

1 AN ACT creating the Kentucky Rural and Opportunity Zone Jobs Act.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO
4 READ AS FOLLOWS:

5 *The General Assembly hereby finds and declares that:*

6 *(1) Businesses in the rural areas of this state have found it difficult to attract capital*
7 *necessary to make investments that would stimulate economic development*
8 *activity and create new jobs for the residents of the rural areas; therefore, a need*
9 *exists to attract capital to rural areas that promotes the retention and expansion*
10 *of existing jobs, stimulates the creation of new jobs, attracts new business and*
11 *industry to the state, stimulates growth in businesses, and fosters job creation in*
12 *this state; and*

13 *(2) Through the establishment of a rural growth fund program under Subchapter 21*
14 *of KRS Chapter 154 and the tax credit under Section 2 of this Act, the*
15 *Commonwealth will attract capital to stimulate business development in rural*
16 *areas, retain and attract new business and industry to the rural areas, create*
17 *high-paying jobs for residents of rural areas, and stimulate growth in businesses*
18 *in rural areas.*

19 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO
20 READ AS FOLLOWS:

21 *(1) As used in this section:*

22 *(a) "Affiliate" has the same meaning as in Section 4 of this Act; and*

23 *(b) "Closing date" has the same meaning as in Section 4 of this Act;*

24 *(c) "Growth business" has the same meaning as in Section 4 of this Act; and*

25 *(d) "Growth fund" has the same meaning as in Section 4 of this Act.*

26 *(2) There is hereby allowed a nonrefundable credit for taxpayers that, as investors,*
27 *make an investor contribution to a growth fund and were issued a tax credit*

1 certificate under subsection (7)(b) of Section 5 of this Act. The credit may be
2 claimed against the tax imposed by:

3 (a) KRS 136.320;

4 (b) KRS 136.330;

5 (c) KRS 136.340;

6 (d) KRS 136.350;

7 (e) KRS 136.370;

8 (f) KRS 136.390; or

9 (g) KRS 304.3-270;

10 with the ordering of the credit as provided in Section 3 of this Act.

11 (3) The credit may not be sold, transferred, or allocated to any other taxpayer other
12 than an affiliate that was an affiliate at the time of the submission of the
13 investor's affidavit included in the growth fund's application and is itself subject
14 to the tax imposed by KRS 136.320, 136.330, 136.340, 136.350, 136.370, 136.390,
15 or 304.3-270.

16 (4) (a) On the closing date, the taxpayer shall earn a vested credit equal to the
17 amount of the taxpayer's investor contribution made to a growth fund as
18 specified on the tax credit certificate.

19 (b) A taxpayer may claim no more than twenty percent (20%) of the credit
20 allowed by this section in each of the years that include the second, third,
21 fourth, fifth, and sixth anniversaries of the closing date, exclusive of
22 amounts carried forward pursuant to subsection (5) of this section.

23 (5) If the amount of the credit allowed for a taxable year under subsection (4) of this
24 section exceeds the tax otherwise due for that year, the excess shall be carried
25 forward to succeeding taxable years until fully used, for a period not to exceed
26 ten (10) years.

27 (6) A taxpayer claiming a credit under this section shall submit a copy of the tax

1 credit certificate with the taxpayer's return filed for each taxable year for which
 2 the credit is claimed.

3 (7) On or before December 1, 2022, and annually thereafter as long as the credit is
 4 claimed by a taxpayer, the department shall submit a written report to the Interim
 5 Joint Committee on Appropriations and Revenue, providing cumulative
 6 information by taxable year:

7 (a) The number of taxpayers claiming a credit under this section, and the total
 8 value of credits claimed;

9 (b) The total value of initial investment authority and investor contributions
 10 approved by the Cabinet for Economic Development since the initial
 11 creation of the credit by fiscal year, listed by the date on which the
 12 approvals were issued; and

13 (c) The number and total value of any tax credit certificates revoked by the
 14 cabinet during the fiscal year, with an explanation of the reason for each
 15 revocation.

16 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO
 17 READ AS FOLLOWS:

18 (1) If a taxpayer is entitled to more than one (1) of the tax credits permitted against
 19 the taxes imposed by KRS 136.320, 136.330, 136.340, 136.350, 136.370, 136.390,
 20 or 304.3-270, the credits shall be taken in the following order:

21 (a) The Kentucky Investment Fund Act credit permitted by KRS 154.20-258;

22 (b) The New Markets Development Program credit permitted by KRS 141.434;
 23 and

24 (c) The rural growth fund credit permitted by Section 2 of this Act.

25 (2) A taxpayer claiming a credit against any of the insurance premiums taxes
 26 imposed by KRS 136.320, 136.330, 136.340, 136.350, 136.370, or 136.390 shall
 27 not be required to pay additional retaliatory tax imposed by KRS 304.3-270.

1 ➔SECTION 4. SUBCHAPTER 21 OF KRS CHAPTER 154 IS ESTABLISHED,
2 AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

3 *As used in this subchapter:*

4 *(1) (a) "Affiliate" means a person or entity that directly, or indirectly through one*
5 *(1) or more intermediaries, controls, is controlled by, or is under common*
6 *control with another person or entity.*

7 *(b) For the purposes of this subsection, an entity is controlled by another entity*
8 *if the controlling person holds, directly or indirectly, the majority voting or*
9 *ownership interest in the controlled person or has control over the day-to-*
10 *day operations of the controlled person by contract or by law;*

11 *(2) "Cabinet" means the Cabinet for Economic Development;*

12 *(3) "Closing date" means the date on which a growth fund has collected all of the*
13 *amounts specified by subsection (8)(a) of Section 5 of this Act;*

14 *(4) "Department" means the Department of Revenue;*

15 *(5) "Growth business" means a business that, at the time of the initial investment in*
16 *the company by a growth fund:*

17 *(a) Has fewer than two hundred fifty (250) employees;*

18 *(b) Has its principal business operations in one (1) or more growth zones in*
19 *this state; and*

20 *(c) 1. Is engaged in the industries described in North American Industry*
21 *Classification System codes 11, 21, 22, 23, 31-33, 48, 49, 54, or 62; or*
22 *2. If not engaged in those industries, the cabinet determines that the*
23 *industry within which the business is engaged will be beneficial to the*
24 *growth zone and the economic growth of this state;*

25 *(6) "Growth fund" means an entity that:*

26 *(a) Has applied to the cabinet and received an application determination*
27 *granting the application under subsection (2) of section 5 of this Act; and*

1 **(b) Is licensed, or is an affiliate of an entity that is licensed, as a rural business**
2 **investment company under 7 U.S.C. sec. 2009cc-3 or as a small business**
3 **investment company under 15 U.S.C. sec. 681, provided that an affiliate of**
4 **the entity used to meet this requirement has been an affiliate of the entity**
5 **for at least four years, and that the entity or affiliate of the entity have at**
6 **least one principal who is, or has been for at least four years, an employee**
7 **or officer of the entity or its affiliates;**

8 **(7) (a) "Growth investment" means any capital or equity investment in a growth**
9 **business or any loan to a growth business with a stated maturity at least one**
10 **(1) year after the date of issuance. A secured loan or the provision of a**
11 **revolving line of credit to a rural business concern shall only qualify as a**
12 **rural growth investment if the rural growth fund obtains an affidavit from**
13 **an officer of the rural business concern attesting that the rural business**
14 **concern applied for and was denied similar financing from a commercial**
15 **bank prior to the date of issuance of the secured loan or revolving line of**
16 **credit.**

17 **(b) "Growth investment" excludes any amount of any investment or loan**
18 **which is also qualified as an investment under:**

- 19 **1. The Kentucky New Markets Development Program, pursuant to KRS**
20 **141.432 to 141.434;**
21 **2. The Kentucky Angel Investment Act, pursuant to KRS 154.20-230 to**
22 **154.20-240; or**
23 **3. The Kentucky Investment Fund Act, pursuant to KRS 154.20-250 to**
24 **154.20-284;**

25 **(8) "Growth zone" means the following geographic areas within this state:**

26 **(a) A rural county;**

27 **(b) An underemployment zone; or**

1 (c) An opportunity zone;

2 (9) "High wage" means a wage that is at least one hundred percent (100%) of the
3 county average as calculated by the United States Department of Labor, Bureau
4 of Labor Statistics;

5 (10) "Initial investment authority" means the amount stated on the notice issued
6 under subsection (7) of Section 5 of this Act certifying the growth fund, seventy-
7 five percent (75%) of which shall be composed of an amount equal to the
8 authorized investor contributions;

9 (11) "Investor contribution" means an investment of cash in a growth fund by an
10 entity with a state premium tax liability that shall:

11 (a) Equal the amount specified in the cabinet's approval of a growth fund
12 related to the entity under subsection (7)(b) of Section 5 of this Act; and

13 (b) Purchase an equity interest in the growth fund or purchase, at par value or
14 premium, a debt instrument that has a maturity date at least five (5) years
15 from the closing date;

16 (12) "Jobs retained" means the number of employment positions at a growth business
17 paying a high wage and requiring at least thirty-five (35) hours of work each
18 week that existed before the initial growth investment and for which the growth
19 business's chief executive officer or similar officer certifies that the employment
20 position would have been eliminated but for the initial growth investment. The
21 retained jobs of a growth business shall be calculated each year based on the
22 monthly average of high wage employment positions. The reported number of
23 retained jobs may not exceed the number reported on the initial report under
24 subsection (1) of Section 10 of this Act;

25 (13) "New annual jobs" means the difference between:

26 (a) 1. The monthly average of employment positions at a growth business
27 paying a high wage and requiring at least thirty-five (35) hours of

- 1 work each week for the preceding calendar year; or
- 2 2. If the preceding calendar year contains the initial growth investment,
3 the monthly average of employment positions at a growth business
4 paying a high wage and requiring at least thirty-five (35) hours of
5 work each week for the months including and after the initial growth
6 investment and before the end of the preceding calendar year; and
- 7 (b) The number of full-time high wage employment positions at the growth
8 business on the date of the initial growth investment; but
- 9 (c) If the amount calculated in paragraph (a)1. of this subsection is less than
10 zero, the new annual jobs amount is equal to zero;
- 11 (14) "Opportunity Zone" means a qualified opportunity zone as defined by 26 U.S.C.
12 sec. 1400Z-1;
- 13 (15) "Principal business operations" means the location where:
- 14 (a) At least sixty percent (60%) of a business entity's employees work; or
15 (b) At least sixty percent (60%) of the business entity's payroll works.
- 16 A business that has agreed to relocate employees using the proceeds of a growth
17 investment to establish its principal business operations in a new location shall be
18 deemed to have its principal business operations in this new location if it satisfies
19 those requirements no later than one hundred eighty (180) days after receiving
20 the growth investment;
- 21 (16) "Rural county" means all Kentucky counties with a population of less than fifty
22 thousand (50,000) based upon the most recent federal decennial census. The
23 cabinet shall publish a list of rural counties;
- 24 (17) "State premium tax liability" means any liability incurred by any entity under the
25 provisions of KRS 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, or
26 304.3-270; and
- 27 (18) "Underemployment zone" means a county with a labor force participation rate,

1 as calculated by the United States Department of Labor, Bureau of Labor
2 Statistics, below the national average for six (6) of the twelve (12) months prior to
3 a growth fund's closing date.

4 →SECTION 5. A NEW SECTION OF SUBCHAPTER 21 OF KRS CHAPTER
5 154 IS CREATED TO READ AS FOLLOWS:

6 (1) Beginning October 1, 2019, the cabinet shall accept applications from entities
7 seeking approval as a growth fund. The application shall be made on standard
8 forms prescribed by the cabinet, incorporated by reference within an
9 administrative regulation according to KRS Chapter 13A, and shall include all of
10 the following:

11 (a) The total investment authority sought by the applicant as part of its business
12 plan;

13 (b) Documents and other evidence sufficient to prove, to the satisfaction of the
14 cabinet and department, that the applicant meets all of the following
15 criteria:

16 1. The applicant or an affiliate of the applicant, has at least one (1)
17 principal in a rural business investment company under 7 U.S.C. sec.
18 2009cc-3, or a small business investment company under 15 U.S.C.
19 sec. 681, who is, and has been for at least four (4) years, an officer or
20 employee of the applicant or the affiliate, and in the case of an
21 affiliate, the affiliate has been an affiliate of the applicant for at least
22 four (4) years;

23 2. The applicant or affiliate of the applicant has, as of the date the
24 application is submitted, invested:

25 a. More than one hundred million dollars (\$100,000,000) in
26 nonpublic companies located in areas outside census places with
27 fifty thousand (50,000) or more people, as provided in the rural

- 1 definitions data documentation and methods established by the
2 United States Department of Agriculture, Economic Research
3 Services; and
- 4 b. At least one hundred million dollars (\$100,000,000) in nonpublic
5 companies located in low-income communities as defined in 26
6 U.S.C. sec. 45D; and
- 7 3. The applicant and all affiliates of the applicant are, as of the date the
8 application is submitted, in compliance with applicable state and
9 federal securities laws and regulations and are current and in good
10 standing on all taxes owed to the Commonwealth;
- 11 (c) An estimate of the number of new annual jobs and jobs retained in this
12 state as a result of the applicant's proposed growth investments;
- 13 (d) A business plan that describes in detail the applicant's investment strategy
14 and includes a revenue impact assessment that projects state and local tax
15 revenue to be generated by the applicant's proposed growth investments, as
16 well as reduced state expenditures prepared by a nationally recognized
17 third-party independent economic forecasting firm using a dynamic
18 economic forecasting model that analyzes the applicant's business plan over
19 the ten (10) years following the date the application is submitted to the
20 cabinet;
- 21 (e) A signed affidavit from each investor stating the amount of investor
22 contributions each investor commits to make;
- 23 (f) A letter of good standing issued by the cabinet for each investor, which
24 letter shall not be unreasonably withheld and shall be issued within thirty
25 (30) days of receipt of a request for the letter from applicant;
- 26 (g) A representation that the applicant shall remain in compliance with
27 applicable state and federal securities laws and regulations; and

- 1 (h) A nonrefundable application fee of five thousand dollars (\$5,000).
- 2 (2) The cabinet shall review applications on a first-come, first-served basis, and shall
3 make an application determination either granting or denying an application
4 within sixty (60) days of receipt. The cabinet shall deem applications received on
5 the same day to have been received simultaneously.
- 6 (3) (a) The cabinet shall not approve initial investment authority that would allow
7 more than fifteen million dollars (\$15,000,000) in tax credits to be taken in
8 any one (1) year, excluding any credits that are carried forward pursuant to
9 subsection (5) of Section 2 of this Act.
- 10 (b) If applications for initial investment authority being reviewed by the cabinet
11 exceed the limitations provided in paragraph (a) of this subsection, the
12 cabinet shall proportionally reduce the initial investment authority and the
13 investor contributions for each approved application as necessary to avoid
14 exceeding the limits.
- 15 (c) The cabinet shall not issue approval for any amount of investment
16 authority, or any amount of investor contributions, on or after October 1,
17 2023.
- 18 (4) The cabinet shall deny an application submitted under this section if any of the
19 following are true:
- 20 (a) The application is incomplete, or the application fee is not paid in full;
- 21 (b) The applicant does not satisfy all the criteria provided in subsection (1)(b)
22 of this section;
- 23 (c) The investor contributions that investors have committed to make, as
24 described in affidavits submitted pursuant to subsection (1)(e) of this
25 section, do not equal seventy-five percent (75%) of the total amount of
26 initial investment authority sought by the applicant;
- 27 (d) The cabinet has already approved the maximum amount of initial

1 investment authority and investor contributions allowed under subsection
2 (3)(a) of this section; or

3 (e) The application is received by the cabinet on or after August 1, 2023, in
4 which case the cabinet would not have the full sixty (60) day period allowed
5 for review of applications prior to reaching the sunset date limitation
6 provided in subsection (3)(c) of this section.

7 (5) If the cabinet denies an application, the applicant may provide additional
8 information to the cabinet to complete, clarify, or cure defects in the application
9 identified by the cabinet, except for a denial under subsection (4)(c) of this
10 section, within fifteen (15) days of the notice of denial and resubmit the
11 application for reconsideration. The cabinet shall review resubmitted applications
12 within thirty (30) days, and prior to reviewing any pending application submitted
13 after the original submission date of the reconsidered application.

14 (6) The cabinet shall not deny a growth fund application or reduce the requested
15 initial investment authority for reasons other than those provided in subsections
16 (1) and (4) of this section.

17 (7) Upon approval of an application, the cabinet shall issue:

18 (a) A written approval to the applicant certifying it as a growth fund and
19 specifying the amount of the applicant's initial investment authority; and

20 (b) A written tax credit certificate to each investor whose affidavit was included
21 in the application, specifying the amount of each investor credit
22 contribution.

23 (8) After receiving the approval issued under subsection (7) of this section, a growth
24 fund shall:

25 (a) Within sixty (60) days:

26 1. Collect the investor contributions from each investor issued a tax
27 credit certificate under subsection (7)(b) of this section; and

- 1 2. Collect one (1) or more investments of cash that, when added to the
2 investor capital contributions collected under subparagraph 1. of this
3 paragraph, equal the growth fund's entire approved initial investment
4 authority. At least ten percent (10%) of the growth fund's initial
5 investment authority shall be composed of equity investments
6 contributed directly or indirectly by affiliates of the growth fund,
7 including employees, officers, and directors of those affiliates;
- 8 (b) Within sixty-five (65) days, submit to the cabinet written documentation
9 sufficient to prove that the amounts described in paragraph (a) of this
10 subsection have been collected; and
- 11 (c) Within two (2) years of the closing date, invest one hundred percent (100%)
12 of its initial investment authority in growth investments in this state,
13 including at least seventy-five percent (75%) of its initial investment
14 authority in growth businesses located in rural counties, and maintain that
15 level of investment until the sixth anniversary of the closing date.
- 16 (9) (a) If the growth fund fails to fully comply with subsection (8)(a) and (b) of this
17 section, the growth fund's approval shall lapse and the corresponding
18 initial investment authority and investor contributions shall not count
19 toward the limits on total initial investment authority and investor
20 contributions prescribed by subsection (3) of this section.
- 21 (b) The cabinet shall first award lapsed initial investment authority and
22 investor contribution amounts pro rata to each growth fund that was
23 awarded less than its requested initial investment authority and investor
24 contribution amounts under subsection (3)(b) of this section. A growth fund
25 receiving awards under this paragraph may allocate investor contribution
26 amounts to its investors in its discretion, upon the submission of written
27 notification to the cabinet detailing the investor to which the amount

1 approved for investor contributions has been allocated.

2 (c) Any remaining initial investment authority and investor contributions may
 3 be awarded by the cabinet to new applications submitted pursuant to
 4 subsection (1) of this section, subject to the sunset date limitation provided
 5 in subsection (3)(c) of this section.

6 (10) Following the making of each growth investment, the growth fund shall within
 7 sixty (60) days submit to the cabinet written documentation listing the following
 8 information:

9 (a) The name, address, and industry of the business entity receiving the growth
 10 investment;

11 (b) The amount of the growth investment;

12 (c) A detailed description of the business activities engaged in by the business
 13 entity; and

14 (d) Any other information required by the cabinet.

15 (11) Nonrefundable application fees submitted to the cabinet pursuant to subsection
 16 (1)(h) of this section shall be retained by the cabinet to offset the costs of
 17 administering this subchapter.

18 (12) The cabinet shall review the applications received under subsection (1) of this
 19 section and documents received pursuant to subsections (8) and (10) of this
 20 section to ensure compliance with this subchapter.

21 (13) The cabinet may promulgate administrative regulations as necessary to
 22 administer this subchapter.

23 ➔SECTION 6. A NEW SECTION OF SUBCHAPTER 21 OF KRS CHAPTER
 24 154 IS CREATED TO READ AS FOLLOWS:

25 (1) The cabinet shall revoke a tax credit certificate issued under subsection (7)(b) of
 26 Section 5 of this Act if any of the following occur with respect to a growth fund
 27 before it exits the program in accordance with subsection (5) of this section:

1 (a) The growth fund in which the investor contribution associated with the tax
2 credit certificate was made does not invest one hundred percent (100%) of
3 its initial investment authority in growth investments in this state within two
4 (2) years of the closing date;

5 (b) 1. The growth fund, after investing one hundred percent (100%) of its
6 investment authority in growth investments in this state, fails to
7 maintain that investment until the sixth anniversary of the closing
8 date.

9 2. For the purposes of this paragraph, a growth investment shall be
10 considered to have been maintained even if the investment is sold or
11 repaid if the growth fund reinvests an amount equal to the capital
12 returned or recovered by the growth fund from the original
13 investment, exclusive of any profits realized, in other growth
14 investments in this state within twelve (12) months of the receipt of the
15 returned capital. Amounts received periodically by a growth fund shall
16 be treated as continually invested in growth investments if the
17 amounts are reinvested in one (1) or more rural growth investments by
18 the end of the following calendar year.

19 3. A growth fund shall not be required to reinvest capital returned from
20 growth investments after the fifth anniversary of the closing date, and
21 those amounts shall be considered to be held continuously by the
22 growth fund through the sixth anniversary of the closing date;

23 (c) The growth fund, before exiting the program in accordance with subsection
24 (5) of this section, makes a distribution or payment that results in the
25 growth fund having less than one hundred percent (100%) of its initial
26 investment authority invested in growth investments in this state or
27 available for investment in growth investments and held in cash and other

1 marketable securities;

2 (d) The growth fund invests more than twenty percent (20%) of its initial
3 investment authority or more than five million dollars (\$5,000,000),
4 whichever is greater, in the same growth business, including amounts
5 invested in affiliates of the growth business; or

6 (e) 1. The growth fund makes a growth investment in a growth business that
7 directly or indirectly through an affiliate owns, has the right to
8 acquire an ownership interest in, makes a loan to, or makes an
9 investment in the growth fund, an affiliate of the growth fund, or an
10 investor in the growth fund.

11 2. This paragraph shall not apply to investments in publicly traded
12 securities made by a growth business or an owner or affiliate of that
13 growth business.

14 3. For purposes of this paragraph, a growth fund shall not be considered
15 an affiliate of a growth business solely as a result of its growth
16 investment.

17 (2) Before revoking one (1) or more tax credit certificates under this section, the
18 cabinet shall notify the growth fund of the reasons for the pending revocation.
19 The growth fund shall have ninety (90) days from the date of the notice to correct
20 any violation outlined in the notice to the satisfaction of the cabinet and to avoid
21 revocation of the tax credit certificate.

22 (3) Upon revocation of a tax credit certificate, any taxpayer that has received the tax
23 credit certificate shall not be allowed to claim any amount of credit not yet
24 claimed.

25 (4) (a) If tax credit certificates are revoked under this section, the corresponding
26 initial investment authority and investor capital contributions shall not
27 count toward the limits on total investment authority and credit-eligible

1 capital contributions prescribed by subsection (3)(a) of Section 5 of this Act.

2 (b) The cabinet shall first award reverted initial investment authority and
3 investor contribution amounts pro rata to each growth fund that was
4 awarded less than its requested initial investment authority and investor
5 contribution amounts under subsection (3)(b) of Section 5 of this Act. A
6 growth fund receiving awards under this paragraph may allocate investor
7 contribution amounts to its investors in its discretion, upon the submission
8 of written notification to the cabinet detailing the investor to which the
9 amount approved for investor contributions has been allocated.

10 (c) The cabinet may award any remaining initial investment authority and
11 investor contributions to new applications submitted pursuant to subsection
12 (1) of Section 5 of this Act, subject to the sunset date limitation provided in
13 subsection (3)(c) of Section 5 of this Act.

14 (5) (a) On or after the sixth anniversary of the closing date, a growth fund that has
15 not committed any of the acts described in subsection (1) of this section may
16 submit a written request to the cabinet to exit the program and to no longer
17 be subject to regulation under this subchapter, except as described in
18 subsection (6) of this section.

19 (b) The cabinet shall respond to the request within sixty (60) days. In
20 evaluating the request, the fact that no tax credit certificates have been
21 revoked and that the growth fund has not received a notice of revocation,
22 which has not been cured pursuant to subsection (2) of this section, shall be
23 sufficient evidence to prove that the growth fund is eligible for exit.

24 (c) The cabinet shall not unreasonably deny a request submitted under this
25 subsection. If the request is denied, the notice of denial shall include the
26 reasons for the determination.

27 (6) After its exit from the program in accordance with of subsection (5)(a) of this

1 section, a growth fund shall not be permitted to make distributions to its equity
 2 holders unless and until it has made growth investments equal to at least one
 3 hundred fifty percent (150%) of its initial investment authority. Each growth fund
 4 shall continue to report the amount of growth investments made to the cabinet
 5 annually until it has made growth investments equal to at least one hundred fifty
 6 percent (150%) of its initial investment authority.

7 (7) At any time the growth fund proposes to make a distribution to its equity holders
 8 that, when added to all previous distributions to its equity holders, would be in
 9 excess of its initial investment authority, the growth fund shall remit to the
 10 cabinet, if applicable, a payment equal to the product of the proposed distribution
 11 and a fraction, the numerator of which is the aggregate number of new annual
 12 jobs and jobs retained reported to the cabinet pursuant to subsection (1) of
 13 Section 10 of this Act and the denominator of which is the number of new annual
 14 jobs and jobs retained projected in the growth fund's application, as prorated
 15 based on the amount of initial investment authority received by the growth fund.
 16 No payment shall be due if the aggregate number of new annual jobs and jobs
 17 retained as of the date of the proposed distribution equal or exceed the number of
 18 new annual jobs and jobs retained projected in the growth fund's application, as
 19 prorated based on the amount of initial investment authority received.

20 (8) The cabinet shall not revoke a tax credit certificate after the associated growth
 21 fund exits the program under subsection (5) of this section.

22 ➔SECTION 7. A NEW SECTION OF SUBCHAPTER 21 OF KRS CHAPTER
 23 154 IS CREATED TO READ AS FOLLOWS:

24 (1) (a) A growth fund may, prior to making a growth investment, request from the
 25 cabinet a written determination as to whether the business entity in which it
 26 proposes to invest qualifies as a growth business under this subchapter.

27 (b) Within twenty (20) days after receiving a request under this section, the

1 cabinet shall notify the growth fund of its determination. If the cabinet fails
 2 to notify the growth fund of its determination by this deadline, the business
 3 entity in which the growth fund proposes to invest shall be considered a
 4 growth business.

5 (c) To enable the cabinet to make a determination under this section, the
 6 growth fund shall supply information concerning the business entity and
 7 the proposed investment as requested by the cabinet. If the growth fund does
 8 not, or is unable to, supply information requested by the cabinet, the cabinet
 9 may refuse to issue a determination under this section, in which case
 10 paragraph (b) of this subsection and subsection (2) of this section shall not
 11 apply.

12 (2) Each person required to provide documentation confirming that the person is in
 13 good standing on all taxes owed the Commonwealth in accordance with
 14 subsection (1) of Section 5 of this Act shall apply for a letter of good standing
 15 from the department. Within ten (10) days after receiving a request, the
 16 department shall notify the person of its determination. If the department fails to
 17 notify the person of its determination by this deadline, it shall be presumed that
 18 the person is in good standing on all taxes owed the Commonwealth for purposes
 19 of this subchapter.

20 ➔SECTION 8. A NEW SECTION OF SUBCHAPTER 21 OF KRS CHAPTER
 21 154 IS CREATED TO READ AS FOLLOWS:

22 (1) The cabinet may examine, under oath, the growth fund manager regarding the
 23 affairs and business of the growth fund. The cabinet may issue subpoenas and
 24 subpoenas duces tecum and administer oaths. Refusal to obey a subpoena or
 25 subpoena duces tecum may be reported to the Franklin Circuit Court, which
 26 shall enforce the subpoena or subpoena duces tecum according to the rules of
 27 civil or criminal procedure, as applicable.

1 (2) The cabinet may audit one (1) or more growth funds in any year on a random
 2 basis or for cause. The cabinet may also audit, for cause, any business entity in
 3 which a growth fund has made a growth investment. Nothing in this section shall
 4 be construed to prohibit the department from conducting any audit relating to the
 5 administration or enforcement of the tax laws of the Commonwealth which the
 6 department determines to be appropriate.

7 ➔SECTION 9. A NEW SECTION OF SUBCHAPTER 21 OF KRS CHAPTER
 8 154 IS CREATED TO READ AS FOLLOWS:

9 The Commonwealth, or any officer, director, official, employee, or agent of the
 10 Commonwealth, shall not be liable to any growth fund or any investor making an
 11 investor contribution to growth fund as a result of the provisions of this subchapter.
 12 This limitation of liability includes without limitation:

13 (1) Losses or damages investors incur in connection with any committed or
 14 contributed investor contributions made to a growth fund or any growth
 15 investments made by a growth fund in any business entity; and

16 (2) Any claim, liability, obligation, loss, damage, assessment, judgment, cost, and
 17 expense of any kind or character relating to federal or state securities laws, rules,
 18 regulations, or orders.

19 ➔SECTION 10. A NEW SECTION OF SUBCHAPTER 21 OF KRS CHAPTER
 20 154 IS CREATED TO READ AS FOLLOWS:

21 To enable the General Assembly to evaluate and measure the effectiveness of the tax
 22 credit allowed by Section 2 of this Act in addressing the needs and achieving the goals
 23 as stated in Section 1 of this Act, the following reporting requirements shall apply:

24 (1) Each growth fund shall submit a written report to the cabinet and the Interim
 25 Joint Committee on Appropriations and Revenue on or before the fifth business
 26 day following the second anniversary of the closing date and on or before the
 27 fifth business day following each subsequent anniversary of the closing date prior

- 1 to the growth fund's exit from the program as set forth in in subsection (5) of
2 Section 6 of this Act. The report shall provide detailed documentation as to the
3 growth fund's growth investments made to date and shall include:
- 4 (a) A bank statement evidencing each growth investment;
- 5 (b) 1. The name, address, and industry of each growth business receiving a
6 growth investment;
7 2. Either a determination letter issued by the cabinet pursuant to Section
8 5 of this Act relating to the growth business, or evidence that it
9 qualified as a growth business at the time the investment was made;
10 and
11 3. A detailed description of the business activities engaged in by the
12 growth business;
- 13 (c) The location, by county, of each growth business;
- 14 (d) The number of employment positions at each growth business on the date of
15 the growth fund's initial growth investment;
- 16 (e) The number of new annual jobs created or jobs retained during the year by
17 the growth business;
- 18 (f) The average annual salary of new annual jobs and jobs retained at each
19 growth business during the year;
- 20 (g) The cumulative amount of growth investments made in each growth
21 business;
- 22 (h) Whether any tax certificates have been revoked by the cabinet; and
- 23 (i) Any other information required by the cabinet to provide evidence that the
24 program is valuable to the Commonwealth and meeting the goals of the
25 program; and
- 26 (2) The growth fund is not required to provide the annual report set forth in
27 subsection (1) of this section for growth investments that have been redeemed or

1 **repaid but shall provide the information, if available.**

2 ➔Section 11. KRS 131.190 is amended to read as follows:

3 (1) No present or former commissioner or employee of the department, present or
4 former member of a county board of assessment appeals, present or former property
5 valuation administrator or employee, present or former secretary or employee of the
6 Finance and Administration Cabinet, former secretary or employee of the Revenue
7 Cabinet, or any other person, shall intentionally and without authorization inspect or
8 divulge any information acquired by him of the affairs of any person, or information
9 regarding the tax schedules, returns, or reports required to be filed with the
10 department or other proper officer, or any information produced by a hearing or
11 investigation, insofar as the information may have to do with the affairs of the
12 person's business.

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

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

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

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

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

24 (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or
25 energy resources assessed under KRS 132.820, or owners of surface land
26 under which the unmined minerals lie, factual information about the owner's
27 property derived from third-party returns filed for that owner's property, under

1 the provisions of KRS 132.820, that is used to determine the owner's
2 assessment. This information shall be provided to the owner on a confidential
3 basis, and the owner shall be subject to the penalties provided in KRS
4 131.990(2). The third-party filer shall be given prior notice of any disclosure
5 of information to the owner that was provided by the third-party filer;

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

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

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

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

21 (j) Providing information to the Legislative Research Commission under:
22 1. KRS 139.519 for purposes of the sales and use tax refund on building
23 materials used for disaster recovery;
24 2. KRS 141.436 for purposes of the energy efficiency products credits;
25 3. KRS 141.437 for purposes of the ENERGY STAR home and the
26 ENERGY STAR manufactured home credits;
27 4. KRS 148.544 for purposes of the film industry incentives;

- 1 5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization
2 tax credits and the job assessment fees;
- 3 6. KRS 141.068 for purposes of the Kentucky investment fund;
- 4 7. KRS 141.396 for purposes of the angel investor tax credit;
- 5 8. KRS 141.389 for purposes of the distilled spirits credit;~~[-and]~~
- 6 9. KRS 141.408 for purposes of the inventory credit; **and**

7 **10. Section 2 of this Act for purposes of the growth fund credit.**

- 8 (3) The commissioner shall make available any information for official use only and on
9 a confidential basis to the proper officer, agency, board or commission of this state,
10 any Kentucky county, any Kentucky city, any other state, or the federal government,
11 under reciprocal agreements whereby the department shall receive similar or useful
12 information in return.
- 13 (4) Access to and inspection of information received from the Internal Revenue Service
14 is for department use only, and is restricted to tax administration purposes.
15 Information received from the Internal Revenue Service shall not be made available
16 to any other agency of state government, or any county, city, or other state, and shall
17 not be inspected intentionally and without authorization by any present secretary or
18 employee of the Finance and Administration Cabinet, commissioner or employee of
19 the department, or any other person.
- 20 (5) Statistics of crude oil as reported to the Department of Revenue under the crude oil
21 excise tax requirements of KRS Chapter 137 and statistics of natural gas production
22 as reported to the Department of Revenue under the natural resources severance tax
23 requirements of KRS Chapter 143A may be made public by the department by
24 release to the Energy and Environment Cabinet, Department for Natural Resources.
- 25 (6) Notwithstanding any provision of law to the contrary, beginning with mine-map
26 submissions for the 1989 tax year, the department may make public or divulge only
27 those portions of mine maps submitted by taxpayers to the department pursuant to

1 KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-
2 out parcel areas. These electronic maps shall not be relied upon to determine actual
3 boundaries of mined-out parcel areas. Property boundaries contained in mine maps
4 required under KRS Chapters 350 and 352 shall not be construed to constitute land
5 surveying or boundary surveys as defined by KRS 322.010 and any administrative
6 regulations promulgated thereto.

7 ➔Section 12. This Act may be cited as the Kentucky Rural and Opportunity Zone
8 Jobs Act.