each year. The report shall include all projects approved in the preceding fiscal year and shall provide for these projects the information specified in subsection (1) of this section plus aggregate data for each program, summary evaluations of program activity and effectiveness, and anything required by statute to be reported for any particular program. The report shall also list all projects that were approved in prior years but active at any time

in the preceding fiscal year, although for these projects the report need not provide further data.

(3) The following programs shall be subject to the reporting requirements of this section:

- (a) The electronic database required in subsection (1) of this section shall include the Bluegrass State Skills Corporation, grants-in-aid and skills training investment credit; Kentucky Business Investment Program; Kentucky Enterprise Initiative Act; Office of Entrepreneurship and Small Business Innovation programs; Incentives for Energy Independence Act; Kentucky Economic Development Finance Authority small business and direct loan programs; Kentucky Industrial Revitalization Act; Kentucky Reinvestment Act; Kentucky Small Business Tax Credit; economic development bonds; Kentucky Industrial Development Act; Kentucky Jobs Development Act; Kentucky Jobs Retention Act; the Kentucky Rural Economic Development Act; and
- (b) The annual report required by subsection (2) of this section shall include all programs listed in paragraph (a) of this subsection plus the Kentucky Investment Fund Act, and tax increment financing, state participation projects.

(4) The cabinet shall coordinate with any other agency necessary to supply the information required by this section.

➔Section 19. KRS 154.20-230 is amended to read as follows:

As used in KRS 154.20-230 to 154.20-240:

- (1) "Application" means a document submitted by small businesses and investors, on a form supplied by the authority, for the purpose of requesting certification to participate in the program and to apply for a credit;
- (2) "Authority" means the Kentucky Economic Development Finance Authority;
- (3) "Commonwealth" means the Commonwealth of Kentucky;
- (4) "Credit" means the nonrefundable angel investor tax credit established by KRS 141.396

and awarded by the authority pursuant to KRS 154.20-236;

- (5) "Department" means the Department of Revenue;
- (6) "Enhanced incentive counties" has the same meaning as in KRS 154.32-010;
- (7) "Entity" means any corporation, limited liability company, business development corporation, partnership, limited partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;
- (8) "Fee" means a nonrefundable application fee in an amount set by the authority, to be collected by the authority to offset the cost of administering KRS 154.20-230 to 154.20-240;
- (9) "Full-time employee" means a person that is required to work a minimum of thirty-five (35) hours per week and is subject to the tax imposed by KRS 141.020;
- (10) "Knowledge-based" has the same meaning as in KRS 164.6011;
- (11) (a) "Qualified activity" means any knowledge-based activity related to the new economy focus areas of the Office of Entrepreneurship and Small Business Innovation, including but not limited to:
 - 1. Bioscience;
 - 2. Environmental and energy technology;
 - 3. Health and human development;
 - 4. Information technology and communications; and
 - 5. Materials science and advanced manufacturing.
- (b) A "qualified activity" does not include any activity principally engaged in by financial institutions, commercial development companies, credit companies, financial or investment advisors, brokerage or financial firms, other investment funds or investment fund managers, charitable and religious institutions, oil and gas

Unofficial Document

exploration companies, insurance companies, residential housing developers, retail establishments, or any activity that the authority determines in its discretion to be against the public interest, against the purposes of KRS 154.20-230 to 154.20-240, or in violation of any law. **Notwithstanding this paragraph, an entity involved in other technological advances may be deemed to be engaged in qualified activity, as determined by the executive director of the Office of Entrepreneurship and Small Business Innovation;**

- (12) "Qualified investment" means an investment meeting the requirements of KRS 154.20-234 for qualified investments, and certified pursuant to KRS 154.20-236;
- (13) "Qualified investor" means an individual investor meeting the requirements of KRS 154.20-234 for qualified investors, and certified pursuant to KRS 154.20-236; and
- (14) "Qualified small business" means an entity meeting the requirements of KRS 154.20-234 for qualified small businesses, and certified pursuant to KRS 154.20-236.

➔Section 20. KRS 154.20-232 is amended to read as follows:

- (1) KRS 154.20-230 to 154.20-240 shall be known as the "Kentucky Angel Investment Act."
- (2) The purpose of KRS 141.396 and 154.20-230 to 154.20-240 is to encourage capital investment in the Commonwealth by individual investors that will further the establishment or expansion of small businesses, create additional jobs, and foster the development of new products and technologies, by providing tax credits for certain investments in small businesses located in the Commonwealth, operating in the fields of knowledge-based, high-tech, and research and development, and showing a potential for rapid growth.
- (3) To participate in the program created by KRS 141.396 and 154.20-230 to 154.20-240:
 - (a) Small businesses and individual investors shall request certification from the authority pursuant to KRS 154.20-236. To be qualified, the small businesses and individual investors shall fulfill the requirements outlined in KRS 154.20-234;~~and~~

(b) Once certified, qualified investors ~~[may make investments in qualified small businesses, and]~~may apply to the authority for a credit in return for making the investment if that investment qualifies under KRS 154.20-234; and

(c) Once the authority certifies the qualified investment, the qualified investor may effectuate the investment, pursuant to any and all guidelines issued by the authority.

(4) Any qualified investment made in a qualified small business under KRS 154.20-230 to 154.20-240 shall be used by that business, insofar as possible, to leverage additional capital investments from other sources.

➔Section 21. KRS 154.20-234 is amended to read as follows:

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

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

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

2.~~[(b)]~~ Is actively and principally engaged in a qualified activity within the Commonwealth, or will be actively and principally engaged in a qualified activity within the Commonwealth after the receipt of a qualified investment by a qualified investor;

3.~~[(c)]~~ Has no more than one hundred (100) full-time employees;

4.~~[(d)]~~ Has more than fifty percent (50%) of its assets, operations, and employees located in the Commonwealth; and

- ~~5.[(e)]~~ Has at no time received an aggregate amount of qualified investments that has allowed qualified investors to receive more than one million dollars (\$1,000,000) in angel investor credits;
- ~~(b) [(2)]~~ To be certified as a qualified investor, an individual investor shall demonstrate to the authority that he or she:
- ~~1. [(a)]~~ Is an individual natural person *who may utilize a single-member limited liability company to make the investment as long as the individual natural person is the owner and the limited liability company is a disregarded entity;*
- ~~2. [(b)]~~ Qualifies as an accredited investor pursuant to Regulation D of the United States Securities and Exchange Commission, 17 C.F.R. sec. 230.501, in effect as of the date the individual investor requests certification;
- ~~3. [(c)]~~ Does not hold in excess of twenty percent (20%) ownership interest in, and is not employed by, the qualified small business prior to making the qualified investment in that qualified small business;
- ~~4. [(d)]~~ Is not closely related to an individual who holds in excess of twenty percent (20%) ownership interest in, or who is employed by, the qualified small business prior to making the qualified investment in that qualified small business. For purposes of this paragraph, "closely related" means any of the following in relation to the owner or owners or spouse of the owner or owners:
- ~~a. [(1)]~~ Parents or grandparents;
- ~~b. [(2)]~~ Children or their spouses; or
- ~~c. [(3)]~~ Siblings or their spouses; and
- ~~5. [(e)]~~ Seeks a financial return from the investment made in the qualified small business; *and*
- ~~(c) [(3)]~~ To be certified as a qualified investment, the investment shall:

Unofficial Document

1.[(a)] Be a cash investment of at least ten thousand dollars (\$10,000), in a qualified small business by a qualified investor; and

2.[(b)] Be offered and executed in compliance with applicable state and federal securities laws and regulations.~~[(c)]~~ and

(2) In consideration for the qualified investment, the qualified investor shall receive an equity interest, or a near equity interest, such as a simple agreement for future equity, or "SAFE agreement", or a convertible debt instrument in the qualified small business.

(3) [(4)] The authority may establish additional requirements and guidelines for the efficient implementation and administration of the Kentucky Angel Investment Act and to carry out its purposes.

➔Section 22. KRS 154.20-254 is amended to read as follows:

As used in KRS 154.20-250 to 154.20-284, unless the context clearly requires otherwise:

- (1) "Affiliate" means any person or entity who directly or indirectly, through one (1) or more intermediaries, controls or is controlled by or is under common control with another person or entity;
- (2) "Agreement" means an investment fund agreement entered into pursuant to KRS 154.20-255(5) by the authority and an investment fund manager on behalf of the investment fund, the investment fund manager, and any investor in the investment fund;
- (3) "Amended application" means a document submitted by an investment fund manager, in a form acceptable to the authority and on behalf of an investment fund, for the purpose of increasing the aggregate amount of available tax credits;
- (4) "Applicant" means any person or entity who has not received approval from the authority as an investment fund manager, but who has submitted or will submit an application to the authority for approval as an investment fund manager;
- (5) "Authority" means the Kentucky Economic Development Finance Authority or its

designee;

- (6) "Cash contribution" means an investment of money by an investor in an investment fund under the terms of KRS 154.20-250 to 154.20-284;
- (7) "Committed cash contribution" means a legally binding agreement by an investor to make a cash contribution in an amount set forth in a written agreement between an investor and an investment fund;
- (8) "Commonwealth" means the Commonwealth of Kentucky;
- (9) "Credit" means a nonrefundable credit for investors against state tax liability allocated and granted by the authority pursuant to KRS 154.20-258 for qualified investments made by approved investment funds;
- (10) "Entity" means any corporation, limited liability company, business development corporation, partnership, limited partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;
- (11) "Financial institution" means "financial institution" as defined in KRS 136.500(10) and includes savings and loan associations, savings banks, and similar institutions subject to the taxes imposed by KRS 136.290, 136.300, or 136.310;
- (12) "Insurance company" means any insurance company subject to the taxes imposed by KRS 136.320, 136.330, or 304.3-270;
- (13) "Investment fund" means any entity that is organized by an investment fund manager in compliance with applicable state and federal securities laws and regulations, and is approved by the authority to make qualified investments pursuant to KRS 154.20-256;
- (14) "Investment fund manager" means any person or entity that has been approved by the authority to manage one (1) or more investment funds authorized under the provisions of KRS 154.20-250 to 154.20-284 and is in compliance with all applicable federal and state

regulations;

(15) "Investor" means any person or entity, including financial institutions and insurance companies, that is subject to state tax liability and that makes a cash contribution or a committed cash contribution to an investment fund in accordance with the provisions of KRS 154.20-250 to 154.20-284 and has not been convicted of violating any of Kentucky's tax laws within the past ten (10) years;

(16) **"Knowledge-based" has the same meaning as in Section 42 of this Act;**

(17) "Nonprofit entity" means an investor that is exempt from federal income tax under Section 501(c) of the Internal Revenue Code of 1986, as amended;

(18)~~(17)~~ "Qualified activity" **has the same meaning as in Section 19 of this Act**~~means any industrial, manufacturing, mining, mining reclamation for economic development, commercial, health care, agricultural enterprise, or agribusiness activity. A "qualified activity" does not include any activity principally engaged in by financial institutions, commercial development companies, credit companies, financial or investment advisors, brokerage or financial firms, other investment funds or investment fund managers, charitable and religious institutions, oil and gas exploration companies, insurance companies, residential housing developers, retail establishments, or any activity that the authority determines in its discretion to be against the public interest, against the purposes of KRS 154.20 250 to 154.20 284, or in violation of any law~~];

(19)~~(18)~~ "Qualified investment" means an investment of **at least ten thousand dollars (\$10,000)**~~money~~ in a small business by an investment fund, in compliance with applicable state and federal securities laws and regulations, seeking a financial return based upon that consideration. In consideration for the qualified investment, the investment fund shall receive an equity interest in the small business, such as a general or limited partnership interest, common or preferred stock with or without voting rights and without regard to

seniority position, forms of subordinate or convertible unsecured debt, or both, with warrants, rights, or other means of equity conversion attached; and

~~(20)~~~~(19)~~ "Small business" means any entity which at the time a qualified investment is made by an investment fund:

- (a) 1. Has a net worth of five million dollars (\$5,000,000) or less or net income after federal income taxes for each of the two (2) preceding fiscal years of three million dollars (\$3,000,000) or less; or
- 2. Is a knowledge-based business, as shall be prescribed by the commissioner of the Department of Commercialization and Innovation, and has a net worth of ten million dollars (\$10,000,000) or less;
- (b) Is actively and principally engaged in a qualified activity within the Commonwealth, or will be actively and principally engaged in a qualified activity within the Commonwealth after the receipt of a qualified investment by an investment fund;
- (c) Has no more than one hundred (100) employees; and
- (d) Has more than fifty percent (50%) of its assets, operations, and employees located in Kentucky.

➔Section 23. KRS 154.20-255 is amended to read as follows:

- (1) (a) The total amount of credits available to any single investment fund awarded credits under KRS 154.20-250 to 154.20-284 shall not exceed, in aggregate:~~;~~~~;~~

1. For any calendar year beginning prior to January 1, 2022, eight million dollars (\$8,000,000) for all investors and all taxable years; and

2. In any calendar year beginning on or after January 1, 2022, one million dollars (\$1,000,000).

- (b)~~[The total tax credits available for all investors in all investment funds awarded under KRS 154.20 250 to 154.20 284, and all qualified investors awarded under KRS~~

Unofficial Document

~~154.20-230 to 154.20-240, shall not exceed a total of forty million dollars (\$40,000,000) for all years prior to December 31, 2020.~~

~~(e)}~~ The total credit available for all investors in all investment funds awarded under KRS 154.20-250 to 154.20-284 shall not exceed a total of three million dollars (\$3,000,000) in any calendar year beginning on or after January 1, 2021.{

~~(d) The authority shall not grant preliminary or final approval for applications received for the Kentucky Investment Fund Act on or after January 1, 2019, but may resume approving applications received on or after January 1, 2021.}~~

(2) A person or entity seeking to be approved as an investment fund manager for the operation of one (1) or more investment funds shall make written application to the authority pursuant to KRS 154.20-256, in addition to complying with applicable state and federal securities laws and regulations.

(3) Prior to the granting of any tax credits to investors of an investment fund, the committed cash contributions to an investment fund shall be not less than five hundred thousand dollars (\$500,000).

(4) (a) An investment fund shall have no less than four (4) investors, and no investor or investment fund manager, including their closely-related~~[immediate]~~ family members~~[, as defined in KRS 164.6011(6)]~~, and affiliates may own or have a capital interest in more than forty percent (40%) of the investment fund's capitalization.

(b) As used in this subsection, "closely-related" means any of the following in relation to the investor, the investor's spouse, the fund manager, or the fund manager's spouse:

1. Parents or grandparents;

2. Children or their spouses; or

3. Siblings or their spouses.

- (5) Subsequent to approval of the investment fund and the investment fund manager, the authority and the investment fund manager, on behalf of itself and any investors in the investment fund, shall enter into an agreement with respect to the investment fund. The terms and provisions of each agreement shall be determined by negotiations between the authority and the investment fund manager. The effective date of the agreement shall be the date of approval of the investment fund and the investment fund manager by the authority. If an investment fund manager fails to comply with any of the obligations of the agreement, the authority may, at its option, do any one (1) or more of the following:
- (a) Suspend the availability of the credits;
 - (b) Pursue any remedy provided under the agreement, including termination of the agreement; or
 - (c) Pursue any other remedy at law to which it may be entitled.
- (6) Any investor shall be entitled to a tax credit as a result of its investment in an investment fund as provided in KRS 154.20-258.
- (7) Total qualified investments made by an investment fund, including initial and subsequent investments made by an investment fund, in any single small business using approved qualified investments, shall not exceed thirty percent (30%) of the committed cash contributions to the investment fund. This restriction shall not apply to investments of money by the investment fund that are not qualified investments.
- (8) The provisions of this section shall not prohibit an investment fund from investing in a business that is not a small business, including a business that is located outside of the Commonwealth; however, such investments shall not be eligible for the tax credit set forth in KRS 154.20-258.

➔Section 24. KRS 154.20-256 is amended to read as follows:

- (1) The approval of investment funds and investment fund managers shall be made pursuant to

an application to the authority submitted by a proposed fund manager on behalf of a proposed investment fund and shall include:

- (a) The name, address, and Social Security number or employer identification number, as applicable, of the investment fund manager and the investment fund;
 - (b) The applicant's business plan, including the minimum and maximum amount of cash contributions to be solicited for the investment fund, and strategy for operation of the proposed investment fund;
 - (c) The amount of credits the investment fund seeks for making qualified investments;
 - (d) The applicant fund manager's relevant experience and demonstrated ability to manage the proposed investment fund;
 - (e) The location and account number of a bank account that has been established for use by the investment fund;
 - (f) The exemption or registration provision that is being relied upon or intended to be relied upon by both the investment fund and the investment fund manager to permit this offering of securities and the activity of the investment fund manager in relation to the offering, in compliance with applicable state and federal securities laws and regulations;
 - (g) A representation that the investment fund and the investment fund manager are and shall remain in compliance with applicable state and federal securities regulations; and
 - (h) Any additional information the authority deems necessary.
- (2) The applicant shall include copies of the following documents as attachments to the application:
- (a) The disclosure documents used in connection with the offering and investment in the investment fund;

- (b) The disclosure documents provided to each investor which state that:
1. The investor has certain rights, responsibilities, and liabilities pursuant to KRS 154.20-250 to 154.20-284;
 2. The Commonwealth shall be immune from liability for any losses or damages investors, investment funds, or investment fund managers may incur pursuant to KRS 154.20-279;
 3. No tax credit shall be available under the provisions of KRS 154.20-250 to 154.20-284 until the investment fund and the investment fund manager have complied with applicable state and federal securities laws and regulations and have been approved by the authority, and an agreement has been executed, and the terms of that agreement have been disclosed in writing to each investor; and
 4. Investors shall lose all rights to any unused credits allocated to an investment fund that does not make a qualified investment within one (1) year of the date of the agreement with the authority or within any one (1) year period thereafter through the end of the term of the agreement.

An applicant soliciting cash contributions for the initial capitalization of an investment fund, or an investment fund manager soliciting additional cash contributions for an approved investment fund, shall disclose in advance and in writing to each potential investor those items described in this subsection in addition to any other items required by law or by agreement.

- (3) The authority shall have, in addition to its other powers provided in this chapter and as otherwise provided by law, all powers and authority, not explicitly prohibited by statute, that are necessary or convenient to carry out and effectuate the purposes, objectives, and provisions of KRS 154.20-250 to 154.20-284, including but not limited to power to:
- (a) Require consultation, advisory, and legal fees and other expenses the authority deems

Unofficial Document

necessary or incident to the preparation, adoption, implementation, modification, or enforcement of the terms of any agreement or other document, or otherwise necessary or incident to any transaction;

- (b) Require the investment fund manager to pay these fees and expenses directly to the person providing such consultation, advisory, legal, or other services on behalf of the authority; and
- (c) Impose and collect fees and charges in connection with any transaction and provide for reasonable penalties for delinquent payment of fees or charges.

Any payments made by an investment fund manager pursuant to this subsection may be passed on to the investment fund manager's investment fund.

- (4) An investment fund's stated purpose shall be primarily to encourage and assist in the creation, development, or expansion of small businesses located in Kentucky.
- (5) The criteria considered by the authority for the approval of investment fund managers and the maximum amount of credits allocated to the investors of an investment fund shall include but not be limited to:
 - (a) Compliance by those persons with applicable state and federal securities laws and regulations;
 - (b) A review of the application;
 - (c) The investment strategy for the investment fund;
 - (d) The relevant experience of the applicant fund manager or, if the applicant fund manager is an entity, the applicant's management;
 - (e) The applicant's demonstrated ability to manage the investment fund; and
 - (f) The amount of credits requested by the investment fund and the total amount of credits which may be granted to investors under KRS 154.20-258.
- (6) Following the making of a qualified investment, the investment fund manager shall within

eighty (80)~~[sixty (60)]~~ days file a disclosure form with the authority detailing the following information:

- (a) The name and address of the small business in which the qualified investment was made;
 - (b) The amount of the qualified investment; and
 - (c) The name, address, and Social Security number or employer identification number, as may be applicable, of each investor and the amount of credit allocated to each investor by virtue of the investor's proportional ownership interest in the qualified investment.
- (7) An investment fund manager and its affiliates may operate no more than three (3) separate investment funds pursuant to separate applications submitted to and approved by the authority, provided the investment fund manager is in compliance with any applicable state and federal securities laws and regulations as evidenced by a written statement to the authority by an investment fund manager to that effect.
- (8) An investment fund manager seeking to expand a previously approved investment fund shall submit to the authority an amended application in a form acceptable to the authority.
- (9) An investment fund shall lose all unused credits that are available to its investors if the investment fund does not make a qualified investment within one (1) year of the date of the agreement or within any one (1) year period thereafter through the end of the term of the agreement.
- (10) The contents of the information form required under subsections (1), (2), and (6) of this section shall be treated by the authority and by the Department of Revenue as confidential and shall not be considered public records under KRS 61.870 to 61.884.
- (11) The authority, in consultation with the Department of Revenue, may establish additional procedures and standards, as it deems necessary for the approval of investment funds and

investment fund managers, and for the allocation and granting of investment tax credits by the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.

➔Section 25. KRS 154.20-258 is amended to read as follows:

- (1) (a) For qualified investments made prior to January 1, 2022, an investor shall be entitled to a nonrefundable credit equal to forty percent (40%) of the investor's proportional ownership share of all qualified investments made by its investment fund and verified by the authority. The aggregate tax credit available to any investor shall not exceed forty percent (40%) of the cash contribution made by the investor to its investment fund.
- (b) For qualified investments made on or after January 1, 2022, an investor shall be entitled to a nonrefundable credit not to exceed twenty-five percent (25%) of the investor's proportional ownership share of all qualified investments made by its investment fund and verified by the authority.
- (c) The credit may be applied against:
 - 1.[(a)] Both the income tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by KRS 141.0401, with the ordering of the credits as provided in KRS 141.0205;
 - 2.[(b)] The insurance taxes imposed by KRS 136.320, 136.330, and 304.3-270; and
 - 3.[(c)] The taxes on financial institutions imposed by KRS 136.300, 136.310, and 136.505.
- (2) The tax credit amount that may be claimed by an investor in any tax year shall not exceed fifty percent (50%) of the initial aggregate credit amount approved by the authority for the investment fund which would be proportionally available to the investor. An investor may

first claim the credit granted in subsection (1) of this section in the year following the year in which the credit is granted.

- (3) If the credit amount that may be claimed in any tax year, as determined under subsections (1) and (2) of this section, exceeds the investor's combined tax liabilities against which the credit may be claimed for that year, the investor may carry the excess tax credit forward until the tax credit is used, but the carry-forward of any excess tax credit shall not increase the fifty percent (50%) limitation established by subsection (2) of this section. Any tax credits not used within fifteen (15) years of the approval by the authority of the aggregate tax credit amount available to the investor shall be lost.
- (4) The tax credits allowed by this section shall not apply to any liability an investor may have for interest, penalties, past due taxes, or any other additions to the investor's tax liability. The holder of the tax credit shall assume any and all liabilities and responsibilities of the credit.
- (5) The tax credits allowed by this section are not transferable, except that:
 - (a) A nonprofit entity may transfer, for some or no consideration, any or all of the credits it receives under this section and any related benefits, rights, responsibilities, and liabilities. Within thirty (30) days of the date of any transfer of credits pursuant to this subsection, the nonprofit entity shall notify the authority and the Department of Revenue of:
 1. The name, address, and Social Security number or employer identification number, as may be applicable, of the party to which the nonprofit entity transferred its credits;
 2. The amount of credits transferred; and
 3. Any additional information the authority or the Department of Revenue deems necessary.

- (b) If an investor is an entity and is a party to a merger, acquisition, consolidation, dissolution, liquidation, or similar corporate reorganization, the tax credits shall pass through to the investor's successor.
- (c) If an individual investor dies, the tax credits shall pass to the investor's estate or beneficiaries in a manner consistent with the transfer of ownership of the investor's interest in the investment fund.
- (6) The tax credit amount that may be claimed by an investor shall reflect only the investor's participation in qualified investments properly reported to the authority by the investment fund manager. No tax credit authorized by this section shall become effective until the Department of Revenue receives notification from the authority that includes:
 - (a) A statement that a qualified investment has been made that is in compliance with KRS 154.20-250 to 154.20-284 and all applicable regulations; and
 - (b) A list of each investor in the investment fund that owns a portion of the small business in which a qualified investment has been made by virtue of an investment in the investment fund, and each investor's amount of credit granted to the investor for each qualified investment.
- The authority shall, within sixty (60) days of approval of credits, notify the Department of Revenue of the information required pursuant to this subsection and notify each investor of the amount of credits granted to that investor, and the year the credits may first be claimed.
- (7) After the date on which investors in an investment fund have cumulatively received an amount of credits equal to the amount of credits allocated to the investment fund by the authority, no investor shall receive additional credits by virtue of its investment in that investment fund unless the investment fund's allocation of credits is increased by the authority pursuant to an amended application.†
- ~~(8) The maximum amount of credits to be authorized by the authority shall be three million~~

dollars (\$3,000,000) for each of fiscal years 2002-03 and 2003-04.]

➔Section 26. KRS 154.20-277 is amended to read as follows:

- (1) ~~[Each investment fund manager shall cause the books and records of the investment fund to be audited on an annual basis by an independent certified public accountant in accordance with generally accepted accounting principles consistently applied. The audit shall address the financial condition of the investment fund and compliance with the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284.]~~Each year the **annual financial statements and annual reports of the investment fund shall be**~~[audit report shall be completed and certified by the independent certified public accountant and]~~ delivered to the authority within ninety (90) days after the end of the investment fund's fiscal year.
- (2) The authority and the Department of Revenue, individually or collectively, may examine, under oath, any of the officers, trustees, partners, members, managers, directors, agents, employees, or investors of an investment fund regarding the affairs and business of the investment fund. The authority and the Department of Revenue, individually or collectively, may issue subpoenas and subpoenas duces tecum and administer oaths. Refusal to obey such 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.
- (3) In addition to the audits required by this section, the authority or the Department of Revenue may audit one (1) or more investment funds or investment fund managers in any year on a random basis or for cause. The authority or the Department of Revenue may also audit, for cause, any small business in which an investment fund has made a qualified investment. Nothing in this section shall be construed to prohibit the Department of Revenue from conducting any audit relating to the administration or enforcement of the tax laws of the Commonwealth which the Department of Revenue determines to be

appropriate.

- (4) If any audit conducted pursuant to this section discloses that an investment fund or investment fund manager is not in compliance with the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284, the authority and the Department of Revenue may consult with one another with respect to this noncompliance and the Department of Revenue may exercise any of its powers to protect the Commonwealth's interest and to enforce the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284.
- (5) The authority may give an investment fund manager written notice of any noncompliance with the provisions of KRS 154.20-250 to 154.20-284 and specify a period of time the investment fund manager shall have to cure any noncompliance. Failure to cure any such noncompliance within the period of time specified by the authority may result in further action by the authority pursuant to this section.
- (6) Nothing in this section shall be construed to prohibit the Department of Financial Institutions, Division of Securities, or any other securities regulatory organization or body with jurisdiction over the activity of an investment fund or the investment fund manager from conducting any examination or investigation relating to the securities activities of the investment fund or investment fund manager. If any examination or investigation conducted pursuant to any securities laws or regulations discloses that an investment fund or investment fund manager is not in compliance with any provision of any applicable securities laws or regulations, the appropriate securities regulator may take whatever action it deems appropriate in accordance with such securities laws and regulations to respond to the noncompliance, notwithstanding any action the authority or the Department of Revenue may or may not take with respect to the noncompliance.

➔Section 27. KRS 154.31-010 is amended to read as follows:

As used in this subchapter:

- (1) "Agreement" means an agreement entered into pursuant to KRS 154.31-030 between the authority and an approved company;
- (2) "Alternative fuel production" **has the same meaning as in Section 28 of this Act**~~means a Kentucky operation that primarily produces for sale alternative transportation fuels. The alternative fuel production may produce electricity as a by-product if the primary function of the operations remains the production and sale of alternative transportation fuels;~~
- ~~(3) "Alternative transportation fuels" has the same meaning as in KRS 152.715;~~
- ~~(3)(4)~~ "Approved company" means an eligible company that has received approval from the authority for a sales and use tax incentive under this subchapter;
- ~~(4)(5)~~ "Approved recovery amount" means the maximum sales and use tax incentive recoverable by an approved company as established in the agreement;
- ~~(5)(6)~~ "Authority" means the Kentucky Economic Development Finance Authority;
- ~~[(7) "Biomass resources" has the same meaning as in KRS 152.715;]~~
- ~~(6)(8)~~ "Carbon dioxide transmission pipeline" **has the same meaning as in Section 28 of this Act**~~means the in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, that is used exclusively for the purpose of transporting carbon dioxide to the point of sale, storage, or other carbon management applications];~~
- (7) "Coal severing and processing" means activities resulting in the eligible company being subject to the tax imposed by KRS Chapter 143;**
- ~~(8)(9)~~ "Department" means the Department of Revenue;
- ~~(9)(10)~~ "Economic development project" means:
- (a) 1. The acquisition or construction of a new facility; or
 - 2. The expansion or rehabilitation of an existing facility; or
 - (b) The installation and equipping of a facility;
- by an eligible company at a specific site in the Commonwealth to be used in an activity

conducted by the approved company;

~~(10)~~~~(11)~~ "Electronic processing" means the use of technology having electronic, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities, now in existence or later developed to perform a service or technology activity;

~~(11)~~~~(12)~~ (a) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or other legal entity with a proposed economic development project that is primarily engaged in or planning to be engaged in one (1) or more of the following activities within the Commonwealth:

1. Manufacturing;
2. Nonretail service or technology activities;
3. Agribusiness;
4. Headquarters operations;
5. Alternative fuel, gasification, energy-efficient alternative fuel or renewable energy production;
6. Carbon dioxide transmission pipelines;
7. Coal severing and processing;
8. Hospital operations; or
9. In operating or developing a tourism attraction.

(b) "Eligible company" does not include any company whose primary activity to be conducted within the Commonwealth is forestry, fishing, the provision of utilities, construction, wholesale trade, retail trade~~[sales]~~, real estate, rental and leasing, educational services, food services, or public administration services;

~~(12)~~~~(13)~~ "Eligible expenses" means the amount expended for:

(a) Building and construction materials permanently incorporated as an improvement to

real property as part of an economic development project; or

- (b) Equipment used for research and development or electronic processing at an economic development project;

if the Kentucky sales and use tax imposed by KRS Chapter 139 is paid on the purchase of the materials or equipment at the time of purchase;

~~(13)~~~~(14)~~ "Energy-efficient alternative fuel production" **has the same meaning as in Section 28 of this Act**~~[means a Kentucky operation that produces energy-efficient alternative fuels for sale;~~

~~(15)~~ "Energy-efficient alternative fuels" means homogeneous fuels that:

- ~~(a) Are produced from processes designed to densify feedstock coal, waste coal, or biomass resources; and~~
- ~~(b) Have an energy content that is greater than the feedstock coal, waste coal, or biomass resource];~~

~~(14)~~~~(16)~~ (a) "Equipment" means tangible personal property which is subject to depreciation under Sections 167 and 168 of the Internal Revenue Code, including assets which are expensed under Section 179 of the Internal Revenue Code, and that is used in the operation of a business.

- (b) "Equipment" does not include any tangible personal property used to maintain, restore, mend, or repair machinery or equipment, consumable operating supplies, office supplies, or maintenance supplies;

~~(15)~~~~(17)~~ "Gasification process" **has the same meaning as in Section 28 of this Act**~~[means a process that converts any carbon-containing material into a synthesis gas composed primarily of carbon monoxide and hydrogen;~~

~~(18)~~ "Gasification production" means a Kentucky operation that primarily produces for sale:

- ~~(a) Alternative transportation fuels;~~

~~(b) Synthetic natural gas;~~

~~(c) Chemicals;~~

~~(d) Chemical feedstocks; or~~

~~(e) Liquid fuels;~~

~~— from coal, waste coal, coal processing waster, or biomass resources, through a gasification process. The gasification production may produce electricity as a by-product if the primary function of the operations remains the production and sale of alternative transportation fuels, synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels];~~

~~(16)~~~~(19)~~ "Headquarters" means the principal office where the principal executives of the entity are located and from which other personnel, branches, affiliates, offices, or entities are controlled;

(17) "Hospital" has the same meaning as in Section 28 of this Act;

~~(18)~~~~(20)~~ ~~(a)~~ "Manufacturing" **has the same meaning as in Section 28 of this Act** means to make, assemble, process, produce, or perform any activity that changes the form or conditions of raw materials and other property, and shall include any ancillary activity to the manufacturing process, such as storage, warehousing, distribution, and related office facilities.

~~(b)~~ "Manufacturing" does not include any activity involving the performance of work classified by the divisions, including successor divisions, of mining in accordance with the "North American Industry Classification System," as revised by the United States Office of Management and Budget from time to time, or any successor publication];

(19) "Nonretail service and technology" has the same meaning as in Section 28 of this Act;

~~(20)~~~~(21)~~ "Project term" means the time for which an agreement shall be in effect. The project term shall be established in the agreement and shall not exceed seven (7) years;

Unofficial Document

~~(21)~~~~(22)~~ "Renewable energy production" has the same meaning as in Section 28 of this Act

~~[means a Kentucky operation that utilizes wind power, biomass resources, landfill methane gas, hydropower, solar power, or other similar renewable resources to generate electricity for sale to unrelated entities];~~ and

~~(22)~~~~(23)~~ (a) "Research and development" means experimental or laboratory activity that has as its ultimate goal the development of new products, the improvement of existing products, the development of new uses for existing products, or the development or improvement of methods for producing products.

(b) "Research and development" does not include testing or inspection of materials or products for quality control purposes, efficiency surveys, management studies, consumer surveys or other market research, advertising or promotional activities, or research in connection with literary, historical, or similar projects;

~~(24) "Service or technology" means any nonretail activity using technology or providing a service, including but not limited to:~~

~~(a) Administration and processing activities;~~

~~(b) Research and development;~~

~~(c) Telephone or Internet sales or services;~~

~~(d) Distribution or fulfillment of orders;~~

~~(e) Data processing; and~~

~~(f) Similar activities;~~

~~provided to customer or affiliate entities primarily outside the Commonwealth and designed to serve a multistate, national, or international market; and~~

~~(25) "Synthetic natural gas" has the same meaning as in KRS 152.715].~~

➔Section 28. KRS 154.32-010 is amended to read as follows:

(1) "Activation date" means the date established in the tax incentive agreement that is within

two (2) years of final approval;

(2) ~~["Advance disbursement" means the disbursement of incentives prior to the activation date;~~

~~(3) —~~ "Affiliate" means the following:

- (a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;
- (b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;
- (c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or profits are owned or controlled, directly or indirectly, by or for that individual;
- (d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:
 - 1. One (1) or more chains of corporations connected through stock ownership with a common parent corporation if:
 - a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and
 - b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or

2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;
- (e) A grantor and a fiduciary of any trust;
- (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
- (g) A fiduciary of a trust and a beneficiary of that trust;
- (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;
- (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
- (j) A fiduciary of a trust and a limited liability company more than fifty percent (50%) of the capital interest, or the interest in profits, of which is owned directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
- (k) A corporation, a partnership, or a limited partnership if the same persons own:
 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership or limited partnership;
- (l) A corporation and a limited liability company if the same persons own:
 1. More than fifty percent (50%) in value of the outstanding stock of the

Unofficial Document

- corporation; and
2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
- (m) A partnership or limited partnership and a limited liability company if the same persons own:
1. More than fifty percent (50%) of the capital interest or profits in the partnership or limited partnership; and
 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
- (n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended;
- (o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended; or
- (p) Two (2) or more limited liability companies, if the same persons own more than fifty percent (50%) of the capital interest or are entitled to more than fifty percent (50%) of the capital profits in the limited liability companies;
- ~~(3)~~~~(4)~~ "Agribusiness" means the processing of raw agricultural products, including but not limited to timber and industrial hemp, or the performance of value-added functions with regard to raw agricultural products;
- ~~(4)~~~~(5)~~ "Alternative fuel production" means a Kentucky operation that primarily produces alternative transportation fuels for sale. The alternative fuel production may produce

electricity as a by-product if the primary function of the operations remains the production and sale of alternative transportation fuels;

~~(5)(6)~~ "Alternative transportation fuels" has the same meaning as in KRS 152.715;

~~(6)(7)~~ "Approved company" means an eligible company that has received final approval to receive incentives under this subchapter;

~~(7)(8)~~ "Approved costs" means the amount of eligible costs approved by the authority at final approval;

~~(8)(9)~~ "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;

~~(9)(10)~~ "Biomass resources" has the same meaning as in KRS 152.715;

~~(10)(11)~~ "Capital lease" means a lease classified as a capital lease by the Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976, as amended;

~~(11)(12)~~ "Carbon dioxide transmission pipeline" means the in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, that is used exclusively for the purpose of transporting carbon dioxide to the point of sale, storage, or other carbon management applications;

~~(12)~~ **"Coal severing and processing" means activities resulting in the eligible company being subject to the tax imposed by KRS Chapter 143;**

(13) "Commonwealth" means the Commonwealth of Kentucky;

(14) "Confirmed approved costs" means:

(a) For owned economic development projects, the documented eligible costs incurred on or before the activation date; or

(b) For leased economic development projects:

1. The documented eligible costs incurred on or before the activation date; and

Unofficial Document

2. Estimated rent to be incurred by the approved company throughout the term of the tax incentive agreement.

For both owned and leased economic development projects, "confirmed approved costs" may be less than approved costs, but shall not be more than approved costs;

(15) "Department" means the Department of Revenue;

(16) "Economic development project" means:

- (a) The acquisition, leasing, or construction of a new facility;
- (b) The acquisition, leasing, rehabilitation, or expansion of an existing facility; or
- (c) The installation and equipping of a facility;

by an eligible company. "Economic development project" does not include any economic development project that will result in the replacement of facilities existing in the Commonwealth, except as provided in KRS 154.32-060;

(17) (a) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity with a proposed economic development project that is engaged in or is planning to be engaged in one (1) or more of the following activities within the Commonwealth:

1. Manufacturing;
2. Agribusiness;
3. Nonretail service or technology;
4. Headquarters operations, regardless of the underlying business activity of the company;
5. Alternative fuel, gasification, energy-efficient alternative fuel, or renewable energy production;~~[-or]~~
6. Carbon dioxide transmission pipeline;

7. Coal severing and processing; or

Unofficial Document

8. *Hospital operations.*

- (b) "Eligible company" does not include companies where the primary activity to be conducted within the Commonwealth is forestry, fishing, ~~mining, coal or mineral processing,~~ the provision of utilities, construction, wholesale trade, retail trade, real estate, rental and leasing, educational services, accommodation and food services, or public administration services;
- (18) "Eligible costs" means:
- (a) For owned economic development projects:
1. Start-up costs;
 2. Nonrecurring obligations incurred for labor and nonrecurring payments to contractors, subcontractors, builders, and materialmen in connection with the economic development project;
 3. The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;
 4. The cost of contract bonds and of insurance of all kinds that may be required or necessary for completion of an economic development project which is not paid by a contractor or otherwise provided for;
 5. All costs of architectural and engineering services, including test borings, surveys, estimated plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required for construction of the economic development project;
 6. All costs which are required to be paid under the terms of any contract for the economic development project;
 7. All costs incurred for construction activities, including site tests and inspections; subsurface site work; excavation; removal of structures, roadways,

cemeteries, and other surface obstructions; filling, grading, and providing drainage and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electric, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; construction and installation of railroad spurs as needed to connect the economic development project to existing railways; or similar activities as the authority may determine necessary for construction of the economic development project; and

8. All other costs of a nature comparable to those described above; and
- (b) For leased economic development projects:
 1. Start-up costs;
 2. Building/leasehold improvements; and
 3. Fifty percent (50%) of the estimated annual rent for each year of the tax incentive agreement.

Notwithstanding any other provision of this subsection, for economic development projects that are not in enhanced incentive counties, the cost of equipment eligible for recovery as an eligible cost shall not exceed twenty thousand dollars (\$20,000) for each new full-time job created as of the activation date;

- (19) "Employee benefits" means payments by an approved company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k), or similar plans;
- (20) "Energy-efficient alternative fuel production" means a Kentucky operation that produces for sale energy-efficient alternative fuels;
- (21) "Energy-efficient alternative fuels" means homogeneous fuels that:
 - (a) Are produced from processes designed to densify feedstock coal, waste coal, or

- biomass resources; and
- (b) Have an energy content that is greater than the feedstock coal, waste coal, or biomass resource;
- (22) "Enhanced incentive counties" means counties certified by the authority pursuant to KRS 154.32-050;
- (23) "Final approval" means the action taken by the authority authorizing the eligible company to receive incentives under this subchapter;
- (24) (a) "Full-time job" means a job held by a person who:
- 1.~~[(a)]~~ **Is required to work a minimum of thirty-five (35) hours per week; and**
2. a. Is~~[a Kentucky resident]~~ subject to the Kentucky individual income tax imposed by KRS 141.020; or~~[and]~~
- b. Works remotely away from the economic development project if the job meets all of the following conditions:**
- i. Is held by a Kentucky resident;**
- ii. Was created as a result of the economic development project; and**
- iii. The payroll of this job is expensed to the economic development project;**
- (b) **"Full-time job" does not include a job held by a resident of any state with a reciprocal agreement between the Commonwealth and the other state as described in KRS 141.070**~~[Is required to work a minimum of thirty five (35) hours per week];~~
- (25) "Gasification process" means a process that converts any carbon-containing material into a synthesis gas composed primarily of carbon monoxide and hydrogen;
- (26) "Gasification production" means a Kentucky operation that primarily produces for sale:
- (a) Alternative transportation fuels;
- (b) Synthetic natural gas;

- (c) Chemicals;
- (d) Chemical feedstocks; or
- (e) Liquid fuels;

from coal, waste coal, coal-processing waste, or biomass resources, through a gasification process. The gasification production may produce electricity as a by-product if the primary function of the operations remains the production and sale of alternative transportation fuels, synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels;

- (27) "Headquarters" means the principal office where the principal executives of the entity are located and from which other personnel, branches, affiliates, offices, or entities are controlled;

(28) "Hospital" means a facility licensed by the Cabinet for Health and Family Services under KRS Chapter 216B for the operation of a hospital and the basic services provided by a hospital;

(29)~~(28)~~ "Incentives" means the incentives available under this subchapter, as listed in KRS 154.32-020(3);

(30)~~(29)~~ "Job target" means the annual average number of new full-time jobs that the approved company commits to create and maintain at the economic development project, which shall not be less than ten (10) new full-time jobs;

(31)~~(30)~~ "Kentucky gross receipts" has the same meaning as in KRS 141.0401;

(32)~~(31)~~ "Kentucky gross profits" has the same meaning as in KRS 141.0401;

(33)~~(32)~~ "Lease agreement" means an agreement between an approved company and an unrelated entity conveying the right to use a facility, the terms of which reflect an arms' length transaction. "Lease agreement" does not include a capital lease;

(34)~~(33)~~ "Leased project" means an economic development project site occupied by an approved company pursuant to a lease agreement;

- ~~[(34) "Loan agreement" means the agreement between the authority and a preliminarily approved company establishing the terms and conditions of an advance disbursement;]~~
- (35) "Manufacturing" means any activity involving:
- ~~(a) [the]~~Processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property and any activity related to the processing, assembling, or production of property, together with the storage, warehousing, distribution, and related office facilities; or
 - (b) Production of vital medications, personal protective equipment, or equipment necessary to produce personal protective equipment;**
- (36) ~~["Wage target" means the average total hourly compensation amount, including the minimum wage and employee benefits, that the approved company commits to meet for all new full-time jobs created and maintained as a result of the economic development project, which shall not be less than:~~
- ~~(a) One hundred twenty five percent (125%) of the federal minimum wage in enhanced incentive counties; or~~
 - ~~(b) One hundred fifty percent (150%) of the federal minimum wage in all other counties;~~
- ~~(37) [(a) "Nonretail service or technology" means any activity where service or technology is provided predominantly outside the Commonwealth and designed to serve a multistate, national, or international market.~~
- (b) "Nonretail service or technology" includes but is not limited to call centers, centralized administrative or processing centers, telephone or Internet sales order or processing centers, distribution or fulfillment centers, data processing centers, research and development facilities, and other similar activities;
- ~~(37)~~[(38)] "Owned project" means an economic development project owned in fee simple by the approved company or an affiliate, or possessed by the approved company or an affiliate

pursuant to a capital lease;

(38) "Personal protective equipment" means protective clothing, helmets, gloves, face shields, goggles, face masks, respirators, and other equipment designed to protect the user from injury or the spread of infection or illness;

(39) "Preliminary approval" means the action taken by the authority preliminarily approving an eligible company for incentives under this subchapter;

(40) "Renewable energy production" means a Kentucky operation that utilizes wind power, biomass resources, landfill methane gas, hydropower, solar power, or other similar renewable resources to generate electricity for sale to unrelated entities;

(41) "Rent" means the actual annual rent or fee paid by an approved company under a lease agreement;

(42) "Start-up costs" means nonrecurring costs incurred to furnish and equip a facility for an economic development project, including costs incurred for:

- (a) Computers, furnishings, office equipment, manufacturing equipment, and fixtures;
- (b) The relocation of out-of-state equipment; and
- (c) Cost of fixed telecommunications equipment;

as certified to the authority in accordance with KRS 154.32-030;

(43) "Synthetic natural gas" means the same thing as in KRS 152.715;

(44) "Tax incentive agreement" means the agreement entered into pursuant to KRS 154.32-040 between the authority and an approved company;

(45) "Term" means the period of time for which a tax incentive agreement may be in effect, which shall not exceed fifteen (15) years for an economic development project located in an enhanced incentive county, or ten (10) years for an economic development project not located in any other county;~~and~~

(46) "Vital medications" means any drug or biologic used to prevent or treat a serious life-

threatening disease or medical condition for which there is no other available source with sufficient supply of that drug or biologic or alternative drug or biologic;

~~(47)~~~~(46)~~ "Wage" means the per hour earnings of a full-time employee, including wages, tips, overtime, bonuses, and commissions, as reflected on the employee's federal form W-2 wage and tax statement, but excludes employee benefits; and

(48) "Wage target" means the average total hourly compensation amount, including the minimum wage and employee benefits, that the approved company commits to meet for all new full-time jobs created and maintained as a result of the economic development project, which shall not be less than:

(a) One hundred twenty-five percent (125%) of the federal minimum wage in enhanced incentive counties; or

(b) One hundred fifty percent (150%) of the federal minimum wage in all other counties.

➔Section 29. KRS 154.32-020 is amended to read as follows:

(1) The purposes of this subchapter are:

(a) To provide incentives for eligible companies and to encourage the location or expansion of manufacturing facilities, agribusiness operations, nonretail service or technology facilities, headquarters operations, alternative fuel production facilities, gasification production facilities, energy-efficient alternative fuel production facilities, renewable energy production facilities,~~and~~ carbon dioxide transmission pipelines, coal severing and processing, and hospital operations in the Commonwealth to advance the public purposes of:

1. Creation of new jobs that, but for the incentives offered by the authority, would not exist within the Commonwealth;
2. Creation of new sources of tax revenues for the support of public services

Unofficial Document

provided by the Commonwealth;~~and~~

3. Improvement in the quality of life for Kentucky citizens through the creation of sustainable jobs with higher salaries; and

4. Providing an economic stimulus to bolster in-state production of vital medications and personal protective equipment; and

- (b) To provide enhanced incentives for companies that locate in enhanced incentive counties in recognition of the depressed economic conditions in those counties and the increased need for the growth and development caused by the depressed economic conditions.
- (2) To qualify for the incentives provided by subsection (3) of this section, an approved company shall:
 - (a) Incur eligible costs of at least one hundred thousand dollars (\$100,000);
 - (b) Create at least ten (10) new full-time jobs and maintain an annual average number of at least ten (10) new full-time jobs; and
 - (c)
 1. Pay at least ninety percent (90%) of all new full-time employees whose jobs were created as a result of the economic development project a minimum wage of at least one hundred twenty-five percent (125%) of the federal minimum wage in enhanced incentive counties, and one hundred fifty percent (150%) of the federal minimum wage in other counties throughout the term of the economic development project; and
 2. Provide employee benefits for all new full-time jobs equal to at least fifteen percent (15%) of the minimum wage requirement established by subparagraph 1. of this paragraph. If the eligible company does not provide employee benefits equal to at least fifteen percent (15%) of the minimum wage requirement established by subparagraph 1. of this paragraph, the eligible company may still

Unofficial Document

qualify for incentives if it provides the full-time employees hired as a result of the economic development project total hourly compensation equal to or greater than one hundred fifteen percent (115%) of the minimum wage requirement established in subparagraph 1. of this paragraph through increased hourly wages combined with employee benefits, or

(d) Produce vital medications, personal protective equipment, or equipment necessary to produce personal protective equipment.

- (3) The incentives available under this subchapter are as follows:
- (a) Tax credits of up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.020 or 141.040 and the limited liability entity tax imposed under KRS 141.0401 on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the economic development project, as set forth in KRS 141.415 and 154.32-070;
 - (b) Authorization for the approved company to impose a wage assessment against the gross wages of each new employee subject to the Kentucky income tax as provided in KRS 154.32-090; and
 - (c) Notwithstanding any provision of law to the contrary, for any economic development project with an eligible investment of more than two hundred million dollars (\$200,000,000), the authority may authorize approval to the economic development project based upon terms and incentives applicable to economic development project locating in an enhanced incentive county.
- (4) The General Assembly hereby finds and declares that the authority granted in this subchapter and the purposes accomplished hereby are proper governmental and public purposes for which public moneys may be expended, and that the inducement of the location of economic development projects within the Commonwealth is of paramount

importance to the economic well-being of the Commonwealth.

➔Section 30. KRS 154.32-040 is amended to read as follows:

The authority, upon final approval of a company, may enter into a tax incentive agreement with the approved company. The terms and conditions of the tax incentive agreement shall be negotiated between the authority and the approved company. The terms of the tax incentive agreement shall include but not be limited to the following provisions:

- (1) The maximum approved costs that may be recovered over the term of the tax incentive agreement and the annual maximum for approved costs;
- (2) That the approved company shall provide the authority with all documentation requested in a manner acceptable to the authority;
- (3) Identification of the contribution of the local government to the economic development project, if any;
- (4) The activation date, which shall be within two (2) years of final approval;
- (5) That the approved company shall implement the activation date by notifying the authority;
- (6) That the approved company shall provide documentation satisfactory to the authority within the timeframes required by the authority that it has met the minimum employment, minimum investment, and minimum wage requirements, including employee benefits, established by KRS 154.32-020;
- (7) That failure of the approved company to meet any of the minimum job, minimum investment, or minimum wage requirements, including employee benefits, established by KRS 154.32-020, on the activation date shall result in cancellation of the tax incentive agreement;
- (8) The term of the agreement, which shall not exceed fifteen (15) years for an economic development project located in an enhanced incentive county, or ten (10) years for an economic development project located in another county;

- (9) That, if confirmed approved costs are less than the maximum approved costs included in the tax incentive agreement, the confirmed approved costs shall become the maximum amount that may be recovered by the approved company;
- (10) If the economic development project is a leased project, that future rent payments that are included in eligible costs shall be included as confirmed approved costs upon submission of a valid lease agreement executed after preliminary approval;
- (11) Establishment of a job target and minimum wage target, including employee benefits;
- (12) A requirement that the job target and minimum wage target, including employee benefits, be measured:
 - (a) On the activation date, against the actual new full-time jobs created and the average wages, including employee benefits, paid for those jobs; and
 - (b) Annually during each year of the agreement, against the annual average of the new full-time jobs and the average wages paid for those jobs, including employee benefits;
- (13) A provision requiring the approved company to notify the authority immediately if the approved company sells or otherwise transfers or disposes of the land on which an economic development project is located, if a lease relating to the economic development project is terminated or lapses, or if the approved company ceases or fundamentally alters operations at the economic development project;
- (14) A provision detailing the reductions in incentives that will occur pursuant to KRS 154.32-030(4) if an approved company fails to meet its job target or minimum wage target, including employee benefits;
- (15) ~~If the tax incentive agreement includes an advance disbursement, incorporation of the provisions of the loan agreement or inclusion of the loan agreement as an attachment to the tax incentive agreement;~~
- (16) ~~That the agreement may be assigned by the approved company upon the adoption of a~~

resolution by the authority to that effect;

~~(16)~~~~(17)~~ That the approved company shall make available to the authority all of its records pertaining to the economic development project, including but not limited to payroll records, records relating to eligible costs, and any other records pertaining to the economic development project that the authority may require;

~~(17)~~~~(18)~~ That the authority may share information with the department for the purposes of monitoring and enforcing the terms of the tax incentive agreement;

~~(18)~~~~(19)~~ That, if an approved company fails to comply with its obligations under the tax incentive agreement other than the jobs target or minimum wage target, the authority may take any or all of the following actions:

- (a) Suspend the incentives available to the approved company;
- (b) Terminate the incentives available to the approved company; or
- (c) Pursue any other remedy set forth in the tax incentive agreement or to which it may be entitled by law; and

~~(19)~~~~(20)~~ Any other provisions not inconsistent with this subchapter and determined to be necessary or appropriate by the parties to the tax incentive agreement.

➔Section 31. KRS 154.32-060 is amended to read as follows:

(1) The authority shall not approve an economic development project that otherwise meets the requirements of this subchapter if the economic development project will result in the replacement of facilities existing in the state except as provided in this section.

(2) The authority may approve an economic development project that:

- (a) Rehabilitates an existing facility used for activities of an eligible company~~[manufacturing, agribusiness, or nonretail service or technology, or as a national or regional corporate headquarters]~~, if:

1. The facility has not been in operation for a period of ninety (90) or more

Unofficial Document

consecutive days; or

2. a. The current occupant of the facility has advertised a notice of closure; and
- b. The eligible company proposing the economic development project is not an affiliate of the current occupant of the facility; or
3. a. The facility is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction; and
- b. The title to the facility prior to the sale is not vested in the eligible company or an affiliate of the eligible company; or

4. The existing facility is rehabilitated to enable a business to produce vital medications, personal protective equipment, or equipment necessary to produce personal protective equipment;

- (b) Replaces an existing facility of an eligible company ~~[manufacturing, agribusiness, nonretail service or technology, or national or regional corporate headquarters facility]~~ if:

1. a. Title to the facility:
 - i. Is held by exercise of the power of eminent domain; or
 - ii. May be taken pursuant to a nonappealable judgment granting authority to exercise the power of eminent domain; and
- b. Normal operations at the facility cannot be resumed within twelve (12) months; or
2. The facility has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

3. The existing facility is replaced to enable a business to produce vital

medications, personal protective equipment, or equipment necessary to produce personal protective equipment; or

- (c) Replaces an existing facility located in the same county if the existing facility cannot be expanded due to the unavailability of real estate at or adjacent to the facility to be replaced. Any economic development project satisfying the requirements of this paragraph shall be eligible for incentives under this subchapter only to the extent of the expansion. No incentives shall be available for the equivalent of the facility to be replaced or rehabilitated.
- (3) The authority shall not approve an economic development project under this section which results in a lease abandonment or lease termination by the approved company without the consent of the lessor.

➔Section 32. KRS 154.34-010 is amended to read as follows:

As used in this subchapter:

- (1) **"Affiliate" has the same meaning as in Section 28 of this Act;**
- (2) **"Agribusiness" has the same meaning as in Section 28 of this Act;**
- (3) **"Alternative fuel production" has the same meaning as in Section 28 of this Act;**
- (4) "Approved company" means an eligible company approved **under Section 33 of this Act** for a reinvestment project;
- ~~(5)(2)~~ "Approved costs" means the **eligible**~~sum of the:~~
- ~~(a) Eligible~~ equipment and related costs~~;~~ and
- ~~(b) Eligible~~ skills upgrade training costs;
- ~~—~~ approved by the authority that may be recovered by an approved company through the incentives authorized by this subchapter;
- ~~(6)(3)~~ "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;

Unofficial Document

(7) "Capital lease" has the same meaning as in Section 28 of this Act;

(8) "Carbon dioxide transmission pipeline" has the same meaning as in Section 28 of this Act;

(9) "Coal severing and processing" means activities resulting in an eligible company being subject to the tax imposed by KRS Chapter 143;

(10)~~(4)~~ "Commonwealth" means the Commonwealth of Kentucky;

(11)~~(5)~~ "Department" means the Department of Revenue;

(12)~~(6)~~ (a) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity;

1. Employing or intending to employ a minimum of twenty-five (25) persons on a full-time bases; and

2. Engaged in or planning to engage in one (1) or more of the following activities;

a. Headquarter operations;

b. ~~Engaged in~~ Manufacturing;

c. Agribusiness;

d. Nonretail service or technology;

e. Coal severing and processing;

f. Alternative fuel, gasification, energy-efficient alternative fuel, or renewable energy production;

g. Carbon dioxide transmission pipeline operations; or

h. Hospital operations;

at the same~~a~~ facility located and operating within the Commonwealth on a permanent basis for a reasonable period of time preceding the request for approval of a reinvestment project by the authority, including facilities where

Unofficial Document

operations have been temporarily suspended and which meet the standards under Section 33 of this Act and related administrative regulations promulgated by the authority;

(b) "Eligible company" does not include any company for which the primary activity to be conducted within the Commonwealth is:

1. Forestry;
2. Fishing;
3. The provision of utilities;
4. Construction;
5. Wholesale trade;
6. Retail trade;
7. Real estate;
8. Rental and leasing;
9. Educational services;
10. Accommodation and food services; or
11. Public administration services;

(13)~~(7)~~ (a) "Eligible equipment and related costs" means:

1. Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, rehabilitation, and installation of a reinvestment project;
2. The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, equipping, rehabilitation, and installation of a reinvestment project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;

3. All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, equipping, rehabilitation, and installation of a reinvestment project;
 4. All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, rehabilitation, and installation of a reinvestment project;
 5. All costs required for the installation of utilities, including but not limited to water, sewer, sewer treatment, gas, electricity, communications, and access to transportation, and including off-site construction of the facilities paid for by the approved company; and
 6. All other costs of a nature comparable to those described in this paragraph.
- (b) "Eligible equipment and related costs" does not include costs related to the replacement or repair of existing machinery or equipment resulting from normal wear and usage of the machinery or equipment;
- ~~[(8) "Eligible skills upgrade training costs" means costs incurred by an approved company in connection with an occupational training program for full time employees specifically related to training or retraining employees as part of the reinvestment project, including the following:~~
- ~~(a) Fees or salaries paid to instructors, whether those instructors are employees of the approved company, contractors, or consultants;~~
 - ~~(b) Administrative fees paid to educational institutions;~~
 - ~~(c) Amounts paid for supplies, materials, and equipment used exclusively for the occupational training program;~~

- ~~(d) Amounts paid to lease a training facility if sufficient training space is not available at the approved company or at an educational institution;~~
- ~~(e) Amounts paid to employees as wages for attending the occupational training program;~~
- ~~(f) Amounts paid for travel expenses for employees; and~~
- ~~(g) All other costs of a nature comparable to those described in this subsection;]~~

(14) "Energy-efficient alternative fuel production" has the same meaning as in Section 28 of this Act;

(15) "Enhanced incentive counties" has the same meaning as in Section 28 of this Act;

(16)(9) "Equipment" means manufacturing machinery *equipment, computers, furnishings, fixtures, and other assets* installed by the approved company as part of the reinvestment project;

(17)(10) "Final approval" means the action taken by the authority designating a preliminarily approved eligible company as an approved company *to receive incentives under this subchapter*;

(18)(11) "Full-time *employee*" means a *person who*:

- (a) *Is required to work a* minimum of thirty-five (35) hours per week; *or***
- (b) *Works remotely away from the reinvestment project if all the following conditions are met:***
 - 1. *Is a Kentucky resident;***
 - 2. *Whose job was created or retained as a result of the reinvestment project; and***
 - 3. *Whose payroll is expensed to the reinvestment project;***

(19) "Gasification production" has the same meaning as in Section 28 of this Act;

(20) "Headquarters" has the same meaning as in Section 28 of this Act;

(21) "Hospital" has the same meaning as in Section 28 of this Act;

(22) "Incentives" means the Kentucky tax credit as prescribed in this subchapter;

~~(23)~~~~(12)~~ "Kentucky gross profits" has the same meaning as in KRS 141.0401;

~~(24)~~~~(13)~~ "Kentucky gross receipts" has the same meaning as in KRS 141.0401;

(25) "Leased project" has the same meaning as in Section 28 of this Act;

~~(26)~~~~(14)~~ "Manufacturing" **has the same meaning as in Section 28 of this Act** ~~means any activity involving the processing, assembling, or production of any property, including activities that result in a change in the condition of the property. "Manufacturing" includes any activity or function related to the manufacturing activity, including storage, warehousing, distribution, and related office facilities~~;

(27) "Nonretail service or technology" has the same meaning as in Section 28 of this Act;

(28) "Personal protective equipment" has the same meaning as in Section 28 of this Act;

~~(29)~~~~(15)~~ "Preliminary approval" means the action taken by the authority designating an eligible company as a preliminarily approved company;

~~(30)~~~~(16)~~ "Reinvestment agreement" means the agreement entered into pursuant to KRS 154.34-080 between the authority and an approved company with respect to a reinvestment project; ~~and~~

~~(31)~~~~(17)~~ "Reinvestment project" means:

- (a) A reinvestment in the ~~physical plant of a manufacturing~~ facility **of an eligible company** ~~and in the full-time employees of an eligible company~~ ~~a manufacturing facility,~~ through **the**~~:~~

- 1. ~~The~~ acquisition, construction, and installation of new equipment and, with respect thereto, the construction, rehabilitation, and installation of improvements to facilities necessary to house the new equipment, including surveys; installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; or off-site construction of utility extensions to the boundaries of the real estate on which the facilities are

Unofficial Document

located; and

~~2. The development of an occupational training program to train or retrain the full-time employees of the company to support the reinvestment in the manufacturing facility, if applicable, for the purpose of improving the economic and operational situation of a company; and~~

(b) The expenditure of at least one million dollars (\$1,000,000) in eligible equipment and related costs for leased projects and at least two million five hundred thousand dollars (\$2,500,000) in eligible equipment and related costs for all other reinvestment projects; and

(c) A reinvestment in a facility in order to allow for the production of vital medications, personal protective equipment, or equipment necessary to produce personal protective equipment;

(32) "Renewable energy production" has the same meaning as in Section 28 of this Act; and

(33) "Vital medications" has the same meaning as in Section 28 of this Act.

➔Section 33. KRS 154.34-070 is amended to read as follows:

(1) The application and approval process under this subchapter shall be as follows:

(a) An eligible company with a proposed reinvestment project may submit an application to the authority. The application shall include the information required by subsection (4) of this section;

(b) Upon review of the application and any additional information submitted, the authority may, by resolution, give preliminary approval to a reinvestment project and authorize the negotiation and execution of a memorandum of agreement. The memorandum of agreement shall establish the minimum job retention requirements and maximum total approved cost for the reinvestment project, shall only allow the recovery of costs incurred after preliminary approval, and may include any other

terms as agreed to by the parties to the agreement. Upon preliminary approval, the preliminarily approved company may undertake the project in accordance with the memorandum of agreement;

- (c) The preliminarily approved company shall submit any documentation required by the authority upon request of the authority;
- (d) The preliminarily approved company shall have up to three (3) years from the date of preliminary approval to complete the reinvestment project and obtain final approval. Upon the earlier of completion of the project or the passage of three (3) years from the date of preliminary approval, the preliminarily approved company shall submit documentation required by the authority, and the authority shall confirm that the minimum investment and job retention requirements established by the memorandum of agreement have been met. Upon review and confirmation of the documentation, the authority may, by resolution, give final approval to the preliminarily approved company and authorize the execution of a reinvestment agreement between the authority and the approved company pursuant to KRS 154.34-080. As part of the reinvestment agreement, the approved costs shall be finally determined, not to exceed the maximum approved costs as determined at preliminary approval, and the approved company shall be eligible to receive incentives in accordance with the provisions of the reinvestment agreement;
- (e) The authority shall monitor the reinvestment agreement at least annually, and the approved company shall submit all documentation necessary for the authority to monitor the agreement. The authority shall, based on the documentation provided, confirm that the approved company is in continued compliance with the provisions of the reinvestment agreement and, therefore, eligible for incentives; and
- (f) Upon final approval, the authority shall notify the department that an approved

company is eligible for incentives and shall provide the department with the information necessary to monitor the use of incentives~~[credits]~~ by the approved company. If, at any time during the term of the reinvestment agreement, an approved company becomes ineligible for incentives, the authority shall notify the department, and the department shall discontinue the availability of incentives~~[credits]~~ for the approved company.

- (2) The authority may establish standards for preliminary and final approval of eligible companies and their projects through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.
- (3) The criteria for preliminary and final approval of eligible companies and reinvestment projects shall include but not be limited to the need for the project, the eligible equipment and other costs ~~[and eligible skills upgrade training costs]~~ to be expended by the eligible company, and the number of jobs created or preserved~~[retained]~~ as a result of the project.
- (4) The application shall include:
 - (a) *The name of the applicant and identification of any affiliates who will have some relation to the reinvestment project;*
 - (b) A description of the condition of the existing facility, including but not limited to the status of the physical plant or office space, the financial situation of the company, and the efficiency and productivity of the facility;
 - ~~(c)~~~~(b)~~ A description of the proposed reinvestment project, including anticipated sources of funding, the total anticipated equipment and related costs and skills upgrade training costs, the impact of the proposed reinvestment project on full-time employment at the facility, and an explanation of why reinvestment in the facility and its full-time employees is necessary;
 - (d) *The number of existing full-time jobs at the site of the reinvestment project on the*

Unofficial Document

date of the application and a description and breakdown of the relevant affiliated employers;

- (e)(e) A timeline for the proposed reinvestment project;
- (f)(d) A description of the other alternatives that are available to the eligible company, if incentives are not provided;
- (g)(e) The amount of incentives sought, and an explanation of why the requested incentives are needed;
- (h)(f) A certification from the company that the reinvestment project would not be economically feasible for the company, but for the incentives available under this subchapter;
- (i)(g) Payment of any applicable application fees required by the authority; and
- (j)(h) Any additional information relating to the proposed reinvestment project that the authority may require.

- (5) The authority may request any materials and make any inquiries concerning an application that the authority deems necessary.

➔Section 34. KRS 154.34-080 is amended to read as follows:

The authority, upon final approval of a company, may enter into a reinvestment agreement with the approved company. The terms and conditions of the reinvestment agreement shall be negotiated between the authority and the approved company. The terms of the reinvestment agreement shall include but not be limited to the following provisions:

- (1) That the authority may employ an independent consultant or utilize technical resources to verify the cost of the project, and that the approved company shall reimburse the authority for the cost of a consultant or other technical resources employed by the authority;
- (2) The maximum approved costs that may be recovered, **and that the amount of incentives allowed in any year shall not exceed twenty percent (20%) of the total amount of the**

approved costs;

- (3) A set employment retention goal, which shall be at least eighty-five percent (85%) of the number of full-time employees employed at the facility on the date the company receives preliminary approval;
- (4) That approval of the company is not a guarantee of incentives and that eligibility for incentives shall be contingent on the approved company meeting the requirements established by the reinvestment agreement and this subchapter;
- (5) The term of the reinvestment agreement, which shall not be longer than the earlier of:
 - (a) The date on which the approved company has received incentives equal to the approved costs of its reinvestment project; or
 - (b) Ten (10) years from the date of final approval granted by the authority;
- (6) That the authority may reduce the incentives, suspend the incentives, or terminate the agreement if the approved company fails to comply with provisions of the reinvestment agreement;
- (7) That both the authority and the department shall have the right to pursue any remedy provided under this reinvestment agreement and any other remedy at law to which it may be entitled;
- (8) That the approved company shall make available to the department and the authority all of its records pertaining to the reinvestment project, including but not limited to payroll records, records relating to the expenditure of eligible equipment and related costs, ~~eligible skills upgrade training costs,~~ and approved costs, and any other records pertaining to the project as the authority or the department may require;
- (9) That the authority may share information with the department for the purposes of monitoring and enforcing the terms of the reinvestment agreement;
- (10) That the agreement shall not be transferred or assigned by the approved company without

the expressed written consent of the authority; and

- (11) Any other provisions not inconsistent with this subchapter and determined to be necessary or appropriate by the parties to the reinvestment agreement.

➔Section 35. KRS 154.34-090 is amended to read as follows:

By October 1 of each year, the department~~[of Revenue of the Commonwealth]~~ shall certify to the authority, in the form of an annual report, aggregate tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year by approved companies with respect to their reinvestment projects under this subchapter and KRS 141.415 and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state tax return, when an approved company has taken incentives~~[inducements]~~ equal to its approved costs.

➔Section 36. KRS 154.34-110 is amended to read as follows:

- (1) The purpose of this subchapter is to provide a means for the Commonwealth to promote job retention by providing incentives for existing businesses to reinvest in existing ~~[manufacturing]~~ operations in Kentucky for eligible companies.
- (2) (a) To qualify for the incentives provided in this subchapter, an approved company shall:
1. Incur eligible equipment and related costs of at least one million dollars (\$1,000,000) for leased projects and at least two million five hundred thousand dollars (\$2,500,000) for all other reinvestment projects;
 2. Agree to maintain a full-time employment base of at least eighty-five percent (85%) at the facility on the date of preliminary approval; and
 3. Not have been awarded incentives under Subchapter 26 of this chapter for a period of at least five (5) years prior to applying for incentives under this subchapter.
- (b) An approved company meeting the expenditure and employment retention requirements established by this subsection shall be eligible to recover up to fifty

percent (50%) of the amount expended for eligible equipment and related costs~~}, and up to one hundred percent (100%) of job skills upgrade training costs~~. The actual amount that an approved company may recover shall be negotiated with the authority, and may be less than the maximum amount for which the approved company is eligible.

- (3) An approved company shall be eligible for **incentives under this subchapter as follows:** tax incentives of up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.020 or 141.040 and the limited liability entity tax imposed under KRS 141.0401 on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the eligible project, as set forth in KRS 154.34-120.
- (4) The General Assembly finds and declares that:
- (a) The general welfare and material well-being of the citizens of the Commonwealth depend in large measure upon the reinvestment and development of existing industry in the Commonwealth;
 - (b) It is in the best interest of the Commonwealth to induce reinvestment in existing ~~manufacturing~~ facilities **of eligible companies** within the Commonwealth in order to advance the public purposes of relieving unemployment by preserving jobs that may be lost if not for the incentives to be offered by the authority to approved companies, and by preserving and creating sources of tax revenues for the support of public services provided by the Commonwealth; and
 - (c) The authority prescribed by this subchapter and the purposes to be accomplished under this subchapter are proper governmental and public purposes for which public moneys may be expended.

(5) On or before November 1, 2021, and each November 1 thereafter, the authority shall

submit an overview report to the Interim Joint Committee on Appropriations and Revenue and the Governor on the success or failure of each completed project in order to determine the effectiveness of the program. The report shall include but not be limited to the following information:

- (a) The number of applications receiving preliminary approval during the fiscal year;
- (b) The number of final approvals issued during the fiscal year;
- (c) The total amount of eligible equipment and other costs projected by the approved company at preliminary approval;
- (d) The total amount of eligible equipment and other costs actually incurred by the approved company at final approval;
- (e) The total number of full time jobs required to be preserved or retained as a result of the reinvestment project;
- (f) The total actual number of full-time jobs reported by the reinvestment project as being preserved or retained on an annual basis;
- (g) The maximum approved costs that may be recovered by the approved companies for the reinvestment projects; and
- (h) The location of the reinvestment projects receiving preliminary and final approval during the fiscal year.

➔Section 37. KRS 154.35-010 is amended to read as follows:

As used in this subchapter, unless the context indicates otherwise:

- (1) "Beneficiary of an economic incentive package" means any entity for which any assessment, incentive, inducement, or tax credit is issued or awarded pursuant to KRS 154.22-010 to 154.22-070, KRS 154.24-010 to 154.24-150, KRS 154.26-015 to 154.26-100, and KRS 154.28-010 to 154.28-090;
- (2) "Board" means the governance board of the Kentucky Science and Technology Council,

Inc.;

- (3) "Cabinet" means the Cabinet for Economic Development;
- (4) "Center" means either or both of the following as the context requires:
 - (a) "Basic research centers" which means centers under contract with the University of Kentucky and the University of Louisville; and
 - (b) "Applied research centers" which means centers for applied research and technologies development;
- (5) "Commonwealth" means the Commonwealth of Kentucky;
- (6) "Council" means the Kentucky Science and Technology Council, Inc.;
- (7) "Fund" means the Kentucky Research and Development Infrastructure fund created and established pursuant to KRS 154.35-040;
- (8) "Infrastructure" means the Kentucky Research and Development Infrastructure;
- (9) "Contracting university" means any of the following that contract with the council to operate a center: the University of Kentucky, the University of Louisville, Eastern Kentucky University, Western Kentucky University, Morehead State University, Northern Kentucky University, Murray State University, and Kentucky State University;~~and~~
- (10) **"Personal protective equipment" has the same meaning as in Section 28 of this Act;**
- (11) "Secretary" means the secretary of the Cabinet for Economic Development; and**
- (12) "Vital medications" has the same meaning as in Section 28 of this Act.**

➔Section 38. KRS 154.35-050 is amended to read as follows:

- (1) The function of the basic research centers shall be to perform basic research of significant benefit to one (1) or more key industries that have been identified in and targeted by the state's economic development strategic plan as having major importance to the sustained economic growth of the Commonwealth. The areas of research to be performed by each basic research center shall be set forth in the contract between the council and the

contracting university and shall be approved only for those projects for which the center has a commitment from a private sector partner to make use of the results of the research.

(2) The functions of the applied research centers shall be:

- (a) To perform applied research, development, and technology transfer on a fee for service basis, to businesses and groups of businesses. For performing this function the center shall give preference to businesses in key industries and networks of businesses;
- (b) To provide advice to businesses regarding other areas of business operations necessary for improved performance, including workforce training, total quality assurance, inventory control, and reorganization of the business and workplace; and
- (c) To perform applied research and technology development of significant benefit to one (1) or more key industries in areas set forth in the contract between the council and the contracting university.

(3) The function of the research centers of the University of Louisville shall be to:

- (a) Identify facilities and businesses capable of the production of vital medications and personal protective equipment in order to bolster in-state production of vital medications and personal protective equipment; and**
- (b) Coordinate with health departments across the Commonwealth to assess the vital medications and personal protective equipment needs of medical facilities and the community.**

(4) [(3)] The council shall appoint advisory committees of persons knowledgeable in each key industry to advise the council and the centers with regard to research needs of the industry and to evaluate research plans and research results.

(5) [(4)] It shall be the goal of the infrastructure that eighty percent (80%) of the total revenues of each center shall be generated by payments under contracts from private businesses.

~~(6)~~~~(5)~~ To perform the functions set out in this section each center shall retain or contract with scientists, engineers, and other persons having high levels of expertise in appropriate fields of research, including but not limited to, faculty, staff and students of the contracting universities; provided, however, that all contracts with persons employed by the contracting university shall be subject to approval by the council.

➔Section 39. KRS 154.60-010 is amended to read as follows:

As used in this subchapter:

- (1) "Authority" means the Kentucky Economic Development Finance Authority;
- (2) (a) "Average hourly wage" means the per-hour wage earned by a full-time employee, including wages, tips, overtime, bonuses, and commissions, as reflected on the employee's federal form W-2 wage and tax statement.
(b) "Average hourly wage" does not include employee benefits as defined in KRS 154.32-010, including health insurance and reimbursements;
- (3) "Base employment" means:
 - (a) For the first application for which credits are approved, the number of full-time employees employed on the day prior to the work start date of the new employee filling the earliest eligible position identified on the application;
 - (b) For subsequent applications, the number of full-time employees employed on the day prior to the work start date of the new employee filling the earliest eligible position identified on the initial approved application plus each eligible position for which a credit has been approved; and
 - (c) For applications from businesses involved in mergers, acquisitions, or federal tax identification number changes, base employment may be adjusted by the Cabinet for Economic Development;
- (4) "Eligible position" means each position that:

- Unofficial Document
- (a) Is filled by a full-time employee and that increases the total employment of the small business above its base employment; and
 - (b) Carries an average hourly wage of no less than one hundred fifty percent (150%) of the federal minimum wage;
 - (5) "Full-time employee" means a person employed by a small business for at least an average of thirty-five (35) hours per week and subject to the state tax imposed by KRS 141.020;
 - (6) "Qualifying equipment or technology" means equipment or technology that has been approved by the Office of Entrepreneurship and Small Business Innovation; and
 - (7) "Small business" means any business entity organized for profit that has been approved by the Office of Entrepreneurship and Small Business Innovation, including a sole proprietorship, partnership, limited partnership, corporation, limited liability company, joint venture, association, or cooperative, that has fifty (50) or fewer employees working more than thirty-five (35) hours per week, whether within or outside the Commonwealth, at the time it applies.

➔Section 40. KRS 154.60-020 is amended to read as follows:

- (1) The authority shall develop a Small Business Development Credit Program in consultation with the Office of Entrepreneurship and Small Business Innovation to assist new or existing small businesses operating in the Commonwealth. The nonrefundable credit shall be allowed against the taxes imposed by KRS 141.020 or 141.040, and 141.0401. The ordering of credits shall be as provided in KRS 141.0205.
- (2) The authority shall determine the terms, conditions, and requirements for application for the credit, in consultation with the Office of Entrepreneurship and Small Business Innovation, subject to the provisions of subsection (3) of this section. The application shall contain identification information about the number of eligible positions created and filled, a calculation of the base employment of the small business, verification of investment of

five thousand dollars (\$5,000) or more in qualifying equipment or technology, and other information the authority may specify to determine eligibility for the credit.

- (3) (a) The maximum amount of credits that may be committed in each fiscal year by the authority and shared between the small business tax credit program and the Selling Farmer Tax Credit Program shall be capped at three million dollars (\$3,000,000).
- (b) In order to be eligible to receive final approval for a credit, a small business shall, within the twenty-four (24) month period immediately preceding the application submission date:
1. Create and fill one (1) or more eligible positions over the base employment; and
 2. Invest five thousand dollars (\$5,000) or more in qualifying equipment or technology.
- (c) Each eligible position that is created and filled shall be maintained for twelve (12) months. If a full-time employee filling a newly created eligible position ceases to be employed by the small business for any reason, that employee shall be replaced within forty-five (45) days in order for the eligible position to maintain its eligible status, in addition to meeting all other applicable requirements.
- (d) The small business shall submit all information necessary for the authority to determine credit eligibility for each year, and the amount of credit for which the small business is eligible.
- (e) The maximum amount of credit for each small business for each year shall not exceed twenty-five thousand dollars (\$25,000).
- (f) The credit shall be claimed on the tax return for the year during which the credit was approved. Unused credits may be carried forward for up to five (5) years.

➔SECTION 41. A NEW SECTION OF SUBCHAPTER 26 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

Unofficial Document

If an eligible company has not received preliminary approval on or before June 30, 2021, the eligible company shall not receive final approval by the authority to become an approved company under this subchapter. Outstanding eligible companies with preliminary or final approval granted on or before June 30, 2021, shall continue to be governed by this subchapter and Section 11 of this Act.

➔Section 42. KRS 164.6011 is amended to read as follows:

As used in KRS 164.6011 to **164.6029**~~[164.6041]~~, unless the context indicates otherwise:

- (1) "Applied research" means those research activities occurring at universities and in private enterprises that have potential commercial application;
- (2) **"Cabinet" means the Cabinet for Economic Development;**
- (3) **"Closely-related family members" means any of the following in relation to an employee or their spouse:**
 - (a) Parents or grandparents;**
 - (b) Children or their spouses; or**
 - (c) Siblings or their spouses;**
- (4) "Cluster" means a geographically bound concentration of similar, related, or complementary businesses with active channels for business transactions, communications, and dialogue, that share specialized infrastructure, labor markets, and services, and that are faced with common opportunities and threats;
- ~~(5)(3)~~ "Commonwealth" means the Commonwealth of Kentucky;
- ~~[(4) "Council" means the Council on Postsecondary Education;]~~
- ~~(6)(5)~~ "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, person, group, or other entity~~engaged in nonretail commerce, agribusiness, trade, or manufacturing;~~
- ~~(6) "Immediate family members" means:~~

- ~~(a) Spouse and parents in law;~~
~~(b) Parents and grandparents;~~
~~(c) Children and their spouses; and~~
~~(d) Siblings and their spouses];~~
- (7) "Kentucky-based company" means a business with its principal place of business in Kentucky or no less than fifty percent (50%) of its property and payroll located in Kentucky;
- (8) "Knowledge-based" means driven by knowledge, innovation, and speed;
- (9) "Medium-size company" means a business with fifty-one (51) to one hundred fifty (150) employees;
- (10) "Qualified company" means an eligible company that may be granted a funding voucher or award pending certification;
- (11) "Science and technology organization" means an independent, nonprofit or quasi-governmental organization, with a statewide mission, that has a demonstrated history of managing complicated programs in the areas of entrepreneurial innovation, science, and technology advancement;
- (12) "Seed funding" means financing that is provided for early-stage development, refinement, and commercialization of a product, process, or innovation through continuing applied research, advancing the patent process, determining commercial and market potential, or moving research toward development of a prototype; and
- (13) "Small company" means a firm with fifty (50) or fewer employees.

➔Section 43. KRS 164.6013 is amended to read as follows:

The General Assembly finds that the general welfare and material well-being of the citizens of the Commonwealth depend on immediate action to develop a strong, entrepreneurial economy, characterized by knowledge, innovation, and speed and that it is in the best interest of the

Commonwealth to promote research, innovation, and high-technology enterprises that utilize the higher-order skills of an educated workforce. The provisions in KRS 164.6011 to 164.6029~~[164.6041]~~, 154.12-274, 154.12-278,~~[and KRS]~~154.12-300 to 154.12-310, and 154.12-320 shall be liberally construed and applied to advance public purposes.

➔Section 44. KRS 164.6017 is amended to read as follows:

- (1) The cabinet~~[Council on Postsecondary Education]~~ shall have all the powers and authority, not explicitly prohibited by statute, necessary and convenient to carry out and effectuate the purposes of KRS 164.6019 to 164.6029~~[164.6041]~~, including but not limited to:
 - (a) Entering into contracts or agreements necessary or incidental to the performance of its duties, functions, and responsibilities; and
 - (b) Soliciting, borrowing, accepting, receiving, and expending funds from any public or private source, including but not limited to general fund appropriations of the Commonwealth, grants, or contributions of money, property, labor, or other things of value to be used to carry out the programs' operations, functions, and responsibilities; and
 - (c) Notwithstanding the provisions in paragraph (a) of this subsection, the executive director~~[commissioner]~~ of the Office~~[Department]~~ of Entrepreneurship and Small Business Innovation~~[Commercialization and Innovation]~~ shall approve the contracts issued by the cabinet~~[Council on Postsecondary Education]~~ regarding the structure of programs and funding levels in those programs administered by a science and technology organization and created in KRS 154.12-320~~[, 164.6021, 164.6029, and 164.6037]~~.
- (2) The cabinet~~[council]~~ may expend money in the funds created in KRS 164.6019 and~~[,]~~ 164.6027~~[, and 164.6035]~~ for reasonable administrative expenses directly incurred in carrying out the requirements of KRS 164.6019 to 164.6029~~[164.6041]~~. It is the intent of

the General Assembly that the funds created in KRS 164.6019 and 164.6027, ~~and 164.6035~~ be used, to the fullest extent possible, to directly fund project costs. It is also the intent of the General Assembly that the first priority of expenditures of any excess revenues generated from the funds created in KRS 164.6019, and 164.6027, ~~and 164.6035~~ is to replenish general fund appropriations for those same purposes.

- (3) The cabinet~~council~~ shall contract with a science and technology organization to administer the programs created in KRS 164.6021, and 164.6029, ~~and 164.6037~~. The cabinet~~council~~ shall work with the science and technology organization to adopt best practices for state investment funds, and shall oversee and approve the application criteria, the process for submission of an application, the types of equity investments permitted, the amount of investments that should be made in each fiscal year, the category or categories of investments that shall be made consistent with the cabinet's strategic plans, and the structure and type of outside expertise or peer review used in the application review process ~~for~~in the programs created in KRS 164.6021, and 164.6029, ~~and 164.6037~~.
- (4) No member of the cabinet~~council~~ or the science and technology organization or other administering entity, or their employees or outside experts or their closely-related~~immediate~~ family members, shall directly or indirectly financially benefit in any award, contract, or agreement under the programs.
- (5) The cabinet~~council~~ shall submit an annual report prior to November 1~~October 15~~ to the Governor and the General Assembly detailing its work related to the programs created in KRS 164.6021, and 164.6029, ~~and 164.6037~~. The annual report shall indicate~~be coordinated with the monitoring report by the Department of Commercialization and Innovation indicating~~ progress made through investments, and shall include but not be limited to reporting on the progress made in achieving each program's purposes, qualitative

and quantitative information concerning the applications received, projects approved and undertaken, companies served, and funding amounts invested in each project or program, as appropriate, and findings and recommendations to increase each program's effectiveness in achieving its purposes.

- (6) All records related to the administration of the programs created in KRS 164.6021 ~~and~~ 164.6029~~, and 164.6037~~ shall be deemed property of the cabinet~~council~~ and shall be deemed open records and subject to public inspection under KRS 61.870 to 61.884. Any research that involves or is a patent, trade secret, or other legally protectable interest shall be exempt from inspection until such time as the intellectual property rights have been fully protected.

➔Section 45. KRS 164.6019 is amended to read as follows:

- (1) There is established and created a trust and agency account~~in the State Treasury a fund~~ entitled the "Kentucky enterprise fund" for the purpose of enabling small or medium-size, Kentucky-based companies to undertake feasibility, concept development, research and development, or commercialization work~~in partnership with colleges and universities in the Commonwealth~~.
- (2) The Kentucky enterprise fund may receive moneys from~~state appropriations, gifts, grants, federal funds, revolving funds, and~~ any ~~other funds both~~ public or~~and~~ private source, including but not limited to general ~~Money deposited in the fund shall be disbursed by the State Treasurer upon the warrant~~ appropriations of the Commonwealth, grants, or contributions ~~secretary~~ of money, property, labor, or other things of value to be used to carry out the fund's operations, functions, and responsibilities, and to otherwise make investments~~the Finance and Administration Cabinet~~.
- (3) The Kentucky enterprise fund shall also receive moneys transferred from the Kentucky Rural Innovation Fund under Section 48 of this Act and the Kentucky

Commercialization Fund under Section 49 of this Act.

- (4) Any unallocated or unencumbered balances in the fund shall be invested as provided in KRS 42.500(9), and any income earned from the investments along with the unallotted or unencumbered balances in the fund shall not lapse, and shall be ~~deemed a trust and agency account and~~ made available solely for the purposes and benefits of the Kentucky enterprise fund ~~Program~~.

➔ Section 46. KRS 164.6021 is amended to read as follows:

- (1) **The Cabinet for Economic Development shall manage** ~~There is created and established in the Council on Postsecondary Education a~~ Kentucky enterprise fund ~~Program~~ to provide capital to small and medium-size, Kentucky-based companies to undertake feasibility, concept development, research and development, or commercialization work ~~in partnership with colleges and universities in the Commonwealth~~.
- (2) The purpose of the Kentucky enterprise fund ~~Program~~ is to:
- (a) Accelerate knowledge transfer and technological innovation, improve economic competitiveness, and spur economic growth in Kentucky-based companies;
 - (b) Support feasibility, concept development, research and development, or commercialization activities that have clear potential to lead to commercially successful products, processes, or services within a reasonable period of time;
 - (c) Stimulate growth-oriented enterprises within the Commonwealth;
 - (d) Encourage partnerships and collaborative projects between private enterprises, Kentucky's colleges and universities, and research organizations;
 - (e) Promote research and development and commercialization activities that are market-oriented; and
 - (f) Support small and medium-sized companies.
- (3) The Kentucky enterprise fund ~~Program~~ shall **be used** ~~make financial assistance available~~

to **fund** qualified companies in accordance with this section as follows:

- (a) Grants of up to **fifty**~~[thirty]~~ thousand dollars **(\$50,000)**~~[(\$30,000)]~~ for companies exploring the feasibility of technology commercialization **or projects related to feasibility studies, such as incubator and accelerator programs;**
 - (b) Funding of up to two hundred fifty thousand dollars (\$250,000) for companies in the concept development phase of technology commercialization;
 - (c) Funding of up to five hundred thousand dollars (\$500,000) for companies **advancing and promoting the program goals, as outlined in subsection (2) of this section**~~[in post initialization but before full commercialization]~~; and
 - (d) **For new investments made on or after July 1, 2021, no qualified company can receive a total investment from the fund in excess of up to five hundred thousand dollars (\$500,000)**~~[Funding of up to seven hundred fifty thousand dollars (\$750,000) for companies with high growth potential and a clear path to commercialization]~~.
- (4) **Beginning July 1, 2021, the cabinet shall allocate at least twenty percent (20%) of the annual allotment of funds for the Kentucky enterprise fund to qualified companies located in rural or enhanced incentive counties, as certified under KRS 154.32-050, and at least twenty percent (20%) of the annual allotment of funds to qualified companies located in Opportunity Zones, as designated by the Commonwealth and certified by the Secretary of the United States Treasury**~~[Notwithstanding any other provision of law to the contrary, if the science and technology organization determines that, despite all best efforts, it is not practicable for a qualified company to partner with a college or university on a project for which all other requirements are met, then the requirement to partner with a college or university may be waived]~~.
- (5) **For all funding totaling more than thirty thousand dollars (\$30,000), the science and technology organization or any entity designated by the executive director of the Office**

of Entrepreneurship and Small Business Innovation shall receive an equity interest in the qualified company, such as a general or limited partnership interest, limited liability company interest, common or preferred stock with or without voting rights and without regard to seniority position, forms of subordinate or convertible unsecured debt, or both, with warrants, rights, or other means of equity conversion attached, a near equity interest such as a simple agreements for future equity or "SAFE agreements", or other convertible debt instruments that are determined to qualify as an adequate investment interest by the executive director of the Office of Entrepreneurship and Small Business Innovation.

➔Section 47. KRS 164.6023 is amended to read as follows:

- (1) The science and technology organization shall have the authority, *upon approval by the cabinet,* to review applications, qualify companies, and certify qualified companies *to receive funding from*~~[under]~~ the Kentucky enterprise fund~~[Program]~~.
- (2) The science and technology organization shall develop application criteria and an application process subject to the following limitations. The proposed project shall be likely to:
 - (a) Produce a measurable result and be technically sound;
 - (b) Lead to innovative technology or new knowledge;
 - (c) Lead to commercially successful products, processes, or services within a reasonable period of time; or
 - (d) Show significant potential for stimulating economic growth and a reasonable probability to enhance employment opportunities within the Commonwealth.
- (3) The applicant shall provide to the science and technology organization an application that shall include but not be limited to the following information:
 - (a) Verification that the applicant is an eligible company that meets the definition of a

- Kentucky-based company and medium-size company or small company;
- (b) A technology description and plan that is sufficient for outside expert review;
 - (c) A detailed financial analysis that includes the commitment of resources by the applicant and others;
 - (d) Sufficient detail concerning proposed project partners, type and amount of work to be performed and financing to be contributed by each partner, and expected product or service with estimated costs to be reflected in the negotiated contract or agreement; and
 - (e) A statement of the economic development potential of the project.
- (4) The science and technology organization shall conduct an independent review with the use of outside experts to evaluate each application. Following the application review, the science and technology organization shall make a determination of the application and may determine that the applicant is a qualified company as defined in KRS 164.6011.
- (5) Upon a qualified company's presentation of a legal agreement or contract meeting the conditions under subsection (6) of this section, the science and technology organization shall present the qualified company, the project partners~~[partner]~~, if any, and the college or university in the Commonwealth, if any, with a certification authorizing funding.
- (6) Prior to receiving certification authorizing funding from the science and technology organization, the qualified company shall:
- (a) Negotiate an agreement and funding contract with a college or university in the Commonwealth, if any, and with a project partner, if any, that is satisfactory to the science and technology organization, to undertake the commercialization work; and
 - (b) Provide assurance to the science and technology organization that the college or university and the qualified company have negotiated the ownership and disposition of patents, royalties, all other intellectual property rights, and equity or related

position relating to the contract between the qualifying company and the college or university;

unless the requirement to partner with a college or university is **recommended to be waived by the science and technology organization**~~[waived under KRS 164.6021(4)]~~.

(7) Prior to certifying a qualified company, the science and technology organization may negotiate with the qualified company the ownership and disposition of patents, royalties, all other intellectual property rights, and an equity **, near equity such as a simple agreement for future agreement or "SAFE agreement", convertible debt, or similar investment format that is approved by the executive director of the Office of Entrepreneurship and Small Business Innovation**~~[or related position]~~ on behalf of the Kentucky Enterprise Fund for the sole purpose of reinvesting and sustaining a revolving fund to carry out the provisions of KRS 164.6021 and 164.6023.

(8) The science and technology organization, upon approval by the **cabinet**~~[council]~~, shall set forth guidelines as to when and how all areas of the state will be notified about the program's availability and a program schedule, including but not limited to the following:

(a) A review cycle including:

1. A deadline for submission of applications at least biannually; and
2. A deadline for reviewing applications of no more than one hundred twenty (120) days after the application submission deadline; and

(b) A deadline, from the date an applicant is determined to be a qualified company, by which certification shall be made. If certification is not made by that deadline the funding voucher award is made void.

➔Section 48. KRS 164.6027 is amended to read as follows:

On July 1, 2021, the Kentucky rural innovation fund shall cease making any further investments and shall be suspended. All funds, investments, unallocated or unencumbered

balances, rights, contractual rights and obligations, and earned income retained by the Kentucky rural innovation fund as of June 30, 2021, shall be transferred to the Kentucky enterprise fund and allocated and invested pursuant to the Kentucky enterprise fund's statutory mandate as provided in Sections 45, 46, and 47 of this Act. To the extent any costs are incurred in the transfer of such interests, those costs may be paid from the funds or from the general fund appropriation to the cabinet, as determined by the cabinet [There is established and created in the State Treasury a fund entitled the "Kentucky Rural Innovation Fund" for the purpose of enabling small, rural Kentucky-based firms to undertake research and development, and entrepreneurial innovation work in partnership with postsecondary institutions in the Commonwealth. The fund may receive state appropriations, gifts, grants, federal funds, revolving funds, and any other funds both public and private. Moneys deposited in the fund shall be disbursed by the State Treasurer upon the warrant of the secretary of the Finance and Administration Cabinet. Any unallocated or unencumbered balances in the fund shall be invested as provided in KRS 42.500(9), and any income earned from the investments along with the unallotted or unencumbered balances in the fund shall not lapse, and shall be deemed a trust and agency account and made available solely for the purposes and benefits of the Kentucky Rural Innovation Program].

➔Section 49. KRS 164.6035 is amended to read as follows:

(1) There is established and created in the State Treasury a fund entitled the "Kentucky Commercialization Fund" to provide seed funding for the development and commercialization of promising technologies at and emerging from colleges and universities in the Commonwealth. The fund may receive state appropriations, gifts, grants, federal funds, revolving funds, and any other funds both public and private. Moneys deposited in the fund shall be disbursed by the State Treasurer upon the warrant of the secretary of the Finance and Administration Cabinet. Any unallocated or unencumbered

balances in the fund shall be invested as provided in KRS 42.500(9), and any income earned from the investments along with the unallotted or unencumbered balances in the fund shall not lapse, and shall be deemed a trust and agency account and made available solely for the purposes and benefits of the Kentucky Commercialization Fund Program.

(2) The Kentucky Commercialization Fund shall be closed on July 1, 2021. All moneys remaining in the fund shall be deposited in the Kentucky enterprise fund created in Section 45 of this Act and shall be used for the purposes established under that section.

➔Section ➔50. KRS 218A.172 is amended to read as follows:

- (1) Administrative regulations promulgated under KRS 218A.205(3) shall require that, prior to the initial prescribing or dispensing of any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone to a human patient, a practitioner shall:
 - (a) Obtain a medical history and conduct a physical or mental health examination of the patient, as appropriate to the patient's medical complaint, and document the information in the patient's medical record;
 - (b) Query the electronic monitoring system established in KRS 218A.202 for all available data on the patient for the twelve (12) month period immediately preceding the patient encounter and appropriately utilize that data in the evaluation and treatment of the patient;
 - (c) Make a written plan stating the objectives of the treatment and further diagnostic examinations required;
 - (d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence; and
 - (e) Obtain written consent for the treatment.

-
- (2) (a) Administrative regulations promulgated under KRS 218A.205(3) shall require that a practitioner prescribing or dispensing additional amounts of Schedule II controlled substances or Schedule III controlled substances containing hydrocodone for the same medical complaint and related symptoms shall:
1. Review, at reasonable intervals based on the patient's individual circumstances and course of treatment, the plan of care;
 2. Provide to the patient any new information about the treatment; and
 3. Modify or terminate the treatment as appropriate.
- (b) If the course of treatment extends beyond three (3) months, the administrative regulations shall also require that the practitioner:
1. Query the electronic monitoring system established in KRS 218A.202 no less than once every three (3) months for all available data on the patient for the twelve (12) month period immediately preceding the query; and
 2. Review that data before issuing any new prescription or refills for the patient for any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone.
- (3) Administrative regulations promulgated under KRS 218A.205(3) shall require that, for each patient for whom a practitioner prescribes any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone, the practitioner shall keep accurate, readily accessible, and complete medical records which include, as appropriate:
- (a) Medical history and physical or mental health examination;
 - (b) Diagnostic, therapeutic, and laboratory results;
 - (c) Evaluations and consultations;
 - (d) Treatment objectives;
 - (e) Discussion of risk, benefits, and limitations of treatments;

- (f) Treatments;
 - (g) Medications, including date, type, dosage, and quantity prescribed or dispensed;
 - (h) Instructions and agreements; and
 - (i) Periodic reviews of the patient's file.
- (4) Administrative regulations promulgated under KRS 218A.205(3) may exempt, in whole or in part, compliance with the mandatory diagnostic, treatment, review, and other protocols and standards established in this section for:
- (a) A licensee prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure or the delivery and the medication usage does not extend beyond the fourteen (14) days;
 - (b) A licensee prescribing or administering a controlled substance necessary to treat a patient in an emergency situation;
 - (c) A licensed pharmacist or other person licensed by the Kentucky Board of Pharmacy to dispense drugs or a licensed pharmacy;
 - (d) A licensee prescribing or dispensing a controlled substance:
 - 1. For administration in a hospital or long-term-care facility if the hospital or long-term-care facility with an institutional account, or a practitioner in those hospitals or facilities where no institutional account exists, queries the electronic monitoring system established in KRS 218A.202 for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;

2. As part of the patient's hospice or end-of-life treatment;
 3. For the treatment of pain associated with cancer or with the treatment of cancer;
 4. In a single dose to relieve the anxiety, pain, or discomfort experienced by a patient submitting to a diagnostic test or procedure;
 5. Within seven (7) days of an initial prescribing or dispensing under subsection (1) of this section if the prescribing or dispensing:
 - a. Is done as a substitute for the initial prescribing or dispensing;
 - b. Cancels any refills for the initial prescription; and
 - c. Requires the patient to dispose of any remaining unconsumed medication;
 6. Within ninety (90) days of an initial prescribing or dispensing under subsection (1) of this section if the prescribing or dispensing is done by another practitioner in the same practice or in an existing coverage arrangement, if done for the same patient for the same medical condition; or
 7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federalwide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections, where the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;
- (e) The prescribing of a Schedule III, IV, or V controlled substance by a licensed optometrist to a patient in accordance with the provisions of KRS 320.240; or
- (f) The prescribing of a three (3) day supply of a Schedule III controlled substance following the performance of oral surgery by a dentist licensed pursuant to KRS Chapter 313.
- (5) (a) A state licensing board promulgating administrative regulations under KRS

Unofficial Document

218A.205(3) may promulgate an administrative regulation authorizing exemptions supplemental or in addition to those specified in subsection (4) of this section. Prior to exercising this authority, the board shall:

1. Notify the Kentucky Office of Drug Control Policy that it is considering a proposal to promulgate an administrative regulation authorizing exemptions supplemental or in addition to those specified in subsection (4) of this section and invite the office to participate in the board meeting at which the proposal will be considered;
 2. Make a factual finding based on expert testimony as well as evidence or research submitted to the board that the exemption demonstrates a low risk of diversion or abuse and is supported by the dictates of good medical practice; and
 3. Submit a report to the Governor and the Legislative Research Commission of its actions, including a detailed explanation of the factual and policy basis underlying the board's action. A copy of this report shall be provided to the regulations compiler.
- (b) Within one (1) working day of promulgating an administrative regulation authorizing an exemption under this section, the promulgating board shall e-mail to the Kentucky Office of Drug Control Policy:
1. A copy of the administrative regulation as filed, and all attachments required by KRS 13A.230(1); and
 2. A request from the board that the office review the administrative regulation in the same manner as would the Commission on Small Business **Innovation and** Advocacy under KRS 11.202(1)(e), and submit its report or comments in accordance with the deadline established in KRS 13A.270(1)(c). A copy of the

report or comments shall be filed with the regulations compiler.

➔Section 51. KRS 141.396 is amended to read as follows:

- (1) As used in this section:
 - (a) "Authority" has the same meaning as in KRS 154.20-230;
 - (b) "Qualified investor" has the same meaning as in KRS 154.20-230;
 - (c) "Qualified small business" has the same meaning as in KRS 154.20-230; and
 - (d) "Taxpayer" means an individual subject to the tax imposed by KRS 141.020, who has either:
 1. Received a credit from the authority pursuant to KRS 154.20-236; or
 2. Received a credit through a valid transfer allowed under this section from a qualified investor that was originally awarded the credit.
- (2) For taxable years beginning on or after January 1, 2015, there is hereby created the angel investor tax credit. The credit shall be nonrefundable, and shall apply against the tax imposed by KRS 141.020. The ordering of the credit shall be as provided in KRS 141.0205.
- (3) A qualified investor may seek a credit by applying to the authority pursuant to KRS 154.20-236.
- (4) The maximum amount of credit that may be claimed by a taxpayer in any taxable year shall not exceed fifty percent (50%) of the total amount of credit awarded or transferred to the taxpayer.
- (5) Any amount of credit that a taxpayer is unable to utilize during a taxable year may be carried forward for use in a succeeding taxable year for a period not to exceed fifteen (15) years. Any amount of credit not used within fifteen (15) years shall be lost. No amount of credit may be carried back by any taxpayer.
- (6) The credit shall not apply to any liability a taxpayer may have for interest, penalties, past

due taxes, or any other additions to the taxpayer's tax liability. The holder of the credit shall assume any and all liabilities and responsibilities of the credit.

- (7) A credit may be transferred by a qualified investor to any individual taxpayer. A qualified investor making a transfer shall give written notice to the department and shall provide any other information required by the department, in the manner prescribed by the department. Any transferred credit shall be subject to the original timeframes and requirements established by this section and KRS 154.20-230 to 154.20-240 as if held by the qualified investor.
- (8) To receive the credit, a taxpayer shall claim the credit on his or her return in the manner prescribed by the department.
- (9) The department shall recapture any portion, or the full amount, of a credit upon notification from the authority that a recapture is required pursuant to KRS 154.20-240.
- (10) In order for the General Assembly to evaluate the fulfillment of the purposes stated in KRS 154.20-232, the department and the Cabinet for Economic Development shall work jointly to submit the following information to the Interim Joint Committee on Appropriations and Revenue on or before May 1, 2019, and each May 1 thereafter, related to each taxable year that an angel investor credit is claimed on a return:
 - (a) The number of qualified small businesses certified by the authority;
 - (b) The demographics of each qualified small business, including:
 - 1. The net worth of the qualified small business;
 - 2. The qualified activity the qualified small business is actively and principally engaged in within the Commonwealth;
 - 3. The number of employees of the qualified small business;
 - 4. The location of the assets, operations, and employees of the qualified small business; and

5. The aggregate amount of qualified investments received by the qualified small business;
- (c) A list detailing each qualified investor certified by the authority, the amount of investment made by each qualified investor, the date each qualified investment is made by the qualified investor, and the amount of tax credit awarded each investor;
 - (d) By taxable year, the amount of tax credit claimed by each investor and the amount of credit available to be claimed in future taxable years;
 - (e) The number of qualified small businesses that are active, inactive, or closed that have received qualified investments;
 - (f) The number of qualified small businesses that have established a location in the Commonwealth and the number that have expanded operations, the number and location of each new job created, a description of each development of new products and technologies in the Commonwealth, and the field of operation for that growth, including knowledge-based, high-tech, or research and development; and
 - (g) The total amount of tax credit awarded for each fiscal year.
- (11) If either the department or the Cabinet for Economic Development does not currently have the data to fulfill the reporting requirement of subsection (10) of this section, the department and the cabinet shall work jointly to obtain the data in an expedient manner to provide the report on or before the May 1, 2019, report date.

➔Section 52. The following KRS sections are repealed:

- 164.6031 Authority of the science and technology organization to review applications, grant awards to qualifying companies, and certify qualified companies.
- 164.6033 Limitations upon project funding in the Kentucky Rural Innovation Program.
- 164.6037 Kentucky Commercialization Fund Program -- Purposes.
- 164.6039 The science and technology organization to review, evaluate, and recommend

proposal applications submitted by universities and report to council -- Council's power to approve program fund awards.

164.6041 Limitations upon project funding in the Kentucky Commercialization Fund Program.