

1 AN ACT relating to economic development.

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

3 ➔ SECTION 1. A NEW SECTION OF SUBCHAPTER 32 OF KRS CHAPTER
4 154 IS CREATED TO READ AS FOLLOWS:

5 (1) The authority is hereby authorized to negotiate and execute a tax incentive
6 agreement pursuant to this subchapter based on the tiering system provided in
7 Section 5 of this Act. Project tax credit amounts may be:

8 (a) Two thousand five hundred dollars (\$2,500) per new job created in Tier I
9 counties;

10 (b) Five thousand dollars (\$5,000) per new job created in Tier II counties;

11 (c) Ten thousand dollars (\$10,000) per new job created in Tier III counties;
12 and

13 (d) Twenty thousand dollars (\$20,000) per new job created in Tier IV counties.

14 (2) If an eligible company establishes or expands its headquarters in Kentucky and
15 creates at least forty (40) new jobs, the eligible company may receive a tax credit
16 equal to twenty percent (20%) of the value of the facility dedicated to the
17 headquarters operations for up to ten (10) years.

18 (3) Eligible companies may choose the taxable year to claim the tax credit negotiated
19 under this subchapter. The credit shall not be claimed on a return filed for a
20 previous taxable year.

21 (4) (a) The tax incentive agreement established pursuant to this subchapter shall
22 indicate the taxable year in which the credit shall be claimed.

23 (b) The authority shall report the credit amount and taxable year for which the
24 credit may be claimed.

25 (c) The taxable year for when the credit shall be claimed shall not exceed more
26 than four (4) taxable years after the date of final approval.

27 ➔ Section 2. KRS 154.32-010 is amended to read as follows:

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

3 (2) "Affiliate" means the following:

4 (a) Members of a family, including only brothers and sisters of the whole or half
5 blood, spouse, ancestors, and lineal descendants of an individual;

6 (b) An individual, and a corporation more than fifty percent (50%) in value of the
7 outstanding stock of which is owned, directly or indirectly, by or for that
8 individual;

9 (c) An individual, and a limited liability company of which more than fifty
10 percent (50%) of the capital interest or profits are owned or controlled,
11 directly or indirectly, by or for that individual;

12 (d) Two (2) corporations which are members of the same controlled group, which
13 includes and is limited to:

14 1. One (1) or more chains of corporations connected through stock
15 ownership with a common parent corporation if:

16 a. Stock possessing more than fifty percent (50%) of the total
17 combined voting power of all classes of stock entitled to vote or
18 more than fifty percent (50%) of the total value of shares of all
19 classes of stock of each of the corporations, except the common
20 parent corporation, is owned by one (1) or more of the other
21 corporations; and

22 b. The common parent corporation owns stock possessing more than
23 fifty percent (50%) of the total combined voting power of all
24 classes of stock entitled to vote or more than fifty percent (50%) of
25 the total value of shares of all classes of stock of at least one (1) of
26 the other corporations, excluding, in computing the voting power
27 or value, stock owned directly by the other corporations; or

1 2. Two (2) or more corporations if five (5) or fewer persons who are
2 individuals, estates, or trusts own stock possessing more than fifty
3 percent (50%) of the total combined voting power of all classes of stock
4 entitled to vote or more than fifty percent (50%) of the total value of
5 shares of all classes of stock of each corporation, taking into account the
6 stock ownership of each person only to the extent the stock ownership is
7 identical with respect to each corporation;

8 (e) A grantor and a fiduciary of any trust;

9 (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a
10 grantor of both trusts;

11 (g) A fiduciary of a trust and a beneficiary of that trust;

12 (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a
13 grantor of both trusts;

14 (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value
15 of the outstanding stock of which is owned, directly or indirectly, by or for the
16 trust or by or for a person who is a grantor of the trust;

17 (j) A fiduciary of a trust and a limited liability company more than fifty percent
18 (50%) of the capital interest, or the interest in profits, of which is owned
19 directly or indirectly, by or for the trust or by or for a person who is a grantor
20 of the trust;

21 (k) A corporation, a partnership, or a limited partnership if the same persons own:
22 1. More than fifty percent (50%) in value of the outstanding stock of the
23 corporation; and
24 2. More than fifty percent (50%) of the capital interest, or the profits
25 interest, in the partnership or limited partnership;

26 (l) A corporation and a limited liability company if the same persons own:
27 1. More than fifty percent (50%) in value of the outstanding stock of the

- 1 (5) "Alternative transportation fuels" has the same meaning as in KRS 152.715;
- 2 (6) "Approved company" means an eligible company that has received final approval
3 to receive incentives under this subchapter;
- 4 (7) "Approved costs" means the amount of eligible costs approved by the authority at
5 final approval;
- 6 (8) "Authority" means the Kentucky Economic Development Finance Authority
7 established by KRS 154.20-010;
- 8 (9) "Biomass resources" has the same meaning as in KRS 152.715;
- 9 (10) "Capital lease" means a lease classified as a capital lease by the Statement of
10 Financial Accounting Standards No. 13, Accounting for Leases, issued by the
11 Financial Accounting Standards Board, November 1976, as amended;
- 12 (11) "Carbon dioxide or hydrogen transmission pipeline" means the in-state portion of a
13 pipeline, including appurtenant facilities, property rights, and easements, that is
14 used exclusively for the purpose of transporting carbon dioxide or hydrogen to the
15 point of sale, storage, or other carbon or hydrogen management applications;
- 16 (12) "Coal severing and processing" means activities resulting in the eligible company
17 being subject to the tax imposed by KRS Chapter 143;
- 18 (13) "Commonwealth" means the Commonwealth of Kentucky;
- 19 (14) "Confirmed approved costs" means:
 - 20 (a) For owned economic development projects, the documented eligible costs
21 incurred on or before the activation date; or
 - 22 (b) For leased economic development projects:
 - 23 1. The documented eligible costs incurred on or before the activation date;
24 and
 - 25 2. Estimated rent to be incurred by the approved company throughout the
26 term of the tax incentive agreement.
- 27 For both owned and leased economic development projects, "confirmed approved

1 costs" may be less than approved costs, but shall not be more than approved costs;

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

3 (16) "Economic development project" means:

4 (a) The acquisition, leasing, or construction of a new facility;

5 (b) The acquisition, leasing, rehabilitation, or expansion of an existing facility; or

6 (c) The installation and equipping of a facility;

7 by an eligible company. "Economic development project" does not include any

8 economic development project that will result in the replacement of facilities

9 existing in the Commonwealth, except as provided in KRS 154.32-060;

10 (17) (a) "Eligible company" means any corporation, limited liability company,

11 partnership, limited partnership, sole proprietorship, business trust, or any

12 other entity with a proposed economic development project that is engaged in

13 or is planning to be engaged in one (1) or more of the following activities

14 within the Commonwealth:

15 1. Manufacturing;

16 2. Agribusiness;

17 3. Nonretail service or technology;

18 4. Headquarters operations, regardless of the underlying business activity

19 of the company;

20 5. Alternative fuel, gasification, energy-efficient alternative fuel, or

21 renewable energy production;

22 6. Carbon dioxide or hydrogen transmission pipeline;

23 7. Coal severing and processing; or

24 8. Hospital operations.

25 (b) "Eligible company" does not include companies where the primary activity to

26 be conducted within the Commonwealth is forestry, fishing, the provision of

27 utilities, construction, wholesale trade, retail trade, real estate, rental and

1 leasing, educational services, accommodation and food services, or public
2 administration services;

3 (18) "Eligible costs" means:

4 (a) For owned economic development projects:

5 1. Start-up costs;

6 2. Nonrecurring obligations incurred for labor and nonrecurring payments
7 to contractors, subcontractors, builders, and materialmen in connection
8 with the economic development project;

9 3. The cost of acquiring land or rights in land and any cost incidental
10 thereto, including recording fees;

11 4. The cost of contract bonds and of insurance of all kinds that may be
12 required or necessary for completion of an economic development
13 project which is not paid by a contractor or otherwise provided for;

14 5. All costs of architectural and engineering services, including test
15 borings, surveys, estimated plans and specifications, preliminary
16 investigations, and supervision of construction, as well as for the
17 performance of all the duties required for construction of the economic
18 development project;

19 6. All costs which are required to be paid under the terms of any contract
20 for the economic development project;

21 7. All costs incurred for construction activities, including site tests and
22 inspections; subsurface site work; excavation; removal of structures,
23 roadways, cemeteries, and other surface obstructions; filling, grading,
24 and providing drainage and storm water retention; installation of utilities
25 such as water, sewer, sewage treatment, gas, electric, communications,
26 and similar facilities; off-site construction of utility extensions to the
27 boundaries of the real estate; construction and installation of railroad

1 spurs as needed to connect the economic development project to existing
2 railways; or similar activities as the authority may determine necessary
3 for construction of the economic development project; and

4 8. All other costs of a nature comparable to those described above; and

5 (b) For leased economic development projects:

- 6 1. Start-up costs;
- 7 2. Building/leasehold improvements; and
- 8 3. Fifty percent (50%) of the estimated annual rent for each year of the tax
9 incentive agreement.

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

14 (19) "Employee benefits" means payments by an approved company for its full-time
15 employees for health insurance, life insurance, dental insurance, vision insurance,
16 defined benefits, 401(k), or similar plans;

17 (20) "Energy-efficient alternative fuel production" means a Kentucky operation that
18 produces for sale energy-efficient alternative fuels;

19 (21) "Energy-efficient alternative fuels" means homogeneous fuels that:

20 (a) Are produced from processes designed to densify feedstock coal, waste coal,
21 or biomass resources; and

22 (b) Have an energy content that is greater than the feedstock coal, waste coal, or
23 biomass resource;

24 (22) "Enhanced incentive counties" means counties certified as Tier III or Tier IV by
25 the authority pursuant to KRS 154.32-050;

26 (23) "Final approval" means the action taken by the authority authorizing the eligible
27 company to receive incentives under this subchapter;

1 (24) (a) "Full-time job" means a job held by a person who:

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

3 2. a. Is subject to the Kentucky individual income tax imposed by KRS

4 141.020; or

5 b. Works remotely away from the economic development project if

6 the job meets all of the following conditions:

7 i. Is held by a Kentucky resident;

8 ii. Was created as a result of the economic development project;

9 and

10 iii. The payroll of this job is expensed to the economic

11 development project.

12 (b) "Full-time job" does not include a job held by a resident of any state with a

13 reciprocal agreement between the Commonwealth and the other state as

14 described in KRS 141.070;

15 (25) "Gasification process" means a process that converts any carbon-containing

16 material into a synthesis gas composed primarily of carbon monoxide and

17 hydrogen;

18 (26) "Gasification production" means a Kentucky operation that primarily produces for

19 sale:

20 (a) Alternative transportation fuels;

21 (b) Synthetic natural gas;

22 (c) Chemicals;

23 (d) Chemical feedstocks; or

24 (e) Liquid fuels;

25 from coal, waste coal, coal-processing waste, or biomass resources, through a

26 gasification process. The gasification production may produce electricity as a by-

27 product if the primary function of the operations remains the production and sale of

1 alternative transportation fuels, synthetic natural gas, chemicals, chemical
2 feedstocks, or liquid fuels;

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

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

9 (29) "Incentives" means the incentives available under this subchapter, as listed in KRS
10 154.32-020(3);

11 (30) "Job target" means the annual average number of new full-time jobs that the
12 approved company commits to create and maintain at the economic development
13 project, which shall not be less than ten (10) new full-time jobs **in Tier I and Tier**
14 **II counties or five (5) new full-time jobs in Tier III and Tier IV counties;**

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

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

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

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

22 (35) "Manufacturing" means any activity involving:

23 (a) Processing, assembling, or production of any property, including the
24 processing resulting in a change in the conditions of the property and any
25 activity related to the processing, assembling, or production of property,
26 together with the storage, warehousing, distribution, and related office
27 facilities; or

11 (46) "Tier" means the sorting of all Kentucky counties into quartiles based on each
12 county's unemployment rate and population ranking pursuant to Section 5 of this
13 Act;

14 **(47)[(46)]** "Vital medications" means any drug or biologic used to prevent or treat a
15 serious life-threatening disease or medical condition for which there is no other
16 available source with sufficient supply of that drug or biologic or alternative drug or
17 biologic;

18 (48)[(47)] "Wage" means the per hour earnings of a full-time employee, including
19 wages, tips, overtime, bonuses, and commissions, as reflected on the employee's
20 federal form W-2 wage and tax statement, but excludes employee benefits; and

21 **(49)[(48)]** "Wage target" means the average total hourly compensation amount,
22 including the minimum wage and employee benefits, that the approved company
23 commits to meet for all new full-time jobs created and maintained as a result of the
24 economic development project, which shall not be less than:

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

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

1 counties.

2 ➔Section 3. KRS 154.32-020 is amended to read as follows:

3 (1) The purposes of this subchapter are:

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

14 2. Creation of new sources of tax revenues for the support of public
15 services provided by the Commonwealth;

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

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

20 (b) To provide a tiered system of[enhanced] incentives for companies [that locate
21 in enhanced incentive counties] in recognition of the depressed economic
22 conditions in certain[those] counties and the increased need for the growth
23 and development caused by the depressed economic conditions.

24 (2) To qualify for the incentives provided by subsection (3) of this section, an approved
25 company shall:

26 (a) Incur eligible costs of at least one hundred thousand dollars (\$100,000);

27 (b) 1. Create at least ten (10) new full-time jobs and maintain an annual

average number of at least ten (10) new full-time jobs in Tier I or Tier II counties; or

2. Create at least five (5) new full-time jobs and maintain an annual average number of at least five (5) new full-time jobs in enhanced incentive counties; and

(c) 1. Pay at least ninety percent (90%) of all new full-time employees whose jobs were created as a result of the economic development project a minimum wage of at least one hundred twenty-five percent (125%) of the federal minimum wage in enhanced incentive counties, and one hundred fifty percent (150%) of the federal minimum wage in **Tier I** or **Tier II**{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.

26 (3) The incentives available under this subchapter are as follows:

27 (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. **Tax credits under this section shall be calculated under Section 1 of this Act;**

21 ➔Section 4. KRS 154.32-040 is amended to read as follows:

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

27 (1) The maximum approved costs that may be recovered over the term of the tax

1 incentive agreement and the annual maximum for approved costs;

2 (2) That the approved company shall provide the authority with all documentation

3 requested in a manner acceptable to the authority;

4 (3) Identification of the contribution of the local government to the economic

5 development project, if any;

6 (4) The activation date, which shall be within two (2) years of final approval;

7 (5) That the approved company shall implement the activation date by notifying the

8 authority;

9 (6) That the approved company shall provide documentation satisfactory to the

10 authority within the timeframes required by the authority that it has met the

11 minimum employment, minimum investment, and minimum wage requirements,

12 including employee benefits, established by KRS 154.32-020;

13 (7) That failure of the approved company to meet any of the minimum job, minimum

14 investment, or minimum wage requirements, including employee benefits,

15 established by KRS 154.32-020, on the activation date shall result in cancellation of

16 the tax incentive agreement;

17 (8) The term of the agreement, which shall not exceed fifteen (15) years for an

18 economic development project located in an enhanced incentive county, or ten (10)

19 years for an economic development project located in a Tier I or Tier II[another]

20 county;

21 (9) That, if confirmed approved costs are less than the maximum approved costs

22 included in the tax incentive agreement, the confirmed approved costs shall become

23 the maximum amount that may be recovered by the approved company;

24 (10) If the economic development project is a leased project, that future rent payments

25 that are included in eligible costs shall be included as confirmed approved costs

26 upon submission of a valid lease agreement executed after preliminary approval;

27 (11) Establishment of a job target and minimum wage target, including employee

1 benefits;

2 (12) A requirement that the job target and minimum wage target, including employee
3 benefits, be measured:

4 (a) On the activation date, against the actual new full-time jobs created and the
5 average wages, including employee benefits, paid for those jobs; and

6 (b) Annually during each year of the agreement, against the annual average of the
7 new full-time jobs and the average wages paid for those jobs, including
8 employee benefits;

9 (13) A provision requiring the approved company to notify the authority immediately if
10 the approved company sells or otherwise transfers or disposes of the land on which
11 an economic development project is located, if a lease relating to the economic
12 development project is terminated or lapses, or if the approved company ceases or
13 fundamentally alters operations at the economic development project;

14 (14) A provision detailing the reductions in incentives that will occur pursuant to KRS
15 154.32-030(4) if an approved company fails to meet its job target or minimum wage
16 target, including employee benefits;

17 (15) That the agreement may be assigned by the approved company upon the adoption
18 of a resolution by the authority to that effect;

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

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

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

- 1 (a) Suspend the incentives available to the approved company;
- 2 (b) Terminate the incentives available to the approved company; or
- 3 (c) Pursue any other remedy set forth in the tax incentive agreement or to which it
- 4 may be entitled by law; and
- 5 (19) Any other provisions not inconsistent with this subchapter and determined to be
- 6 necessary or appropriate by the parties to the tax incentive agreement.

7 ➔Section 5. KRS 154.32-050 is amended to read as follows:

- 8 (1) The authority shall identify and certify or decertify ~~the tiers for all~~^{enhanced} ~~incentive~~ counties on an annual basis as provided in this section. **The authority shall certify all counties in Kentucky into four (4) tax credit tiers. The incentives available under this subchapter shall be determined based on the county where the economic development project is located by an approved company.**
- 12 (2) Each fiscal year, the authority shall:
 - 14 (a) Obtain from the Department of Workforce Development in the Education and Labor Cabinet, the final unemployment figures for the prior calendar year for each county and for the Commonwealth as a whole; and
 - 17 (b) **For each county**, identify~~those counties which have had~~:
 - 18 1. **a.** A countywide unemployment rate that exceeds the statewide unemployment rate in the most recent five (5) consecutive calendar years; or
 - 21 **b.**~~[2.]~~ An average countywide rate of unemployment exceeding the statewide unemployment rate by two hundred percent (200%) in the most recent calendar year; and
- 24 **2. The county population ranking pursuant to KRS 154.21-017**
- 25 (c) ~~Certify the counties identified in paragraph (b) of this subsection as enhanced incentive counties.~~
- 27 (3) **On or before January 1, 2027, and no later than January 1 annually thereafter,**

1 the authority shall determine a county's tax credit tier based on the five (5) year
2 average of:

3 (a) A county's unemployment rate; and
4 (b) A county's population ranking pursuant to KRS 154.21-017.

5 The tier rankings shall be effective July 1, 2027, and no later than July 1
6 annually thereafter.

7 (4) The cabinet shall publish tax credit tiers approved under this section annually on
8 January 1 as follows:

9 (a) Tier I shall be the top twenty (20) counties with the highest composite score
10 as calculated pursuant to subsection (3) of this section;

11 (b) Tier II shall be the next twenty (20) counties after Tier I with the highest
12 composite score as calculated pursuant to subsection (3) of this section;

13 (c) Tier III shall be the next forty (40) counties after Tier II with the highest
14 composite score as calculated pursuant to subsection (3) of this section; and

15 (d) Tier IV shall be the next forty (40) counties after Tier III with the highest
16 composite score as calculated pursuant to subsection (3) of this section. A
17 ~~county not certified under subsection (2) of this section may also be certified~~
18 ~~by the authority as an enhanced incentive county if the authority determines~~
19 ~~the county is one (1) of the sixty (60) most distressed counties in the~~
20 ~~Commonwealth based on the following criteria with equal weight given to~~
21 ~~each criterion:~~

22 ~~(a) The average countywide rate of unemployment in the most recent three (3)~~
23 ~~consecutive calendar years, using the information obtained under subsection~~
24 ~~(2)(a) of this section;~~

25 ~~(b) The percentage of adults twenty five (25) years of age and older who have attained~~
26 ~~at least a high school education or equivalent, on the basis of the most recent~~
27 ~~data available from the United States Department of Commerce, Bureau of the~~

1 Census; and

2 (e) The quality of the roads in the county. Quality of roads shall be determined by the
3 access within a county to roads, ranked in descending order from best quality
4 to worst quality, as certified to the authority by the Kentucky Transportation
5 Cabinet as follows:

- 6 1. Two (2) or more interstate highways;
- 7 2. One (1) interstate highway;
- 8 3. A state four (4) lane parkway;
- 9 4. A four (4) lane principal arterial access to an interstate highway;
- 10 5. A state two (2) lane parkway; and
- 11 6. None of the preceding road types].

12 (5){(4)} (a) If the authority determines that an enhanced incentive county no longer
13 meets the criteria to be certified as an enhanced incentive county under this
14 section, the authority shall decertify that county.

15 (b) Any economic development project located in an enhanced incentive county
16 that was decertified by the authority after May 1, 2009, shall have until July 1
17 of the third year following the fiscal year in which the county was decertified
18 to obtain final approval from the authority.

19 (6){(5)} (a) As used in this subsection, "industrial park" means a regional industrial
20 park as defined in KRS 42.4588, or an industrial park created pursuant to an
21 interlocal agreement in which revenues are shared as provided in KRS 65.210
22 to 65.300.

23 (b) An economic development project undertaken in an industrial park that is
24 located in two (2) or more counties, one (1) of which is an enhanced incentive
25 county, may be approved for the enhanced incentive county incentives set
26 forth in this subchapter.

27 (7){(6)} **On or before July 1, 2028, and no later than July 1 every two (2) years**

1 thereafter, the cabinet shall report to the Legislative Research Commission for
2 referral to the Interim Joint Committee on Appropriations and Revenue the
3 following information for each county:

4 (a) The county name;
5 (b) The tier ranking for that county;
6 (c) The five (5) year average unemployment rate; and
7 (d) The five (5) year average county population ranking ~~[A county not certified~~
8 ~~under subsection (2) or (3) of this section may be certified by the authority as~~
9 ~~an enhanced incentive county if the county has been declared a disaster relief~~
10 ~~area by any state or federal agency on or after December 1, 2021. The~~
11 ~~enhanced county certification shall be effective for a period of two (2) years~~
12 ~~from the date of certification by the authority. Following the two (2) year~~
13 ~~period, if a county certified under this subsection does not meet the criteria~~
14 ~~under subsections (2) and (3) of this section to be certified as an enhanced~~
15 ~~incentive county, the county shall be decertified in accordance with~~
16 ~~subsection (4) of this section].~~

17 ➔Section 6. KRS 154.32-090 is amended to read as follows:

18 (1) An approved company or, with the authority's consent, an affiliate of an approved
19 company may impose wage assessments against employees as provided in this
20 section if a wage assessment is included in the incentives awarded to the approved
21 company in the tax incentive agreement. The level of wage assessment shall be
22 negotiated as part of the tax incentive agreement.
23 (2) If an economic development project is located in an enhanced incentive county, the
24 approved company or, with the authority's consent, an affiliate of the approved
25 company may require that each employee subject to the tax imposed by KRS
26 141.020, whose job is determined by the authority to be created as a result of the
27 economic development project, as a condition of employment, agree to an

1 assessment of up to one hundred percent (100%) of the individual income tax rate
2 imposed by KRS 141.020, and that assessment shall operate as the
3 Commonwealth's wage assessment. Although not required for an economic
4 development project located in an enhanced incentive county, a local jurisdiction
5 may agree to forgo all or a portion of its local occupational license fee as a local
6 wage assessment.

7 (3) (a) If the economic development project is located in a Tier I or Tier II~~not~~
8 ~~located in an enhanced incentive~~ county, and is located in a local jurisdiction
9 where:

10 1. No local occupational license fee is imposed;

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

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

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

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

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

1 the Commonwealth's wage assessment.

2 (4) (a) If the economic development project is located in a Tier I or Tier II [not
3 located in an enhanced incentive] county, and is located in a local jurisdiction
4 where:

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

25 (5) If the project is not located in an enhanced incentive county, and:

26 (a) Is located in a local jurisdiction that does not impose a local occupational
27 license fee, the local jurisdiction shall be required to provide some alternative

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

14 (6) Each employee paying the assessment shall simultaneously be entitled to a credit
15 against the Kentucky individual income tax required to be withheld under KRS
16 141.310 equal to the state portion of the assessment and shall be entitled to a credit
17 against the local occupational license tax equal to the local portion of the
18 assessment.

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

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

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

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

6 (10) Notwithstanding any other provision of the Kentucky Revised Statutes, if an
7 approved company elects not to deduct the assessment from each payment of wages
8 to the employee, but rather requests a reimbursement of state tax imposed by KRS
9 141.020 or local occupational tax in the aggregate after they have been paid to the
10 state or local jurisdiction, no interest shall be paid by the state or by the local
11 jurisdiction on that reimbursement.

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

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

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

21 ➔Section 7. KRS 154.61-010 is amended to read as follows:

22 As used in this subchapter:

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

26 (2) "Animated production" means a nationally distributed feature-length film created
27 with the rapid display of a sequence of images using 2-D or 3-D graphics of

1 artwork or model positions in order to create an illusion of movement;

2 (3) "Approved company" means an eligible company approved for incentives provided

3 under KRS 141.383 and 154.61-020;

4 (4) "Below-the-line production crew" means employees involved with the production

5 of a motion picture or entertainment production except above-the-line production

6 crew. "Below-the-line production crew" includes but is not limited to:

7 (a) Casting assistants;

8 (b) Costume design;

9 (c) Extras;

10 (d) Gaffers;

11 (e) Grips;

12 (f) Location managers;

13 (g) Production assistants;

14 (h) Set construction staff; and

15 (i) Set design staff;

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

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

18 (7) "Compensation" means compensation included in adjusted gross income as defined

19 in KRS 141.010;

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

21 that:

22 (a) 1. Has a projected budget of a minimum of ten million dollars

23 (\$10,000,000) per calendar year for qualifying expenditures and

24 qualifying payroll expenditures allocated to all qualifying motion picture

25 or entertainment productions to be filmed or produced in Kentucky, with

26 a minimum of one million five hundred thousand dollars (\$1,500,000)

27 per production in Kentucky; and

- 1 2. Has a minimum of fifty percent (50%) of the funds available and the
2 ability to raise the remaining funds necessary to complete the filming
3 and production, which may be verified by:
4 a. Bank statements or other financial documents; or
5 b. A fundraising plan at the request of the council;
6 (b) Demonstrates a distribution contract for each motion or entertainment
7 production;
8 (c) Films and produces a minimum of twelve (12) or more days per production
9 within the Commonwealth; and
10 (d) Maintains:
 - 11 1. An apprenticeship program or on-the-job training program as defined in
12 KRS 343.010; or
 - 13 2. Partners with a film studies program with an accredited institution of
14 postsecondary education located in the Commonwealth;
- 15 (9) "Council" means the Kentucky Film Leadership Council created in KRS 154.12-
16 282;
- 17 (10) "Documentary" means a production based upon factual information and not
18 subjective interjections;
- 19 (11) "Eligible company" means any person that intends to film or produce a motion
20 picture or entertainment production in the Commonwealth;
- 21 (12) "Employee" has the same meaning as in KRS 141.010, and, for purposes of this
22 subchapter, also may include the employees or independent contractors of an
23 approved company or the employees of a loan-out entity engaged by an approved
24 company if they meet the requirements of KRS 141.310;
- 25 (13) "Enhanced incentive county" has the same meaning as in KRS 154.32-010;
- 26 (14) "Feature-length film" means a live-action or animated production that is:
 - 27 (a) More than thirty (30) minutes in length; and

1 (21) (a) "Qualifying expenditure" means expenditures made in the Commonwealth for
2 the following if directly used in or for a motion picture or entertainment
3 production:
4 1. The production script and synopsis;
5 2. Set construction and operations, wardrobe, accessories, and related
6 services;
7 3. Lease or rental of real property in Kentucky as a set location;
8 4. Photography, sound synchronization, lighting, and related services;
9 5. Editing and related services;
10 6. Rental of facilities and equipment;
11 7. Vehicle leases;
12 8. Food; and
13 9. Accommodations.

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

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

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

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

22 (25) "Tax incentive agreement" means the agreement entered into pursuant to KRS
23 154.61-030 between the council and the approved company;~~and~~

24 (26) "Television program" means any live-action or animated production or
25 documentary, including but not limited to:
26 (a) An episodic series;
27 (b) A miniseries;

1 (c) A television movie; or

2 (d) A television pilot;

3 that is produced for distribution on television via broadcast, cable, or any digital
4 format, including but not limited to cable, satellite, internet, or mobile electronic
5 devices; **and**

6 (27) "Tier" means the sorting of all Kentucky counties into quartiles based on each
7 county's unemployment rate and population ranking pursuant to Section 5 of this
8 Act.

9 ➔Section 8. KRS 154.61-020 is amended to read as follows:

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

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

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

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

17 (d) The development of a production and postpri

18 Commonwealth for film production and touring Broadway show production
19 facilities containing state-of-the-art technologies.

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

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

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

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

1 shall be one hundred twenty-five thousand dollars (\$125,000);

2 2. Produces a national touring production of a Broadway show in whole or

3 in part in the Commonwealth, the minimum combined total of

4 qualifying expenditures and qualifying payroll expenditures shall be

5 twenty thousand dollars (\$20,000); or

6 3. Films or produces a documentary in whole or in part in the

7 Commonwealth, the minimum combined total of qualifying

8 expenditures and qualifying payroll expenditures shall be ten thousand

9 dollars (\$10,000); and

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

11 1. Films or produces a feature-length film, television program, or industrial

12 film in whole or in part in the Commonwealth, the minimum combined

13 total of qualifying expenditures and qualifying payroll expenditures

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

15 2. Films or produces a documentary in whole or in part in the

16 Commonwealth or that produces a national touring production of a

17 Broadway show, the minimum combined total of qualifying

18 expenditures and qualifying payroll expenditures shall be twenty

19 thousand dollars (\$20,000).

20 (4) (a) Beginning on January 1, 2022, the total tax incentive approved under KRS

21 141.383 and this subchapter shall be limited to seventy-five million dollars

22 (\$75,000,000) for calendar year 2022 and each calendar year thereafter.

23 (b) Beginning with calendar year 2024:

24 1. Twenty-five million dollars (\$25,000,000) shall be allocated for all

25 approved companies with a continuous film production; and

26 2. On the first day of July of each calendar year, any unused balance of the

27 amount allocated under subparagraph 1. of this paragraph for continuous

1 film productions shall be made available for all approved companies
2 with motion picture or entertainment productions.

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

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

9 (b) The tax credit shall be against the Kentucky income tax imposed under KRS
10 141.020 or 141.040, and the limited liability entity tax imposed under KRS
11 141.0401, and shall be refundable as provided in KRS 141.383.

12 (c) 1. For a motion picture or entertainment production or continuous film
13 production filmed or produced in its entirety in an enhanced incentive
14 county, the amount of the incentive shall be equal to thirty-five percent
15 (35%) of the approved company's:

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.

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

14 1. Thirty percent (30%) of the approved company's:

15 a. Qualifying expenditures;

16 b. Qualifying payroll expenditures paid to below-the-line production

17 crew that are not residents; and

18 c. Qualifying payroll expenditures paid to above-the-line production

19 crew that are not residents, not to exceed one million dollars

20 (\$1,000,000) in payroll expenditures per employee; and

27 ➔Section 9. KRS 141.383 is amended to read as follows:

- 1 (1) As used in this section:
 - 2 (a) "Above-the-line production crew" has the same meaning as in KRS 154.61-010;
 - 3 (b) "Approved company" has the same meaning as in KRS 154.61-010;
 - 4 (c) "Below-the-line production crew" has the same meaning as in KRS 154.61-010;
 - 5 (d) "Continuous film production" has the same meaning as in KRS 154.61-010;
 - 6 (e) "Council" means the Kentucky Film Leadership Council created in KRS 154.12-282;
 - 7 (f) "Loan-out entity" has the same meaning as in KRS 154.61-010;
 - 8 (g) "Qualifying expenditure" has the same meaning as in KRS 154.61-010;
 - 9 (h) "Qualifying payroll expenditure" has the same meaning as in KRS 154.61-010;
 - 10 (i) "Secretary" has the same meaning as in KRS 154.61-010; and
 - 11 (j) "Tax incentive agreement" has the same meaning as KRS 154.61-010.
- 12 (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.
- 13 (b) The incentive available under paragraph (a) of this section is:
 - 14 1. A refundable credit for applications approved prior to April 27, 2018;
 - 15 2. A nonrefundable and nontransferable credit for applications approved on or after April 27, 2018, but before January 1, 2022; and
 - 16 3. A refundable credit for applications approved on or after January 1, 2022, if the provisions of paragraph (c) of this subsection are met.
- 17 (c) 1. The total tax incentive approved under KRS 154.61-020 shall be limited to:
 - 18 a. One hundred million dollars (\$100,000,000) for calendar year

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

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

6 (5) The department may promulgate administrative regulations under KRS Chapter
7 13A to administer this section.

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

12 (7) No later than September 1, 2021, and by November 1 every four (4) years
13 thereafter, the department and the Cabinet for Economic Development shall
14 cooperatively provide historical data related to the tax credit allowed in this section
15 and KRS 154.61-020 and 154.61-030, including data items beginning with tax
16 credits claimed for taxable years beginning on or after January 1, 2018:
17 (a) The name of the taxpayer claiming the tax credit;
18 (b) The date that the application was approved and the date the filming or
19 production was completed;
20 (c) The taxable year in which the taxpayer claimed the tax credit;
21 (d) The total amount of the tax credit, including any amount denied, any amount
22 applied against a tax liability, any amount refunded, and any amount
23 remaining that may be claimed on a return filed in the future;
24 (e) Whether the taxpayer is a Kentucky-based company as defined in KRS
25 154.61-010;
26 (f) Whether the taxpayer films or produces a:
27 1. Feature-length film, television program, or industrial film;

- 1 2. National touring production of a Broadway show; or
- 2 3. Documentary;
- 3 (g) Whether the filming or production was performed:
 - 4 1. Entirely in an enhanced county; or
 - 5 2. In whole or in part in any **Tier I or Tier II** Kentucky county[~~other than~~
6 in an enhanced incentive county];
- 7 (h) The amount of qualifying expenditures incurred by the taxpayer;
- 8 (i) The amount of qualifying payroll expenditures paid to:
 - 9 1. Resident below-the-line crew; and
 - 10 2. Nonresident below-the-line production crew;
11 including the number of crew members in each category;
- 12 (j) The amount of qualifying payroll expenditures paid to:
 - 13 1. Resident above-the-line crew; and
 - 14 2. Nonresident above-the-line crew;
15 including the number of crew members in each category; and
- 16 (k) A brief description of the type of motion picture or entertainment production
17 project.

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