

CHAPTER 36

(SB 111)

AN ACT relating to local government.

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

➔Section 1. KRS 65.7047 is amended to read as follows:

- (1) Any city or county may establish a local development area pursuant to this section, subject to the following conditions:
 - (a) A local development area shall be on previously undeveloped land;
 - (b) No more than one thousand (1,000) acres shall be approved for a local development area in any twelve (12) month period in any county;
 - (c) The establishment or expansion of the local development area shall not cause the assessed value of taxable real property within all local development areas and development areas of the city or county establishing the local development area to exceed twenty percent (20%) of the assessed value of all taxable real property within its jurisdiction. For the purpose of determining whether the twenty percent (20%) threshold has been met, the assessed value of taxable real property within all of the local development areas and development areas shall be valued as of the establishment date; and
 - (d) Unless the ordinance establishing a local development area requires an earlier termination date, a local development area shall cease to exist on the termination date.
- (2) A city or county shall take the following steps to establish or modify a local development area:
 - (a) ***If the city or county pledges occupational license taxes or the occupational license fee authorized by KRS 65.7056 as a part of the local tax revenues to support the local development area,*** the city or county ~~may~~^{shall} engage the services of a qualified independent outside consultant or financial adviser to analyze the data related to the project and the development area and prepare a report. ***If the city or county elects to have the report prepared pursuant to this paragraph,*** the report ~~may~~^{shall} include the following:
 1. The estimated approved public infrastructure costs for the project ~~and, if relevant, project costs, financing costs, and costs associated with land preparation, demolition, and clearance~~;
 2. The feasibility of the project, taking into account the scope and location of the project;
 3. The estimated amount of local tax revenues, as applicable, that would be generated by the project over the period, which may be up to forty (40) years, as applicable, from the development area's established date;
 4. The estimated amount of local tax revenues, as applicable, that would be displaced within the city or county, for the purpose of quantifying economic activity which is being shifted over the same period as that set forth in subparagraph 3. of this paragraph. The projections for displaced activity shall include economic activity that is lost to the local jurisdiction as a result of the project, as well as economic activity that is diverted to the project that formerly took place at existing establishments within the local jurisdiction prior to the commencement date of the project;
 5. The estimated amount of old revenues that would have been generated in the development area of the project in the absence of the project, computed over the same time period as set forth in subparagraph 3. of this paragraph;
 6. In the process of estimating the revenues and impacts prescribed in subparagraphs 3. and 4. of this paragraph, the independent outside consultant shall not consider any of the following:
 - a. ***Local tax*** revenues or economic impacts associated with any projects within the development area where the new project will be located; or
 - b. ***Local tax*** revenues or economic impacts associated with economic development projects and approved Kentucky Tourism Development Act projects under KRS Chapter 148;

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7. The relationship of the estimated incremental revenues to the financing needs, including any increment bonds, of the project;
 8. When estimating the fiscal impact of the project, the consultant shall evaluate the amount of revenue estimated in subparagraph 3. of this paragraph and shall deduct the amounts estimated in subparagraphs 4. and 5. of this paragraph. The resulting difference shall be compared to the estimated incremental revenues to determine the presence or absence of a positive fiscal impact; and
 9. A determination that the project will not occur if not for the designation of the development area, the granting of incremental revenues by the taxing district or districts, and the granting of the local tax incremental revenues;~~;~~
- (b) The city or county shall hold a public hearing to solicit input from the public regarding the local development area. The city or county shall advertise the hearing by causing to be published, in accordance with KRS 424.130, notice of the time, place, and purpose of the hearing and a general description of the boundaries of the proposed local development area. The notice shall include a summary of the projects proposed for the local development area;
- (c) After the public hearing, the city or county shall adopt an ordinance which shall include the following provisions:
1. A description of the boundaries of the local development area;
 2. The establishment date and the termination date;
 3. A name for the local development area for identification purposes;
 4. Approval of any agreements relating to the local development area;
 5. A provision establishing a special fund for the local development area or any project within the local development area;
 6. A requirement that any entity other than the governing body that receives financial assistance under the local development area ordinance, whether in the form of a grant, loan, or loan guarantee, shall make periodic accounting to the governing body;
 7. A provision for periodic analysis and review by the governing body of the development activity in the local development area;
 8. Designation of the agency or agencies responsible for oversight, administration, and implementation of the local development ordinance;
 9. The estimated net positive fiscal impact as calculated in paragraph (a)8. of this subsection ***if the city or county elects to have an***~~in the required~~ independent consultant report ***prepared***; and
 10. Any other provisions, findings, limitations, rules, or procedures regarding the proposed local development area or a project within the local development area and its establishment or maintenance deemed necessary by the city or county;~~and~~
- (d) If incremental revenues or other resources are to be pledged from taxing districts other than the city or county establishing the local development area, a local development area agreement shall be executed in accordance with the provisions of subsection (4) of this section; ***and***
- (e) ***If the city or county elects to use an independent consultant or financial adviser as provided in paragraph (a) of this subsection, the independent consultant or financial adviser shall:***
1. ***Consult with the city's or county's budget office in the development of the report; and***
 2. ***With the approval of the city's or county's budget office, create a methodology to be used and assumptions to be made by the independent consultant or financial adviser in preparing the report.***
- The developer requesting the city or county to establish the local development area shall pay all costs associated with the independent consultant or financial adviser preparation of the independent consultant or financial adviser report, unless the city or county agrees to pay the costs of preparation.***
- (3) Funding for projects in a local development area shall be provided in accordance with KRS 65.7057.

- (4) A local development area agreement shall be executed among the agencies and taxing districts involved in administering, providing financing, or pledging incremental revenues within the local development area. The local development area agreement shall be adopted by a city or county by ordinance and by any other taxing district or agency by resolution, and shall include but not be limited to the following provisions:
- (a) Identification of the parties to the local development area agreement and the duties and responsibilities of each entity under the agreement;
 - (b) Specific identification of the tax increments released or pledged by type of tax by each taxing district;
 - (c) The anticipated benefit to be received by each taxing district for the release or pledge, including:
 1. A detailed summary of old revenues collected and projected new revenues for each taxing district on an annual basis for the term of the local development area agreement; and
 2. The maximum amount of incremental revenue to be paid by each taxing district and the maximum number of years the payment will be effective;
 - (d) A detailed description of the local development area;
 - (e) A description of each proposed project, including an estimate of the costs of construction, acquisition, and development;
 - (f) A requirement that pledged incremental revenues will be deposited in a special fund pursuant to KRS 65.7061, including the timing and procedure for depositing incremental revenues and other pledged amounts into the special fund;
 - (g) Terms of default and remedies, provided that no remedy shall permit the withholding by any party to the local development area agreement of any incremental revenues pledged to the special fund if increment bonds are outstanding that are secured by a pledge of those incremental revenues;
 - (h) The commencement date, activation date, and termination date; and
 - (i) Any other provisions not inconsistent with KRS 65.7041 to 65.7083 deemed necessary or appropriate by the parties to the agreement.
- (5) Any pledge of incremental revenues in a local development area agreement shall be superior to any other pledge of revenues for any other purpose and shall, from the activation date to the termination date set forth in the local area development agreement, supersede any statute, ordinance, or resolution regarding the application or use of incremental revenues. No ordinance in conflict with a local development area agreement shall be adopted while any increment bonds secured by that pledge remain outstanding. Ordinances or resolutions pledging incremental revenues on a subordinate basis to any existing pledges may be adopted.
- (6) ***A city or county government acting pursuant to this section on or after the effective date of this Act shall file information regarding its local development area agreement with the Cabinet for Economic Development on a form prescribed by the cabinet. The Cabinet for Economic Development is authorized to promulgate administrative regulations pursuant to KRS Chapter 13A to create any necessary forms to meet the requirements of this subsection.***

➔Section 2. KRS 49.020 is amended to read as follows:

- (1) (a) As used in this section and KRS 49.220, "revenue and taxation agency" means and includes any agency of state~~[,] or county[, and local] government[, including special taxing districts,]~~ that issues final rulings, orders, or determinations affecting revenue and taxation.
- (b) The Board of Tax Appeals created by KRS 49.010 shall have the power and authority to hear and determine appeals from final rulings, orders, and determinations of any revenue and taxation agency.
- (2) (a) The Board of Tax Appeals shall consist of three (3) members appointed by the Governor, subject to Senate confirmation in accordance with KRS 11.160 for each appointment or reappointment. One (1) member shall be appointed initially for a two (2) year term. One (1) member shall be appointed initially for a three (3) year term. One (1) member shall be appointed initially for a four (4) year term. Thereafter, all appointments to the board shall be for a four (4) year term. There shall be no limit to the amount of reappointments a member shall receive.
- (b) Vacancies for unexpired terms shall be filled in the same manner as regular appointments, but the appointees shall hold office only to the end of the unexpired term of the member replaced.

- (c) The Governor shall appoint a chairperson for the board, subject to Senate confirmation in accordance with KRS 11.160 for each appointment or reappointment. The chairperson shall be appointed for a four (4) year term and shall be an attorney with the qualifications required of candidates for Circuit Judge. The chairperson shall be the presiding officer over appeals heard by the board.
 - (d) The Governor shall establish the compensation, not to include benefits, of the members of the board pursuant to KRS 64.640.
 - (e) Two (2) of the members shall be attorneys with the qualifications required of candidates for Circuit Judge. One (1) of the members shall have a background in taxation. No member shall engage in any occupation or business inconsistent with his or her duties as such a member.
- (3) The Crime Victims Compensation Board created by KRS 49.010 shall have the power and authority to hear and determine all matters relating to a claim by a crime victim or a person authorized by law to act on behalf of a crime victim for compensation.
- (4) (a) The Crime Victims Compensation Board shall consist of three (3) members appointed by the Governor, not all of whom shall be engaged in the same occupation or profession. Appointed board members shall be subject to Senate confirmation in accordance with KRS 11.160 for each appointment or reappointment. Members shall be appointed for a four (4) year term. There shall be no limit to the amount of reappointments a member may receive. One (1) member shall be appointed initially for a two (2) year term. One (1) member shall be appointed initially for a three (3) year term. One (1) member shall be appointed initially for a four (4) year term. Thereafter, all appointments to the board shall be for a four (4) year term. Two (2) of the appointees shall be a victim as defined in KRS 421.500(1), the parent, spouse, sibling, or child of a victim as defined in KRS 421.500(1), whether or not the victim is deceased, or a victim advocate as defined in KRS 421.570(1); and the other appointee shall be an attorney licensed to practice law in this state with two (2) years of experience.
- (b) Vacancies for unexpired terms shall be filled in the same manner as regular appointments, but the appointees shall hold office only to the end of the unexpired term of the member replaced.
- (c) The Governor shall appoint a chairperson for the board, subject to Senate confirmation in accordance with KRS 11.160 for each appointment or reappointment. The chairperson shall be appointed for a four (4) year term.
- (d) The Governor shall establish the compensation, not to include benefits, of the members of the board pursuant to the provisions of KRS 64.640.
- (5) The Board of Claims created by KRS 49.010 shall have the following powers and authority to investigate, hear proof, and compensate persons for damages sustained to either person or property as a proximate result of negligence on the part of the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies; except, however, regardless of any provision of law to the contrary, the Commonwealth, its cabinets, departments, bureaus, and agencies, and its officers, agents, and employees, while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies, shall not be liable for collateral or dependent claims which are dependent on loss to another and not the claimant or damages for mental distress or pain or suffering, and compensation shall not be allowed, awarded, or paid for such claims for damages.
- (6) (a) The Board of Claims shall consist of three (3) members appointed by the Governor, subject to Senate confirmation in accordance with KRS 11.160 for each appointment or reappointment. One (1) member shall be appointed initially for a two (2) year term. One (1) member shall be appointed initially for a three (3) year term. One (1) member shall be appointed initially for a four (4) year term. Thereafter, all appointments to the board shall be for a four (4) year term. There shall be no limit to the amount of reappointments a member shall receive.
- (b) Vacancies for unexpired terms shall be filled in the same manner as regular appointments, but the appointees shall hold office only to the end of the unexpired term of the member replaced.
- (c) The Governor shall appoint a chairperson for the board, subject to Senate confirmation in accordance with KRS 11.160 for each appointment or reappointment. The chairperson shall be appointed for a four (4) year term, and shall be an attorney with the qualifications required of a candidate for Circuit Judge. The chairperson shall be the presiding officer over appeals heard by the board.

- (d) The Governor shall establish the compensation, not to include benefits, of the members of the board pursuant to the provision of KRS 64.640.
 - (e) Two (2) of the members shall be attorneys with the qualifications required of candidates for Circuit Judge and have a background and working knowledge in Kentucky tort law. One (1) member shall have a background in business. No member shall engage in any occupation or business inconsistent with his or her duties as such a member.
- (7) The Board of Tax Appeals, the Board of Claims, and the Crime Victims Compensation Board shall each be separately authorized to:
- (a) Promulgate, amend, and repeal suitable administrative regulations to carry out the provisions and purposes of the board's statutory authority;
 - (b) Issue subpoenas and discovery orders, and to petition a court of competent jurisdiction for any order necessary to carry out the board's powers and duties;
 - (c) Take or cause to be taken affidavits or depositions within or without the state;
 - (d) Administer or cause to be administered oaths;
 - (e) Except for the power to issue final decisions on the merits of a claim or appeal, to delegate any of its power or authority to the Office of Claims and Appeals; and
 - (f) Publicize widely the functions and purposes of the board.
- (8) If any appointed board member has a conflict of interest, as contemplated by KRS 11A.030, involving any matter pending before the board, the secretary of the cabinet shall appoint a member of one (1) of the other boards administered by the Office of Claims and Appeals as a substitute member. Following appointment, the substitute board member shall serve in place of the member who has a conflict for all actions and votes relevant to that matter.
- (9) Members of the Board of Tax Appeals, Board of Claims, and Crime Victims Compensation Board shall receive new member orientation and annual training to discuss new legislation, pertinent court decisions, and board policies and procedures.
- (10) The boards shall meet as often as necessary to perform their statutory responsibilities as outlined in this chapter. A majority of the members of the commission shall constitute a quorum for the transaction of business.
- (11) Immediately following June 29, 2021, the Governor shall review the current board, determine any members that are no longer qualified, and appoint new members to the board if necessary.

➔Section 3. Whereas it is of the utmost importance for local governments to have the ability to establish or modify local development areas using the provisions of this Act at the earliest timeframe possible, 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.

Signed by Governor March 25, 2022.