

2009 KY H 3 a, Enacted - Final

Kentucky

SUMMARY: Relates to economic development; provides for various economic development income, gross receipts, employment-related, and sales tax credits for service, technology, manufacturing, or tourism attraction activity; requires a related tax incentive agreement; relates to bi-state transportation projects and funding therefor; relates to the motor vehicles sales tax.~SAME AS:

State Net Legislative History and Analysis

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status

06/15/2009 INTRODUCED.

06/15/2009 To HOUSE Committee on APPROPRIATIONS AND REVENUE.

06/15/2009 Taken from HOUSE Committee on APPROPRIATIONS AND REVENUE; 1st reading; returned to APPROPRIATIONS AND REVENUE.

06/15/2009 Posting waived.

06/16/2009 Taken from HOUSE Committee on APPROPRIATIONS AND REVENUE; 2nd reading; returned to APPROPRIATIONS AND REVENUE.

06/16/2009 From HOUSE Committee on APPROPRIATIONS AND REVENUE: Reported favorably with substitute.

06/16/2009 Placed in Orders of the Day.

06/17/2009 Floor amendment filed to Committee substitute. Amendment No. 1 and 2.

06/17/2009 3rd Reading.

06/17/2009 Floor Amendment defeated. Amendment No. 1

06/17/2009 Floor Amendment adopted on HOUSE Floor. Amendment No. 2

06/17/2009 Committee substitute adopted on HOUSE floor.

06/17/2009 Passed HOUSE. *****To SENATE.

06/17/2009 To SENATE Committee on COMMITTEES.

06/17/2009 Taken from SENATE Committee on COMMITTEES; 1st reading; returned to Committee on COMMITTEES.

06/18/2009 To SENATE Committee on APPROPRIATIONS AND REVENUE.

06/18/2009 Taken from SENATE Committee on APPROPRIATIONS & REVENUE; 2nd reading; returned to Committee on APPROPRIATIONS & REVENUE.

06/19/2009 From SENATE Committee on APPROPRIATIONS AND REVENUE: Reported favorably with substitute and amendment no. 1, 2-title.

06/19/2009 Posted for passage in Regular Orders of the Day.

06/19/2009 3rd Reading.

06/19/2009 Committee substitute adopted on SENATE floor.

06/19/2009 Committee amendment adopted on SENATE floor. Amendment No. 1, 2-title.

06/19/2009 Passed SENATE. *****To HOUSE for concurrence.

06/22/2009 Posted for passage for Concurrence.

06/22/2009 HOUSE refused to concur in SENATE Substitute and Amendment No. 1 and 2-title

06/23/2009 SENATE refuses to recede from Amendment No. 1 and 2-title
06/23/2009 *****To CONFERENCE Committee.
06/24/2009 CONFERENCE Committee report Filed in HOUSE.
06/24/2009 CONFERENCE Committee report filed in SENATE.
06/24/2009 CONFERENCE Committee report adopted by HOUSE.
06/24/2009 CONFERENCE Committee report adopted by SENATE.
06/24/2009 **** Eligible For Governor's Desk.
06/24/2009 *****To GOVERNOR.
06/26/2009 Signed by GOVERNOR.
06/26/2009 Act No. 1

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session: Kentucky First Extraordinary Session of 2009

cite: 2009 KY H 3 a

Enacted - Final

June 26, 2009

Thompson

Act ch. 1

AN ACT relating to economic development, making an appropriation therefor, and declaring an emergency.

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

SECTIONS NOT PERTAINING TO THE FILM INCENTIVE HAVE BEEN OMITTED

SECTION 43. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

As used in Sections 43 to 45 of this Act:

(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 Sections 44 and 47 of this Act;

(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 Finance and Administration Cabinet;

(6) "Commercial" means an individual production or series of live-action or animated productions, music videos,

infomercials, or interstitials that are:

(a) Less than thirty-one (31) minutes in length;

(b) Made for the purpose of promoting a product, service, or idea; and

(c) Produced for regional or national distribution via broadcast, cable, or any digital format, including but not limited to cable, satellite, Internet, or mobile electronic devices;

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

(8) "Compensation" means compensation included in adjusted gross income as defined in KRS 141.010(10);

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

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

(11) "Employee" means the same as defined in KRS 141.010(20);

(12) "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;

(13) "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;

(14) (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;

d. A documentary; or

e. A commercial; 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;

(15) "Obscene" means the same as defined in KRS 531.010;

(16) "Office" means the Kentucky Film Office in the Tourism, Arts and Heritage Cabinet;

(17) "Person" means the same as defined in KRS 141.010(15);

(18) (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;

(19) "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;

(20) "Secretary" means the secretary of the Tourism, Arts and Heritage Cabinet;

(21) "Tax incentive agreement" means the agreement entered into pursuant to Section 45 of this Act between the office and the approved company; and

(22) "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 44. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

(1) The purposes of Sections 43 to 45 and 47 of this Act are to:

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

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

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

(d) Encourage 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 Kentucky Film Office is hereby established in the Tourism, Arts and Heritage Cabinet to administer, together with the Finance and Administration Cabinet and the Tourism Development Finance Authority, the tax incentive established by Sections 43 to 45 and 47 of this Act.

(3) To qualify for the tax incentive provided in subsection (4) of this section, the following requirements shall be met:

(a) For an approved company that films or produces a motion picture production, except for a commercial or documentary, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be five hundred thousand dollars (\$500,000);

(b) For an approved company that films or produces a commercial in the Commonwealth that is distributed regionally or nationally, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be two hundred thousand dollars (\$200,000); and

(c) For an approved company that films or produces a documentary 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 fifty thousand dollars (\$50,000).

(4) (a) The incentive available under Sections 43 to 45 and 47 of this Act is a refundable credit against the Kentucky income tax imposed under KRS 141.020 or 141.040, and the limited liability entity tax imposed under KRS 141.0401, as provided in Section 47 of this Act. The amount of the incentive shall not exceed:

1. Twenty percent (20%) of the approved company's qualifying expenditures;

2. Twenty percent (20%) of the approved company's qualifying payroll expenditures paid to below-the-line production crew; and

3. Twenty percent (20%) of the approved company's qualifying payroll expenditures paid to above-the-line production crew not to exceed one hundred thousand dollars (\$100,000) in payroll expenditures per employee.

(b) 1. The Tourism Development Finance Authority may accept applications, authorize the execution of tax incentive agreements, and enter into tax incentive agreements beginning on the effective date of this Act; however, no credit amount shall be claimed by the taxpayer as a refund or paid by the Department of Revenue prior to July 1, 2010.

2. The credit shall be available to approved companies with tax incentive agreements executed before January 1, 2015.

SECTION 45. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

(1) An eligible company shall, at least thirty (30) days prior to incurring any expenditure for which recovery will be sought, file an application for tax incentives with the office. The application shall include:

- (a) The name and address of the applicant;*
- (b) The production script or a detailed synopsis of the script;*
- (c) The anticipated date on which filming or production shall begin;*
- (d) The anticipated date on which the production will be completed;*
- (e) The total anticipated qualifying expenditures;*
- (f) The total anticipated qualifying payroll expenditures for above-the-line crew;*
- (g) The total anticipated qualifying payroll expenditures for below-the-line crew;*
- (h) The address of a Kentucky location at which records of the production will be kept;*
- (i) An affirmation that if not for the incentive offered under Sections 43 to 45 of this Act, the eligible company would not film or produce the production in the Commonwealth; and*
- (j) Any other information the office may require.*

(2) The office shall notify the eligible company within thirty (30) days after receiving the application of its status.

(3) Upon review of the application and any additional information submitted, the office shall present the application and its recommendation to the Tourism Development Finance Authority established by KRS 148.850 which may, by resolution, authorize the execution of a tax incentive agreement between the Tourism Development Finance Authority and the approved company.

(4) The tax incentive agreement shall include the following provisions:

- (a) The duties and responsibilities of the parties;*
- (b) A detailed description of the motion picture or entertainment production for which incentives are requested;*
- (c) The anticipated qualifying expenditures and qualifying payroll expenditures for both above-the-line and below-the-line crews;*
- (d) The minimum combined total of qualifying expenditures and qualifying payroll expenditures necessary for the approved company to qualify for incentives;*
- (e) That the approved company shall have no more than two (2) years from the date the tax incentive agreement is executed to start the motion picture or entertainment production;*
- (f) That the approved company shall have no more than four (4) years from the execution of the tax incentive agreement to complete the motion picture or entertainment production;*
- (g) That the motion picture or entertainment production shall not include obscene materials and shall not negatively impact the economy or the tourism industry of the Commonwealth;*
- (h) That the execution of the agreement is not a guarantee of tax incentives and that actual receipt of the incentives shall be contingent upon the approved company meeting the requirements established by the tax incentive agreement;*
- (i) That the approved company shall submit to the office within one hundred eighty (180) days of the completion of the motion picture or entertainment production a detailed cost report of the qualifying expenditures, qualifying payroll expenditures, and final script;*
- (j) That the approved company shall provide the office with documentation that the approved company has withheld income tax as required by KRS 141.310 on all qualified payroll expenditures for which an incentive under Sections 44 and 47 of this Act is sought;*
- (k) That, if the office determines that the approved company has failed to comply with any of its obligations under the tax incentive agreement:*
 - 1. The office may deny the incentives available to the approved company;*
 - 2. Both the office and the cabinet may pursue any remedy provided under the tax incentive agreement;*
 - 3. The office may terminate the tax incentive agreement; and*

4. Both the office and the cabinet may pursue any other remedy at law to which it may be entitled;

(l) That the office shall monitor the tax incentive agreement;

(m) That the approved company shall provide to the office and the cabinet all information necessary to monitor the tax incentive agreement;

(n) That the office may share information with the cabinet or any other entity the office determines is necessary for the purposes of monitoring and enforcing the terms of the tax incentive agreement;

(o) That the motion picture or entertainment production shall contain an acknowledgment that the motion picture production was filmed or the touring show was produced in the Commonwealth of Kentucky;

(p) Terms of default;

(q) The method and procedures by which the approved company shall request and receive the incentive provided under Sections 44 and 47 of this Act;

(r) That the approved company may be required to pay an administrative fee as authorized under subsection (5) of this section; and

(s) Any other provisions deemed necessary or appropriate by the parties to the tax incentive agreement.

(5) The office may require the approved company to pay an administrative fee, the amount of which shall be established by administrative regulation promulgated in accordance with KRS Chapter 13A. The administrative fee shall not exceed one-half of one percent (0.5%) of the estimated amount of tax incentive sought or five hundred dollars (\$500), whichever is greater.

(6) Prior to commencement of activity as provided in a tax incentive agreement, the tax incentive agreement shall be submitted to the Government Contract Review Committee established by Section 50 of this Act for review, as provided in Sections 49, 50, and 51 of this Act.

(7) The office shall notify the cabinet upon approval of an approved company. The notification shall include the name of the approved company, the name of the motion picture or entertainment production, the estimated amount of qualifying expenditures, the estimated date on which the approved company will complete filming or production, and any other information required by the cabinet.

(8) Within one hundred eighty days (180) days of completion of the motion picture or entertainment production, the approved company shall submit to the office a detailed cost report of:

(a) Qualifying expenditures;

(b) Qualifying payroll expenditures for above-the-line crew;

(c) Qualifying payroll expenditures for below-the-line crew; and

(d) The final script.

(9) (a) The office, together with the secretary, shall review all information submitted for accuracy and shall confirm that all relevant provisions of the tax incentive agreement have been met.

(b) Upon confirmation that all requirements of the tax incentive agreement have been met, the office, and the secretary shall review the final script, and if they determine that the motion picture or entertainment production does not:

1. Contain visual or implied scenes that are obscene; or

2. Negatively impact the economy or the tourism industry of the Commonwealth;

the office shall forward the detailed cost report to the cabinet for calculation of the refundable credit.

(10) The cabinet shall verify that the approved company withheld the proper amount of income tax on qualifying payroll expenditures, and the cabinet shall notify the office of the total amount of refundable credit available on qualifying expenditures and qualifying payroll expenditures.

(11) On or before October 1, 2010, and on or before each October 1 thereafter, for the immediately preceding fiscal year, the office shall report to the Tourism Development Finance Authority:

(a) The number of tax incentive agreements that have been executed;

(b) The estimated amount of tax incentives that have been requested under Sections 43 to 45 and 47 of this Act; and

(c) The amount of tax incentives approved under Sections 43 to 45 and 47 of this Act and KRS 139.538.

(12) (a) By October 1, 2010, and on or before October 1 of each year thereafter, the authority shall file an annual report with the Legislative Research Commission. The report shall also be available on the Tourism, Arts and Heritage Cabinet's Web site.

(b) The report shall include information for all motion picture or entertainment production projects approved.

(c) The report shall include the following information:

1. For each approved motion picture or entertainment production project:

a. The name of the approved company and a brief description of the project;

b. The amount of approved costs included in the agreement; and

c. The total amount recovered under the tax incentive agreement;

2. The number of applications for projects submitted during the prior fiscal year;

3. The number of projects finally approved during the prior fiscal year; and

4. The total dollar amount approved for recovery for all projects approved during the prior fiscal year, and cumulatively under Sections 43 to 45 and 47 of this Act since its inception, by year of approval.

(d) 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 46. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Film Commission is hereby established and administratively attached to the Office of the Secretary, Tourism, Arts and Heritage Cabinet.

(2) The functions and purpose of the Kentucky Film Commission shall be:

(a) To serve in an advisory capacity to support the Tourism, Arts and Heritage Cabinet in:

1. Promoting the growth of the film, television, and video production industry within the Commonwealth;

2. Marketing and promoting Kentucky as a location destination for motion picture productions throughout the Commonwealth for the express purpose of economic development; and

3. Providing a broad base of industry-specific demographic, economic, and informational support to the Tourism, Arts and Heritage Cabinet; and

(b) To advise the Governor and members of the General Assembly on issues relating to the Commonwealth's development and implementation of programs to attract and encourage film, television, and video production in the Commonwealth.

(3) (a) The commission shall consist of fifteen (15) members who shall be appointed by the Governor.

(b) Initially, the Governor shall appoint:

1. Not more than four (4) members for a term of one (1) year;

2. Not more than four (4) members for a term of two (2) years;

3. Not more than four (4) members for a term of three (3) years; and

4. Not more than three (3) members for a term of four (4) years.

(c) Thereafter, the Governor shall make all appointments for a term of four (4) years.

(d) The Governor shall appoint a chairman from among the members.

(4) The members of the commission shall serve without compensation but shall be reimbursed for necessary travel expenses.

(5) The commission shall meet at the call of the chairman at locations within the Commonwealth designated by the chairman.

(6) The commission, by majority vote, may appoint other nonvoting ex officio members within the Commonwealth to assist the commission in achieving its functions and purpose as described in subsection (2) of this section.

SECTION 47. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

- (a) "Above-the-line production crew" means the same as defined in Section 43 of this Act;*
 - (b) "Approved company" means the same as defined in Section 43 of this Act;*
 - (c) "Below-the-line production crew" means the same as defined in Section 43 of this Act;*
 - (d) "Cabinet" means the same as defined in Section 43 of this Act;*
 - (e) "Office" means the same as defined in Section 43 of this Act;*
 - (f) "Qualifying expenditure" means the same as defined in Section 43 of this Act;*
 - (g) "Qualifying payroll expenditure" means the same as defined in Section 43 of this Act;*
 - (h) "Secretary" means the same as defined in Section 43 of this Act; and*
 - (i) "Tax incentive agreement" means the same as defined in Section 43 of this Act.*
- (2) There is hereby created a refundable tax credit against the tax imposed under KRS 141.020 or 141.040, and KRS 141.0401, with the ordering of credits as provided in Section 30 of this Act.*
- (3) For tax incentive agreements executed before January 1, 2015, an approved company may receive a refundable tax credit on and after July 1, 2010, if:*
- (a) The cabinet has received notification from the office that the approved company has satisfied all requirements of Sections 43 to 45 of this Act; and*
 - (b) The approved company has provided a detailed cost report and sufficient documentation to the office, which has been forwarded by the office to the cabinet, that:*
 - 1. The purchases of qualifying expenditures were made after the execution of the tax incentive agreement; and*
 - 2. The approved company has withheld income tax as required by KRS 141.310 on all qualified payroll expenditures.*
- (4) The refundable tax credit shall not apply until the taxable year in which the secretary notifies the approved company of the amount of refundable credit that is available. If the notification of approval is provided prior to July 1, 2010, the company shall not claim the credit and the department shall not issue any refunds until on or after July 1, 2010.*
- (5) Interest shall not be allowed or paid on any refundable credits provided under this section.*
- (6) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to administer this section.*
- (7) On or before September 1, 2010, and on or before each September 1 thereafter, for the immediately preceding fiscal year, the cabinet shall report to the office the names of the approved companies and the amounts of refundable income tax credit claimed.*

Section 48. KRS 45A.690 is amended to read as follows:

- (1) As used in KRS 45A.690 to 45A.725:
- (a) "Committee" means the Government Contract Review Committee of the Legislative Research Commission;
- (b) "Contracting body" means each state board, bureau, commission, department, division, authority, university, college, officer, or other entity, except the Legislature, authorized by law to contract for personal services .
"Contracting body" includes the Tourism Development Finance Authority with regard to tax incentive agreements;
- (c) "Governmental emergency" means an unforeseen event or set of circumstances that creates an emergency condition as determined by the committee by promulgation of an administrative regulation;
- (d) "Memorandum of agreement" means any memorandum of agreement, memorandum of understanding, program administration contract, interlocal agreement to which the Commonwealth is a party, privatization contract, or similar device relating to services between a state agency and any other governmental body or political subdivision of the Commonwealth that involves an exchange of resources or responsibilities to carry out a governmental function. It includes agreements by regional cooperative organizations formed by local boards of education or other public educational institutions for the purpose of providing professional educational services to the participating organizations and agreements with Kentucky Distinguished Educators pursuant to KRS 158.782. This definition does not apply to:
 - 1. Agreements between the Transportation Cabinet and any political subdivision of the Commonwealth for road and road-related projects;
 - 2. Agreements between the Auditor of Public Accounts and any other governmental agency or political subdivision of

the Commonwealth for auditing services;

3. Agreements between state agencies as required by federal or state law;
4. Agreements between state agencies and state universities or colleges and agreements between state universities or colleges and employers of students in the Commonwealth work-study program sponsored by the Kentucky Higher Education Assistance Authority;
5. Agreements involving child support collections and enforcement;
6. Agreements with public utilities, providers of direct Medicaid health care to individuals except for any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services established by law or by agreement with the Cabinet for Health and Family Services, and transit authorities;
7. Nonfinancial agreements;
8. Any obligation or payment for reimbursement of the cost of corrective action made pursuant to KRS 224.60-140;
9. Exchanges of confidential personal information between agencies;
10. Agreements between state agencies and rural concentrated employment programs; or
11. Any other agreement that the committee deems inappropriate for consideration;

(e) *"Motion picture or entertainment production" means the same as defined in Section 43 of this Act;*

(f) "Multicontract" means a group of personal service contracts between a contracting body and individual vendors providing the same or substantially similar services to the contracting body that, for purposes of the committee, are treated as one (1) contract; ~~and~~

(g) ~~(f)~~ "Personal service contract" means an agreement whereby an individual, firm, partnership, or corporation is to perform certain services requiring professional skill or professional judgment for a specified period of time at a price agreed upon. It includes all price contracts for personal services between a governmental body or political subdivision of the Commonwealth and any other entity in any amount. This definition does not apply to:

1. Agreements between the Department of Parks and a performing artist or artists for less than five thousand dollars (\$5,000) per fiscal year per artist or artists;
2. Agreements with public utilities, foster care parents, providers of direct Medicaid health care to individuals except for any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services established by law or by agreement with the Cabinet for Health and Family Services, individuals performing homemaker services, and transit authorities;
3. Agreements between state universities or colleges and employers of students in the Commonwealth work study program sponsored by the Kentucky Higher Education Assistance Authority;
4. Agreements between a state agency and rural concentrated employment programs;
5. Agreements between the State Fair Board and judges, officials, and entertainers contracted for events promoted by the State Fair Board; or
6. Any other contract that the committee deems inappropriate for consideration;

(h) *"Tax incentive agreement" means an agreement executed under Section 45 of this Act; and*

(i) *"Tourism Development Finance Authority" means the authority established by KRS 148.850.*

(2) Compliance with the provisions of KRS 45A.690 to 45A.725 does not dispense with the requirements of any other law necessary to make the personal service contract or memorandum of agreement valid.

Section 49. KRS 45A.695 is amended to read as follows:

(1) Except as provided in subsection (8) of this section, no one shall begin work on a personal service contract entered into by any contracting body *or incur expenditures under a tax incentive agreement* ~~and~~ until notification of the personal service contract *or tax incentive agreement* is filed with the committee. Each personal service contract shall have a cancellation clause not to exceed thirty (30) days notice to the contractee.

(2) Each personal service contract *, tax incentive agreement,* and memorandum of agreement shall be filed with the committee prior to the effective date and shall be accompanied by a completed proof of necessity form as established by the committee by promulgation of an administrative regulation, or equivalent information if submitted electronically. The proof of necessity form shall document:

- (a) The need for the service *or benefit to the Commonwealth of the tax incentive agreement* ;
 - (b) *For personal service contracts and memoranda of agreement*, the unavailability of state personnel or the nonfeasibility of utilizing state personnel to perform the service;
 - (c) The total projected cost of the contract or agreement and source of funding;
 - (d) The total projected duration of the contract *or tax incentive agreement* ;
 - (e) Payment information, in detail;
 - (f) In the case of memoranda of agreement or similar device, the reason for exchanging resources or responsibilities; and
 - (g) Such other information as the committee deems appropriate.
- (3) Adequate notice of the need for a personal service contract shall be given by the contracting body through a request for proposals. The request for proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications.
- (4) The head of the contracting body or his *or her* designee may conduct discussions with any offeror who has submitted a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.
- (5) Award shall be made to the offeror determined by the head of the contracting body, or his *or her* designee, to be the best qualified of all offerors based on the evaluation factors set forth in the request for proposals and the negotiation of fair and reasonable compensation. If compensation cannot be agreed upon with the best qualified offeror and if proposals were submitted by one (1) or more other offerors determined to be qualified, negotiations may be conducted with the other offeror or offerors in the order of their respective qualification ranking. In this case, the contract may be awarded to the next best ranked offeror for a fair and reasonable compensation. All determinations of the qualification rankings of offerors by the head of the contracting body or a designee of the officer based on evaluation factors set forth in the request for proposals shall be made in writing. Written documentation shall be maintained concerning the final results of negotiation with each vendor and reasoning as to why each vendor was chosen.
- (6) The committee shall maintain a record or have readily accessible records of the date on which each personal service contract , *tax incentive agreement*, and memorandum of agreement was received and shall maintain or have access to electronic or paper files on all personal service contracts , *tax incentive agreements*, and memoranda of agreement. Except for records exempt from inspection under KRS 61.870 to 61.884, all personal service contracts , *tax incentive agreements*, and memoranda of agreement shall be made available for public inspection.
- (7) Payment on personal service contracts , *tax incentive agreements*, and memoranda of agreement submitted to the committee for approval shall not be made for services rendered *or projects undertaken* after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the secretary of the Finance and Administration Cabinet. All personal service contracts , *tax incentive agreements*, and memoranda of agreement shall contain a provision that stipulates that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority.
- (8) In the event of a governmental emergency as defined under KRS 45A.690, work may begin prior to filing notification of the personal service contract with the committee, if the secretary of the Finance and Administration Cabinet or his designee determines that the time involved in the normal review process would be detrimental to the Commonwealth's ability to act or procure the services and the normal process will not accommodate the governmental emergency. Payment shall not be made until written notification and explanation of the reasons for this action are forwarded to the committee.
- (9) If a governmental emergency exists as defined under KRS 45A.690 and work is authorized to begin on a personal service contact immediately, a copy of a statement, approved by the secretary of the Finance and Administration Cabinet or his designee, setting forth in detail the nature of the emergency shall be filed with the committee, along with a copy of the personal service contract.

Section 50. KRS 45A.705 is amended to read as follows:

- (1) There is hereby created a permanent committee of the Legislative Research Commission to be known as the Government Contract Review Committee. The committee shall be composed of eight (8) members appointed as follows: three (3) members of the Senate appointed by the President of the Senate; one (1) member of the minority party

in the Senate appointed by the Minority Floor Leader in the Senate; three (3) members of the House of Representatives appointed by the Speaker of the House of Representatives; and one (1) member of the minority party in the House of Representatives appointed by the Minority Floor Leader in the House of Representatives. Members shall serve for terms of two (2) years, and the members appointed from each chamber shall elect one (1) member from their chamber to serve as co-chair. Any vacancy that may occur in the membership of the committee shall be filled by the appointing authority who made the original appointment.

(2) On an alternating basis, each co-chair shall have the first option to set the monthly meeting date. A monthly meeting may be canceled by agreement of both co-chairs. The co-chairs shall have joint responsibilities for committee meeting agendas and presiding at committee meetings. A majority of the entire membership of the Government Contract Review Committee shall constitute a quorum, and all actions of the committee shall be by vote of a majority of its entire membership. The members of the committee shall be compensated for attending meetings, as provided in KRS 7.090(3).

(3) Any professional, clerical, or other employees required by the committee shall be provided in accordance with the provisions of KRS 7.090(4) and (5).

(4) All proposed personal service contracts , *tax incentive agreements*, and memoranda of agreement received by the Legislative Research Commission shall be submitted to the committee to:

(a) Examine the stated need for the service *or benefit to the Commonwealth of the motion picture or entertainment production* ;

(b) Examine whether the service could or should be performed by state personnel , *for personal service contracts and memoranda of agreement* ;

(c) Examine the amount and duration of the contract or agreement; and

(d) Examine the appropriateness of any exchange of resources or responsibilities.

(5) If the committee determines that the contract service or agreement, other than an emergency contract approved by the secretary of the Finance and Administration Cabinet or his *or her* designee, is not needed or inappropriate, *the motion picture or entertainment production is not beneficial or is inappropriate*, the service could or should be performed by state personnel, the amount or duration is excessive, or the exchange of resources or responsibilities are inappropriate, the committee shall attach a written notation of the reasons for its disapproval or objection to the personal service contract , *tax incentive agreement*, or memorandum of agreement and shall return the personal service contract , *tax incentive agreement*, or memorandum of agreement to the secretary of the Finance and Administration Cabinet or his *or her* designee. The committee shall act on a personal service contract , *tax incentive agreement*, or memorandum of agreement submitted to the Legislative Research Commission within forty-five (45) days of the date received.

(6) Upon receipt of the committee's disapproval or objection to a personal service contract , *tax incentive agreement*, or memorandum of agreement, the secretary of the Finance and Administration Cabinet or his *or her* designee shall determine whether the personal service contract , *tax incentive agreement*, or memorandum of agreement shall:

(a) Be revised to comply with the objections of the committee;

(b) Be canceled and, if applicable, payment allowed for services rendered under the contract or amendment; or

(c) Remain effective as originally approved.

(7) The secretary of the Finance and Administration Cabinet or his *or her* designee shall notify the committee of the action taken on personal service contracts , *tax incentive agreements*, and memoranda of agreement disapproved or objected to within ten (10) days from the date the personal service contracts , *tax incentive agreement*, or memoranda of agreement were reviewed by the committee.

(8) Contracting bodies shall make annual reports to the committee not later than December 1 of each year. The committee shall establish reporting procedures for contracting bodies related to personal service contracts , *tax incentive agreements*, and memoranda of agreement submitted by the secretary of the Finance and Administration Cabinet or his *or her* designee.

Section 51. KRS 45A.725 is amended to read as follows:

(1) The Government Contract Review Committee may establish policies and procedures concerning the manner and form of notification and the documentation to accompany the proposed personal service contract , *tax incentive agreement*, or memorandum of agreement.

(2) Nothing in this code shall prohibit the committee from accepting personal service contracts , *tax incentive*

agreement, or memoranda of agreement through the use of electronic instrumentalities.

Section 52. KRS 141.310 is amended to read as follows:

(1) Every employer making payment of wages on or after January 1, 1971, shall deduct and withhold upon the wages a tax determined under KRS 141.315 or by the tables authorized by KRS 141.370.

(2) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days, including Sundays and holidays, equal to the number of days in the period with respect to which the wages are paid.

(3) If wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days, including Sundays and holidays, which have elapsed since the date of the last payment of wages by the employer during the calendar year, or the date of commencement of employment with the employer during the year, or January 1 of the year, whichever is the later.

(4) In determining the amount to be deducted and withheld under this section, the wages may, at the election of the employer, be computed to the nearest dollar.

(5) The tables mentioned in subsection (1) of this section shall consider the standard deduction.

(6) The department may permit the use of accounting machines to calculate the proper amount to be deducted from wages when the calculation produces substantially the same result as set forth in the tables authorized by KRS 141.370. Prior approval of the calculation shall be secured from the department at least thirty (30) days before the first payroll period for which it is to be used.

(7) The department may, by administrative regulations, authorize employers:

(a) To estimate the wages which will be paid to any employee in any quarter of the calendar year;

(b) To determine the amount to be deducted and withheld upon each payment of wages to the employee during the quarter as if the appropriate average of the wages estimated constituted the actual wages paid; and

(c) To deduct and withhold upon any payment of wages to the employee during the quarter the amount necessary to adjust the amount actually deducted and withheld upon the wages of the employee during the quarter to the amount that would be required to be deducted and withheld during the quarter if the payroll period of the employee was quarterly.

(8) The department may provide by regulation, under the conditions and to the extent it deems proper, for withholding in addition to that otherwise required under this section and KRS 141.315 in cases in which the employer and the employee agree to the additional withholding. The additional withholding shall for all purposes be considered tax required to be deducted and withheld under this chapter.

(9) Effective January 1, 1992, any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job assessment fee provided in KRS 154.24-110 may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be four-fifths (4/5) of the amount of the assessment fee withheld from the employee or the Commonwealth's contribution of KRS 154.24-110(3) applies. If the provisions in KRS 154.24-150(3) or (4) apply, the offset, the offset shall be one hundred percent (100%) of the assessment.

(10) Any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees an assessment provided in KRS 154.22-070 or KRS 154.28-110 may offset the fee against the Kentucky income tax required to be withheld from the employee under this section.

(11) Any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job assessment fee provided in KRS 154.26-100 may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be four-fifths (4/5) of the amount of the assessment fee withheld from the employee, or if the agreement under KRS 154.26-090(1)(f)2. is consummated, the offset shall be one hundred percent (100%) of the assessment fee.

(12) Any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job development assessment fee provided in KRS 154.23-055 may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be equal to the Commonwealth's contribution as determined by KRS 154.23-055(1) to (3).

(13) *Any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job development assessment fee provided in Section 18 of this Act may offset the state portion of the assessment against the Kentucky income tax required to be withheld from the employee under this section.*

(14) Any employer required by this section to withhold Kentucky income tax may be required to post a bond with the department. The bond shall be a corporate surety bond or cash. The amount of the bond shall be determined by the department, but shall not exceed fifty thousand dollars (\$50,000).

(15) ~~(14)~~ Any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees an assessment provided in KRS 154.27-080 may offset the assessment against the Kentucky income tax required to be withheld from the employee under this section.

(16) ~~(15)~~ The Commonwealth may bring an action for a restraining order or a temporary or permanent injunction to restrain or enjoin the operation of an employer's business until the bond is posted or the tax required to be withheld is paid or both. The action may be brought in the Franklin Circuit Court or in the Circuit Court having jurisdiction of the defendant.

Section 53. KRS 141.350 is amended to read as follows:

The amount deducted and withheld as tax under KRS 141.310 and 141.315 during any calendar year upon the wages of any individual and the amount of credit described in KRS 154.22-070(2), 154.23-055, 154.24-110, 154.24-150(3) and (4), 154.26-100(2), 154.27-080, *Section 18 of this Act*, or 154.28-110 shall be allowed as a credit to the recipient of the income against the tax imposed by KRS 141.020, for taxable years beginning in the calendar year. If more than one (1) taxable year begins in the calendar year, the amount shall be allowed as a credit against the tax for the last taxable year so beginning.

SECTIONS NOT PERTAINING TO THE FILM INCENTIVE HAVE BEEN OMITTED

Section 116. Whereas the Commonwealth is in need of enhanced programs to support economic recovery in general, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.