AN ACT relating to economic development and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Approved company" has the same meaning as in Sections 9 and 13 of this Act;

(b) "Authority" has the same meaning as in Sections 9 and 13 of this Act; and

(c) "Credit" means the economic development credit provided to an approved company by the authority in accordance with Section 10 or 17 of this Act.

(2) (a) For taxable years beginning on or after January 1, 2026, there shall be allowed an economic development credit to an approved company. The credit shall be refundable, nontransferable, and allowed against the tax imposed under KRS 141.020 or 141.040 and 141.0401, with the ordering of the credit as provided in Section 2 of this Act.

(b) In the case of a pass-through entity not subject to the tax imposed by KRS 141.040, the credit shall be taken against the tax imposed by KRS 141.0401 and shall be claimed by the partners, members, or shareholders in accordance with their proportionate share of income.

(c) The amount of the credit that may be claimed in a taxable year by the approved company shall be equal to the amount determined in accordance with Section 10 or 17 of this Act, as applicable, except the total amount of credits claimed by all approved companies under Sections 10 and 17 of this Act shall not exceed two million dollars ($2,000,000) per taxable year.

(3) (a) The department shall:

1. Promulgate administrative regulations in accordance with KRS Chapter 13A to administer the credit;

2. Work with the authority to determine the approved amount of credit or apportionable share of credit available to be claimed in any taxable year on a return as filed by an approved company or each partner, member, or shareholder of an approved company; and

3. Report the following to the authority on the credits claimed under this section:

a. The total amount of credit awarded for each taxable year, by county;

b. Each taxpayer claiming a credit; and

c. The total amount of wages paid to a full-time employee by an approved company and included in its credit computation.

(b) The information required to be reported under this subsection shall not be considered confidential taxpayer information and shall not be subject to KRS Chapter 131 or any other provisions of the Kentucky Revised Statutes prohibiting disclosure or reporting of information.

➔Section 2. KRS 141.0205 is amended to read as follows:

If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of the credits shall be determined as follows:

(1) The nonrefundable business incentive credits against the tax imposed by KRS 141.020 shall be taken in the following order:

(a) The limited liability entity tax credit permitted by KRS 141.0401;

(b) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.3841, 141.400, 141.403, 141.407, 141.415, 154.12-207, and 154.12-2088;

(c) The qualified farming operation credit permitted by KRS 141.412;

(d) The certified rehabilitation credit permitted by KRS 171.397(1)(a);

(e) The health insurance credit permitted by KRS 141.062;

(f) The tax paid to other states credit permitted by KRS 141.070;

(g) The credit for hiring the unemployed permitted by KRS 141.065;

(h) The recycling or composting equipment credit permitted by KRS 141.390;

(i) The ~~[tax]~~credit for cash contributions in investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;

(j) The research facilities credit permitted by KRS 141.395;

(k) The employer High School Equivalency Diploma program incentive credit permitted under KRS 151B.402;

(l) The voluntary environmental remediation credit permitted by KRS 141.418;

(m) The biodiesel and renewable diesel credit permitted by KRS 141.423;

(n) The clean coal incentive credit permitted by KRS 141.428;

(o) The ethanol credit permitted by KRS 141.4242;

(p) The cellulosic ethanol credit permitted by KRS 141.4244;

(q) The energy efficiency credits permitted by KRS 141.436;

(r) The railroad maintenance and improvement credit permitted by KRS 141.385;

(s) The Endow Kentucky credit permitted by KRS 141.438;

(t) The New Markets Development Program credit permitted by KRS 141.434;

(u) The distilled spirits credit permitted by KRS 141.389;

(v) The angel investor credit permitted by KRS 141.396;

(w) The film industry credit permitted by KRS 141.383 for applications approved on or after April 27, 2018, but before January 1, 2022;

(x) The inventory credit permitted by KRS 141.408;

(y) The renewable chemical production credit permitted by KRS 141.4231; and

(z) The qualified broadband investment ~~[tax]~~credit permitted by KRS 141.391;

(2) After the application of the nonrefundable credits in subsection (1) of this section,

the nonrefundable personal tax credits against the tax imposed by KRS 141.020 shall be taken in the following order:

(a) The individual credits permitted by KRS 141.020(3);

(b) The credit permitted by KRS 141.066;

(c) The tuition credit permitted by KRS 141.069;

(d) The household and dependent care credit permitted by KRS 141.067;

(e) The income gap credit permitted by KRS 141.066; and

(f) The Education Opportunity Account Program ~~[tax]~~credit permitted by KRS 141.522;

(3) After the application of the nonrefundable credits provided for in subsection (2) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:

(a) The individual withholding tax credit permitted by KRS 141.350;

(b) The individual estimated tax payment credit permitted by KRS 141.305;

(c) The certified rehabilitation credit permitted by KRS 171.3961, 171.3963, and 171.397(1)(b);

(d) The film industry ~~[tax]~~credit permitted by KRS 141.383 for applications approved prior to April 27, 2018, or on or after January 1, 2022;

(e) The development area ~~[tax]~~credit permitted by KRS 141.398;

(f) The decontamination ~~[tax]~~credit permitted by KRS 141.419;~~[and]~~

(g) The pass-through entity tax credit permitted by KRS 141.209; ***and***

(h) The economic development credit permitted by Section 1 of this Act;

(4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the tax imposed by KRS 141.040;

(5) The following nonrefundable credits shall be applied against the sum of the tax imposed by KRS 141.040 after subtracting the credit provided for in subsection (4) of this section, and the tax imposed by KRS 141.0401 in the following order:

(a) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.3841, 141.400, 141.403, 141.407, 141.415, 154.12-207, and 154.12-2088;

(b) The qualified farming operation credit permitted by KRS 141.412;

(c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);

(d) The health insurance credit permitted by KRS 141.062;

(e) The unemployment credit permitted by KRS 141.065;

(f) The recycling or composting equipment credit permitted by KRS 141.390;

(g) The coal conversion credit permitted by KRS 141.041;

(h) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods ending prior to January 1, 2008;

(i) The ~~[tax]~~credit for cash contributions to investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;

(j) The research facilities credit permitted by KRS 141.395;

(k) The employer High School Equivalency Diploma program incentive credit permitted by KRS 151B.402;

(l) The voluntary environmental remediation credit permitted by KRS 141.418;

(m) The biodiesel and renewable diesel credit permitted by KRS 141.423;

(n) The clean coal incentive credit permitted by KRS 141.428;

(o) The ethanol credit permitted by KRS 141.4242;

(p) The cellulosic ethanol credit permitted by KRS 141.4244;

(q) The energy efficiency credits permitted by KRS 141.436;

(r) The ENERGY STAR home or ENERGY STAR manufactured home credit permitted by KRS 141.437;

(s) The railroad maintenance and improvement credit permitted by KRS 141.385;

(t) The railroad expansion credit permitted by KRS 141.386;

(u) The Endow Kentucky credit permitted by KRS 141.438;

(v) The New Markets Development Program credit permitted by KRS 141.434;

(w) The distilled spirits credit permitted by KRS 141.389;

(x) The film industry credit permitted by KRS 141.383 for applications approved on or after April 27, 2018, but before January 1, 2022;

(y) The inventory credit permitted by KRS 141.408;

(z) The renewable chemical production ~~[tax]~~credit permitted by KRS 141.4231;

(aa) The Education Opportunity Account Program ~~[tax]~~credit permitted by KRS 141.522; and

(ab) The qualified broadband investment ~~[tax]~~credit permitted by KRS 141.391; and

(6) After the application of the nonrefundable credits in subsection (5) of this section, the refundable credits shall be taken in the following order:

(a) The corporation estimated tax payment credit permitted by KRS 141.044;

(b) The certified rehabilitation credit permitted by KRS 171.3961, 171.3963, and 171.397(1)(b);

(c) The film industry ~~[tax]~~credit permitted by KRS 141.383 for applications approved prior to April 27, 2018, or on or after January 1, 2022;

(d) The decontamination ~~[tax]~~credit permitted by KRS 141.419;~~[and]~~

(e) The pass-through entity tax credit permitted by KRS 141.209***; and***

(f) The economic development credit permitted by Section 1 of this Act.

➔Section 3. KRS 131.190 is amended to read as follows:

(1) No present or former commissioner or employee of the department, present or former member of a county board of assessment appeals, present or former property valuation administrator or employee, present or former secretary or employee of the Finance and Administration Cabinet, former secretary or employee of the Revenue Cabinet, or any other person, shall intentionally and without authorization inspect

or divulge any information acquired by him or her of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the department or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business.

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

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

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

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

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

(e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or energy resources assessed under KRS 132.820, or owners of surface land under which the unmined minerals lie, factual information about the owner's property derived from third-party returns filed for that owner's property, under the provisions of KRS 132.820, that is used to determine the owner's assessment. This information shall be provided to the owner on a confidential basis, and the owner shall be subject to the penalties provided in KRS 131.990(2). The third-party filer shall be given prior notice of any disclosure of information to the owner that was provided by the third-party filer;

(f) Providing to a third-party purchaser pursuant to an order entered in a foreclosure action filed in a court of competent jurisdiction, factual information related to the owner or lessee of coal, oil, gas reserves, or any other mineral resources assessed under KRS 132.820. The department may promulgate an administrative regulation establishing a fee schedule for the provision of the information described in this paragraph. Any fee imposed shall not exceed the greater of the actual cost of providing the information or ten dollars ($10);

(g) Providing information to a licensing agency, the Transportation Cabinet, or the Kentucky Supreme Court under KRS 131.1817;

(h) Statistics of gasoline and special fuels gallonage reported to the department under KRS 138.210 to 138.448;

(i) Providing any utility gross receipts license tax return information that is necessary to administer the provisions of KRS 160.613 to 160.617 to applicable school districts on a confidential basis;

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

(k) Publishing administrative writings on its official website in accordance with KRS 131.020(1)(b); or

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

1. KRS 139.519 for purposes of the sales and use tax refund on building materials used for disaster recovery;
2. KRS 141.436 for purposes of the energy efficiency products credits;
3. KRS 141.437 for purposes of the ENERGY STAR home and the ENERGY STAR manufactured home credits;
4. KRS 141.383 for purposes of the film industry incentives;
5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization credit and the job assessment fees;
6. KRS 141.068 for purposes of the Kentucky investment fund;

7. KRS 141.396 for purposes of the angel investor credit;
8. KRS 141.389 for purposes of the distilled spirits credit;
9. KRS 141.408 for purposes of the inventory credit;
10. KRS 141.390 for purposes of the recycling and composting credits;
11. KRS 141.3841 for purposes of the selling farmer credit;
12. KRS 141.4231 for purposes of the renewable chemical production credit;
13. KRS 141.524 for purposes of the Education Opportunity Account Program credit;
14. KRS 141.398 for purposes of the development area credit;
15. KRS 139.516 for purposes of the sales and use tax exemptions for the commercial mining of cryptocurrency;
16. KRS 141.419 for purposes of the decontamination credit;
17. KRS 141.391 for purposes of the qualified broadband investment credit;
18. KRS 139.499 for purposes of the sales and use tax exemptions for a qualified data center project;~~[and]~~
19. KRS 139.5325 for purposes of the sales and use tax incentive for a qualifying attraction***; and***
20. Section 1 of this Act for purposes of the economic development credit.

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

(4) Access to and inspection of information received from the Internal Revenue Service is for department use only, and is restricted to tax administration purposes. Information received from the Internal Revenue Service shall not be made available

to any other agency of state government, or any county, city, or other state, and shall not be inspected intentionally and without authorization by any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the department, or any other person.

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

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

➔Section 4. 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 KRS 154.32-010;

(2) "Alternative fuel production" has the same meaning as in KRS 154.32-010;

(3) "Applicant" means a 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) "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) "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***, equipment,*** 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) "Board" means the board of directors of the Bluegrass State Skills Corporation;

(7) "Carbon dioxide or hydrogen transmission pipeline" has the same meaning as in KRS 154.32-010;

(8) "Coal severing and processing" has the same meaning as in KRS 154.32-010;

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

(10) "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) "Employee" means any person ***who is***:

(a) ~~[Who is]~~Currently a permanent full-time employee of the qualified company;

(b) ***Subject to the tax imposed by KRS 141.020***~~[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 KRS 154.32-010;

(13) "Gasification production" has the same meaning as in KRS 154.32-010;

(14) "Grant-in-aid" means funding that is provided to 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 KRS 154.32-010;

(16) ***"Heritage county" means a county where the county population ranking determined by the cabinet under Section 7 of this Act scores greater than or equal to ninety-seven (97);***

(17) "Hospital" has the same meaning as in KRS 154.32-010;

(18)~~[(17)]~~ "Manufacturing" has the same meaning as in KRS 154.32-010;

(19)~~[(18)]~~ "Minimum base hourly wage" means the minimum wage amount paid to an employee by a qualified company, which shall not be less than***:***

(a) Two~~[One]~~ hundred fifty percent ***(250%)***~~[(150%)]~~ of the federal minimum wage ***for a company located in a heritage county; or***

(b) Three hundred fifty percent (350%) of the federal minimum wage for a

company located in any other county;

(20)~~[(19)]~~ "Nonretail service or technology" ***has***~~[means]~~ the same ***meaning*** as in KRS 154.32-010;

(21)~~[(20)]~~ "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;

(22)~~[(21)]~~ "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;

(23)~~[(22)]~~ (a) "Qualified company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other legal entity through which business is conducted 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. Headquarter operations, regardless of the underlying business activity of the company;
5. Alternative fuel, gasification, energy-efficient alternative fuel, or renewable energy production;
6. Carbon dioxide or hydrogen 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, the provision of utilities, construction, wholesale trade, retail trade, real estate, rental and leasing, accommodation and food services, or public administration services;

(24)[~~(23)~~] "Renewable energy production" means the same as in KRS 154.32-010;

(25)[~~(24)~~] "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;

(26)[~~(25)~~] "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

(27)[~~(26)~~] "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 5. 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 qualified companies, not in excess of five hundred thousand

dollars ($500,000) 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 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 ***four thousand dollars ($4,000)***~~[two thousand dollars ($2,000)]~~ per trainee ***for an approved company in a heritage county and three thousand dollars ($3,000) per trainee for an approved company located in any other county,*** and, in the aggregate, not to exceed five hundred thousand dollars ($500,000) for each approved company per fiscal year. The corporation shall only approve one (1) application per fiscal year for each approved company.

(3) 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) A proposal for a program of skills upgrade training, occupational upgrade training, and education;

(b) A description of each component of the proposed training program and the number of employee training hours requested; and

(c) 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.

(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 are inadequate to attract the technical assistance and financial support necessary from a qualified company.

(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 shall not exceed two million five hundred thousand dollars ($2,500,000) for each fiscal year. 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 ***three (3) years***[~~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 6. KRS 154.21-015 is amended to read as follows:

As used in KRS 154.21-010 to 154.21-040:

(1) "Cabinet" means the Cabinet for Economic Development;

(2) "County population ranking" means the score of each county determined by the cabinet under KRS 154.21-017;

(3) "Eligible grant recipient" means a grant applicant that is a local government or an economic development authority in an economic development district in this Commonwealth that is engaged in an eligible project;

(4) "Eligible project":

(a) Means an economic development project initiated on a property that meets the availability requirements in KRS 154.21-035(3); and

(b) Requires local matching funds based on the county population ranking;

(5) "Eligible use":

(a) Means the authorized purpose for which an awarded grant may be used depending on the source of funds from the Commonwealth; and

(b) May include expenditures in any of the following categories or some combination thereof:

1. Due diligence study;

2. Property acquisition;

3. Infrastructure extension or improvement;

4. Site preparation work;

5. Building construction or renovation; or

6. Road improvement;

(6) ***"Heritage county" means a county where the county population ranking determined by the cabinet under Section 7 of this Act scores greater than or equal to ninety-seven (97);***

(7) "Population density":

(a) Means the number of persons per square mile of a county;

(b) Is calculated by dividing the total county population by the square miles in the county;

(c) Is determined by using the population estimate from the most recent available five (5) year American Community Survey as published by the United States Census Bureau; and

(d) Is used to rank each county in descending order, with the county having the largest population density receiving a rank of one (1) and the county with the smallest population density receiving a rank of one hundred twenty (120);

(8)~~[(7)]~~ "Regional project" means an eligible project that is proposed by eligible grant recipients residing in different counties in this Commonwealth who submit a single grant application as co-applicants; and

(9)~~[(8)]~~ "Ten (10) year percentage change in population":

(a) Means the percentage change in population within a county;

(b) Is determined by comparing the population estimate from the most recent available five (5) year American Community Survey as published by the United States Census Bureau to the same survey ten (10) years prior to the most recent available survey; and

(c) Is used to rank each county in descending order, with the county having the largest positive percentage change in population receiving a rank of one (1) and the county with the largest negative percentage change receiving a rank of one hundred twenty (120).

➔Section 7. KRS 154.21-017 is amended to read as follows:

(1) The Kentucky Product Development Initiative of 2024 is hereby established under the cabinet. The cabinet shall partner with the Kentucky Association for Economic Development to administer the program. The cabinet's administration of the program includes:

(a) Creating and making available a standardized grant application and regional grant application;

(b) Adopting a standardized scoring system pursuant to KRS 154.21-040;

(c) Reviewing the applications and proposals submitted by the proposed grant recipients;

(d) Verifying the eligibility of the proposed grant recipients;

(e) Verifying that the proposed grant recipient seeks grant money for an eligible project prior to prioritizing all eligible projects;

(f) Determining the county's population ranking under subsection (3) of this section;

(g) Awarding grants to selected eligible grant recipients in multiple rounds of funding; and

(h) Compiling and submitting the reports required by subsections (3) and (5) of this section.

(2) Upon receipt of eligible grant recipients and eligible project recommendations and prioritization from the Kentucky Association for Economic Development and the third-party independent site selection consultant, the cabinet shall verify and process the eligible grant recipients and eligible project recommendations with the intent to approve and award grants under the economic development fund program pursuant to KRS 154.12-100 and based on the following criteria:

(a) Consideration of whether the eligible grant recipient had received a grant award from the Kentucky Product Development Initiative of 2022 under KRS 154.21-020; and

(b) The matching funds for the selected grant recipient's contribution to its eligible project based on the county population ranking determined under subsection (3) of this section.

(3) (a) On or before June 1, 2024, and no later than June 1 every two (2) years

thereafter, the cabinet shall determine a county population ranking for each county by adding the following two (2) factors:

1. The population density ranking; and

2. The ten (10) year percentage change in population ranking.

(b) The required local match for each county shall be as follows:

1. Eligible projects in counties where the county population ranking is greater than or equal to one hundred ninety-three (193) shall provide a minimum amount of local matching funds equal to ten percent (10%) of the project cost;

2. Eligible projects in counties where the county population ranking is less than one hundred ninety-three (193) but greater than or equal to one hundred forty-five (145) shall provide a minimum amount of local matching funds equal to twelve and one-half percent (12.5%) of the project cost;

3. Eligible projects in counties where the county population ranking is less than one hundred forty-five (145) but greater than or equal to ninety-seven (97) shall provide a minimum amount of local matching funds equal to fifteen percent (15%) of the project cost;

4. Eligible projects in counties where the county population ranking is less than ninety-seven (97) but greater than or equal to forty-nine (49) shall provide a minimum amount of local matching funds equal to seventeen and one-half percent (17.5%) of the project cost;

5. Eligible projects in counties where the county population ranking is less than forty-nine (49) shall provide a minimum amount of local matching funds equal to twenty percent (20%) of the project cost; and

6. For eligible projects requesting due diligence as an eligible use, the due diligence must be completed prior to acquisition of the site. If the due

diligence result leads to the decision to not purchase the site, then the cabinet may expend up to two hundred thousand dollars ($200,000) with no local matching funds required. If the amount to be reimbursed by the cabinet exceeds two hundred thousand dollars ($200,000), the cabinet shall report to the Interim Joint Committee on Appropriations and Revenue, or the Senate Standing Committee on Appropriations and Revenue and the House Standing Committee on Appropriations and Revenue, within five (5) days of the disbursement. The report shall include the name and county location of the eligible project approved, the amount of the grant awarded, the amount of the funding disbursed for due diligence and the extenuating circumstances related to the due diligence study.

(c) On or before July 1, 2024, and no later than July 1 every two (2) years thereafter, the cabinet shall report to the Legislative Research Commission and the Interim Joint Committee on Appropriations and Revenue the following information for each county:

1. The county name;
2. The population density ranking for that county;
3. The ten (10) year percentage change in population ranking for that county; and
4. The county population ranking for that county.

(d) When awarding grants in this initiative, the cabinet shall not award grants to:

1. An eligible grant recipient or a group of eligible grant recipients in excess of the amount allocated to the county in which the county is located, except when pooled pursuant to subsection (4) of this section; or
2. An eligible grant recipient that received a grant award from the

Kentucky Product Development Initiative of 2022 prior to all other eligible grant recipients receiving a grant award from the Kentucky Product Development Initiative of 2024 if the eligible project scores are equal to or above the score of an eligible project from an eligible grant recipient who received a grant award from the Kentucky Product Development Initiative of 2022 under KRS 154.21-040, and in the case where the scores are equal, discretion by the Kentucky Association for Economic Development and the cabinet shall be used.

(e) The maximum funding available for an approved development project is ***two million four hundred thousand dollars ($2,400,000) in a heritage county and*** two million dollars ($2,000,000) ***in any other***[~~per~~] county, except as permitted by subsection (4) of this section.

(f) If there are funds available after the first round of grant awards of the Kentucky Product Development Initiative of 2024, the cabinet shall initiate additional rounds of grant awards.

(4) (a) For selected eligible grant recipients that are involved in a regional project, the cabinet may pool the potential allocation of funds available for each county represented by the eligible grant recipients for the grant amount awarded.

(b) A county that is an eligible grant recipient involved in a regional project shall provide that county's local matching funds based on the county population ranking determined under subsection (3) of this section and each county's local matching funds may be pooled as described in paragraph (a) of this subsection.

(5) Beginning no later than November 1, 2024, and annually thereafter until the authorized appropriation is spent or returned, the cabinet shall compile and submit a report for each application approved by the Kentucky Economic Development

Finance Authority for the Kentucky Product Development Initiative of 2024. The report shall be electronically delivered to the Legislative Research Commission and the Interim Joint Committee on Appropriations and Revenue and contain the following information:

(a) The name of the applicant, a description of the eligible project, and the location of each proposed project for which an application was approved;

(b) The date the application was approved by the Kentucky Economic Development Finance Authority;

(c) The amount of funding authorized for each project approved;

(d) The total amount of funding disbursed for each project approved; and

(e) The round of funding for which each project received approval.

(6) The Kentucky Product Development Initiative of 2024 shall begin July 1, 2024.

➔Section 8. KRS 154.21-035 is amended to read as follows:

(1) The Kentucky Association for Economic Development shall evaluate each applicant's eligible project according to the criteria described in this section and KRS 154.21-040 for the purposes of compiling a recommendation and score for the eligible project and project site pursuant to KRS 154.21-040.

(2) The Kentucky Association for Economic Development and the third-party independent site selection consultant shall consider the requirements in the following five (5) categories in the evaluation of proposed projects:

(a) Property availability as described in subsection (3) of this section;

(b) Property development ability as described in subsection (4) of this section;

(c) Zoning availability as described in subsection (5) of this section;

(d) Transportation accessibility as described in subsection (6) of this section; and

(e) Utility adequacy as described in subsection (7) of this section.

(3) The property that the eligible project occupies or is proposed to occupy shall be available. Property shall be deemed available for the purposes of this program:

(a) If the property is publicly owned; or

(b) If the project's eligible use includes property acquisition or a due diligence study. In this situation the application shall include one (1) of the following:

1. A legally binding letter of intent or option for the sale to an eligible grant recipient; or

2. An agreement for the sale to an eligible recipient.

(4) The property that the eligible project occupies or is proposed to occupy shall be developable. Property shall be deemed developable if:

(a) The acreage intended for development is clearly defined by either:

1. The grant applicant; or

2. An engineering partner during or after a site visit, if the applicant is unable to define the developable acreage; and

(b) The property is free of impediments to development, or a known impediment can be mitigated by a grant applicant. A property is free of impediments if it:

1. Is located outside of the one hundred (100) year and five hundred (500) year flood zone;

2. Is free of recognized environmental conditions;

3. Is free of wetlands;

4. Is free of state and federally threatened and endangered species;

5. Is free of areas of archaeological or historical significance; and

6. Possesses soils compatible with the grant applicant's intended development.

(5) The property that the eligible project occupies or is proposed to occupy shall be appropriately zoned for the intended use or shall be able to be rezoned within ninety (90) calendar days. The properties surrounding the grant applicant's project site shall be zoned so they are compatible with the grant applicant's intended development and use of the project site.

(6) The property that the eligible project occupies or is proposed to occupy shall be directly served by a road or roads that are compatible with the intended use of the property. Additionally, if the property is marketed as rail-served, the property shall be deemed rail-served if:

(a) The grant applicant provides documentation from the rail provider that evinces that rail infrastructure exists and the rail provider actually provides rail service; or

(b) If the rail service does not exist at the time of the grant application, the grant applicant provides documentation from the rail provider that evinces that the project site will be able to be rail-served within twelve (12) months.

(7) The property that the eligible project occupies or is proposed to occupy shall have access to adequate utilities and shall be served or able to be served by the following:

(a) Electric infrastructure;

(b) Natural gas ***or propane***;

(c) Water infrastructure and a public water system;

(d) Wastewater infrastructure and a public wastewater treatment plant, excluding a septic wastewater treatment system; and

(e) Fiber telecommunications infrastructure.

➔Section 9. KRS 154.25-010 is amended to read as follows:

As used in this subchapter:

(1) "Activation date" means a date selected by an approved company and set forth in the jobs retention agreement at any time within a three (3) year period after the date of final approval of the agreement by the authority upon which the required investment shall be made and the jobs retention project completed;

(2) "Agreement" means a jobs retention agreement entered into pursuant to KRS 154.25-030 on behalf of the authority and an approved company with respect to a

jobs retention project;

(3) "Agribusiness" has the same meaning as in KRS 154.32-010;

(4) "Approved company" means any eligible company approved by the authority pursuant to KRS 154.25-030 for a jobs retention project;

(5) "Approved costs" means that portion of the eligible costs approved by the authority that an approved company may recover through the inducements authorized by KRS 154.25-030, being a percentage of eligible costs as approved by the authority;

(6) "Assessment" means the wage assessment fee authorized by KRS 154.25-040;

(7) "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;

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

(9) "Eligible company"***:***

(a) Means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity that has been operating within the Commonwealth on a continuous basis for at least sixty (60) months preceding the request for approval by the authority of the project which meets the standards set forth in KRS 154.25-020, has been previously approved for economic development incentives from the Commonwealth related to one (1) or more of its facilities, and employs a minimum of ***two hundred fifty (250) full-time persons for a project located in a heritage county or*** one thousand (1,000) full-time persons ***for a project located in any other county,*** engaged in one (1) or more of the following activities:

1.[~~(a)~~] Manufacturing;

2.[~~(b)~~] Agribusiness;

3.[~~(c)~~] Nonretail service or technology; or

4.[~~(d)~~] Headquarters operations, regardless of the underlying business activity of the company***; and***~~[.]~~

(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;

(10) "Eligible costs" means:

(a) 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 jobs retention project;

(b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of a jobs retention project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;

(c) 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 jobs retention project;

(d) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, rehabilitation, and installation of a jobs retention project;

(e) All costs required for the installation of utilities, including but not limited to water, sewer, sewer treatment, gas, electricity, communications, and railroads, and including off-site construction of the facilities paid for by the approved company; and

(f) All other costs comparable with those described above;

(11) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter;

(12) "Headquarters" has the same meaning as in KRS 154.32-010;

(13) ***"Heritage county" means a county where the county population ranking determined by the cabinet under Section 7 of this Act scores greater than or equal to ninety-seven (97);***

(14) "Inducements" means the Kentucky tax credit and the wage assessment fee as prescribed in KRS 154.25-030 and 154.25-040;

(15)[~~(14)~~] "Jobs retention project" or "project" means 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 acquisition, construction, and installation of new equipment, including surveys; installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located; and shall contain eligible costs of not less than ***twenty-five million dollars ($25,000,000) for a project located in a heritage county or*** one hundred million dollars ($100,000,000) ***for a project located in any other county***, all of which are utilized to improve the economic and operational situation of an approved company to allow the approved company to reinvest in its operations and retain a significant number of existing jobs within the Commonwealth;

(16)[~~(15)~~] "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401;

(17)[~~(16)~~] "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401;

(18)[~~(17)~~] "Manufacturing" has the same meaning as in KRS 154.32-010;

(19)[~~(18)~~] "Nonretail service or technology" has the same meaning as in KRS 154.32-

010;

(20)~~[(19)]~~ "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements under this subchapter;

(21)~~[(20)]~~ "Supplemental project" means an additional jobs retention project proposed by the approved company or its affiliate during the term of a previously approved jobs retention project, which may be included in the jobs retention agreement by way of amendment and which may result in increased inducements and an extension of the original project term as set forth in KRS 154.25-050; and

(22)~~[(21)]~~ "Transferred credits" means unused approved costs as determined by the Department of Revenue from a previously approved, independent, active project under a different incentive program governed by the Cabinet for Economic Development that may be transferred to a jobs retention project and used by the approved company pursuant to a jobs retention agreement.

➔Section 10. KRS 154.25-030 is amended to read as follows:

(1) The authority, upon adoption of its final approval, may enter into, with any approved company, an agreement with respect to the jobs retention project. The terms and provisions of each agreement, including the amount of approved costs, the amount of the inducement, the job maintenance requirement, and any limitations the authority may deem necessary, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:

(a) The amount the approved company may recover through inducements under this subchapter for the initial project, which shall be a negotiated percentage not to exceed fifty percent (50%) of eligible costs. However, the authority may negotiate an increase in the percentage such that both the initial project and any supplemental projects are eligible for seventy-five percent (75%) of eligible costs upon approval of a supplemental project. The adjustment to the initial project shall be made on the total approved costs and any credits taken prior to the addition of a supplemental project shall then be subtracted from that increased amount of approved costs. Neither the initial project nor any supplemental project shall ever be eligible for inducements greater than seventy-five percent (75%) of the eligible costs. The authority shall negotiate a maximum allowable inducement for each year of the agreement, and the approved company may not recover inducements above that maximum in any year during the term of the agreement, except that the annual maximum allowable inducement may be exceeded if a carry-forward of unused inducements from previous years exists. Any carry-forward of unused inducements will lapse upon maturity or termination of the agreement;

(b) A provision that sets the activation date for the initial project within three (3) years of the final approval. Prior to the activation date, the authority may extend the time for the completion of the jobs retention project and compliance with the required investment upon request of the approved company for good cause; however, the ten (10) year period for the term of the agreement shall begin from the activation date. No inducements from the jobs retention project shall be available, other than the transferred credits provided for under subsection (2) of this section, until activation. Upon activation, the balance of transferred credits shall expire;

(c) A provision that states that within three (3) months of the completion of the jobs retention project, the approved company shall document the actual cost of the project in a manner acceptable to the authority. The authority may employ an independent consultant or utilize technical resources to verify the cost of the project. The approved company shall reimburse the authority for the cost of the consultant;

(d) A provision that establishes a minimum required number of full-time jobs that must be maintained at the site of the jobs retention project and filled with residents of the Commonwealth subject to Kentucky income tax and states that the authorized inducements may be suspended at the discretion of the authority from the date of noncompliance until the date compliance is reestablished if the approved company's employment falls below the established minimum employment requirement. If the company does not increase the number of full-time employees at the site who are residents of the Commonwealth and subject to Kentucky income tax sufficiently to meet the minimum employment requirement within one (1) year from the date of the initial suspension, the remaining unused inducements may be terminated at the discretion of the authority;

(e) A provision that gives the authority discretion to suspend or terminate the authorized inducements for any failure to comply with the terms of the agreement; and

(f) ***1.*** A provision that provides the term shall not be longer than the earlier of:

a.~~[1.]~~The date on which the approved company has received inducements or withheld assessments equal to the amount that the company may recover under paragraph (a) of this subsection; or

b.~~[2.]~~Ten (10) years from the activation date.

2. ~~[However,]~~The term ***in subparagraph 1. of this paragraph*** may be extended to a period longer than ten (10) years upon***:***

a. The approved company demonstrating that less than seventy-five percent (75%) of the incentives awarded under the agreement will be claimed during the term of the agreement; or

b. The addition of a supplemental project as negotiated and approved by the authority.

<u>An extension of the term shall not amend any provision of the agreement impacting the scope of the project or the maximum amount of incentives awarded under the agreement.</u>

(2) In consideration of the execution of the agreement, during the time the agreement is in effect, which time shall commence on the date of the agreement, the approved company may be permitted the following inducements:

(a) Beginning on the effective date of the jobs retention agreement, which shall also be the date of final approval, if the approved company has a balance of unused approved costs on a previously existing and active incentive agreement approved by the authority pursuant to KRS Chapter 154, the approved company may impose wage assessments on employees whose jobs are at the facility where the project defined in the previously existing incentive agreement was located. The wage assessments may be imposed as provided in KRS 154.25-040, and shall be available in an amount up to the balance of transferred credits from the previously existing project.

1. The transferred credits shall only be available to the approved company until the activation date, the term from the original incentive agreement expires, or the balance of transferred credits is exhausted, whichever occurs first; and

2. Should the approved company exercise this option, the incentive agreement from which the credits were transferred shall be terminated upon transfer and all parties shall be released from their obligations thereunder.

(b) After the activation date:

1. A one hundred percent (100%) credit against the taxes imposed by KRS 141.020, 141.040, and 141.0401 that would otherwise be owed by the approved company, in the approved company's taxable year, as

determined under KRS 141.402, on the taxable income, Kentucky gross receipts, or Kentucky gross profits of the approved company generated by or arising from the jobs retention project. The ordering of credits shall be as provided in KRS 141.0205;

2. The aggregate assessment withheld by the approved company as provided in KRS 154.25-040 in each year after the activation date;

(c) The tax credits allowed to the approved company shall be equal to the lesser of the total amount of the tax liability or the amount that the company may recover under subsection (1)(a) of this section that has not yet been recovered, reduced by any recovery through the collection of assessments subject to the annual maximum inducements authorized pursuant to subsection (1)(a) of this section. The credit shall be allowed for each taxable year of the approved company during the term of the agreement and for which a tax return of the approved company is filed until the amount that the company may recover under subsection (1)(a) of this section has been received through a combination of credits and assessments, if the company elects to impose assessments. The approved company shall not be required to pay estimated tax payments as prescribed under KRS 141.044 or 141.305 on income, Kentucky gross profits, or Kentucky gross receipts from the jobs retention project. One hundred eighty (180) days after the filing of the tax return of the approved company, the Department of Revenue shall certify to the authority the state tax liability for the preceding taxable year of the approved company and the amount of any tax credits taken pursuant to this section;

(d) Prior to execution of the agreement, the eligible company shall secure from all local governmental authorities responsible for collecting local occupational license fees a resolution or order of the local governmental entities acknowledging and consenting to the termination or partial termination of the receipt of local occupational license fees on wages subject to the agreement paid by the approved company on behalf of its employees to the local government entities;

(e) If more than one (1) local occupational license fee is imposed upon the employees of the approved company, the assessment imposed upon the employees shall be credited against the local occupational license fee and shall be apportioned to each local occupational license fee according to each local occupational license fee's proportion to the total of all local occupational license fees for such employees. No credit or portion thereof shall be allowed against any local occupational license fee imposed by or dedicated solely to a local board of education; and

(f) If, in any taxable year of the approved company during which the agreement is in effect, the assessment collected from the wages of the employees exceeds the expended portion of the amount that the approved company may recover under paragraph (a) of this subsection, or exceeds the annual maximum negotiated by the authority, the assessment collected from the wages of the employees shall cease for the remainder of that taxable year of the approved company. The approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that taxable year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees' wages next succeeding the first date when the approved company collected excess assessments.

(3) ***(a) An approved company receiving preliminary approval after July 1, 2026, may receive, in addition to inducements provided under subsections (1) and (2) of this section, a credit as provided under Section 1 of this Act in an***

amount up to one and one-half percent (1.5%) of the wages paid to full-time employees who are subject to the tax imposed by KRS 141.020 and maintained at a jobs retention project located in a heritage county.

(b) The cumulative credits awarded:

1. To an approved company under this subsection for any year of the agreement shall not exceed the annual maximum approved costs of the jobs retention project as provided in the agreement; and

2. To all approved companies under this subsection and subsection (6) of Section 17 of this Act shall not exceed two million dollars ($2,000,000) per taxable year.

(4) The jobs retention agreement and inducements available pursuant thereto shall not be transferable or assignable by the approved company without the expressed written consent of the authority.

➔Section 11. KRS 154.25-040 is amended to read as follows:

(1) The approved company may require that each employee subject to the income tax imposed by KRS 141.020, whose job was preserved or created as a result of the project, as a condition of employment or the retention of employment, agree to pay an assessment up to one hundred percent (100%) of the individual income tax rate imposed by KRS 141.020 for each employee subject to the income tax imposed by KRS 141.020. The Commonwealth's wage assessment shall be equal to the following:

(a) Up to eighty percent (80%) of the individual income tax rate imposed by KRS 141.020 if the project is located in a local jurisdiction where:

1. No local occupational license fee is imposed;

2. a. A local occupational fee greater than or equal to twenty percent (20%) of the individual income tax rate in KRS 141.020 is imposed; and

b. The local jurisdiction agrees to forgo the local wage assessment of at least twenty percent (20%) of the individual income tax rate imposed by KRS 141.020 via credits against the local occupational license fee for the affected employees; or

3. a. A local occupational license fee less than twenty percent (20%) of the individual income tax rate in KRS 141.020 is imposed; and

b. The local jurisdiction agrees to forgo the total amount of the local occupational license fee as the local wage assessment; or

(b) Up to four (4) times the forgone local wage assessment rate if the project is located in a local jurisdiction where:

1. a. A local occupational license fee greater than or equal to twenty percent (20%) of the individual income tax rate in KRS 141.020 is imposed; and

b. The local jurisdiction agrees to forgo an amount of the local occupational license fee that is less than twenty percent (20%) of the individual income tax rate imposed by KRS 141.020 as the local wage assessment; or

2. a. A local occupational license fee less than twenty percent (20%) of the individual income tax rate in KRS 141.020 is imposed; and

b. The local jurisdiction agrees to forgo only a portion of the total amount of the local occupational license fee as the local wage assessment.

(2) Each assessed employee shall be entitled to a credit against the Kentucky income tax required to be withheld under KRS 141.310 in the form of a simultaneous adjustment equal to the Commonwealth's assessment outlined in subsection (1) of this section.

(3) Each employee assessed under subsection (1) of this section also shall be entitled to

a credit against the local occupational license fee in the form of a simultaneous adjustment of the local occupational license fee withholding equal to the local wage assessment outlined in subsection (1) of this section.

(4) If an approved company elects to impose the assessment as a condition of employment or the retention of employment, the approved company shall deduct the assessment from each paycheck of each employee subject to the provisions of subsections (2) and (3) of this section.

(5) Any approved company collecting an assessment shall make its payroll books and records available to the authority at such reasonable times as the authority shall request and shall file with the authority the documentation respecting the assessment the authority may require.

(6) Any assessment of the wages of the employees of an approved company shall permanently lapse upon expiration or termination of the agreement unless the agreement has been amended to extend the termination as a result of a supplemental project.

(7) ***(a)*** By October 1 of each year, the Department of Revenue shall certify to the authority, in the form of an annual report, aggregate tax credits claimed on tax returns filed during the taxable year ending June 30 of that year and wage assessment fees taken during the prior calendar year by approved companies with respect to their jobs retention projects under this subchapter, and shall certify to the authority, within one hundred eighty (180) days from the date an approved company has filed its state tax return, when an approved company has taken tax credits equal to its total inducements.

(b) For the economic development credit provided under Section 1 of this Act, the Department of Revenue shall report to the authority the total amount of economic development credits awarded for each taxable year, by county, including the following:

1. Each approved company awarded a credit; and

2. The total amount of wages paid to a full-time employee by an approved company and included in the credit computation.

(8) On a semiannual basis, by May 1 and November 1 of each year, the cabinet shall prepare a report of the economic development credit provided under Section 10 of this Act to be submitted to the Governor and the Legislative Research Commission for referral to Interim Joint Committee on Appropriations and Revenue and made available on the cabinet's website. The report shall include but not be limited to the following:

(a) A summary of the economic development credits received and relevant statistics relating to actions taken by the cabinet, including:

1. The approved company;

2. The total amount of economic development credits awarded;

3. The number of jobs retained; and

4. The annual maximum approved costs of the jobs retention project;

(b) The annual total of the economic development credit received; and

(c) Recommendations for legislation or policy actions needed to increase the number of jobs retention projects.

➔Section 12. KRS 154.25-050 is amended to read as follows:

(1) If an approved company makes additional investments in the form of additional jobs retention projects during the term of the initial jobs retention project, the approved company may apply for, and the authority may approve, a supplemental project.

(2) The authority, upon adoption of its final approval of a supplemental project, may enter into, with any approved company, an amended agreement with respect to both the initial jobs retention project and the supplemental project which shall jointly make up its project. The terms and provisions of each amended agreement,

including the amount of approved costs, the amount of the tax credit pursuant to KRS 154.25-030, the job maintenance requirement established by the agreement, and any limitations the authority may deem necessary, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:

(a) Upon approval of a supplemental project, the amount the approved company may recover through inducements for the initial project and any supplemental projects shall be a negotiated percentage not to exceed seventy-five percent (75%) of the eligible costs from the initial project and all newly incurred eligible costs from any supplemental projects, subject to the annual maximum negotiated and approved by the authority. At the time a supplemental project is approved, the recoverable amount and the annual maximum inducement for the initial jobs retention project and any previous supplemental projects may also be increased at the discretion of the authority pursuant to KRS 154.25-030.

(b) The activation date for a supplemental project shall be no more than three (3) years from final approval of the supplemental project. Prior to the activation date, the authority may extend the time for the completion of the jobs retention project and compliance with the required investment upon request of the approved company for good cause; however, the ten (10) year period for the term of the agreement shall begin from the activation date. Within three (3) months of the completion date for a supplemental project, the approved company shall document the actual cost of the project in a manner acceptable to the authority. The authority may employ an independent consultant to verify the cost of the supplemental project subject to reimbursement for the cost of same from the approved company.

(c) In consideration of the execution of the amended agreement, on the date stated in the agreement, the approved company may be permitted during the term of the amended agreement to take the inducements set forth in KRS 154.25-030(2)(b)***,***~~[and]~~ (2)(c)***, and (3)(a)***, subject to the remaining terms of that section.

➔Section 13. KRS 154.32-010 is amended to read as follows:

As used in this subchapter:

(1) "Activation date" means the date established in the tax incentive agreement that is within two (2) years of final approval;

(2) "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 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) "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) "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) "Alternative transportation fuels" has the same meaning as in KRS 152.715;

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

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

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

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

(10) "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) "Carbon dioxide or hydrogen 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 or hydrogen to the point of sale, storage, or other carbon or hydrogen 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

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;

6. Carbon dioxide or hydrogen transmission pipeline;
7. Coal severing and processing;~~[or]~~
8. Hospital operations***; or***
9. Research and development.

(b) "Eligible company" does not include companies where the primary activity to be conducted within the Commonwealth is forestry, fishing, 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 ***to furnish and equip a facility, including:***
   a. Office and manufacturing equipment;
   b. Software;
   c. Computers;
   d. Fixtures; and
   e. Fixed telecommunications equipment;
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 ***to furnish and equip a facility, including:***

a. Office and manufacturing equipment;

b. Software;

c. Computers;

d. Fixtures; and

e. Fixed telecommunications equipment;

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 ***heritage***~~[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;

(23)~~[(24)]~~ (a) "Full-time job" means a job held by a person who:

1. Is required to work a minimum of thirty-five (35) hours per week; and

2. a. Is subject to the Kentucky individual income tax imposed by KRS 141.020; or

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;

(24)[~~(25)~~] "Gasification process" means a process that converts any carbon-containing material into a synthesis gas composed primarily of carbon monoxide and hydrogen;

(25)[~~(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;

(26)[~~(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;

(27)[~~(28)~~] ***"Heritage county" means a county where the county population ranking determined by the cabinet under Section 7 of this Act scores greater than or equal to ninety-seven (97);***

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

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

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

(33) "Lease agreement"***:***

(a) Means an agreement between***:***

1. An approved company and an unrelated entity conveying the right to use a facility, the terms of which reflect an arms' length transaction***; or***

2. An approved company and a related entity where the facility to be occupied by the approved company was conveyed by an unrelated entity after the approved company received preliminary approval; and~~[. "Lease agreement"]~~

(b) Does not include a capital lease;

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

(35) "Manufacturing" means any activity involving:

(a) 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) (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) "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***,***" ***subject to Section 16 of this Act,*** 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 ***a heritage***~~[an enhanced incentive]~~ county, or ten (10) years for an economic development project not located in any other county;

(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) "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) ***Two hundred fifty percent (250%)***~~[One hundred twenty-five percent (125%)]~~ of the federal minimum wage in ***heritage***~~[enhanced incentive]~~ counties; or

(b) ***Three hundred fifty percent (350%)***~~[One hundred fifty percent (150%)]~~ of the federal minimum wage in ***any***~~[all]~~ other counties.

➔Section 14. 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, carbon dioxide or hydrogen 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 provided by the Commonwealth;
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 ***balanced***~~[enhanced]~~ incentives for companies that locate in ***heritage***~~[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 ***two hundred fifty percent (250%)***~~[one hundred twenty-five percent (125%)]~~ of the federal minimum wage in ***heritage***~~[enhanced incentive]~~ counties, and ***three hundred fifty percent***

(350%)~~[one hundred fifty percent (150%)]~~ of the federal minimum wage in ***any*** 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 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) ***(a)*** The incentives available under this subchapter are as follows:

1.~~[(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;

2.~~[(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

3.~~[(c)]~~ ***An approved company receiving preliminary approval after July***

1, 2026, may receive, in addition to the inducements provided under subparagraphs 1. and 2. of this paragraph, an income tax credit as provided under Section 17 of this Act.

(b) 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 ***a heritage***~~[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 15. KRS 154.32-030 is amended to read as follows:

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

(a) An eligible company with a proposed economic development project may submit an application to the authority. The application shall include the information required by subsection (3) of this section;

(b) Upon review of the application and any additional information submitted, the authority may, by resolution, give preliminary approval to an eligible company and authorize the negotiation and execution of a memorandum of agreement. The memorandum of agreement shall establish a preliminary job target, minimum wage target, including employee benefits, and maximum total approved cost for the economic development project, and shall only allow the recovery of eligible costs incurred ***ninety (90) days prior to receipt of***~~[after]~~ preliminary approval. Upon preliminary approval, the preliminarily approved company may undertake the project in accordance with the memorandum of agreement, and may begin to hire employees that may be counted toward the minimum full-time job requirements established by the memorandum of agreement;

(c) After preliminary approval but before final approval, the authority shall post the preliminarily approved company's name, the location of the economic development project, and the incentives that have been preliminarily approved on the Cabinet for Economic Development's ***website***~~[Web site]~~;

(d) The preliminarily approved company shall submit any documentation required by the authority upon request of the authority;

(e) To obtain final approval, the preliminarily approved company shall submit:

1. Documentation required by the authority to confirm that the requirements established by the memorandum of agreement have been met; and

2. Documentation of official action taken by a local governmental entity detailing the manner and level of local contribution, if applicable.

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 tax incentive agreement between the authority and the approved company pursuant to KRS 154.32-040. The tax incentive agreement shall establish an activation date, which shall be within two (2) years of final approval;

(f) 1. On or before the activation date, the approved company shall notify the authority of its intention to activate the tax incentive agreement. The approved company shall submit:

a. Documentation that it has met the minimum full-time job, minimum investment, and minimum wage and employee benefits requirements established by KRS 154.32-020 as of the date of activation; and

b. The confirmed approved costs incurred as of the date of activation, which shall be the total eligible costs that may be recovered by the approved company.

2. If the approved company fails to meet any of the minimum investment, full-time job, or wage requirements, including employee benefits, established by KRS 154.32-020 on the activation date, the tax incentive agreement shall be canceled and the approved company shall not be eligible for incentives.

3. If an approved company meets the minimum investment, full-time job, and wage requirements, including employee benefits, established by KRS 154.32-020, but fails to meet higher job targets and minimum wage targets, including employee benefits, established in the tax incentive agreement, then the provisions of subsection (4) of this section shall apply in determining the incentives for which the approved company qualifies.

4. Upon activation of a tax incentive agreement, the authority shall notify the department, and shall provide the department with the information necessary to monitor and track the incentives taken by the approved company; and

(g) 1. The authority shall monitor the tax incentive agreement at least annually, and the approved company shall submit all documentation necessary for the authority to monitor the agreement.

2. The authority shall, based on the documentation provided, confirm that

the approved company is in continued compliance with the provisions of the tax incentive agreement and, therefore, eligible for incentives.

3. Upon annual review, if the approved company meets the minimum job and wage requirements, including employee benefits, established by KRS 154.32-020, but fails to meet the job target and minimum wage target, including employee benefits, established in the tax incentive agreement, then the provisions of subsection (4) of this section shall apply in determining the incentives for which the approved company qualifies in any year.

4. 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 by the approved company. If, at any time during the term of the tax incentive agreement, an approved company becomes ineligible for incentives, the authority shall notify the department, and the department shall discontinue the availability of incentives for the approved company.

(2) (a) The authority may establish procedures and standards for the review and approval of eligible companies and their economic development projects through the promulgation of administrative regulations in accordance with KRS Chapter 13A.

(b) Standards to be used by the authority in reviewing and approving an eligible company and its economic development project shall include but not be limited to:

1. The creditworthiness of the eligible company;

2. The proposed capital investment to be made;

3. The number of new full-time jobs to be provided for the residents of the

Commonwealth and the wages to be paid;

4. Support of the local community; and

5. The likelihood of the economic success of the economic development project.

(3) The application shall include but not be limited to:

(a) The name of the applicant and identification of any affiliates of the applicant who will have some relation to the economic development project;

(b) A description of the economic development project, including its location, the total investment in the economic development project, and total proposed eligible costs;

(c) The projected number of new full-time jobs to be created as a result of the economic development project and identification of any affiliates who may employ persons hired to fill those jobs;

(d) The number of existing full-time jobs at the site of the economic development project on the date of the application and a description and breakdown of the relevant affiliated employers;

(e) Proposed wage and employee benefit amounts for the new full-time jobs to be created as a result of the proposed economic development project;

(f) For proposed economic development projects new to the Commonwealth, certification by the eligible company that the economic development project could reasonably and efficiently locate outside of the Commonwealth and, without the incentives offered by the authority, the eligible company would likely locate outside the Commonwealth;

(g) For eligible companies with an existing location in the Commonwealth considering an expansion, certification that the tax incentives are necessary for the expansion to occur;

(h) A letter of support from a local governmental entity in the city or county where the economic development project will be located; and

(i) Any other information the authority may require.

(4) (a) An approved company that meets the minimum job and wage requirements, including employee benefits established by KRS 154.32-020, but fails to meet the job target and minimum wage target, including employee benefits established by the tax incentive agreement, shall be eligible to receive the incentives authorized by the tax incentive agreement as provided in this subsection.

(b) If, upon activation or annual review, an approved company achieves at least ninety percent (90%) of both the job target and minimum wage target, including employee benefits established by the tax incentive agreement, and no other default has occurred, then the approved company shall be eligible to receive full incentives as provided in the tax incentive agreement.

(c) If, upon activation or annual review, an approved company achieves less than ninety percent (90%) of either the job target or minimum wage target, including employee benefits established in the tax incentive agreement, and no other default has occurred, then the incentives available to the approved company for the following year shall be reduced by a percentage equal to the percentage representing the difference between the job target or minimum wage target, including employee benefits established in the tax incentive agreement, and the actual average number of full-time jobs or average wage, including employee benefits, paid. If both the number of actual average full-time jobs and average wages paid, including employee benefits, are below ninety percent (90%) of the targets on the same measurement date, then the greater percentage reduction of the two (2) shall be applied rather than reducing the incentives available by the sum of the two (2).

(d) If, upon annual review, either the actual number of new full-time jobs or the average wages paid for those jobs, including employee benefits, is less than the minimum requirements established by KRS 154.32-020, then the economic development project may be suspended automatically or, with approval of the authority, terminated.

➔Section 16. 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 ***a heritage***~~[an enhanced incentive]~~ county, or ten (10) years for an economic development project located in ***any other***~~[another]~~ county;

(9) ***Notwithstanding subsection (8) of this section, an approved company that received preliminary approval of an economic development project prior to January 1, 2023, in which wage assessments were provided pursuant to Section 18 of this Act may request a one (1) time extension for up to five (5) years under the following conditions:***

(a) At the time the extension is granted, the approved company has received less than seventy-five percent (75%) of the incentives awarded under the tax incentive agreement; and

(b) The extension does not amend any provision of the tax incentive agreement impacting the scope of the project or the maximum amount of incentives awarded under the tax incentive agreement;

(10) 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;

(11)~~[(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;

(12)~~[(11)]~~ Establishment of a job target and minimum wage target, including employee benefits;

(13)~~[(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;

(14)[~~(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;

(15)[~~(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;

(16)[~~(15)~~] That the agreement may be assigned by the approved company upon the adoption of a resolution by the authority to that effect;

(17)[~~(16)~~] 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;

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

(19)[~~(18)~~] 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

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

➔Section 17. KRS 154.32-070 is amended to read as follows:

(1) For taxable years beginning after December 31, 2009, an approved company may be eligible for a credit 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, that would otherwise be owed by the approved company to the Commonwealth for the approved company's taxable year, on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the economic development project.

(2) The credit allowed the approved company shall be applied against both the income tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by KRS 141.0401, with credit ordering as provided in KRS 141.0205, for the taxable year for which the tax return of the approved company is filed, subject to the annual maximum set forth in the tax incentive agreement. Any credit not used in the year in which it was first available may be carried forward to subsequent years, provided that no credit may be carried forward beyond the term of the tax incentive agreement.

(3) The approved company shall not be required to pay estimated tax payments under KRS 141.044 on the Kentucky taxable income, Kentucky gross receipts, or Kentucky gross profits generated by or arising from the eligible project.

(4) The credit provided by this section shall be determined as provided in KRS 141.415.

(5) The amount of incentives allowed ***under subsections (1) to (4) of this section***~~[in any year]~~ shall not exceed the lesser of the tax liability of the approved company related to the economic development project for that year or the annual maximum approved costs set forth in the tax incentive agreement ***in any year***. The incentives

shall be allowed for each fiscal year of the approved company during the term of the tax incentive agreement for which a tax return is filed by the approved company.

(6) (a) An approved company receiving preliminary approval after July 1, 2026, may receive, in addition to the inducements provided under subsections (1) to (4) of this section, a credit as provided under Section 1 of this Act in an amount up to one and one-half percent (1.5%) of the wages paid to full-time employees who are subject to the tax imposed by KRS 141.020 and maintained at an economic development project located in a heritage county.

(b) The cumulative credits awarded:

1. To an approved company under this subsection for any year of the agreement shall not exceed the annual maximum approved costs of the economic development project as provided in the tax incentive agreement; and

2. To all approved companies under this subsection and subsection (3) of Section 10 of this Act shall not exceed two million dollars ($2,000,000) per taxable year.

➔Section 18. KRS 154.32-090 is amended to read as follows:

(1) An approved company or, with the authority's consent, an affiliate of an approved company may impose wage assessments against employees as provided in this section if a wage assessment is included in the incentives awarded to the approved company in the tax incentive agreement. The level of wage assessment shall be negotiated as part of the tax incentive agreement.

(2) If an economic development project is located in ***a heritage***~~[an enhanced incentive]~~ county, the approved company or, with the authority's consent, an affiliate of the approved company may require that each employee subject to the tax imposed by

KRS 141.020, whose job is determined by the authority to be created as a result of the economic development project, as a condition of employment, agree to an assessment of up to one hundred percent (100%) of the individual income tax rate imposed by KRS 141.020, and that assessment shall operate as the Commonwealth's wage assessment. Although not required for an economic development project located in ***a heritage***~~[an enhanced incentive]~~ county, a local jurisdiction may agree to forgo all or a portion of its local occupational license fee as a local wage assessment.

(3) (a) If the economic development project is not located in ***a heritage***~~[an enhanced incentive]~~ county, and is located in a local jurisdiction where:

1. No local occupational license fee is imposed;

2. a. A local occupational license fee greater than or equal to twenty percent (20%) of the individual income tax rate in KRS 141.020 is imposed; and

b. The local jurisdiction agrees to forgo, as the local wage assessment, at least twenty percent (20%) of the individual income tax rate imposed by KRS 141.020 via credits against the local occupational license fee for the affected employees; or

3. a. A local occupational license fee less than twenty percent (20%) of the individual income tax rate in KRS 141.020 is imposed; and

b. The local jurisdiction agrees to forgo the total amount of the local occupational license fee as the local wage assessment; then

(b) An approved company or, with the authority's consent, an affiliate of an approved company may require that each employee subject to tax imposed by KRS 141.020, whose job is determined by the authority to be created as a result of the economic development project, as a condition of employment, agree to pay an assessment of up to sixty percent (60%) of the individual income tax rate imposed by KRS 141.020 and that assessment shall operate as the Commonwealth's wage assessment.

(4) (a) If the economic development project is not located in ***a heritage***~~[an enhanced incentive]~~ county, and is located in a local jurisdiction where:

1. a. A local occupational license fee greater than or equal to twenty percent (20%) of the individual income tax rate in KRS 141.020 is imposed; and

b. The local jurisdiction agrees to forgo an amount of the local occupational license fee that is less than twenty percent (20%) of the individual income tax rate in KRS 141.020 as the local wage assessment; or

2. a. A local occupational license fee of lesser than twenty percent (20%) of the individual income tax rate in KRS 141.020 is imposed; and

b. The local jurisdiction agrees to forgo only a portion of the total amount of the local occupational license fee as the local wage assessment; then

(b) An approved company or, with the authority's consent, an affiliate of an approved company may require that each employee subject to tax imposed by KRS 141.020, whose job is determined by the authority to be created as a result of the economic development project, as a condition of employment, agree to pay an assessment equal to three (3) times the forgone local wage assessment rate and that assessment shall operate as the Commonwealth's wage assessment.

(5) If the project is not located in ***a heritage***~~[an enhanced incentive]~~ county, and:

(a) Is located in a local jurisdiction that does not impose a local occupational license fee, the local jurisdiction shall be required to provide some alternative inducement satisfactory to the authority at the local level in order for a preliminarily approved company to receive final approval. However, the authority may waive this requirement if there are reasonable circumstances that prevent the local jurisdiction from providing a reasonable inducement; or

(b) Is located in a local jurisdiction that does impose a local occupational license fee, the jurisdiction may request that the authority waive the local occupational license fee requirements established by subsection (3) or (4) of this section if the local jurisdiction offers alternative inducements of similar value satisfactory to the authority. The authority shall review all requests for a waiver, and may waive the local occupational license fee requirements and instead require the local jurisdiction to provide alternative inducements of similar value if the authority determines that the circumstances warrant an alternative contribution by the local jurisdiction.

(6) Each employee paying the assessment shall simultaneously be entitled to a credit against the Kentucky individual income tax required to be withheld under KRS 141.310 equal to the state portion of the assessment and shall be entitled to a credit against the local occupational license tax equal to the local portion of the assessment.

(7) If more than one (1) local jurisdiction imposes an occupational license fee, the local jurisdiction portion of the assessment shall be prorated proportionately among the taxes imposed by the local jurisdictions unless one (1) local jurisdiction agrees to forgo the receipt of these taxes in an amount equal to the local jurisdiction portion of the wage assessment, in which case no proration shall be made.

(8) If a full-time employee subject to state tax imposed by KRS 141.020 is already employed by the approved company at a site other than the site of the economic development project, that full-time employee's job shall be deemed to have been created when the full-time employee is transferred to the site of the economic

development project if the full-time employee's existing job is filled with a new full-time employee.

(9) If an approved company elects to impose the assessment as a condition of employment, it shall be authorized to deduct the assessment from each payment of wages to the employee.

(10) Notwithstanding any other provision of the Kentucky Revised Statutes, if an approved company elects not to deduct the assessment from each payment of wages to the employee, but rather requests a reimbursement of state tax imposed by KRS 141.020 or local occupational tax in the aggregate after they have been paid to the state or local jurisdiction, no interest shall be paid by the state or by the local jurisdiction on that reimbursement.

(11) No credit, or portion thereof, shall be allowed against any occupational license fee imposed by or dedicated solely to the board of education in a local jurisdiction.

(12) An approved company imposing an assessment shall make its payroll, books, and records available to the authority or the department upon request, and shall file with the authority or department documentation pertaining to the assessment as the authority or department may require.

(13) Any assessment of the wages of employees of an approved company in connection with their employment at an economic development project shall permanently cease at the expiration of the tax incentive agreement.

➔Section 19. KRS 154.32-100 is amended to read as follows:

(1) (a) By October 1 of each year, the department 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 and aggregate assessments taken during the prior calendar year by approved companies with respect to their economic development projects under this subchapter, and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state income tax return, when an approved company has taken tax credits or assessments equal to the total incentives available to the approved company.

(b) For the economic development credit provided under Section 1 of this Act, the department shall report to the authority the total amount of economic development credit awarded for each taxable year, by county, including the following:

1. Each approved company awarded a credit; and

2. The total amount of wages paid to a full-time employee by an approved company and included in the credit computation.

(2) On a semiannual basis, by May 1 and November 1 of each year, the cabinet shall prepare a report of the economic development credits provided under Section 17 of this Act to be submitted to the Governor and the Legislative Research Commission for referral to Interim Joint Committee on Appropriations and Revenue and made available on the cabinet's website. The report shall include but not be limited to the following:

(a) A summary of the economic development credits received and relevant statistics relating to actions taken by the cabinet, including:

1. The approved company;

2. The total amount of economic development credits awarded;

3. The number of full-time jobs created; and

4. The annual maximum approved costs of the economic development project;

(b) The annual total of the economic development credits received; and

(c) Recommendations for legislation or policy actions needed to increase the number of economic development projects.

➔SECTION 20. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER

154 IS CREATED TO READ AS FOLLOWS:

(1) The cabinet shall work closely with the workforce liaison appointed by the president of the Kentucky Community and Technical College System to:

(a) Promote jobs created in the Commonwealth as a result of economic development incentive programs; and

(b) Provide support with the goal of recruitment and placement of system students and graduates into new job and workforce training opportunities as they are made available within the Commonwealth.

(2) The cabinet shall work closely with the system and involve it in policy discussions and planning that may have an effect on community members, system staff, and students.

➔Section 21. KRS 141.383 is amended to read as follows:

(1) As used in this section:

(a) "Above-the-line production crew" has the same meaning as in KRS 154.61-010;

(b) "Approved company" has the same meaning as in KRS 154.61-010;

(c) "Below-the-line production crew" has the same meaning as in KRS 154.61-010;

(d) "Continuous film production" has the same meaning as in KRS 154.61-010;

(e) "Council" means the Kentucky Film Leadership Council created in KRS 154.12-282;

(f) "Loan-out entity" has the same meaning as in KRS 154.61-010;

(g) "Qualifying expenditure" has the same meaning as in KRS 154.61-010;

(h) "Qualifying payroll expenditure" has the same meaning as in KRS 154.61-010;

(i) "Secretary" has the same meaning as in KRS 154.61-010; and

(j) "Tax incentive agreement" has the same meaning as KRS 154.61-010.

(2) (a) There is hereby created a tax credit against the tax imposed under KRS 141.020 or 141.040 and 141.0401, with the ordering of credits as provided in KRS 141.0205.

(b) The incentive available under paragraph (a) of this section is:

1. A refundable credit for applications approved prior to April 27, 2018;

2. A nonrefundable and nontransferable credit for applications approved on or after April 27, 2018, but before January 1, 2022; and

3. A refundable credit for applications approved on or after January 1, 2022, if the provisions of paragraph (c) of this subsection are met.

(c) 1. The total tax incentive approved under KRS 154.61-020 shall be limited to:

a. One hundred million dollars ($100,000,000) for calendar year 2018 and each calendar year through the calendar year 2021;

b. Seventy-five million dollars ($75,000,000) for the calendar year 2022 and each calendar year thereafter; and

c. Beginning with calendar year 2024, the amount in subdivision b. of this subparagraph shall be allocated accordingly:

i. Twenty-five million dollars ($25,000,000) shall be allocated for all approved companies with a continuous film production; and

ii. On the first day of April 2025, and on April 1 of each calendar year thereafter, any unused balance allocated under subpart i. of this subdivision for continuous film productions shall be made available for all approved companies with a motion picture or entertainment production.

2. To qualify for the refundable credit, all applicants shall:

a. Begin filming or production in Kentucky within six (6) months of approval by the council; and

b. Complete filming or production in Kentucky within two (2) years of their production start date.

(3) An approved company may receive a refundable tax credit if:

(a) The department has received notification from the council that the approved company has satisfied all requirements of KRS 154.61-020 and 154.61-030; and

(b) The approved company has provided a detailed cost report and sufficient documentation to the council, which has been forwarded by the council to the department, that:

1. The purchases of qualifying expenditures were made after the execution of the tax incentive agreement; and

2. The approved company or loan-out entity has withheld income tax as required by KRS 141.310 on all qualified payroll expenditures, and remitted and certified the withheld amount to the department.

(4) Interest shall not be allowed or paid on any refundable credits provided under this section.

(5) The department may promulgate administrative regulations under KRS Chapter 13A to administer this section.

(6) On or before September 1, 2010, and on or before each September 1 thereafter, for the immediately preceding fiscal year, the department shall report to the council and the Interim Joint Committee on Appropriations and Revenue the names of the approved companies and the amounts of refundable income tax credit claimed.

(7) No later than September 1, 2021, and by November 1 every four (4) years thereafter, the department and the Cabinet for Economic Development shall cooperatively provide historical data related to the tax credit allowed in this section and KRS 154.61-020 and 154.61-030, including data items beginning with tax

credits claimed for taxable years beginning on or after January 1, 2018:

(a) The name of the taxpayer claiming the tax credit;

(b) The date that the application was approved and the date the filming or production was completed;

(c) The taxable year in which the taxpayer claimed the tax credit;

(d) The total amount of the tax credit, including any amount denied, any amount applied against a tax liability, any amount refunded, and any amount remaining that may be claimed on a return filed in the future;

(e) Whether the taxpayer is a Kentucky-based company as defined in KRS 154.61-010;

(f) Whether the taxpayer films or produces a:

1. Feature-length film, television program, or industrial film;

2. National touring production of a Broadway show; or

3. Documentary;

(g) Whether the filming or production was performed:

1. Entirely in ***a heritage***~~[an enhanced]~~ county ***as defined in Section 4 of this Act***; or

2. In whole or in part in any Kentucky county other than in ***a heritage***~~[an enhanced incentive]~~ county;

(h) The amount of qualifying expenditures incurred by the taxpayer;

(i) The amount of qualifying payroll expenditures paid to:

1. Resident below-the-line crew; and

2. Nonresident below-the-line production crew;

including the number of crew members in each category;

(j) The amount of qualifying payroll expenditures paid to:

1. Resident above-the-line crew; and

2. Nonresident above-the-line crew;

including the number of crew members in each category; and

(k) A brief description of the type of motion picture or entertainment production project.

(8) The information required to be reported under this section shall not be considered confidential taxpayer information and shall not be subject to KRS Chapter 131 or any other provisions of the Kentucky Revised Statutes prohibiting disclosure or reporting of information.

➔Section 22. KRS 154.61-010 is amended to read as follows:

As used in this subchapter:

(1) "Above-the-line production crew" means employees involved with the production of a motion picture or entertainment production whose salaries are negotiated prior to commencement of production, such as actors, directors, producers, and writers;

(2) "Animated production" means a nationally distributed feature-length film created with the rapid display of a sequence of images using 2-D or 3-D graphics of artwork or model positions in order to create an illusion of movement;

(3) "Approved company" means an eligible company approved for incentives provided under KRS 141.383 and 154.61-020;

(4) "Below-the-line production crew" means employees involved with the production of a motion picture or entertainment production except above-the-line production crew. "Below-the-line production crew" includes but is not limited to:

(a) Casting assistants;

(b) Costume design;

(c) Extras;

(d) Gaffers;

(e) Grips;

(f) Location managers;

(g) Production assistants;

(h) Set construction staff; and

(i) Set design staff;

(5) "Cabinet" means the Cabinet for Economic Development;

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

(7) "Compensation" means compensation included in adjusted gross income as defined in KRS 141.010;

(8) "Continuous film production" means a motion picture or entertainment production that:

(a) 1. Has a projected budget of a minimum of ten million dollars ($10,000,000) per calendar year for qualifying expenditures and qualifying payroll expenditures allocated to all qualifying motion picture or entertainment productions to be filmed or produced in Kentucky, with a minimum of one million five hundred thousand dollars ($1,500,000) per production in Kentucky; and

2. Has a minimum of fifty percent (50%) of the funds available and the ability to raise the remaining funds necessary to complete the filming and production, which may be verified by:

a. Bank statements or other financial documents; or

b. A fundraising plan at the request of the council;

(b) Demonstrates a distribution contract for each motion or entertainment production;

(c) Films and produces a minimum of twelve (12) or more days per production within the Commonwealth; and

(d) Maintains:

1. An apprenticeship program or on-the-job training program as defined in KRS 343.010; or

2. Partners with a film studies program with an accredited institution of

postsecondary education located in the Commonwealth;

(9) "Council" means the Kentucky Film Leadership Council created in KRS 154.12-282;

(10) "Documentary" means a production based upon factual information and not subjective interjections;

(11) "Eligible company" means any person that intends to film or produce a motion picture or entertainment production in the Commonwealth;

(12) "Employee" has the same meaning as in KRS 141.010, and, for purposes of this subchapter, also may include the employees or independent contractors of an approved company or the employees of a loan-out entity engaged by an approved company if they meet the requirements of KRS 141.310;

(13) ~~["Enhanced incentive county" has the same meaning as in KRS 154.32-010;~~

~~(14)]~~"Feature-length film" means a live-action or animated production that is:

(a) More than thirty (30) minutes in length; and

(b) Produced for distribution in theaters or via digital format, including but not limited to DVD, Internet, or mobile electronic devices;

(14) "Heritage county" means a county where the county population ranking determined by the cabinet under Section 7 of this Act scores greater than or equal to ninety-seven (97);

(15) "Industrial film" means a business-to-business film that may be viewed by the public, including but not limited to videos used for training or for viewing at a trade show;

(16) "Kentucky-based company" has the same meaning as in KRS 164.6011;

(17) "Loan-out entity" means a corporation, partnership, limited liability company, or other entity through which an artist or other person is loaned out to perform services for the approved company. A loan-out entity shall be registered and in good standing with the Kentucky Secretary of State. Notwithstanding the business

organization, the loan-out entity and all employees of and other persons performing services for the loan-out entity shall be subject to all applicable provisions of the Kentucky personal income tax and any applicable payroll or other tax provisions;

(18) (a) "Motion picture or entertainment production" means:

1. The following if filmed in whole or in part, or produced in whole or in part, in the Commonwealth:

a. A feature-length film;

b. A television program;

c. An industrial film; or

d. A documentary; or

2. A national touring production of a Broadway show produced in Kentucky.

(b) "Motion picture or entertainment production" does not include the filming or production of obscene material or television coverage of news or athletic events;

(19) "Obscene" has the same meaning as in KRS 531.010;

(20) "Person" has the same meaning as in KRS 141.010;

(21) (a) "Qualifying expenditure" means expenditures made in the Commonwealth for the following if directly used in or for a motion picture or entertainment production:

1. The production script and synopsis;

2. Set construction and operations, wardrobe, accessories, and related services;

3. Lease or rental of real property in Kentucky as a set location;

4. Photography, sound synchronization, lighting, and related services;

5. Editing and related services;

6. Rental of facilities and equipment;

7. Vehicle leases;
8. Food; and
9. Accommodations.

(b) "Qualifying expenditure" does not include Kentucky sales and use tax paid by the approved company on the qualifying expenditure;

(22) "Qualifying payroll expenditure" means compensation paid to above-the-line crew and below-the line crew while working on a motion picture or entertainment production in the Commonwealth if the compensation is for services performed in the Commonwealth;

(23) "Resident" has the same meaning as in KRS 141.010;

(24) "Secretary" means the secretary of the Cabinet for Economic Development;

(25) "Tax incentive agreement" means the agreement entered into pursuant to KRS 154.61-030 between the council and the approved company; and

(26) "Television program" means any live-action or animated production or documentary, including but not limited to:

(a) An episodic series;

(b) A miniseries;

(c) A television movie; or

(d) A television pilot;

that is produced for distribution on television via broadcast, cable, or any digital format, including but not limited to cable, satellite, internet, or mobile electronic devices.

➔Section 23. KRS 154.61-020 is amended to read as follows:

(1) The purposes of KRS 141.383 and this subchapter are to encourage:

(a) The film and entertainment industry to choose locations in the Commonwealth for the filming and production of motion picture or entertainment productions;

(b) The development of a film and entertainment industry in Kentucky;

(c) Increased employment opportunities for the citizens of the Commonwealth within the film and entertainment industry; and

(d) The development of a production and postproduction infrastructure in the Commonwealth for film production and touring Broadway show production facilities containing state-of-the-art technologies.

(2) The council, together with the Department of Revenue, shall administer the tax credit established by KRS 141.383, this section, and KRS 154.61-030.

(3) To qualify for the tax incentive provided in subsection (5) of this section, the following requirements shall be met:

(a) For an approved company that is also a Kentucky-based company that:

1. Films or produces a feature-length film, television program, or industrial film in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be one hundred twenty-five thousand dollars ($125,000);

2. Produces a national touring production of a Broadway show in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be twenty thousand dollars ($20,000); or

3. Films or produces a documentary in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be ten thousand dollars ($10,000); and

(b) For an approved company that is not a Kentucky-based company that:

1. Films or produces a feature-length film, television program, or industrial film in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures

shall be two hundred fifty thousand dollars ($250,000); or

2. Films or produces a documentary in whole or in part in the Commonwealth or that produces a national touring production of a Broadway show, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be twenty thousand dollars ($20,000).

(4) (a) Beginning on January 1, 2022, the total tax incentive approved under KRS 141.383 and this subchapter shall be limited to seventy-five million dollars ($75,000,000) for calendar year 2022 and each calendar year thereafter.

(b) Beginning with calendar year 2024:

1. Twenty-five million dollars ($25,000,000) shall be allocated for all approved companies with a continuous film production; and

2. On the first day of July of each calendar year, any unused balance of the amount allocated under subparagraph 1. of this paragraph for continuous film productions shall be made available for all approved companies with motion picture or entertainment productions.

(5) (a) To qualify for the tax incentive available under KRS 141.383 and this subchapter all applicants shall:

1. Begin filming or production in Kentucky within six (6) months of approval by the council; and

2. Complete filming or production in Kentucky within two (2) years of the filming or production start date.

(b) The tax credit shall be against the Kentucky income tax imposed under KRS 141.020 or 141.040, and the limited liability entity tax imposed under KRS 141.0401, and shall be refundable as provided in KRS 141.383.

(c) 1. For a motion picture or entertainment production or continuous film production filmed or produced in its entirety in ***a heritage***~~[an enhanced~~

~~incentive]~~ county, the amount of the incentive shall be equal to thirty-five percent (35%) of the approved company's:

a. Qualifying expenditures;

b. Qualifying payroll expenditures paid to resident and nonresident below-the-line production crew; and

c. Qualifying payroll expenditures paid to resident and nonresident above-the-line production crew not to exceed one million dollars ($1,000,000) in payroll expenditures per employee.

2. a. To the extent the approved company films or produces a motion picture or entertainment production or continuous film production in part in ***a heritage***~~[an enhanced incentive]~~ county and in part a Kentucky county that is not ***a heritage***~~[an enhanced incentive]~~ county, the approved company shall be eligible to receive the incentives provided in this paragraph for those expenditures incurred in the ***heritage***~~[enhanced incentive]~~ county and all other expenditures shall be subject to the incentives provided in paragraph (d) of this subsection.

b. The approved company shall track the requisite expenditures by county. If the approved company can demonstrate to the satisfaction of the cabinet that it is not practical to use a separate accounting method to determine the expenditures by county, the approved company shall determine the correct expenditures by county using an alternative method approved by the cabinet.

(d) For a motion picture or entertainment production or continuous film production filmed or produced in whole or in part in any Kentucky county other than in ***a heritage***~~[an enhanced incentive]~~ county, the amount of the incentive shall be equal to:

1. Thirty percent (30%) of the approved company's:
   a. Qualifying expenditures;
   b. Qualifying payroll expenditures paid to below-the-line production crew that are not residents; and
   c. Qualifying payroll expenditures paid to above-the-line production crew that are not residents, not to exceed one million dollars ($1,000,000) in payroll expenditures per employee; and
2. Thirty-five percent (35%) of the approved company's:
   a. Qualifying payroll expenditures paid to resident below-the-line production crew; and
   b. Qualifying payroll expenditures paid to resident above-the-line production crew not to exceed one million dollars ($1,000,000) in payroll expenditures per employee.

➔Section 24. KRS 148.851 is amended to read as follows:

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

(1) "Agreement" means the tourism development agreement entered into between the authority and an approved company;

(2) "Approved company" means any eligible company that has received final approval to receive incentives provided under KRS 148.853;

(3) "Approved costs" means the amount of eligible costs approved by the authority upon completion of the project;

(4) "Authority" means the Kentucky Tourism Development Finance Authority as set forth in KRS 148.850;

(5) "Cabinet" means the Tourism, Arts and Heritage Cabinet;

(6) "Crafts and products center" means a facility primarily devoted to the display, promotion, and sale of Kentucky products, and at which a minimum of eighty percent (80%) of the sales occurring at the facility are of Kentucky arts, crafts, or

agricultural products;

(7) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity operating or intending to operate a tourism development project;

(8) "Eligible costs" means:

(a) Obligations incurred for labor and amounts paid to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a tourism development project;

(b) The costs of acquiring real property or rights include the acquisition of real property by a leasehold interest with a minimum term of ten (10) years, and any costs incidental thereto;

(c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a tourism development project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;

(d) All costs of architectural and engineering services, including but not limited to estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a tourism development project;

(e) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a tourism development project;

(f) All costs required for the installation of utilities, including but not limited to water, sewer, sewer treatment, gas, electricity and communications, and including off-site construction of the facilities paid for by the approved company; and

(g) All other costs comparable with those described in this subsection, excluding costs subject to refund under KRS 154.20-202, 154.20-204, 154.20-206, 154.20-208, and 154.20-210 or Subchapter 31 of KRS Chapter 154;

(9)[~~ "Enhanced incentive county" has the same meaning as in KRS 154.32-010;~~

~~(10)~~] "Entertainment destination center project" means a facility that meets the requirements of KRS 148.853(2)(b);

(10)[~~(11)~~] "Final approval" means the action taken by the authority authorizing the eligible company to receive incentives under KRS 139.536 and 148.851 to 148.860;

(11)[~~(12)~~] "Full-service lodging facility" means a facility that provides overnight sleeping accommodations, including private bathrooms and all of the following:

(a) On-site dining facilities;

(b) Room service;

(c) Catering: and

(d) Meeting space;

(12)[~~(13)~~] ***"Heritage county" means a county where the county population ranking determined by the Cabinet for Economic Development under Section 7 of this Act scores greater than or equal to ninety-seven (97);***

(13) "Incentives" means the Kentucky sales tax refund as prescribed in KRS 139.536;

(14) "Kentucky sales tax" means the sales tax imposed by KRS 139.200;

(15) "Lodging facility project" means a full-service lodging facility that:

(a) 1. Is located on recreational property owned or leased by the Commonwealth or the federal government;

2. Involves the restoration or rehabilitation of a structure that:

a. Is listed individually on the National Register of Historic Places; or

b. Is located in the National Register Historic District; and is certified by the Kentucky Heritage Council as contributing to the historic significance of the district, and the rehabilitation or restoration of the structure has been approved in advance by the Kentucky Heritage Council;

3. Is an integral part of a major convention or sports facility;

4. Is located:

   a. Within a fifty (50) mile radius of a property listed on the National Register of Historic Places with a current function of recreation and culture; and

   b. In any of the one hundred (100) least-populated counties in the Commonwealth, in terms of population density, according to the most recent census;

5. Is located on property:

   a. Owned by the Commonwealth, or leased by the Commonwealth from the federal government;

   b. Acquired for use in the state park system pursuant to KRS 148.028; and

   c. Operated by the Kentucky Department of Parks pursuant to KRS 148.021 or the Kentucky Horse Park Commission pursuant to KRS 148.258 to 148.320;

6. Is located on property:

   a. Owned or leased by the federal government and under the control of the Department of the Interior; or

   b. Owned by the Commonwealth and in the custody of the State Fair Board as provided in KRS 247.140;

7. Is part of a tourism attraction project, entertainment destination center project, or theme restaurant destination attraction project and the full-

service lodging facility represents less than fifty percent (50%) of the total eligible costs; or

8. Has not less than five hundred (500) guest rooms; or

(b) 1. Is located:

a. In any of the one hundred (100) least-populated counties in the Commonwealth, in terms of population density, according to the most recent decennial census;

b. In a county, the boundaries of which:

i. Include, in part, the boundaries of a designated national forest; or

ii. Are adjacent to or include a portion of parallel reservoirs of water surrounding a national recreation area;

c. Within ***a heritage***[~~an enhanced incentive~~] county and will create at least fifty (50) new full-time jobs within that county; and

d. Within one-half (1/2) mile of a state resort park;

2. Has a capital investment of at least one hundred million dollars ($100,000,000); and

3. Contains accommodations for:

a. Lodging, with a minimum of one hundred (100) guest rooms, cabins, or rental units;

b. Relaxation, including a spa;

c. More than one (1) on-site dining facility; and

d. More than one (1) meeting or event space;

(16) "Net positive fiscal impact" means the amount by which increased state tax revenues will exceed the incentives given;

(17) "Preliminary approval" means the action taken by the authority conditionally approving an eligible company for the incentives under KRS 139.536 and 148.851

to 148.860;

(18) "Recreational facility" means a structure or outdoor area that:

(a) Provides visitors recreational opportunities, including but not limited to amusement parks, boating, hiking, horseback riding, hunting, fishing, camping, wildlife viewing, live theater, rock climbing, and all-terrain vehicle trails; and

(b) Serves as a likely destination where individuals who are not residents of the Commonwealth would remain overnight in commercial lodging at or near the recreational facility;

(19) "Theme restaurant destination attraction project" means a restaurant facility that meets the requirements for incentives under KRS 148.853(2)(c);

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

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

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

(21) "Tourism development project" means:

(a) A tourism attraction project;

(b) A theme restaurant destination attraction project;

(c) An entertainment destination center project; or

(d) A lodging facility project.

➔Section 25. KRS 148.853 is amended to read as follows:

(1) 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 development of tourism in the Commonwealth;

(b) It is in the best interest of the Commonwealth to provide incentives for the creation of new tourism attractions and the expansion of existing tourism attractions within the Commonwealth in order to advance the public purposes of relieving unemployment by preserving and creating jobs that would not exist if not for the incentives 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;

(c) The authorities granted by KRS 148.851 to 148.860 are proper governmental and public purposes for which public moneys may be expended; and

(d) That the creation or expansion of tourism development projects is of paramount importance mandating that the provisions of KRS 139.536 and KRS 148.851 to 148.860 be liberally construed and applied in order to advance public purposes.

(2) To qualify for incentives provided in KRS 139.536 and 148.851 to 148.860, the following requirements shall be met:

(a) For a tourism attraction project:

1. The total eligible costs shall exceed one million dollars ($1,000,000), except for a tourism attraction project located in a county designated as ***a heritage***[~~an enhanced incentive~~] county at the time the eligible company becomes an approved company as provided in KRS 148.857(6), the total eligible costs shall exceed five hundred thousand dollars ($500,000);

2. In any year, including the first year of operation, the tourism attraction

project shall be open to the public at least one hundred (100) days; and

3. In any year following the third year of operation, the tourism attraction project shall attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth;

(b) For an entertainment destination center project:

1. The total eligible costs shall exceed five million dollars ($5,000,000);

2. The facility shall contain a minimum of two hundred thousand (200,000) square feet of building space adjacent or complementary to an existing tourism attraction project or a major convention facility;

3. The incentives shall be dedicated to a public infrastructure purpose that shall relate to the entertainment destination center project;

4. In any year, including the first year of operation, the entertainment destination center project shall:

a. Be open to the public at least one hundred (100) days per year;

b. Maintain at least one (1) major theme restaurant and at least three (3) additional entertainment venues, including but not limited to live entertainment, multiplex theaters, large-format theater, motion simulators, family entertainment centers, concert halls, virtual reality or other interactive games, museums, exhibitions, or other cultural and leisure-time activities; and

c. Maintain a minimum occupancy of sixty percent (60%) of the total gross area available for lease with entertainment and food and drink options not including the retail sale of tangible personal property; and

5. In any year following the third year of operation, the entertainment destination center project shall attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the

Commonwealth;

(c) For a theme restaurant destination attraction project:

1. The total eligible costs shall exceed five million dollars ($5,000,000);

2. In any year, including the first year of operation, the attraction shall:

a. Be open to the public at least three hundred (300) days per year and for at least eight (8) hours per day; and

b. Generate no more than fifty percent (50%) of its revenue through the sale of alcoholic beverages;

3. In any year following the third year of operation, the theme restaurant destination attraction project shall attract a minimum of fifty percent (50%) of its visitors from among persons who are not residents of the Commonwealth; and

4. The theme restaurant destination attraction project shall:

a. At the time of final approval, offer a unique dining experience that is not available in the Commonwealth within a one hundred (100) mile radius of the attraction;

b. In any year, including the first year of operation, maintain seating capacity of four hundred fifty (450) guests and offer live music or live musical and theatrical entertainment during the peak business hours that the facility is in operation and open to the public; or

c. Within three (3) years of the completion date, the attraction shall obtain a top two (2) tier rating by a nationally accredited service and shall maintain a top two (2) tier rating through the term of the agreement;

(d) For a lodging facility project defined in KRS 148.851(15)(a):

1. a. The eligible costs shall exceed five million dollars ($5,000,000) unless the provisions of subdivision b. of this subparagraph apply.

b. i. If the lodging facility is an integral part of a major convention or sports facility, the eligible costs shall exceed six million dollars ($6,000,000); and

ii. If the lodging facility includes five hundred (500) or more guest rooms, the eligible costs shall exceed ten million dollars ($10,000,000); and

2. In any year, including the first year of operation, the lodging facility shall:

a. Be open to the public at least one hundred (100) days; and

b. Attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth;

(e) For a lodging facility project defined in KRS 148.851(15)(b):

1. The eligible costs shall exceed one hundred million dollars ($100,000,000); and

2. The lodging facility shall:

a. Be open to the public at least one hundred (100) days each year, including the first year of operation; and

b. In any year following the third year of operation, attract a minimum of twenty-five percent (25%) of its overnight visitors from among persons who are not residents of the Commonwealth;

(f) Any tourism development project shall not be eligible for incentives if it includes material determined to be lewd, offensive, or deemed to have a negative impact on the tourism industry in the Commonwealth; and

(g) An expansion of any tourism development project shall in all cases be treated as a new stand-alone project.

(3) (a) The incentives offered to an approved company under the Kentucky Tourism Development Act may include a sales tax incentive based on the Kentucky

sales tax imposed on sales generated by or arising at the tourism development project.

(b) 1. For a tourism development project other than a lodging facility project described in subparagraph 4. or 5. of this paragraph:

a. A sales tax incentive shall be allowed to an approved company over a period of ten (10) years, except as provided in subparagraphs 7. and 8. of this paragraph; and

b. The sales tax incentive shall not exceed the lesser of the total amount of the sales tax liability of the approved company and its lessees or a percentage of the approved costs as specified by the agreement, not to exceed twenty-five percent (25%).

2. For projects approved according to the application period established under KRS 148.8531, a tourism attraction project located in ***a heritage***~~[an enhanced incentive]~~ county at the time the eligible company becomes an approved company as provided in KRS 148.857(6):

a. A sales tax incentive shall be allowed to the approved company over a period of ten (10) years; and

b. The sales tax incentive shall not exceed the lesser of the total amount of the sales tax liability of the approved company and its lessees or a percentage of the approved costs as specified by the agreement, not to exceed thirty percent (30%).

3. For applications considered after June 27, 2025, including projects related to property to which the title passed from a seller to a buyer on or after March 1, 2025, a tourism attraction project located in ***a heritage***~~[an enhanced incentive]~~ county with a population equal to or less than twenty thousand (20,000) based on the most recent decennial census at the time the eligible company becomes an approved company

as provided in KRS 148.857(6):

a. A sales tax incentive shall be allowed to the approved company over a period of twenty (20) years; and

b. The sales tax incentive shall not exceed the lesser of the total amount of the sales tax liability of the approved company and its lessees or a percentage of the approved costs as specified by the agreement, not to exceed fifty percent (50%).

4. For a lodging facility project described in KRS 148.851(15)(a)5. or 6.:

a. A sales tax incentive shall be allowed to the approved company over a period of twenty (20) years; and

b. The sales tax incentive shall not exceed the lesser of total amount of the sales tax liability of the approved company and its lessees or a percentage of the approved costs as specified by the agreement, not to exceed fifty percent (50%).

5. For a lodging facility project described in KRS 148.851(15)(b), a sales tax incentive that shall:

a. Be allowed to the approved company over a period of twenty (20) years; and

b. Not exceed the lesser of the total amount of sales tax liability of the approved company and its lessees or a percentage of the approved costs as specified by the agreement, not to exceed fifty percent (50%).

6. Any unused incentives from a previous year may be carried forward to any succeeding year during the term of the agreement until the entire specified percentage of the approved costs has been received through sales tax incentives.

7. If the approved company is an entertainment destination center that has

dedicated at least thirty million dollars ($30,000,000) of the incentives provided under the agreement to a public infrastructure purpose, the agreement may be amended to extend the term of the agreement up to two (2) additional years if the approved company agrees to:

a. Reinvest in the original entertainment destination project one hundred percent (100%) of any incentives received during the extension that were outstanding at the end of the original term of the agreement; and

b. Report to the authority at the end of each fiscal year the amount of incentives received during the extension and how the incentives were reinvested in the original entertainment destination project.

8. The term of a tourism development agreement entered into with a tourism attraction project that was in effect on January 1, 2020, shall be extended for one (1) year if the tourism attraction project:

a. Has historically been open to the public on a seasonal basis consisting of less than six (6) months;

b. Has previously met the requirement of being open to the public at least one hundred (100) days during the entire term of the tourism development agreement as required under subsection (2)(a)2. of this section;

c. Failed to be open to the public at least one hundred (100) days during the calendar year 2020 solely as a result of complying with one (1) or more executive orders issued by the Governor under the authority of KRS 39A.090 that prevented the tourism attraction project from being open to the public for at least one hundred (100) days during its normal operating season; and

d. Applied for a sales tax incentive related to the calendar year 2020 operating season and was denied the sales tax incentive solely on the basis that the tourism attraction project was not open to the public for at least one hundred (100) days in calendar year 2020.

➔Section 26. 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;

(7)[~~(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;

(8)[~~(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;

(9) "Heritage county" means a county where the county population ranking determined by the cabinet under Section 7 of this Act scores greater than or equal to ninety-seven (97);

(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 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 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 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 27. KRS 154.20-236 is amended to read as follows:

(1) The total amount of credit that may be awarded by the authority in each calendar year, pursuant to KRS 154.20-230 to 154.20-240, to:

(a) All qualified investors shall be no more than three million dollars ($3,000,000); and

(b) Any individual qualified investor shall be no more than two hundred thousand dollars ($200,000).

(2) (a) The total amount of credit that may be awarded by the authority to:

1. All qualified investors pursuant to KRS 154.20-230 to 154.20-240; and

2. All investors in all investment funds pursuant to KRS 154.20-250 to 154.20-284;

shall be no more than forty million dollars ($40,000,000) in total for all years prior to December 31, 2020.

(b) Beginning on or after January 1, 2021, the amount of credit that may be awarded by the authority in each calendar year shall be equal to the amount provided in subsection (1) of this section.

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

(3) The authority shall, by promulgation of an administrative regulation, develop a standard procedure for:

(a) Small businesses and investors to request certification for participation in the program;

(b) Qualified investors to request certification of a planned investment as being a qualified investment, and to apply for a credit; and

(c) The award of credits to qualified investors making qualified investments.

(4) At a minimum, the procedure shall:

(a) Require small businesses and investors to demonstrate to the authority that they, and any planned investment, satisfy all requirements provided in KRS 154.20-234;

(b) Provide small businesses and investors with a standard written application form to request certification and apply for a credit;

(c) Require the payment of a fee; and

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

(5) The amount of credit awarded shall not exceed:

(a) Twenty-five percent (25%) of the amount of the qualified investment, if the principal place of business of the qualified small business is outside ***a heritage***[~~an enhanced incentive~~] county; or

(b) Forty percent (40%) of the amount of the qualified investment, if the principal place of business of the qualified small business is in ***a heritage***[~~an enhanced incentive~~] county.

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

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

➔Section 28. KRS 154.34-010 is amended to read as follows:

As used in this subchapter:

(1) "Affiliate" has the same meaning as in KRS 154.32-010;

(2) "Agribusiness" has the same meaning as in KRS 154.32-010;

(3) "Alternative fuel production" has the same meaning as in KRS 154.32-010;

(4) "Approved company" means an eligible company approved under KRS 154.34-070 for a reinvestment project;

(5) "Approved costs" means the eligible equipment and related costs approved by the authority that may be recovered by an approved company through the incentives authorized by this subchapter;

(6) "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;

(7) "Capital lease" has the same meaning as in KRS 154.32-010;

(8) "Carbon dioxide or hydrogen transmission pipeline" has the same meaning as in KRS 154.32-010;

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

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

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

(12) (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. 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 or hydrogen transmission pipeline operations; or

h. Hospital operations;

at the same 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 operations have been temporarily suspended and which meet the standards under KRS 154.34-070 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) (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;

(14) "Energy-efficient alternative fuel production" has the same meaning as in KRS 154.32-010;

(15)[~~ "Enhanced incentive counties" has the same meaning as in KRS 154.32-010;~~

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

(16)[~~(17)~~] "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;

(17)[~~(18)~~] "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;

(18)[~~(19)~~] "Gasification production" has the same meaning as in KRS 154.32-010;

(19)[~~(20)~~] "Headquarters" has the same meaning as in KRS 154.32-010;

(20) "Heritage county" means a county where the county population ranking determined by the cabinet under Section 7 of this Act scores greater than or equal to ninety-seven (97);

(21) "Hospital" has the same meaning as in KRS 154.32-010;

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

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

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

(25) "Leased project" has the same meaning as in KRS 154.32-010;

(26) "Manufacturing" has the same meaning as in KRS 154.32-010;

(27) "Nonretail service or technology" has the same meaning as in KRS 154.32-010;

(28) "Personal protective equipment" has the same meaning as in KRS 154.32-010;

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

(30) "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;

(31) "Reinvestment project" means:

(a) A reinvestment in the facility of an eligible company and in the full-time employees of an eligible company through 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 located;

(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 KRS 154.32-010; and

(33) "Vital medications" has the same meaning as in KRS 154.32-010.

➔Section 29. KRS 164.6021 is amended to read as follows:

(1) The Cabinet for Economic Development shall manage the Kentucky enterprise fund to provide capital to small and medium-size, Kentucky-based companies to undertake feasibility, concept development, research and development, or commercialization work.

(2) The purpose of the Kentucky enterprise fund 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 shall be used to fund qualified companies in accordance with this section as follows:

(a) Grants of up to fifty thousand dollars ($50,000) 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; 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).

(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 ***heritage***~~[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. ***As used in this subsection, "heritage county" means a county where the county population ranking determined by the cabinet under Section 7 of this Act scores greater than or equal to ninety-seven (97).***

(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 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 agreement for future equity or "SAFE agreement", 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 Innovation.

➔SECTION 30. A NEW SECTION OF KRS CHAPTER 96 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section and Section 31 of this Act:

(a) "Contract" means the electric service agreement between a municipal electric utility and a customer that owns or operates a data center;

(b) "Data center" means:

1. A qualified data center project that has been preliminarily approved or approved for a certificate of exemption under KRS 139.499; or

2. A centralized facility that:

a. Is used primarily or exclusively for electronic information

services, including but not limited to the management, storage, processing, and dissemination of electronic data and information through the use of computer systems, servers, networking equipment, and related components;

b. Has electrical load that is either fixed, portable, or distributable, including but not limited to structures that are not affixed to the ground or are easily removed from a location;

c. Has an expected or actual peak of real-time energy demand of fifteen (15) megawatts or greater; and

d. Has an expected or actual monthly load factor of sixty percent (60%) or greater;

(c) "Data center customer" means a customer of a municipal electric utility that owns or operates, or proposes to own or operate, a data center or who is otherwise responsible for paying for municipal electric utility service for a data center;

(d) "Dedicated resource" means one (1) or more sources of electric power or capacity that is sufficient to serve the contract capacity needs of the data center from:

1. All or any portion of an electric generation facility that is owned or leased by the municipal electric utility or, to the extent permitted by law, the data center customer;

2. Bilateral power and capacity agreements entered into by the municipal electric utility; or

3. Any combination of both; and

(e) "Municipal electric utility" means any city or municipal corporation that is engaged in the furnishing of electric utility service to a consumer for ultimate consumption.

(2) A municipal electric utility shall only provide electric service to a data center customer through a contract that conforms to the requirements of this section and Section 31 of this Act.

(3) Within one hundred eighty (180) days of the effective date of this Act, a municipal electric utility shall issue and maintain a tariff that includes the following minimum requirements for serving a data center:

(a) A process for submission of an application for service, in the form and manner required by the municipal electric utility, that sets forth the data center customer's:

1. Location for the data center, including the status of the data center customer's control over the premises;

2. Requirements for electric service, including a load ramp schedule;

3. Proposed dedicated resource if the data center's contract capacity exceeds twenty-five (25) megawatts; and

4. Any other information as the municipal electric utility may determine is necessary to develop a resource supply plan and to conduct necessary interconnection, infrastructure, and pricing studies for service to the data center;

(b) Payment of an initial nonrefundable application fee with a minimum fee of not less than seventy-five thousand dollars ($75,000), provided that:

1. The data center customer shall be required to pay the full actual cost of the municipal electric utility's study and development of the requirements to serve the data center consistent with this section;

2. The municipal electric utility shall require payment of any supplemental application fees as are necessary to recover its full actual costs of undertaking activities set forth in this section; and

3. Any overpayment of actual costs beyond the initial application fee

shall be refunded or credited toward satisfying financial obligations for procurement or interconnection agreements at the same geographic site; and

(c) Preparation within a reasonable time of load, interconnection, pricing, and any other studies necessary to determine the manner in which to safely and efficiently serve the data center's requirements in a way that does not have any negative service or rate impact to the municipal electric utility's non-data center customer classes and preserves the municipal electric utility's existing generation margins and excess capacity.

(4) A contract between a data center customer and a municipal electric utility shall:

(a) Be in the form and manner required by the municipal electric utility;

(b) Be consistent with the results of the studies described in subsection (3)(c) of this section;

(c) Prevent the subsidization of data center customers by non-data center customers through rates or by any other means;

(d) Include terms and conditions to ensure that all fixed and variable capital and operating costs attributable to serving a data center are fully allocated to the data center regardless of category, form, purpose, nature, or label;

(e) Require the data center customer to tender prepayment of all estimated capital costs incurred by the municipal electric utility to invest in new or existing infrastructure to serve the data center, subject to subsequent credits, payments, or repayments by the municipal utility if the actual costs of those investments are less than or greater than the prepayments made by the data center customer;

(f) Require an identified dedicated resource be available to serve the data center if the data center's peak load at any point during the term of the contract will exceed twenty-five (25) megawatts; and

(g) Allocate any curtailment obligations between a data center and non-data center customers in a manner that is consistent with the rules and requirements of the municipal electric utility's transmission grid operator and that fairly allocates any mandated curtailment as between a data center customer and non-data center customer classes.

(5) The requirements of this section shall not apply to:

(a) Distributors of electricity supplied by the Tennessee Valley Authority;

(b) Data centers constructed on sites owned by the United States Department of Energy; or

(c) An electric service contract entered into prior to the effective date of this Act.

➔SECTION 31. A NEW SECTION OF KRS CHAPTER 96 IS CREATED TO READ AS FOLLOWS:

(1) A municipal utility subject to the requirements of this chapter shall not charge or allocate any of the costs associated with serving or constructing any new infrastructure to serve a data center to any other customers served by the utility with regard to the following utility services that it provides to the public for compensation:

(a) The diverting, developing, pumping, impounding, distributing, or furnishing of water;

(b) The collection, transmission, or treatment of sewage; or

(c) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of both.

(2) The provisions of this section shall not apply to data centers constructed on sites owned by the United States Department of Energy.

➔SECTION 32. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section and Section 33 of this Act:

(a) "Contract" means the electric service agreement between a retail electric supplier and a customer that owns or operates a data center, which for any retail electric service agreement involving a retail electric supplier formed under KRS Chapter 279 shall also include the generation and transmission cooperative from which the retail electric supplier is contractually obligated to purchase electricity;

(b) "Data center" means:

1. A qualified data center project that has been preliminarily approved or approved for a certificate of exemption under KRS 139.499; or

2. A centralized facility that:

a. Is used primarily or exclusively for electronic information services, including but not limited to the management, storage, processing, and dissemination of electronic data and information through the use of computer systems, servers, networking equipment, and related components;

b. Has electrical load that is either fixed, portable, or distributable, including but not limited to structures that are not affixed to the ground or are easily removed from a location;

c. Has an expected or actual peak of real-time energy demand of fifteen (15) megawatts or greater; and

d. Has an expected or actual monthly load factor of sixty percent (60%) or greater;

(c) "Data center customer" means a customer of a retail electric supplier that owns or operates, or proposes to own or operate, a data center or who is otherwise responsible for paying for electric utility service for a data center;

(d) "Dedicated resource" means one (1) or more sources of electric power or

capacity that is sufficient to serve the contract capacity needs of the data center from:

1. All or any portion of an electric generation facility that is owned or leased by the retail electric supplier or its generation and transmission cooperative, or to the extent permitted by law, the data center customer;

2. Bilateral power and capacity agreements entered into by the retail electric supplier or its generation and transmission cooperative; or

3. Any combination of both;

(e) "Generation and transmission cooperative" has the same meaning as in KRS 278.010; and

(f) "Retail electric supplier" has the same meaning as in KRS 278.010.

(2) A retail electric supplier shall only provide electric service to a data center customer through a contract approved by the commission that is consistent with the retail electric supplier's data center tariff and this section.

(3) Within ninety (90) days of the effective date of this Act, the commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to require each retail electric supplier to file and maintain a tariff to serve data centers located within its service territory. Each retail electric supplier shall thereafter file a data center tariff that conforms to the requirements of the commission's administrative regulations within ninety (90) days of the promulgation of the administrative regulations. The commission shall require that each data center tariff include the following minimum requirements for serving a data center:

(a) A process for the submission of an application for service, in the form and manner required by the retail electric supplier, that sets forth the following information about the data center:

<u>1. The location for the data center, including the status of the data center customer's control over the premises;</u>

<u>2. Requirements for its electric service, including a load ramp schedule;</u>

<u>3. A proposed dedicated resource if the data center's contract capacity exceeds two hundred fifty (250) megawatts; and</u>

<u>4. Any other information as the retail electric supplier may determine is necessary to develop a resource supply plan and conduct necessary interconnection, infrastructure, and pricing studies for the data center;</u>

<u>(b) Payment of an initial nonrefundable application fee with a minimum fee of not less than seventy-five thousand dollars ($75,000), provided that:</u>

<u>1. The data center customer shall be required to pay the full actual cost of the retail electric supplier's study, including but not limited to third-party transmission studies and other third-party costs, and the full actual costs for the development of the requirements to serve the data center consistent with this section;</u>

<u>2. The retail electric supplier shall require payment of supplemental application fees as are necessary to recover its full actual costs of undertaking activities set forth in this section; and</u>

<u>3. Any overpayment of actual costs beyond the initial application fee shall be refunded or credited toward satisfying financial obligations for procurement or interconnection agreements at the same geographic site;</u>

<u>(c) Preparation within a reasonable time of load, interconnection, infrastructure, pricing and any other studies necessary to determine the manner in which to safely and efficiently serve the data center's requirements in a way that does not have any negative service or rate impact</u>

<u>to the retail electric supplier's non-data center customer classes and preserves the retail electric supplier's existing generation margins and excess capacity. For a retail electric supplier formed under KRS Chapter 279, the existing generation margins and excess capacity of the generation and transmission cooperative from which the retail electric supplier is contractually obligated to purchase electricity shall be preserved; and</u>

<u>(d) An itemization of the types of terms and conditions that shall be included within each contract.</u>

<u>(4) A contract between a data center customer and a retail electric supplier shall:</u>

<u>(a) Be in the form and manner required by the retail electric supplier and, as applicable, its generation and transmission cooperative;</u>

<u>(b) Be consistent with the results of the studies described in subsection (3)(c) of this section;</u>

<u>(c) Prevent the subsidization of data center customers by non-data center customers through rates or by any other means;</u>

<u>(d) Include terms and conditions to ensure that all fixed and variable capital and operating costs attributable to serving a data center are fully allocated to the data center regardless of category, form, purpose, nature, or label;</u>

<u>(e) Require the data center customer to tender prepayment of all estimated capital costs incurred by the retail electric supplier, and as applicable, its generation and transmission cooperative, to invest in new or existing infrastructure to serve the data center, subject to any subsequent credits, payments, or repayments by the retail electric supplier, or as applicable the generation and transmission cooperative, if the actual costs of those investments are less than or greater than the prepayments made by the data center customer;</u>

<u>(f) Require an identified dedicated resource be available to serve the data</u>

center if the data center's peak load at any point during the term of the contract will exceed two hundred fifty (250) megawatts;

(g) Allocate any curtailment obligations between a data center and non-data center customers in a manner that is consistent with the rules and requirements of the transmission grid operator of the retail electric supplier or, as applicable, its generation and transmission cooperative, and that fairly allocates any mandated curtailment as between a data center customer and non-data center customer classes; and

(h) Include any other terms and conditions as the commission may require to isolate and insulate non-data center customers from the costs, risks and liabilities incurred by the retail electric supplier or as applicable, its generation and transmission cooperative, in serving a data center.

(5) If the commission has previously approved the data center tariff of a generation and transmission cooperative from which a retail electric supplier formed under KRS Chapter 279 is contractually obligated to purchase electricity, then the retail electric supplier may adopt and incorporate the data center tariff of the generation and transmission cooperative in lieu of developing and submitting its own unique tariff to serve data centers as otherwise required by this section.

(6) This section shall not be construed to limit or abrogate a retail electric supplier's exclusive right to serve an electric consuming facility pursuant to KRS 278.016, 278.017, and 278.018.

(7) The requirements of this section shall not apply to:

(a) Distributors of electricity supplied by the Tennessee Valley Authority;

(b) Data centers constructed on sites owned by the United States Department of Energy; or

(c) An electric service contract entered into prior to the effective date of this Act.

➔SECTION 33. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

(1) A utility providing a service described in KRS 278.010(3)(b), (d), or (f) to a data center subject to the requirements of Section 32 of this Act shall not charge or allocate any of the costs associated with serving or constructing any new infrastructure to serve the data center to any other customer classes served by the utility.

(2) The provisions of this section shall not apply to data centers constructed on sites owned by the United States Department of Energy.

➔Section 34. KRS 154.20-229 is amended to read as follows:

The authority, with preliminary approval of an eligible company, may execute a memorandum of agreement with the eligible company. The terms and conditions of the memorandum of agreement shall be negotiated between the authority and the company. The terms of the memorandum of agreement shall include but not be limited to the following provisions:

(1) The estimated capital investment for the qualified data center project;

(2) That the preliminarily approved company shall provide the authority with all documentation requested in a manner acceptable to the authority and within the timeframes required by the authority related to the minimum capital investment requirement to be used in monitoring compliance of the memorandum of agreement;

(3) That failure of a preliminarily approved company to meet the minimum capital investment on or before the fifth anniversary of the preliminary approval shall result in cancellation of the memorandum of agreement with the preliminarily approved company;

(4) The term of the agreement, which shall not exceed:

(a) Fifteen (15) years for a qualified data center project of a project organizer; or

(b) 1. Fifty (50) years for a qualified data center project having a capital investment of at least four hundred fifty million dollars ($450,000,000); or

2. Twenty-five (25) years for any other qualified data center project;

(5) A provision requiring the preliminarily approved company to notify the authority immediately if the eligible company sells or otherwise transfers or disposes of the land on which a qualified data center project is located;

(6) Authorization for the department to issue a certificate of exemption to the preliminarily approved company under KRS 139.499;

(7) A provision detailing the elimination of the sales and use tax exemption and the notice of assessment by the department provided under KRS 139.499 that shall occur if the preliminarily approved company fails to make the minimum capital investment;

(8) (a) A statement that the memorandum of agreement may remain in effect, even if there is a future transfer, sale, or disposition, directly or indirectly, of the qualified data center project, upon the adoption of a resolution by the authority to that effect.

(b) If continuation of the sales and use tax exemption is desired by the subsequent owner:

1. The memorandum of agreement may be assigned to that owner under paragraph (a) of this subsection provided the subsequent owner assumes the prior owner's obligations under that agreement; or

2. The subsequent owner shall enter into a memorandum of agreement with the authority for the remainder of the eligibility period.

(c) The authority shall notify the department regarding the events that transpire under paragraphs (a) and (b) of this subsection;

(9) That the approved company shall make available to the authority all of its records

pertaining to the qualified data center project, including but not limited to records relating to eligible costs and any other records pertaining to the project that the authority may require;

(10) (a) That the authority may share information with the department; and

(b) That the department may share information with the authority;

for the purposes of monitoring and enforcing the terms of the memorandum of agreement;

(11) That, if the preliminarily approved company fails to comply with its obligations under the memorandum of agreement by the fifth anniversary of the preliminary approval, the authority shall:

(a) Suspend the memorandum of agreement;

(b) Terminate the incentives available to the preliminarily approved company under the memorandum of agreement;

(c) Notify the department of the authority's actions;

(d) Instruct the department to proceed with the notice of assessment; and

(e) Pursue any other remedy set forth in the memorandum of agreement or to which it may be entitled by law;~~[and]~~

(12) ***A certification from the preliminarily approved company that the data center project complies or will comply with all applicable local requirements, the applicable requirements of Sections 30, 31, 32, and 33 of this Act, and any administrative regulations promulgated thereunder; and***

(13) Any other provisions not inconsistent with this subchapter and determined to be necessary or appropriate by the parties to the memorandum of agreement.

➔Section 35. KRS 278.466 is amended to read as follows:

(1) Each retail electric supplier shall make net metering available to any eligible customer-generator that the supplier currently serves or solicits for service. If the cumulative generating capacity of net metering systems reaches one percent (1%)

of a supplier's single hour peak load during a calendar year, the supplier shall have no further obligation to offer net metering to any new customer-generator at any subsequent time***. For the purposes of this subsection, the load of a data center as defined in Section 32 of this Act shall not be considered in determining a retail electric supplier's single hour peak load***.

(2) Each retail electric supplier serving a customer with eligible electric generating facilities shall use a standard kilowatt-hour meter capable of registering the flow of electricity in two (2) directions. Any additional meter, meters, or distribution upgrades needed to monitor the flow in each direction shall be installed at the customer-generator's expense. If additional meters are installed, the net metering calculation shall yield the same result as when a single meter is used.

(3) A retail electric supplier serving an eligible customer-generator shall compensate that customer for all electricity produced by the customer's eligible electric generating facility that flows to the retail electric supplier, as measured by the standard kilowatt-hour metering prescribed in subsection (2) of this section. The rate to be used for such compensation shall be set by the commission using the ratemaking processes under this chapter during a proceeding initiated by a retail electric supplier or generation and transmission cooperative on behalf of one (1) or more retail electric suppliers.

(4) Each billing period, compensation provided to an eligible customer-generator shall be in the form of a dollar-denominated bill credit. If an eligible customer-generator's bill credit exceeds the amount to be billed to the customer in a billing period, the amount of the credit in excess of the customer's bill shall carry forward to the customer's next bill. Excess bill credits shall not be transferable between customers or premises. If an eligible customer-generator closes his or her account, no cash refund for accumulated credits shall be paid.

(5) Using the ratemaking process provided by this chapter, each retail electric supplier

shall be entitled to implement rates to recover from its eligible customer-generators all costs necessary to serve its eligible customer-generators, including but not limited to fixed and demand-based costs, without regard for the rate structure for customers who are not eligible customer-generators.

(6) For an eligible electric generating facility in service prior to the effective date of the initial net metering order by the commission in accordance with subsection (3) of this section, the net metering tariff provisions in place when the eligible customer-generator began taking net metering service, including the one-to-one (1:1) kilowatt-hour denominated energy credit provided for electricity fed into the grid, shall remain in effect at those premises for a twenty-five (25) year period, regardless of whether the premises are sold or conveyed during that twenty-five (25) year period. For any eligible customer-generator to whom this subsection applies, each net metering contract or tariff under which the customer takes service shall be identical, with respect to energy rates, rate structure, and monthly charges, to the contract or tariff to which the same customer would be assigned if the customer were not an eligible customer-generator.

(7) Electric generating systems and interconnecting equipment used by eligible customer-generators shall meet all applicable safety and power quality standards established by the National Electrical Code (NEC), Institute of Electrical and Electronics Engineers (IEEE), and accredited testing laboratories such as Underwriters Laboratories.

(8) An eligible customer-generator installation is transferable to other persons at the same premises upon notification to the retail electric supplier and verification that the installation is in compliance with the applicable safety and power quality standards in KRS 278.467 and in subsection (7) of this section.

(9) Any upgrade of the interconnection between the retail electric supplier and the customer-generator that is required by commission-approved tariffs for the purpose

of allowing net metering shall be made at the expense of the customer-generator.

➔Section 36. The Cabinet for Economic Development's various incentive programs play a vital role in supporting economic development and job growth throughout the Commonwealth. To ensure companies operating within the Commonwealth's border counties are not negatively impacted by employees residing in adjacent states and to encourage companies operating in adjacent states to hire Kentucky residents, the cabinet is encouraged to conduct a feasibility and impact study on interstate reciprocity between state economic development programming. The study shall at a minimum identify any existing models, identify the potential economic impacts of such an arrangement between Kentucky and adjacent states, assess the feasibility and cost implications of implementing those models, and provide recommendations. The cabinet shall collaborate with the Center for Economic and Entrepreneurial Development at Murray State University to establish the scope of the study. If the cabinet completes such a study, it shall be submitted to the Interim Joint Committee on Economic Development and Workforce Investment by December 1, 2028.

➔Section 37. Notwithstanding KRS 45.229, the balance of the General Fund appropriation authorized in 2022 Ky. Acts ch. 199, Part I, B., 1., (12) shall not lapse and shall carry forward. Projects considered for KPDI funding shall meet the requirements under KRS 154.21-017.

➔Section 38. The following KRS section is repealed:

154.32-050 Enhanced incentive counties -- Annual identification and certification or decertification -- Criteria -- Multicounty industrial park projects.

➔Section 39. Whereas areas of Kentucky have been impacted by high unemployment an emergency is declared to exist, Sections 1 to 29 and 36 to 38 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.