AN ACT relating to economic development incentives.

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

➔Section 1. KRS 154.20-234 is amended to read as follows:

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

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

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

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

(c) Has no more than one hundred (100) full-time employees;

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

(e) Has at no time received an aggregate amount of qualified investments that has allowed qualified investors to receive more than one million dollars ($1,000,000) in angel investor credits;

(2) To be certified as a qualified investor, an individual investor shall demonstrate to the authority that he or she:

(a) Is an individual natural person;

(b) Qualifies as an accredited investor pursuant to Regulation D of the United States Securities and Exchange Commission, 17 C.F.R. sec. 230.501, in effect as of the date the individual investor requests certification;

(c) Does not hold in excess of twenty percent (20%) ownership interest in, and is not employed by, the qualified small business prior to making the qualified investment in that qualified small business;

(d) Is not closely related to an individual who holds in excess of twenty percent (20%) ownership interest in, or who is employed by, the qualified small business prior to making the qualified investment in that qualified small business. For purposes of this paragraph, "closely related" means ***any of the following in relation to the owner or owners or spouse of the owner or owners:***

1. Parents or grandparents;

2. Children or their spouses; or

3. Siblings or their spouses~~[the parent, spouse, or child of an individual]~~; and

(e) Seeks a financial return from the investment made in the qualified small business;

(3) To be certified as a qualified investment, the investment shall:

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

(b) Be offered and executed in compliance with applicable state and federal securities laws and regulations; and

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

➔Section 2. 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***~~[be equal to]~~:

(a) ***Twenty-five percent (25%)***~~[Forty percent (40%)]~~ of the amount of the qualified investment, if the principal place of business of the qualified small business is outside an enhanced incentive county; or

(b) ***Forty percent (40%)***~~[Fifty percent (50%)]~~ of the amount of the qualified investment, if the principal place of business of the qualified small business is in 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 3. KRS 154.20-240 is amended to read as follows:

(1) On or before February 1 of the calendar year succeeding the year in which a credit was awarded, and continuing for four (4) years thereafter, a qualified small business that has received a qualified investment shall file an annual report with the authority.

(2) (a) This report shall demonstrate that the small business:

1. Continues to have more than fifty percent (50%) of its assets, operations, and employees in the Commonwealth;

2. Has at no time received an aggregate amount of qualified investments that has allowed qualified investors to receive more than one million

dollars ($1,000,000) in credits; and

3. Continues to be actively and principally engaged in a qualified activity.

(b) The report shall also provide additional information related to the success of the small business attributable to the investment, including but not limited to:

1. New jobs created;

2. Increased sales or other economic activity conducted;

3. The degree of other private investment attracted; and

4. Any other information requested by the authority.

(3) If a qualified small business either:

(a) Fails to submit the report mandated by this section in any year; or

(b) Fails to meet any of the criteria listed in subsection (2)(a) of this section at any time during any year of the reporting period;

the authority shall notify the department, which shall recapture any portion, or the full amount, of the credit awarded for qualified investments in that qualified small business from the qualified investor that received the credit award or any taxpayer receiving the credit through a valid transfer. Any amounts collected from the recapture shall be deposited in the general fund.

(4) If a qualified small business becomes insolvent and ceases operations at any time before the final required annual report is due, it shall file a written report with the authority attesting to that fact and shall thereafter be exempt from the annual report required by this section, and credits awarded ***and already claimed*** for qualified investments in that qualified small business shall not be subject to any recapture***. Any credits not claimed as of the date the company became insolvent and ceased operations shall be considered expired and shall not be claimed***.

➔Section 4. KRS 154.60-010 is amended to read as follows:

As used in this subchapter:

(1) "Authority" means the Kentucky Economic Development Finance Authority;

(2) (a) "Average hourly wage" means the per-hour wage earned by a full-time employee, including wages, tips, overtime, bonuses, and commissions, as reflected on the employee's federal form W-2 wage and tax statement.

(b) "Average hourly wage" does not include employee benefits as defined in KRS 154.32-010, including health insurance and reimbursements;

(3) "Base employment" means:

(a) For the first application for which credits are approved, the number of full-time employees employed on the day prior to the <u>***work start***</u>~~[hire]~~ date of the new employee filling the earliest eligible position identified on the application; and

(b) For subsequent applications, the number of full-time employees employed on the day prior to the <u>***work start***</u>~~[hire]~~ date of the new employee filling the earliest eligible position identified on the initial approved application plus each eligible position for which a credit has been approved;<u>***and***</u>

<u>***(c) For applications from businesses involved in mergers, acquisitions, or federal tax identification number changes, base employment may be adjusted by the Cabinet for Economic Development;***</u>

(4) "Eligible position" means each position that:

(a) Is filled by a full-time employee and that increases the total employment of the small business above its base employment; and

(b) Carries an average hourly wage of no less than one hundred fifty percent (150%) of the federal minimum wage;

(5) "Full-time employee" means a person employed by a small business for at least an average of thirty-five (35) hours per week and subject to the state tax imposed by KRS 141.020;

(6) "Qualifying equipment or technology" means equipment or technology that has been approved by the Office of Entrepreneurship; and

(7) "Small business" means any business entity organized for profit that has been approved by the Office of Entrepreneurship, including a sole proprietorship, partnership, limited partnership, corporation, limited liability company, joint venture, association, or cooperative, that has fifty (50) or fewer ~~[full-time]~~employees ***working more than thirty-five (35) hours per week, whether within or outside the Commonwealth,*** at the time it applies.

➔Section 5. KRS 103.220 is amended to read as follows:

(1) The bonds may be issued to bear interest at any rate or rates, either fixed or variable, in accordance with such method as shall be set by the governing body of the issuer, payable either annually or at shorter intervals, may be of such terms and maturities, may bear such conversion privileges, may be executed by the manual or facsimile signatures of such officers of the issuer and shall be executed in such manner and at such time or times or from time to time and be payable at such times not exceeding ***forty (40)***~~[thirty (30)]~~ years from the date thereof, or if commercial paper, from the date of issuance thereof, and at such place or places as the governing body of the issuer determines.

(2) The bonds may provide that they or any of them may be called for redemption prior to maturity under conditions set by the governing body of the issuer before issuing the bonds.

(3) (a) Any bonds issued and outstanding hereunder may, at any time on or after the earliest redemption date provided therefor at the time of their issuance, be refunded by the issuer or any other city, county or authority, with the consent of the lessee, industrial concern or utility company, in such amount as the governing body may deem necessary to refund the principal of the bonds to be refunded, together with any unpaid interest thereon, to create any necessary debt service reserve fund, and to pay the costs of any improvements or additions to the project, and of any premiums, expenses and commissions

required to be paid in connection therewith. Any refunding bonds issued under the authority of this section shall be payable from the revenues out of which the bonds to be refunded were payable.

(b) At the time of the initial issuance of the bonds, the issuer may designate individual officials of its governing body as agent for purposes of approving the principal amount, the interest rate, the discount, if any, and the maturity date of bonds being issued later to refund the maturing bonds; provided, however, that, at the time of the initial issuance of such bonds, the governing body of the issuer shall set the maximum principal amount, the maximum interest rate, and the maximum discount, if any, of the refunding bonds plus the final maturity date of the last issue of such refunding bonds; and provided further that the issuer shall retain the right to revoke any such agent's authority at any time and for any reason whatsoever. Individual issues of commercial paper, issued as part of a continuing financing program, may be refunded by the approvals of such agent of the issuer and separate proceedings of the issuer pursuant to KRS 103.210 shall not be required.

(c) At the time of issuance of bonds which bear interest at a variable rate or rates, the governing body of the issuer may designate individuals or institutions who in the sole judgment of such governing body have financial market expertise to serve as agent for the issuer for establishing and changing from time to time while such bonds remain outstanding the rate of interest to be borne by and the price to be paid for the bonds; provided, however, that the rate-setting procedures and authority of each such agent shall be set forth in writing, and may include a formula or an index or indices based upon market factors, and shall be established by the issuer at the time of issuance of such bonds; and provided further that at the time of the issuance of the bonds, the governing body of the issuer shall establish the maximum interest rate to be borne by the bonds; and provided further that the issuer shall retain the right to remove or replace any such agent at any time and for any reason whatsoever.

(4) Any bonds issued and outstanding hereunder and the coupons appertaining to such bonds shall prior to the maturity or redemption date thereof be deemed to have been paid to the same extent as if they had actually been paid in cash and retired, if:

(a) In case any of such bonds are to be redeemed on any date prior to their maturity, the issuer of such bonds shall have given a trustee appointed for the holders of such bonds in connection with their issuance, in form satisfactory to such trustee and in conformity with the requirements of the ordinance or resolution authorizing their issuance, irrevocable instructions to give notice of redemption of such bonds to the holders thereof by publication or by other method which is satisfactory to such trustee;

(b) There shall have been deposited with the trustee either money in an amount which shall be sufficient, or direct obligations of or obligations guaranteed by the United States of America, the principal of and the interest on which, when due, will provide money which, together with the money, if any, deposited with the trustee at the same time, shall be sufficient to pay when due the principal and the interest due and to become due on such bonds on and prior to redemption date or maturity date thereof, as the case may be; and

(c) In the event that such bonds are not to be redeemed within the next succeeding sixty (60) days, the issuer shall have given the trustee in form satisfactory to it irrevocable instructions to give, as soon as practicable, in a manner satisfactory to it, a notice to the holders of such bonds and coupons that the deposit required by paragraph (b) of this subsection has been made with the trustee, that such bonds and coupons are deemed to have been paid in accordance with the provisions hereof and stating such maturity or redemption date upon which money is to be available for the payment of the principal of and interest on such bonds. Any deposits made under paragraph (b) of this subsection, to the extent not secured by the Federal Deposit Insurance Corporation, shall be secured by the pledging of direct obligations of or obligations guaranteed by the United States of America.

(5) It is hereby declared and determined that the issuance of any and all refunding bonds as provided herein will be for a public purpose if the legislative body of the issuer authorizing such bonds so declares in the proceedings authorizing same, it being hereby declared and determined that the ability of any domestic or foreign corporation renting or leasing any facilities financed by the bonds to cause refunding bonds to be issued will be an inducement for such domestic or foreign corporation to establish in Kentucky the facilities provided for in KRS 103.210 and will tend to further the purposes of KRS 103.200 to 103.285.

(6) No bonds shall be issued hereunder in violation of federal statutes or regulations prohibiting arbitrage profits.

➔Section 6. KRS 103.246 is amended to read as follows:

(1) (a) The term "pollution control facilities" means any land, building, structure, machinery, equipment, device, system or facility functionally related thereto designed for the control, containment, reduction, prevention or abatement of atmospheric pollutants or contaminants, solid waste, noise, radiation, or water pollution produced by industrial concerns and utility companies, including, but not by way of limitation, any such facilities used in whole or in part to control, contain, reduce, prevent or abate atmospheric, solid waste, noise, radiation, or water pollution by removing, altering, containing, disposing or storing pollutants, contaminants, wastes, whether gaseous, solid or liquid, thermal or radioactive. Said term includes all pollution control facilities whenever constructed, reconstructed, purchased, leased or otherwise acquired and placed in use, which may legally be financed by issuance of bonds

determined to be tax-exempt pursuant to the provisions of Section 103(b) of the Internal Revenue Code of 1954, as amended, and regulations promulgated thereunder. Pollution control facilities may be constructed as part of, and may include, facilities also designed for the recovery of chemicals or other by-products or to serve other purposes which also contribute to the control of or abatement of atmospheric, solid waste and water pollution.

(b) The term "industrial concern" means any domestic or foreign corporation, company, partnership, association, rural electric cooperative corporation, or any other legal entity.

(2) It is hereby determined and declared that the acquisition and financing of pollution control facilities for utilization by industrial concerns and utility companies by the issuance of bonds of cities and counties amortized by payments made by such industrial concerns and utility companies inures to the public interest, and constitutes the performance of a proper governmental purpose. It is the intent of this section to afford to cities and counties alternative methods of financing pollution control facilities to the end that atmospheric, solid waste and water pollution in the Commonwealth may be abated and controlled to the maximum possible extent.

(3) As an alternative to the procedure set forth in KRS 103.200 to 103.285, inclusive, any city or county, for the purpose of financing the acquisition of pollution control facilities for any industrial concern or utility company, may issue negotiable bonds pursuant to KRS 103.200 to 103.285, inclusive, and either (a) loan the proceeds from the sale of such bonds to an industrial concern or utility company to finance the acquisition of such pollution control facilities, (b) sell such pollution control facilities to an industrial concern or utility company pursuant to agreement, or (c) lease such pollution control facilities from an industrial concern or utility company and sublease same to such industrial concern or utility company. In the event of use of such alternative financing procedure, such bonds shall not constitute an

indebtedness of such city or county within the meaning of the Constitution of Kentucky, but shall be payable as to principal and interest solely from the revenues derived from payments, repayments, or sublease payments made by such industrial concern or utility company to such city or county in respect of such loan, sale or sublease.

(4) In the event that an alternate procedure authorized by this section is to be utilized in the financing of pollution control facilities, (i) the provisions of KRS 103.200 to 103.285, inclusive, shall apply, except that the proceedings and procedures therein described shall contemplate and authorize a transaction in the form of (a) a loan of the proceeds from the sale of such bonds by such city or county to an industrial concern or utility company for the acquisition of such pollution control facilities, (b) a sale of such pollution control facilities to an industrial concern or utility company pursuant to agreement, or (c) a lease of such pollution control facilities from an industrial concern or utility company and sublease of same to such industrial concern or utility company; and (ii) the loan, sale, lease and sublease and any agreement or contract with respect thereto may include such provisions as such city or county shall deem appropriate to effect the securing of the financing undertaken in respect of such pollution control facilities, including, but not by way of limitation, (a) the pledge of the general credit of any such industrial concern or utility company, (b) the making of guarantees to an indenture trustee or to such city or county in respect of amortization of such bonds by any such industrial concern or utility company, (c) the creation of liens of security interests on any property or portion thereof of any such industrial concern or utility company, either senior or junior to, or ranking equally with, any other lien, security interest or rights of others, including any party or parties to any agreement in connection with such financing and/or its or their respective security holders and indenture trustees or mortgage trustees, and (d) the pledge of other direct securities of such industrial concern or

utility company in respect of such bonds.

(5) In the event any city or county shall finance pollution control facilities pursuant to the express authority contained in this section, title to such pollution control facilities shall not be acquired by such city or county in the case of a loan or lease transaction, and, in the case of a sale transaction, title may pass at any time, and the statutory mortgage lien for which provision is made in KRS 103.250 shall not apply to any such pollution control facilities.

(6) Bonds issued by cities and counties pursuant to the authority contained in this section may be caused to mature as to principal in term or serial maturities not to exceed ***forty (40)***[~~thirty (30)~~] years from date of issue.