GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2006 REGULAR SESSION

HOUSE BILL NO. 380

VOLUME 3 OF 3

AS ENACTED AND VETOED IN PART

WEDNESDAY, APRIL 12, 2006 - AS ENACTED

MONDAY, APRIL 24, 2006 - VETOED IN PART

Informational Copy

	Fire Department		
	General Fund	12,500	-0-
007.	Kenton County Fiscal Court - Behringer-Crawford Museum Improvements		
	Bond Funds	1,500,000	-0-
008.	Kenton County Fiscal Court - City of Covington Renaissance on Main Facade Project		
	General Fund	100,000	-0-
009.	Kenton County Fiscal Court - Covington Artisans Enterprise Center Improvements		
	Bond Funds	450,000	-0-
Knott County			
001.	Knott County Fiscal Court - Knott County Arts Center		
	General Fund	250,000	250,000
Laurel County			
001.	Laurel County Fiscal Court - Christian Shelter for the Homeless		
	General Fund	-0-	150,000
002.	London/Laurel County Tourism Commission - Design and Construct History Museum		
	Bond Funds	1,000,000	-0-
Lewis County			
001.	City of Vanceburg - Carter House Purchase and Renovate		
	General Fund	200,000	-0-
002.	Lewis County Fiscal Court - E911 Dispatch		

	Center - Purchase Building and Renovate		
	General Fund	250,000	-0-
003.	Lewis County Volunteer Fire Department		
	District - Lewis County Fiscal Court -		
	Construction of a Building		
	General Fund	75,000	-0-
Lincoln County			
001.	Lincoln County Fiscal Court - First Southern		
	Veterans Park Construction		
	Bond Funds	500,000	-0-
Logan County			
001.	City of Russellville - Russellville Theatre Project		
	Bond Funds	100,000	-0-
Lyon County			
001.	Lyon County Fiscal Court - Emergency Dredging -		
	Eddyville Riverport		
	General Fund	250,000	-0-
Madison County			
001.	Artisans Center		
	General Fund	300,000	-0-
002.	Madison County Fiscal Court - Battle of		
	Richmond Association		
	Bond Funds	1,700,000	-0-
003.	Madison County Fiscal Court - Domestic		
	Violence Services		
	General Fund	400,000	400,000
004.	Madison County Fiscal Court - Hospice Care		

	Plus, Inc. Madison County		
	Bond Funds	400,000	-0-
005.	Madison County Fiscal Court - Richmond		
	Area Arts Council - Land Acquisition		
	Bond Funds	200,000	-0-
006.	Madison County Fiscal Court - Richmond Area		
	Arts Council - Operating		
	General Fund	200,000	200,000
Marion County			
001.	City of Lebanon - Lebanon Community Center		
	Improvements		
	General Fund	-0-	500,000
Marshall County			
001.	City of Benton - Park Improvements		
	General Fund	100,000	-0-
002.	Marshall County Fiscal Court - Marshall County -		
	Calvert City River Port Authority - Infrastructure		
	Bond Funds	2,000,000	-0-
Mason County			
001.	City of Mayslick - Community Center		
	Improvements		
	General Fund	300,000	-0-
002.	City of Maysville - Maysville Riverwalk Phase II		
	Bond Funds	160,000	-0-
003.	City of Maysville - Riverwalk		
	Bond Funds	500,000	-0-
004.	Mason County Fiscal Court - Lewisburg Fire		

	Department - New Building		
	Bond Funds	300,000	-0-
005.	Mason County Fiscal Court - Russell Theatre Phase II Restoration		
	General Fund	250,000	-0-
006.	Mason County Fiscal Court - Underground Railroad Museum		
	General Fund	50,000	-0-
007.	Mason County Health Department - Infrastructure		
	Bond Funds	500,000	-0-
McCracken County			
001.	McCracken County Fiscal Court - Renovation of the Joint City-County E911 Center.		
	General Fund	250,000	-0-
McCreary County			
001.	McCreary County Fiscal Court - Drug Court Program		
	General Fund	200,000	-0-
002.	McCreary County Fiscal Court - Multigeneration Center		
	Bond Funds	500,000	-0-
McLean County			
001.	McLean County Fiscal Court - Planning and Design of The McLean County Public Library		
	General Fund	-0-	100,000
002.	McLean County Fiscal Court - Planning and Design of The Myer Creek Agricultural Complex		

	General Fund	250,000	-0-
Mercer County			
001.	City of Harrodsburg - West Lane Park - Park Renovations		
	General Fund	50,000	-0-
Metcalfe County			
001.	City of Edmonton - Edmonton Industrial Authority - Industrial Park Improvements		
	Bond Funds	300,000	-0-
002.	City of Edmonton - Park Improvements		
	General Fund	100,000	-0-
Monroe County			
001.	City of Gamaliel - Community Building		
	Bond Funds	100,000	-0-
002.	City of Tompkinsville - City Park Improvements		
	General Fund	200,000	-0-
003.	Monroe County Fiscal Court - Wellness Center Improvements		
	Bond Funds	3,000,000	-0-
Montgomery County			
001.	Juvenile Justice - Gateway Juvenile Diversion Center Operational Support		
	General Fund	50,000	50,000
002.	Juvenile Justice - Gateway Juvenile Diversion Center Renovation		
	Bond Funds	600,000	-0-
003.	Montgomery County Fiscal Court - Gateway		

	Regional Arts Center		
	General Fund	50,000	50,000
~~[Muhlenberg County~~			
~~001. Lake Malone State Park - Park Improvements and~~			
~~Miniature Golf Course~~			
~~Bond Funds~~		~~200,000~~	~~0~~]*(Veto #4)*
002. Muhlenberg County Fiscal Court - Courthouse			
Dome Repair			
Bond Funds		200,000	-0-
003. Muhlenberg County Fiscal Court - Muhlenberg			
County Agricultural Center			
General Fund		100,000	-0-
Nelson County			
001. Nelson County Fiscal Court - Kentucky			
Railway Museum - Renovation/Upgrade, Road			
Bid and Bridge Improvements			
Bond Funds		1,700,000	-0-
Oldham County			
001. Oldham County Fair Board - Oldham County			
Fairgrounds Facility Renovation and Infrastructure			
Improvements			
General Fund		100,000	-0-
002. Oldham County Fiscal Court - Oldham County			
Parks Department - South Oldham Little League			
Improvement to Peggy Baker Park			
General Fund		15,000	-0-
003. Oldham County Fiscal Court - Westport Park			

	Improvements		
	General Fund	-0-	250,000
004.	Oldham CountyFiscal Court - Library Improvements		
	Bond Funds	1,500,000	-0-
Pendleton County			
001.	Pendleton County Fiscal Court - Athletic Park Infrastructure and Construction of Concession Stand		
	General Fund	50,000	-0-
~~[Pike County~~			
~~001.~~	~~Pike County Fiscal Court - Pikeville Medical Center Planning, Design, and Construction~~		
	~~Bond Funds~~	~~1,500,000~~	~~0-]~~ *(Veto #4)*
Pulaski County			
001.	City of Burnside - Park Infrastructure Improvement		
	General Fund	50,000	-0-
002.	City of Eubank - City Infrastructure Improvement		
	General Fund	50,000	-0-
003.	City of Science Hill - Park Infrastructure Improvement		
	General Fund	50,000	-0-
004.	City of Somerset - City Park Improvement		
	General Fund	100,000	-0-
005.	Pulaski County Board of Education - Pulaski Secondary Vocational School Project		
	General Fund	300,000	-0-

006. Pulaski County Fiscal Court - Parks and Recreation Development			
	General Fund	200,000	200,000
Robertson County			
001. Robertson County Board of Education - Deming School Replacement/Renovations			
	Bond Funds	500,000	-0-
002. Robertson County Fiscal Court - Mt. Olivet Community Center			
	General Fund	300,000	-0-
Rockcastle County			
001. City of Mt. Vernon - Relocate Utility Lines For Hospital Expansion			
	General Fund	100,000	-0-
002. Rockcastle County Industrial Authority - Jones Building Purchase			
	Bond Funds	100,000	-0-
Rowan County			
001. Rowan County Board of Education - Rowan County High School Outdoor Athletic Complex Site Preparation, Planning, and Construction			
	General Fund	100,000	200,000
002. Rowan County Fiscal Court - Rowan County Economic Development Office Design			
	General Fund	150,000	-0-
Russell County			
001. City of Jamestown - Park Improvements			

	General Fund	100,000	-0-
002.	City of Russell Springs - Park Improvements		
	General Fund	100,000	-0-
003.	Russell County Board of Education - Wellness		
	Center Improvements		
	Bond Funds	1,500,000	-0-
004.	Russell County Fiscal Court - Senior Citizens		
	Center Improvements		
	General Fund	-0-	200,000
005.	Russell County Fiscal Court - Wellness Center		
	Building Construction		
	Bond Funds	1,000,000	-0-
Scott County			
001.	Scott County Board of Education - Scott County		
	High School Athletic Field Construction		
	Bond Funds	200,000	-0-
002.	Scott County Fiscal Court - Buffalo Park		
	Improvement Infrastructure		
	General Fund	150,000	-0-
003.	Scott County Fiscal Court - Kentucky Japan		
	Friendship Garden Construction of Educational		
	Center		
	Bond Funds	250,000	-0-
004.	Scott County Fiscal Court - Senior Citizens Center		
	Operational Expense		
	General Fund	50,000	50,000
Shelby County			

001.	City of Simpsonville - Simpsonville Fire Dept. Addition		
	Bond Funds	300,000	-0-
002.	Shelby County Fiscal Court - Chestnut Grove Firehouse		
	Bond Funds	600,000	-0-
003.	Shelby County Fiscal Court - Community Theatre Renovation and Expansion		
	General Fund	-0-	150,000
004.	Shelby County Fiscal Court - Shelby County A & M Association - Construction of Barns		
	General Fund	-0-	250,000
Simpson County			
001.	Simpson County Fiscal Court - Park Improvements		
	General Fund	100,000	-0-
002.	Simpson County Industrial Authority Expansion		
	Bond Funds	500,000	-0-
Statewide			
001.	City of Buckhorn - Buckhorn Children's Foundation		
	General Fund	500,000	-0-
Taylor County			
001.	Campbellsville University - Tech Center Upgrade/ Workforce Retooling		
	General Fund	317,900	-0-
002.	City of Campbellsville - Renaissance Funds for Downtown Development		
	General Fund	100,000	100,000

Todd County			
001.	Todd County Fiscal Court - Clifty Community, Clifty Park Restrooms Construction		
	General Fund	40,000	-0-
Trigg County			
001.	Trigg County Fiscal Court - Senior Citizens Center		
	General Fund	-0-	200,000
Trimble County			
001.	Trimble County Park Improvements		
	General Fund	250,000	-0-
Union County			
001.	City of Morganfield - Sewer, Water, and Storm Drains Construction		
	Bond Funds	2,000,000	-0-
002.	City of Sturgis - Sewer, Water, and Storm Drains Construction		
	Bond Funds	2,000,000	-0-
003.	City of Uniontown - Sewer, Water, and Storm Drains Construction		
	Bond Funds	500,000	-0-
004.	Union County Fiscal Court - Water and Sewer Projects - Construction U.S. Highway 60		
	Bond Funds	1,500,000	-0-
Warren County			
001.	City of Bowling Green - Bowling Green Chamber Orchestra		
	General Fund	40,000	40,000

002. City of Bowling Green - Historic Rail Park		
General Fund	75,000	-0-
003. City of Bowling Green - Kentucky Fireman's Museum		
General Fund	50,000	-0-
004. Warren County Fiscal Court - Lost River Gateway Visitors Center		
General Fund	75,000	100,000
005. Warren County Fiscal Court - Lovers Lane Utility Infrastructure		
Bond Funds	200,000	-0-
006. Warren County Fiscal Court - Old Courthouse Renovation		
Bond Funds	250,000	-0-
007. Warren County Fiscal Court - Research and Development Center - Business Accelerator		
General Fund	-0-	150,000
008. Warren County Fiscal Court - Warren County Community Center Development		
General Fund	80,000	-0-
009. Warren County School Board - Old Alvaton School Gymnasium Renovations		
Bond Funds	220,000	-0-
010. Warren County Schools - New Alvaton School Intermediate Center Playground Construction and Equipment		
General Fund	75,000	-0-

Washington County			
001. Washington County Fiscal Court - Opera House Renovation			
General Fund		200,000	-0-
Wayne County			
001. City of Monticello - Downtown Revitalization			
Bond Funds		750,000	-0-
002. Wayne County Fiscal Court - Courthouse Renovation			
Bond Funds		500,000	-0-
003. Wayne County Fiscal Court - Foothills Academy - Otter Creek Female Facility			
Bond Funds		350,000	-0-
004. Wayne County Fiscal Court - Mill Springs Battlefield Association - West Metcalfe House			
Bond Funds		250,000	-0-
005. Wayne County Fiscal Court - Wayne County EMS Building			
Bond Funds		674,000	-0-
Webster County			
001. City of Providence - Sewer Line Expansion			
Bond Funds		950,000	-0-
002. City of Providence - Sewer Plant Debt Service			
General Fund		200,000	200,000
Wolfe County			
001. Wolfe County Fiscal Court - Lee City Fire Station Land and Building			

	General Fund	80,000	-0-
Woodford County			
001.	City of Midway - Walter Bradley Park - Woods Cleanup		
	General Fund	50,000	-0-
002.	Woodford County Fiscal Court - New Senior Citizens Center Construction		
	Bond Funds	750,000	-0-
003.	Woodford County Fiscal Court - Economic Development Authority for Midway Station - Debt Forgiveness		
	Bond Funds	1,250,000	-0-
004.	Woodford County Fiscal Court - Falling Springs Recreational Center Construction		
	General Fund	500,000	-0-
005.	Woodford County Fiscal Court - Woodford County Heritage Committee - Jack Jouett House Land Acquisition and Renovations		
	General Fund	250,000	-0-

PART III

GENERAL PROVISIONS

1. **Funds Designations:** Restricted Funds designated in the biennial budget bills are classified in the state financial records and reports as the Agency Revenue Fund, State Enterprise Funds (State Parks, State Fair Board, Insurance Administration, and Kentucky Horse Park), Internal Services Funds (Fleet Management, Computer Services, Correctional Industries, Central Printing, Risk Management, and Property Management), and selected Fiduciary Funds (Other Expendable Trust Funds). Separate funds records

and reports shall be maintained in a manner consistent with the branch budget bills.

The sources of Restricted Funds appropriations in this Act shall include all fees (which includes fees for room and board, athletics, and student activities) and rentals, admittances, sales, bond proceeds, licenses collected by law, gifts, subventions, contributions, income from investments, and other miscellaneous receipts produced or received by a budget unit, except as otherwise specifically provided, for the purposes, use, and benefit of the budget unit as authorized by law. Restricted Funds receipts shall be credited and allotted to the respective fund or account out of which a specified appropriation is made in this Act. All receipts of Restricted Funds shall be deposited in the State Treasury and credited to the proper account as provided in KRS Chapters 12, 42, 45, and 48.

The sources of Federal Funds appropriations in this Act shall include federal subventions, grants, contracts, or other Federal Funds received, income from investments, and other miscellaneous federal receipts received by a budget unit, the Unemployment Compensation Fund, except as otherwise provided, for the purposes, use, and benefit of the budget unit as authorized by law. Federal Funds receipts shall be credited and allotted to the respective fund account out of which a specified appropriation is made in this Act. All Federal Funds receipts shall be deposited in the State Treasury and credited to the proper account as provided in KRS Chapters 12, 42, 45, and 48.

2. Expenditure of Excess Restricted Funds or Federal Funds Receipts: If receipts received or credited to the Restricted Funds accounts or Federal Funds accounts of a budget unit during fiscal year 2006-2007 or fiscal year 2007-2008, and any balance forwarded to the credit of these same accounts from the previous fiscal year, exceed the appropriation made by specific sum for these accounts of the budget unit as provided in Part I, Operating Budget, of this Act, for the fiscal year in which the excess occurs, the excess funds in the accounts of the budget unit shall become available for expenditure for the purpose of the account during the fiscal year only upon compliance with the

conditions and procedures specified in KRS 48.400, 48.500, 48.600, 48.605, 48.610, 48.620, 48.630, 48.700, 48.705, 48.710, 48.720, 48.730, 48.800, and 48.810 and this Act, and with the authorization of the State Budget Director and approval of the Secretary of the Finance and Administration Cabinet.

Prior to authorizing the appropriation of any excess, unbudgeted Restricted Funds pursuant to this section, the State Budget Director and the Secretary of the Finance and Administration Cabinet shall review the adequacy of the General Fund Surplus Account with respect to its availability to support Necessary Government Expenses. In the event that General Fund Surplus Account moneys are determined by this review to be adequate to meet known or anticipated Necessary Government Expenses during fiscal year 2006-2007 or fiscal year 2007-2008, respectively, then the appropriation increase may be approved. In the event that the review indicates that there are insufficient funds available or reasonably estimated to become available to the General Fund Surplus Account to meet known or projected Necessary Government Expenses for the fiscal years enumerated above, the State Budget Director, with the concurrence of the Secretary of the Finance and Administration Cabinet, may disapprove the request for additional Restricted Funds expenditure authority and may direct the excess Restricted Funds identified to the General Fund Surplus Account in order to meet Necessary Government Expense obligations. The results of any review shall be reported to the Interim Joint Committee on Appropriations and Revenue in accordance with KRS 48.400, 48.500, 48.600, 48.605, 48.610, 48.620, 48.630, 48.700, 48.705, 48.710, 48.720, 48.730, 48.800, and 48.810.

Any request made by a budget unit pursuant to KRS 48.630 that relates to Restricted Funds or Federal Funds shall include documentation showing a comparative statement of revised estimated receipts by fund source and the proposed expenditures by proposed use, with the appropriated sums specified in the Budget of the Commonwealth, and statements which explain the cause, source, and use for any variances which may exist.

Each budget unit shall submit its reports in print and electronic format consistent with the Restricted Funds and Federal Funds records contained in the fiscal biennium 2006-2008 Branch Budget Request Manual and according to the following schedule in each fiscal year: (a) On or before the beginning of each fiscal year; (b) On or before October 1; (c) On or before January 1; and (d) On or before April 1.

3. **Interim Appropriation Increases:** No appropriation from any fund source shall exceed the sum specified in this Act until the agency has documented the necessity, purpose, use, and source, and the documentation has been submitted to the Interim Joint Committee on Appropriations and Revenue for its review and action in accordance with KRS 48.630. Proposed revisions to an appropriation contained in the enacted State/Executive Budget or allotment of an unbudgeted appropriation shall conform to the conditions and procedures of KRS 48.630 and this Act.

Notwithstanding KRS 48.630(3), (4), and (5), any proposed and recommended actions to increase appropriations for funds specified in Section 2 of this Part shall be scheduled consistent with the timetable contained in that section in order to provide continuous and timely budget information.

4. **Revision of Appropriation Allotments:** Allotments within appropriated sums for the activities and purposes contained in the enacted State/Executive Budget shall conform to KRS 48.610 and may be revised pursuant to KRS 48.605 and this Act.

5. **Appropriations Expenditure Purpose and Transfer Restrictions:** Funds appropriated in this Act shall not be expended for any purpose not specifically authorized by the General Assembly in this Act nor shall funds appropriated in this Act be transferred to or between any cabinet, department, board, commission, institution, agency, or budget unit of state government unless specifically authorized by the General Assembly in this Act and the provisions of KRS 48.400, 48.500, 48.600, 48.605, 48.610, 48.620, 48.630, 48.700, 48.705, 48.710, 48.720, 48.730, 48.800, and 48.810. Compliance with the provisions of this section shall be reviewed and determined by the Interim Joint

Committee on Appropriations and Revenue.

6. Permitted Appropriation Obligations: No state agency, cabinet, department, office, or program shall incur any obligation against the General Fund or Road Fund appropriations contained in this Act unless the obligation may be reasonably determined to have been contemplated in the enacted budget and is based upon supporting documentation considered by the General Assembly, legislative and executive records, and the statutory budget memorandum.

7. Lapse of General Fund or Road Fund Appropriations Supplanted by Federal Funds: Any General Fund or Road Fund appropriation made in anticipation of a lack, loss, or reduction of Federal Funds shall lapse to the General Fund or Road Fund Surplus Account, respectively, to the extent the Federal Funds otherwise become available.

8. Federally Funded Agencies: A state agency entitled to Federal Funds, which would represent 100 percent of the cost of a program, shall conform to KRS 48.730.

9. Lapse of General Fund or Road Fund Excess Debt Service Appropriations: Pursuant to KRS 48.720, any excess General Fund or Road Fund debt service shall lapse to the respective surplus account unless otherwise directed in this Act.

10. Continuing Appropriations: All statutes and portions of statutes in conflict with any of the provisions of this Act, to the extent of the conflict, are suspended unless otherwise provided by this Act.

11. Construction of Budget Provisions on Statutory Budget Administration Powers and Duties: Nothing in this Act is to be construed as amending or altering the provisions of Chapters 42, 45, and 48 of the Kentucky Revised Statutes pertaining to the duties and powers of the Secretary of the Finance and Administration Cabinet except as otherwise provided in this Act.

12. Interpretation of Appropriations: All questions that arise in interpreting any appropriation in this Act as to the purpose or manner for which the appropriation may be

expended shall be decided by the Secretary of the Finance and Administration Cabinet pursuant to KRS 48.500, and the decision of the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

13. Publication of the Budget of the Commonwealth: The State Budget Director shall cause the Governor's Office for Policy and Management, within 60 days of adjournment of the 2006 Regular Session of the General Assembly, to publish a final enacted budget document, styled the Budget of the Commonwealth, based upon the Legislative Budget, State/Executive Budget and Judicial Budget as enacted by the 2006 Regular Session, as well as other Acts which contain appropriation provisions for the 2006-2008 fiscal biennium, and based upon supporting documentation and legislative records as considered by the 2006 Regular Session, and the statutory budget memorandum. This document shall include, for each agency and budget unit, a consolidated budget summary statement of available regular and continuing appropriated revenue by fund source, corresponding appropriation allocations by program or subprogram as appropriate, budget expenditures by principal budget class and for the State/Executive Budget, and any other fiscal data and commentary considered necessary for budget execution by the Governor's Office for Policy and Management and oversight by the Interim Joint Committee on Appropriations and Revenue. The enacted State/Executive Budget shall be revised or adjusted only upon approval by the Governor's Office for Policy and Management as provided in each Part of this Act and by KRS 48.400, 48.500, 48.600, 48.605, 48.610, 48.620, 48.630, 48.700, 48.705, 48.710, 48.720, 48.730, 48.800, and 48.810, and upon review and action by the Interim Joint Committee on Appropriations and Revenue.

14. State Financial Condition: Pursuant to KRS 48.400, the State Budget Director shall monitor and report on the financial condition of the Commonwealth.

15. Prorating Administrative Costs: The Secretary of the Finance and Administration Cabinet is authorized to establish a system or formula or a combination of

both for prorating the administrative costs of the Finance and Administration Cabinet, the Department of the Treasury, and the Office of the Attorney General relative to the administration of programs in which there is joint participation by the state and federal governments for the purpose of receiving the maximum amount of participation permitted under the appropriate federal laws and regulations governing the programs. The receipts and allotments under this section shall be reported to the Interim Joint Committee on Appropriations and Revenue prior to any transfer of funds.

16. Construction of Budget Provisions Regarding Executive Reorganization Orders: Nothing in this Act shall be construed to confirm or ratify, under KRS 12.027 or 12.028, any executive reorganization order unless the executive order was confirmed or ratified by appropriate amendment to the Kentucky Revised Statutes in another Act of the 2006 Regular Session of the General Assembly. If any executive reorganization order issued from sine die adjournment of the 2005 Regular Session to sine die adjournment of the 2006 Regular Session was not confirmed by the 2006 Regular Session of the General Assembly, the Secretary of the Finance and Administration Cabinet shall, in consultation with agency heads and with notification to the Legislative Research Commission, transfer the balance of funds for any affected program or function for fiscal year 2005-2006 and any related appropriations and funds for each of the next two fiscal years from the budget unit in which the program or function was placed by the executive reorganization order to the budget unit in which the program or function resided prior to the reorganization action or in which it was placed by action of the 2006 Regular Session of the General Assembly.

17. Budget Planning Report: By August 15, 2007, the State Budget Director, in conjunction with the Consensus Forecasting Group, shall provide to each branch of government, pursuant to KRS 48.117, a budget planning report.

18. Tax Expenditure Revenue Loss Estimates: By October 15, 2007, the Office of State Budget Director shall provide to each branch of government detailed estimates for the General Fund and Road Fund for the current and next two fiscal years of the

revenue loss effected by tax expenditures. The Department of Revenue shall provide assistance and furnish data which is not restricted by KRS 131.190. "Tax expenditure" means an exemption, exclusion, or deduction from the base of a tax, a credit against the tax, a deferral of a tax, or a preferential tax rate. The estimates shall include for each tax expenditure the amount of revenue loss, a citation of the legal authority for the tax expenditure, the year in which it was enacted, and the tax year in which it became effective.

19. Duplicate Appropriations: Any appropriation item and sum in Parts I to X of this Act and in an appropriation provision in any Act of the 2006 Regular Session which constitutes a duplicate appropriation shall be governed by KRS 48.312.

20. Priority of Individual Appropriations: KRS 48.313 shall control when a total or subtotal figure in this Act conflicts with the sum of the appropriations of which it consists.

21. Severability of Budget Provisions: Appropriation items and sums in Parts I to X of this Act shall conform to KRS 48.311. If any section, any subsection, or any provision is found by a court of competent jurisdiction in a final, unappealable order to be invalid or unconstitutional, the decision of the courts shall not affect or impair any of the remaining sections, subsections, or provisions.

22. Unclaimed Lottery Prize Money: For fiscal year 2006-2007 and fiscal year 2007-2008, all unclaimed lottery prize money under KRS 154A.110(3) shall be credited to the Kentucky Educational Excellence Scholarship Reserve Account to be held as a subsidiary account within the Finance and Administration Cabinet for the purpose of funding the KEES Program as appropriated in this Act. If the Kentucky Higher Education Assistance Authority certifies to the State Budget Director that the appropriations in this Act for the KEES Program under the existing award schedule are insufficient to meet funds required for eligible applicants, then the State Budget Director shall provide the necessary allotment of funds in the balance of the KEES Reserve Account to fund the

KEES Program. Actions taken under this section shall be reported to the Interim Joint Committee on Appropriations and Revenue on a timely basis.

23. Sales and Use Tax Collection and Remittance Compensation: Notwithstanding KRS 139.570, for the periods after June 30, 2006, the total reimbursement allowed per taxpayer in any month shall not exceed $1,500. Notwithstanding KRS 139.240, 139.250 or 139.700, after the effective date of this Act, separate permit numbers for a taxpayer with different business locations shall not be issued.

24. Abandoned Property Held by Financial Institutions: Notwithstanding KRS 393.060, the dormancy period for property held or owing by a banking or financial institution, other than traveler's checks, shall be three years rather than seven years.

25. Sale of Abandoned Property by Finance and Administration Cabinet: Notwithstanding KRS 393.125, the department, within three years of the receipt of abandoned property that are securities, shall sell the securities. Unclaimed securities received by the department on or before June 30, 2004, shall be sold by June 30, 2007 with the receipts, net of estimated claims to be paid, available for appropriation to the General Fund. Unclaimed securities received by the department after June 30, 2004 and on or before June 30, 2005 shall be sold by June 30, 2008 with the receipts, net of estimated claims to be paid, available for appropriation to the General Fund.

26. Premium and Retaliatory Taxes: Notwithstanding KRS 304.17B-021(4)(d), premium taxes collected under KRS Chapter 136 from any insurer and retaliatory taxes collected under KRS 304.3-270 from any insurer shall be credited to the General Fund.

27. Undesignated General Fund and Road Fund Carry Forward: Notwithstanding KRS 48.700, and KRS 48.705 and other Parts of this Act, the Secretary of the Finance and Administration Cabinet shall determine and certify, within 30 days of the close of fiscal year 2006-2007, the actual amount of undesignated balance of the General Fund and the Road Fund for the year just ended. The amounts from the

undesignated fiscal year 2006-2007 General Fund and Road Fund balances that are designated and carried forward for budgeted purposes in the 2006-2008 fiscal biennium shall be determined by the State Budget Director during the close of the respective fiscal year and shall be reported to the Interim Joint Committee on Appropriations and Revenue within 30 days of the close of the fiscal year. The General Fund undesignated balance in excess of the amount designated for budgeted purposes under this section shall be made available for the General Fund Surplus Expenditure Plan contained in Part VII of this Act unless otherwise provided in this Act. The Road Fund undesignated balance in excess of the amount designated for budgeted purposes under this section shall be made available for the Road Fund Surplus Expenditure Plan contained in Part IX of this Act unless otherwise provided in this Act.

28. Workers' Compensation Surety Bond: Notwithstanding KRS 342.340(1) or any other provision of law, public sector self-insured employers are not required to deposit funds as security, indemnity, or bond to secure the payment of compensation liabilities, provided that each public sector employer has the authority to impose taxes or raise tuition in an amount sufficient to recoup payments of compensation liabilities as they are incurred.

29. Reduction In State Utility Costs: The Finance and Administration Cabinet is hereby directed to continue to review current practices to reduce energy costs to achieve a government-wide savings of total utility costs. The Cabinet is empowered to utilize expertise in the Department of Natural Resources, the Public Service Commission, and other agencies to accomplish this goal.

30. Cellular Telephones/Electronic Devices: By 90 days after the effective date of this Act, the Secretary of the Finance and Administration Cabinet shall review the use of cellular telephones and other types of electronic communication devices and issue guidelines to state agencies specifying criteria to document the need for such equipment. A copy of the guidelines shall be transmitted to the Interim Joint Committee on

Appropriations and Revenue at the time of issuance.

31. **Printing:** The General Assembly declares that the financial condition of the Commonwealth requires that the Secretary of the Finance and Administration Cabinet shall review all state printing, including publications and the associated cost of storage, distribution, and advertising and direct all state agencies to use Internet and other electronic technology in order to reduce costs.

32. **Travel Expenditures:** All state agencies shall continue to monitor all travel expenditures and shall utilize state parks or other state facilities to the fullest extent feasible. The Secretary of the Finance and Administration Cabinet shall review all out-of-state travel requests for three or more state employees to attend the same destination or event and shall approve the requests if deemed necessary.

33. **Horse Cave Repertory Theatre:** The Horse Cave Repertory Theatre located in Hart County, Kentucky is named and designated as the official state repertory theatre.

34. **Fiscal Year 2007-2008 Funds Expenditure Restriction:** Except in the case of a declared emergency, the Governor, all agency heads, and all other constitutional officers shall not expend or encumber in the aggregate more than 55 percent of the funds appropriated by this Act during the first half of fiscal year 2007-2008.

35. **Appropriation of Budget Reserve Trust Fund:** Pursuant to KRS 48.705, $25,000,000 from the Budget Reserve Trust Fund is available in fiscal year 2007-2008 to be appropriated by the General Assembly in this Act.

36. **Civil War Reenactors:** Notwithstanding KRS 38.440, Civil War reenactors may associate, drill, and parade with firearms and/or swords without permission from the Governor before, during, and after Civil War reenactments and events.

37. **Voluntary Assignment of Escrow Payments:** Funds totaling $35,000,000 in fiscal year 2006-2007 and $20,000,000 in fiscal year 2007-2008 from the voluntary assignment of escrow payments by nonparticipating manufacturers shall be appropriated to the Budget Reserve Trust Fund. Beginning in fiscal year 2006-2007 and for fiscal year

2007-2008, the first $2,200,000 in funds deposited in the Budget Reserve Trust Fund pursuant to the provisions of this section are hereby appropriated to the Cabinet for Health and Family Services, Department for Public Health, to be used for smoking prevention and cessation programs.

38. General Fund Expenditure Reductions Through Efficiencies: The Executive Office of the Governor shall reduce General Fund expenditures appropriated in this Act by $38,500,000 in fiscal year 2006-2007 and by $19,500,000 in fiscal year 2007-2008, by continuing to reduce waste, fraud, and abuse, and by creating additional savings through increased efficiencies. The biennial savings are in addition to the revenue measures directed by the Executive Branch.

39. Abandonment of Traveler's Checks: Notwithstanding KRS 393.060, traveler's checks held or owing by a banking or financial organization shall be presumed abandoned when the period of time the traveler's checks have been outstanding exceeds seven years, unless the owner has within seven years corresponded in writing with the banking or financial organization concerning the traveler's checks, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization.

(40) Kentucky Wine and Vine Fest: The Kentucky Wine and Vine Fest of Nicholasville, Kentucky, is named and designated as the official state wine festival.

(41) Lottery Receipt Dividend Payment: Notwithstanding KRS 154A.130(4), the additional net lottery receipt dividend payment declared in March 2006 which exceeded the Consensus Forecast Group lottery funds estimate in December 2005 shall be credited to the General Fund.

PART IV

STATE SALARY/COMPENSATION AND EMPLOYMENT POLICY

1. Maximum Filled Permanent Positions: Notwithstanding KRS 18A.010(2), for the 2006-2008 fiscal biennium, the total number of filled permanent positions in the

agencies of the Executive Branch is limited to the number authorized in the enacted State/Executive Budget of the Commonwealth for the 2006-2008 fiscal biennium. The provisions of this section do not apply to the employees of the General Assembly, the Legislative Research Commission, or the Court of Justice.

2. **Authorized Personnel Complement:** On July 1, 2006, the Personnel Cabinet and the Office of State Budget Director shall establish a record for each budget unit of authorized permanent and other positions based upon the enacted State/Executive Budget of the Commonwealth and any adjustments authorized by provisions in this Act. The total number of filled and vacant positions of permanent full-time, permanent part-time, and all other positions shall not exceed the authorized complements pursuant to this section. When an agency head certifies that an emergency employment situation exists for a limited time within a fiscal year, the State Budget Director may approve, and the Secretary of the Personnel Cabinet may authorize, the employment of individuals in addition to the authorized complement for the duration of the limited time period so authorized within the fiscal year. A copy of records, certifications, and actions authorized in this section shall be provided to the Interim Joint Committee on Appropriations and Revenue on a monthly basis.

3. **Salary Adjustments:** Notwithstanding KRS 18A.355[~~(1)~~], *(Veto #25)* in fiscal year 2006-2007 and in fiscal year 2007-2008, a salary adjustment amounting to an annualized value on the base salary or wages of each eligible full-time and part-time employee on their anniversary date is provided. The amount of the salary adjustment is determined by each eligible employee's annual base salary or wages on their anniversary date, and the following table reflects the annualized values of the salary adjustment for fiscal year 2006-2007 and fiscal year 2007-2008, except as provided by this section.

Annual Base Salary or Wages	**2006-07**	**2007-08**
$0 to $30,000.00	$1,350	$1,350
$30,000.01 to $50,000.00	$1,200	$1,200

$50,000.01 to $60,000.00	$1,000	$1,000
$60,000.01 to $80,000.00	$600	$600
$80,000.01 and above	$400	$400

Commencing with an eligible employee's anniversary date, the salary adjustment shall be added to the eligible employee's base salary or wages and shall be disbursed by payroll period in a one-twenty-fourth installment for the duration of the employment. The Secretary of the Personnel Cabinet shall determine the pro rata amount of the salary adjustment to be provided to part-time employees. The salary adjustment shall be a part of the salary or wage base of the employee.

4. **State Salary and Compensation Fund:** The State Budget Director shall determine the amount of funds from the appropriation in Part I, Operating Budget, J. Personnel Cabinet, 4. State Salary and Compensation Fund, of this Act by budget unit necessary to provide for the salary adjustments. The State Salary and Compensation Fund shall be supplemented by Restricted Funds, Federal Funds, the Road Fund, and other General Fund amounts otherwise appropriated to state agencies in order to provide for the salary adjustments.

The State Budget Director shall notify the Secretary of the Finance and Administration Cabinet of the respective amount of General Fund from the State Salary and Compensation Fund to transfer to each affected budget unit and such funds shall be transferred. The State Budget Director shall report to the Interim Joint Committee on Appropriations and Revenue the implementation of these provisions.

5. **Monthly Per Employee Health Insurance Benefits Assessment:** The Personnel Cabinet shall collect a benefits assessment per month per employee eligible for health insurance coverage in the state group as contained in Appendix B of the budget instructions promulgated by the Legislative Research Commission pursuant to KRS 48.040 and communicated to agencies by the Office of State Budget Director for duly authorized use by the Personnel Cabinet in administering its statutory and administrative

responsibilities, including but not limited to administration of the Commonwealth's health insurance program.

6. **Employee Cross-Reference:** The Personnel Cabinet shall permit married couples who are both eligible to participate in the state health insurance plan to be covered under one family health benefit plan. The annual percentage increase for the employee contribution for family coverage for married couples who cross-reference shall not exceed the annual percentage increase in the total premium for that coverage option.

7. **Public Employees Self-Insured Health Insurance Premiums:** Beginning with the employer premium due for coverage effective July 1, 2006, under the Public Employees Self-Insured Health Insurance Program, the employer rate shall be reduced by 12 percent for the balance of Plan Year 2006. For Plan Year 2007, the increase in employer and employee premiums for coverage under the Public Employees Self-Insured Health Insurance Program shall not exceed 10.4 percent for the Essential Plan and 9 percent for the Enhanced and Premium Plan over the Plan Year 2006 rates as adjusted by this Act.

8. **Employer Retirement Contribution Rates:** Notwithstanding KRS 61.565, the employer contribution rates for the Kentucky Employees Retirement Systems from July 1, 2006, through June 30, 2007, shall be 7.75 percent, consisting of 4.83 percent for pension and 2.92 percent for insurance, for nonhazardous duty employees and 22.0 percent, consisting of 8.75 percent for pension and 13.25 percent for insurance, for hazardous duty employees; for the same period the employer contribution for employees of the State Police Retirement System shall be no more than 25.5 percent, consisting of 12.44 percent for pension and 13.06 percent for insurance. Notwithstanding KRS 61.565, the employer contribution rates for the Kentucky Employees Retirement Systems from July 1, 2007, through June 30, 2008, shall be 8.5 percent, consisting of 5.47 percent for pension and 3.03 percent for insurance, for nonhazardous duty employees and 24.25 percent, consisting of 9.79 percent for pension and 14.46 percent for insurance for

hazardous duty employees; for the same period the employer contribution for employees of the State Police Retirement System shall be no more than 28.0 percent, consisting of 14.23 percent for pension and 13.77 percent for insurance.

9. Interest Earnings: Interest accruing to the Public Employees Self-Insured Health Insurance Fund shall be credited to the fund.

PART V

FUNDS TRANSFER

The General Assembly finds that the financial condition of state government requires the following action.

Notwithstanding the statutes or requirements of the Restricted Funds enumerated below, there is transferred to the General Fund the following amounts in fiscal year 2005-2006, fiscal year 2006-2007, and fiscal year 2007-2008:

		2005-06	2006-07	2007-08
A.	**GENERAL GOVERNMENT**			
1.	**Office of the Governor**			
	Agency Revenue Fund	5,600	-0-	-0-
2.	**Office of the Governor**			
	Other Special Revenue Fund	25,200	-0-	-0-
3.	**Office of State Budget Director**			
	Agency Revenue Fund	75,400	-0-	-0-
4.	**Homeland Security**			
	Agency Revenue Fund	351,400	-0-	-0-
	(KRS 65.7631)			
5.	**Department of Veterans' Affairs**			
	Agency Revenue Fund	1,756,100	-0-	-0-
6.	**Kentucky Infrastructure Authority**			
	Solid Waste and Environmental			

		Protection Revolving Loan			
		Fund Program	3,600,000	-0-	-0-
	7.	**Military Affairs**			
		Agency Revenue Fund	300,000	4,900,000	300,000
	8.	**Commission on Women**			
		Agency Revenue Fund	1,800	-0-	-0-
	9.	**Local Government Economic**			
		Development Fund			
		Multi-County Fund	-0-	7,450,000	15,599,000
		(KRS 42.4588)			
	10.	**Secretary of State**			
		Agency Revenue Fund	350,000	900,000	900,000
	11.	**Attorney General**			
		Agency Revenue Fund	521,200	-0-	-0-
	12.	**Treasury**			
		Agency Revenue Fund	92,900	-0-	-0-
	13.	**Agriculture**			
		Agency Revenue Fund	-0-	479,500	337,800
	14.	**Emergency Medical Services**			
		Agency Revenue Fund	162,500	-0-	-0-
		(KRS 311A.145(2))			
	B.	**COMMERCE CABINET**			
	1.	**Secretary**			
		Agency Revenue Fund	190,700	-0-	-0-
	2.	**Artisans Center**			
		Other Special Revenue Fund	307,100	-0-	-0-
	3.	**Energy Policy**			

		Agency Revenue Fund	506,300	-0-	-0-
		(KRS 132.020(5))			
	4.	**Tourism**			
		Agency Revenue Fund	204,000	-0-	-0-
	5.	**Horse Park Commission**			
		Kentucky Horse Park Fund	40,800	-0-	-0-
	6.	**State Fair Board**			
		State Fair Board Fund	234,000	-0-	-0-
	7.	**Historical Society**			
		Agency Revenue Fund	120,000	-0-	-0-
	8.	**Arts Council**			
		Agency Revenue Fund	20,000	-0-	-0-
		(KRS 153.220(8))			
	C.	**ECONOMIC DEVELOPMENT CABINET**			
	1.	**Secretary**			
		Agency Revenue Fund	200,000	-0-	-0-
	2.	**Financial Incentives**			
		Kentucky Economic Development			
		Finance Authority	-0-	-0-	700,000
		(KRS 154.20-010 to 154.20-150)			
	D.	**DEPARTMENT OF EDUCATION**			
	1.	**Operations and Support Services**			
		Agency Revenue Fund	150,000	-0-	-0-
	2.	**Department of Education**			
		School Districts Flexible Spending			
		Account Expendable Trust Fund	7,000,000	12,000,000	12,000,000
	E.	**EDUCATION CABINET**			

1	**1.**	**General Administration and Program Support**			
2		Agency Revenue Fund	53,000	75,000	89,600
3	**2.**	**Environmental Education Council**			
4		Agency Revenue Fund	874,600	-0-	-0-
5		(KRS 224.43-505(2)(b))			
6	**3.**	**Career and Technical Education**			
7		Agency Revenue Fund	656,800	-0-	-0-
8	**F.**	**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**			
9	**1.**	**Natural Resources**			
10		Agency Revenue Fund	247,900	-0-	-0-
11		(KRS 149.280(2) and 149.670)			
12	**2.**	**Public Protection Commissioner**			
13		Agency Revenue Fund	400,000	175,000	150,000
14	**3.**	**Petroleum Storage Tank Environmental**			
15		**Assurance Fund**			
16		Insurance Administration Fund	626,500	41,997,300	17,564,100
17		(KRS 224.60-140, 224.60-145 and			
18		224.60-150)			
19	**4.**	**Alcoholic Beverage Control**			
20		Agency Revenue Fund	3,011,700	836,200	457,600
21		(KRS 243.025)			
22	**5.**	**Charitable Gaming**			
23		Agency Revenue Fund	1,100,000	-0-	-0-
24		(KRS 238.570(2))			
25	**6.**	**Financial Institutions**			
26		Agency Revenue Fund	3,295,100	1,851,300	1,900,900
27		(KRS 287.485)			

7.	**Insurance**			
	Agency Revenue Fund	8,659,700	9,000,000	10,750,000
	(KRS 304.2-300, 304.2-400 and 304.2-440)			
8.	**Workers Compensation Funding Commission**			
	Insurance Administration Fund	-0-	3,735,500	1,618,900
	(KRS 342.1227)			
9.	**Environmental and Public Protection**			
	Kentucky Pride Trust Fund	-0-	18,000,000	-0-
	(KRS 224.43-505(1))			
10.	**Environmental and Public Protection**			
	Kentucky Pride Trust Fund	-0-	2,006,300	2,006,300

Pursuant to KRS 224.43-505(2)(a)5., these funds transfers to the General Fund support the General Fund debt service on the bonds sold as appropriated by 2003 Ky. Acts ch. 156, Part II, Capital Projects Budget, A. Government Operations, 3. Kentucky Infrastructure Authority, c. Kentucky Pride Fund Projects.

G.	**FINANCE AND ADMINISTRATION CABINET**			
1.	**General Administration**			
	Agency Revenue Fund	58,800	3,779,800	3,784,800
2.	**Controller**			
	Agency Revenue Fund	1,200,000	204,300	215,800
3.	**Facilities and Support Services**			
	Agency Revenue Fund	232,500	200,800	583,400
~~[4. Commonwealth Office of Technology~~				
	~~Agency Revenue Fund~~	~~0~~	~~0~~	~~1,000,000]~~ *(Veto #26)*
5.	**Revenue**			
	Agency Revenue Fund	1,000,000	-0-	-0-

		(KRS 45.238(3), 132.320(3), 134.400,			
		160.6154(2) and 365.390(2))			
	6.	**Finance and Administration**			
		Capital Construction and Equipment Purchase			
		Contingency Fund	-0-	2,000,000	-0-
		(KRS 45.770)			
	7.	**Finance and Administration**			
		Capital Construction			
		Investment Income	-0-	6,200,000	5,330,000
		(KRS 42.500)			
	8.	**Finance and Administration**			
		Statewide Deferred Maintenance Fund	-0-	332,000	-0-
		(KRS 45.782)			
	9.	**Finance and Administration**			
		Capital Construction Emergency			
		Repair and Maintenance Fund	-0-	1,000,000	-0-
		(KRS 45.780)			
	H.	**HEALTH AND FAMILY SERVICES CABINET**			
	1.	**General Administration and**			
		Program Support			
		Agency Revenue Fund	5,723,000	-0-	-0-
		(KRS 212.025(2))			
	2.	**General Administration and**			
		Program Support			
		Malt Beverage Education Fund	350,000	350,000	350,000
	3.	**Children with Special Health**			
		Care Needs			

		Agency Revenue Fund	500	-0-	-0-
		(KRS 212.025(2))			
	4.	**Public Health**			
		Agency Revenue Fund	4,657,000	542,800	483,000
		(KRS 194A.050(4), 211.350(7), 211.848(2), 212.025(2), 213.141(3), 217.125(2), 219.071 and 221.020(2))			
	5.	**Health Policy**			
		Agency Revenue Fund	351,700	-0-	-0-
		(KRS 212.025(2))			
	6.	**Human Support Services**			
		Agency Revenue Fund	156,500	-0-	-0-
		(KRS 212.025(2))			
	7.	**Ombudsman**			
		Agency Revenue Fund	1,600	-0-	-0-
		(KRS 212.025(2))			
	8.	**Disability Determination Services**			
		Agency Revenue Fund	2,400	-0-	-0-
		(KRS 212.025(2))			
	I.	**JUSTICE AND PUBLIC SAFETY CABINET**			
	1.	**Justice Administration**			
		Agency Revenue Fund	109,100	-0-	-0-
	2.	**Criminal Justice Training**			
		Kentucky Law Enforcement Foundation Program Fund	-0-	-0-	2,000,000
		(KRS 15.430)			
	3.	**Juvenile Justice**			

		Agency Revenue Fund	6,520,000	-0-	-0-
	4.	**Community Services and Local Facilities**			
		Agency Revenue Fund	80,100	-0-	-0-
	5.	**Public Advocacy**			
		Agency Revenue Fund	162,700	-0-	-0-
		(KRS 31.211(8) and 189A.050(3)(f))			
	J.	**PERSONNEL**			
	1.	**General Operations**			
		Flexible Spending Account	323,000	1,000,000	1,000,000
		(KRS 18A.225(2)(g))			
	2.	**General Operations**			
		Other Special Revenue Fund	333,300	-0-	-0-
	3.	**General Operations**			
		Agency Revenue Fund	922,500	-0-	-0-
		(KRS 18A.225(2)(g))			
	4.	**Workers Compensation**			
		Benefits and Reserve			
		Risk Management Fund	4,028,500	-0-	-0-
		(KRS 18A.375(3))			
	K.	**POSTSECONDARY EDUCATION**			
	1.	**Council on Postsecondary Education**			
		Agency Revenue Fund	300,000	-0-	-0-
	2.	**Kentucky Higher Education Assistance Authority**			
		Osteopathic Medicine			
		Scholarship Trust Fund	390,000	-0-	-0-
		(KRS 164.7891(11))			
	3.	**Kentucky Higher Education Assistance Authority**			

	Osteopathic Medicine			
	Repayment Fund	440,000	350,000	-0-
	(KRS 164.7891(11))			
4.	**Kentucky Community and Technical College System**			
	Firefighters Foundation			
	Program Fund	-0-	-0-	2,000,000
	(KRS 95A.220)			
L.	**TRANSPORTATION CABINET**			
1.	**Aviation**			
	Kentucky Aviation Economic			
	Development Fund	-0-	468,000	468,000
	Notwithstanding KRS 183.525(5), these funds transfers to the General Fund support the General Fund debt service on the bonds sold as appropriated by 2005 Ky. Acts ch. 173, Part II, Capital Projects Budget, C., 1., 002.			
2.	**Aviation**			
	Kentucky Aviation Economic			
	Development Fund	-0-	4,000,000	4,000,000
3.	**Highways**			
	~~[Federal]~~Funds *(Veto #27)*	-0-	9,000,000	-0-
TOTAL - FUNDS TRANSFER		62,483,500	132,833,800	85,589,200

PART VI

GENERAL FUND BUDGET REDUCTION PLAN

Pursuant to KRS 48.130 and 48.600, a General Fund Budget Reduction Plan is enacted for state government in the event of an actual or projected deficit in estimated General Fund revenue receipts of $8,514,872,500 in fiscal year 2006-2007 and $8,879,172,400 in fiscal year 2007-2008 as modified by related Acts and actions of the General Assembly in an extraordinary or regular session. Direct services, obligations

essential to the minimum level of constitutional functions, and other items that may be specified in this Act, are exempt from the requirements of this Plan. Each branch head shall prepare a specific plan to address a proportionate share of the General Fund revenue shortfall applicable to the respective branch. No budget revision action shall be taken by a branch head in excess of the actual or projected deficit.

The Governor, the Chief Justice, and the Legislative Research Commission shall direct and implement reductions in allotments and appropriations only for their respective branch budget units as may be necessary as well as take other measures which shall be consistent with the provisions of this Part and general branch budget bills.

In the event of a revenue shortfall under the provisions of KRS 48.120, General Fund budget reduction actions shall be implemented in the following sequence:

(1) The Local Government Economic Assistance and the Local Government Economic Development Funds shall be adjusted by the Secretary of the Finance and Administration Cabinet to equal revised estimates of receipts pursuant to KRS 42.4582 as modified by the provisions of this Act;

(2) Transfers of excess unappropriated Restricted Funds other than fiduciary funds shall be applied as determined by the head of each branch for its respective budget units;

(3) Excess General Fund appropriations which accrue as a result of personnel vacancies and turnover, and reduced requirements for operating expenses, grants, and capital outlay shall be determined and applied by the heads of the executive, judicial, and legislative departments of state government for their respective branches. The branch heads shall certify the available amounts which shall be applied to budget units within the respective branches and shall promptly transmit the certification to the Secretary of the Finance and Administration Cabinet and the Legislative Research Commission. The Secretary of the Finance and Administration Cabinet shall execute the certified actions as transmitted by the branch heads.

Branch heads shall take care, by their respective actions, to protect, preserve, and advance the fundamental health, safety, legal and social welfare, and educational well-being of the citizens of the Commonwealth;

(4) Funds available in the Budget Reserve Trust Fund shall be applied in an amount not to exceed 25 percent of the trust fund balance in fiscal year 2006-2007 and 50 percent of the trust fund balance in fiscal year 2007-2008; and

(5) Notwithstanding KRS 48.130 and 48.600, if the actions contained in subsections (1) to (4) of this section are insufficient to eliminate an actual or projected revenue shortfall in the enacted General Fund revenue receipts, then the Governor is empowered and directed to take necessary actions with respect to the Executive Branch budget units to balance the budget by such actions conforming with the criteria expressed in this Part.

PART VII

GENERAL FUND SURPLUS EXPENDITURE PLAN

(1) Pursuant to KRS 48.700 and notwithstanding KRS 48.140, there is established a plan for the expenditure of General Fund surplus moneys pursuant to a General Fund Surplus Expenditure Plan contained in this Part for fiscal years 2006-2007 and 2007-2008. Pursuant to the enactment of the Surplus Expenditure Plan, General Fund moneys in the General Fund undesignated fund balance in excess of the amount specified in Part III, General Provisions, Section 27, of this Act are appropriated to the following:

(a) Necessary Government Expenses, including but not limited to Emergency Orders formally declared by the Governor in an Executive Order;

(b) Increased support to the Budget Reserve Trust Fund;

(c) The Kentucky Retirement Systems to address a portion of the actuarially unfunded liability; and

(d) The Kentucky Teachers' Retirement System's medical insurance fund as established in KRS 161.420 to augment the state medical insurance stabilization

contribution as established in KRS 161.550.

(2) The Secretary of the Finance and Administration Cabinet shall determine, within 30 days after the close of the fiscal year 2005-2006, and the close of fiscal year 2006-2007, based on the official financial records of the Commonwealth, the amount of actual General Fund undesignated fund balance for the General Fund Surplus Account that may be available for expenditure pursuant to the Plan respectively in fiscal year 2005-2006 and fiscal year 2006-2007. The Secretary of the Finance and Administration Cabinet shall certify the amount of actual General Fund undesignated fund balance available for expenditure to the Legislative Research Commission.

Subsequent to June 30, 2006, funds that are certified as being available in the actual General Fund undesignated fund balance for the General Fund Surplus Account are appropriated for expenditure in fiscal year 2005-2006 pursuant to the Plan.

PART VIII

ROAD FUND BUDGET REDUCTION PLAN

There is established a Road Fund Budget Reduction Plan for fiscal year 2006-2007 and fiscal year 2007-2008. Pursuant to KRS 48.130, in the event of an actual or projected shortfall in estimated Road Fund revenue receipts of $1,238,685,300 in fiscal year 2006-2007 and $1,261,931,900 in fiscal year 2007-2008 as determined by KRS 48.120(3), the Governor shall implement sufficient reductions as may be required to protect the highest possible level of service.

PART IX

ROAD FUND SURPLUS EXPENDITURE PLAN

Pursuant to KRS 48.710 and notwithstanding KRS 48.140, there is established a plan for the expenditure of the Road Fund surplus moneys pursuant to a Road Fund Surplus Expenditure Plan contained in this Part for fiscal years 2006-2007 and 2007-2008. Pursuant to the enactment of the Surplus Expenditure Plan, Road Fund moneys in the Road Fund undesignated fund balance in excess of the amount specified in Part III,

General Provisions, Section 27, of this Act are appropriated to the State Construction Account and utilized to support projects in the fiscal biennium 2006-2008 Biennial Highway Construction Program.

PART X

PHASE I TOBACCO SETTLEMENT

(1) General Purpose: This Part prescribes the policy implementing aspects of the national settlement agreement between the tobacco industry and the collective states as described in KRS 248.701 to 248.727. In furtherance of that agreement, the General Assembly recognizes that the Commonwealth of Kentucky is a party to the Phase I Master Settlement Agreement (MSA) between the Participating Tobacco Manufacturers and 46 Settling States which provides reimbursement to states for smoking-related expenditures made over time.

(2) State's MSA Share: The Commonwealth's share of the MSA is equal to 1.7611586 percent of the total settlement amount. Payments under the MSA are made to the states annually in April of each year.

(3) MSA Payment Amount Variables: The total settlement amount to be distributed each payment date is subject to change pursuant to several variables provided in the MSA, including inflation adjustments, volume adjustments, previously settled states adjustments, and the nonparticipating manufacturers adjustment.

(4) Distinct Identity of MSA Payment Deposits: The General Assembly has determined that it shall be the policy of the Commonwealth that all Phase I Tobacco Settlement payments shall be deposited to the credit of the General Fund and shall maintain a distinct identity as Phase I Tobacco Settlement payments that shall not lapse to the credit of the General Fund surplus, but shall continue forward from each fiscal year to the next fiscal year to the extent that any balance is unexpended.

(5) MSA Payment Estimates and Adjustments: Based on the current estimates as reviewed by the Consensus Revenue Forecasting Group, the amount of MSA payments

expected to be received in fiscal year 2005-2006 is $91,300,000 and in fiscal year 2006-2007 is $88,800,000 and in fiscal year 2007-2008 is $94,000,000. It is recognized that payments to be received by the Commonwealth are estimated and are subject to change. Any appropriations made from the estimated receipts are subject to adjustments based on actual receipts as received and certified by the Secretary of the Finance and Administration Cabinet.

a. **State Enforcement:** Notwithstanding KRS 248.654, a total of $175,000 of the MSA payments received each fiscal year of the 2006-2008 biennium is appropriated to the Finance and Administration Cabinet, Department of Revenue for the state's enforcement of noncompliant nonparticipating manufacturers.

b. **Agricultural Development Initiatives:** Fifty percent of the MSA payments, less the above enforcement appropriations, received in fiscal year 2006-2007, estimated to be $44,312,500, and in fiscal year 2007-2008, estimated to be $46,912,500, is appropriated to the Kentucky Agricultural Development Fund to be used for agricultural development initiatives.

c. **Early Childhood Development Initiatives:** Twenty-five percent of the MSA payments, less the above enforcement appropriations, received in fiscal year 2006-2007, estimated to be $22,156,200, and in fiscal year 2007-2008, estimated to be $23,456,300, is appropriated for Early Childhood Development Initiatives as specified below.

d. **Health Care Initiatives:** Twenty-five percent of the MSA payments received, less the above enforcement appropriations, in fiscal year 2006-2007, estimated to be $22,156,300, and in fiscal year 2007-2008, estimated to be $23,456,200, is appropriated to the Kentucky Health Care Improvement Fund for health care initiatives as specified below.

(6) MSA Appropriation Adjustment: The Consensus Forecasting Group reduced the fiscal year 2005-2006 Phase I Master Settlement Agreement revenue forecast from the enacted estimate of $108,600,000 to $91,300,000, a reduction of $17,300,000.

The revenue estimate reduction was based on the high probability of an adjustment for nonparticipating manufacturers. To accommodate this reduction in estimated revenues, the following fiscal year 2005-2006 appropriations are hereby reduced in accordance with 2005 Ky. Acts ch. 173, Part X, (5):

a. Agricultural Development

1. Finance - Debt Service - $12,097,700
2. Natural Resources - Conservation - $630,000

b. Early Childhood Development

1. Community Based Services - Child Care - $1,041,000
2. Public Health - HANDS - $393,000
3. Public Health - Healthy Start - $50,000
4. Public Health - Immunizations - $250,000
5. Commission for Children with Special Health Care Needs - Universal Newborn Hearing Screening - $104,000
6. Commission for Children with Special Health Care Needs - Universal Newborn Vision Screening - $5,000

c. Health Care Improvement

1. Insurance - Kentucky Access - $1,139,100
2. Public Health - Smoking Cessation - $184,200
3. Justice Administration - $151,100
4. Council on Postsecondary Education - Lung Cancer Research Fund - $368,600

d. Enforcement

1. Revenue - $11,900

(7) MSA Appropriation Adjustments - Prior Year Receipts Received: In the event that Phase I Master Settlement Agreement revenues due from a prior fiscal year are received in a subsequent fiscal year, those revenues are hereby appropriated as follows:

50 percent to the Agricultural Development Fund, 25 percent to the Early Childhood Development Fund, and 25 percent to the Health Care Improvement Fund.

a. **Early Childhood Development:** From the 25 percent of the Phase I Master Settlement Agreement payments appropriated to the Early Childhood Development Fund, the Early Childhood Development Authority shall recommend to the State Budget Director for approval the specific appropriations to be made to the existing initiatives.

b. **Health Care Improvement:** From the 25 percent of the Phase I Master Settlement Agreement payments appropriated to the Health Care Improvement Fund, appropriations shall be made pursuant to KRS 304.17B-003(5).

A. STATE ENFORCEMENT

GENERAL FUND - PHASE I TOBACCO SETTLEMENT FUNDS

1. FINANCE AND ADMINISTRATION CABINET

Budget Unit	**2006-07**	**2007-08**
a. Revenue	175,000	175,000

B. AGRICULTURAL DEVELOPMENT APPROPRIATIONS

GENERAL FUND - PHASE I TOBACCO SETTLEMENT FUNDS

1. GENERAL GOVERNMENT

Budget Unit	**2006-07**	**2007-08**
a. Governor's Office of Agricultural Policy	17,469,800	20,065,100

(1) **Tobacco Settlement Funds - Allocations:** Notwithstanding KRS 248.711(2), and from the allocation provided therein, counties that are allocated in excess of $20,000 annually may provide up to four percent of the individual county allocation, not to exceed $15,000 annually, to the county council in that county for administrative costs.

(2) **Partial Phase II Litigation Proceeds:** Notwithstanding KRS 45.229, General Fund dollars of $27,000,000 representing Partial Phase II Litigation proceeds that were appropriated in fiscal year 2005-2006 pursuant to 2005 House Bill 267 (2005 Ky. Acts ch. 173, Part X, Phase I Tobacco Settlement, B.3.a.(4), shall not lapse in fiscal years

2005-2006, 2006-2007, and 2007-2008. To the extent possible, all General Fund dollars shall be expended from the account prior to the expenditure of Tobacco Fund dollars.

(3) Kentucky Tobacco Settlement Trust Corporation: The Governor's Office of Agricultural Policy shall provide and make available the funds necessary, not to exceed $4,000,000, for the Kentucky Tobacco Settlement Trust Corporation to carry out the provisions of the Phase II Amnesty Payment Program established in Part XX, Tobacco Amnesty Compensation, of this Act. General Fund and/or General Fund (Tobacco) continuing appropriations from the Governor's Office of Agricultural Policy shall be the source of funds provided to the Kentucky Tobacco Settlement Trust Corporation.

2. ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Budget Unit	**2006-07**	**2007-08**
a. Natural Resources - Conservation	9,000,000	9,000,000

(1) Environmental Stewardship Program: Included in the above General Fund (Tobacco) appropriation is $9,000,000 in fiscal year 2006-2007 and $9,000,000 in fiscal year 2007-2008 for the Environmental Stewardship Program.

3. FINANCE AND ADMINISTRATION CABINET

Budget Unit	**2006-07**	**2007-08**
a. Debt Service	17,842,700	17,847,400

(1) Debt Service: To the extent that revenues sufficient to support the required debt service appropriations are received from the Tobacco Settlement Program, those revenues shall be made available from those accounts to the appropriate account of the General Fund. All necessary debt service amounts shall be appropriated from the General Fund and shall be fully paid regardless of whether there is a sufficient amount available to be transferred from tobacco-supported funding program accounts to other accounts of the General Fund.

TOTAL - AGRICULTURAL APPROPRIATIONS	44,312,500	46,912,500

C. EARLY CHILDHOOD DEVELOPMENT

GENERAL FUND - PHASE I TOBACCO SETTLEMENT FUNDS

1. EDUCATION CABINET

Budget Unit	**2006-07**	**2007-08**
a. Learning and Results Services	1,388,400	1,508,400

2. CABINET FOR HEALTH AND FAMILY SERVICES

Budget Units	**2006-07**	**2007-08**
a. Community Based Services	6,970,400	7,420,400

(1) Early Childhood Development Program: Included in the above General Fund (Tobacco) appropriation is $6,970,400 in fiscal year 2006-2007 and $7,420,400 in fiscal year 2007-2008 for the Early Childhood Development Program.

b. Public Health	11,785,300	12,375,500

(1) HANDS Program, Healthy Start, Universal Children's Immunizations, Folic Acid Program, Early Childhood Mental Health, Early Childhood Oral Health, and Kentucky Early Intervention Services First Steps: Included in the above General Fund (Tobacco) appropriation is $7,149,800 in fiscal year 2006-2007 and $7,599,900 in fiscal year 2007-2008 for the Health Access Nurturing Development Services (HANDS) Program; $1,000,000 in fiscal year 2006-2007 and $1,140,100 in fiscal year 2007-2008 for Healthy Start initiatives; $1,750,000 in each fiscal year for Universal Children's Immunizations; $400,000 in each fiscal year for the Folic Acid Program; $775,000 in each fiscal year for Early Childhood Mental Health; $210,500 in each fiscal year for Early Childhood Oral Health; and $500,000 in each fiscal year for the Kentucky Early Intervention Services First Steps Program.

c. Mental Health and Mental Retardation Services	800,000	800,000

(1) Substance Abuse Prevention and Treatment: Included in the above General Fund (Tobacco) appropriation is $800,000 in each fiscal year for substance abuse prevention and treatment.

d.	Commission for Children with Special Health Care Needs	312,100	352,000

(1) Universal Newborn Hearing Screening and Vision Screening: Included in the above General Fund (Tobacco) appropriation is $310,100 in fiscal year 2006-2007 and $350,000 in fiscal year 2007-2008 for Universal Newborn Hearing Screening and $2,000 in each fiscal year for Vision Screening.

e.	Human Support Services	100,000	100,000

(1) Children's Advocacy Centers: Included in the above General Fund (Tobacco) appropriation is $100,000 in each fiscal year for Children's Advocacy Centers.

3. POSTSECONDARY EDUCATION

Budget Unit		**2006-07**	**2007-08**
a.	Kentucky Higher Education Assistance Authority	800,000	900,000

(1) Early Childhood Scholarships: Included in the above General Fund (Tobacco) appropriation is $800,000 in fiscal year 2006-2007 and $900,000 in fiscal year 2007-2008 for Early Childhood Scholarships.

TOTAL - EARLY CHILDHOOD APPROPRIATIONS	22,156,200	23,456,300

D. HEALTH CARE IMPROVEMENT APPROPRIATIONS

GENERAL FUND - PHASE I TOBACCO SETTLEMENT FUNDS

Notwithstanding KRS 304.17B-003(5), appropriations for health care improvement shall be as follows:

1. ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Budget Unit		**2006-07**	**2007-08**
a.	Insurance	13,692,700	14,496,000

(1) Kentucky Access Program: Included in the above General Fund (Tobacco) appropriation is $13,692,700 in fiscal year 2006-2007 and $14,496,000 in fiscal year 2007-2008 for the Kentucky Access Program.

2. CABINET FOR HEALTH AND FAMILY SERVICES

Budget Unit	**2006-07**	**2007-08**
a. Public Health	2,215,600	2,345,600

(1) Smoking Cessation Program: Included in the above General Fund (Tobacco) appropriation is $2,215,600 in fiscal year 2006-2007 and $2,345,600 in fiscal year 2007-2008 for the Smoking Cessation Program.

3. JUSTICE AND PUBLIC SAFETY CABINET

Budget Unit	**2006-07**	**2007-08**
a. Justice Administration	1,816,800	1,923,400

(1) Office of Drug Control Policy: Included in the above General Fund (Tobacco) appropriation is $1,816,800 in fiscal year 2006-2007 and $1,923,400 in fiscal year 2007-2008 for the Office of Drug Control Policy.

4. POSTSECONDARY EDUCATION

Budget Unit	**2006-07**	**2007-08**
a. Council on Postsecondary Education	4,431,200	4,691,200

(1) Ovarian Cancer Screening: Notwithstanding KRS 164.476, General Fund (Tobacco) dollars in the amount of $775,000 in fiscal year 2006-2007 and $775,000 in fiscal year 2007-2008 shall be allotted from the Lung Cancer Research Fund to the Ovarian Cancer Screening Outreach Program at the University of Kentucky.

TOTAL - HEALTH CARE APPROPRIATIONS	22,156,300	23,456,200
TOTAL - PHASE I TOBACCO SETTLEMENT FUNDING PROGRAM	88,800,000	94,000,000

PART XI

STATE/EXECUTIVE BRANCH BUDGET SUMMARY

OPERATING BUDGET

	2005-06	**2006-07**	**2007-08**
General Fund (Tobacco)	-0-	88,800,000	94,000,000

General Fund	86,848,200	8,377,397,500	9,013,922,400
Restricted Funds	7,669,300	4,848,685,800	4,725,186,100
Federal Funds	274,526,200	7,173,272,300	7,336,562,900
Road Fund	12,805,700	1,229,893,800	1,255,136,900
Highway Bonds	-0-	350,000,000	-0-
SUBTOTAL	381,849,400	22,068,049,400	22,424,808,300

CAPITAL PROJECTS BUDGET

	2005-06	**2006-07**	**2007-08**
General Fund (Tobacco)	-0-	-0-	-0-
General Fund	-0-	22,145,800	11,103,000
Restricted Funds	4,320,000	1,649,349,400	60,762,200
Federal Funds	-0-	179,082,000	22,190,000
Road Fund	-0-	10,285,000	6,795,000
Bond Funds	-0-	1,558,923,000	-0-
Agency Bonds	-0-	471,901,000	-0-
Capital Construction Surplus	-0-	4,107,000	1,045,000
Investment Income	-0-	10,900,000	10,810,000
Other Funds	-0-	210,141,000	17,868,000
Deferred Maintenance	-0-	-0-	-0-
Emergency Repair Maintenance and Replacement	-0-	1,700,000	-0-
SUBTOTAL	4,320,000	4,118,534,200	130,573,200

BUDGET RESERVE TRUST FUND

General Fund	-0-	35,000,000	20,000,000

TOTAL - STATE/EXECUTIVE BUDGET

	2005-06	**2006-07**	**2007-08**

General Fund (Tobacco)	-0-	88,800,000	94,000,000
General Fund	86,848,200	8,434,543,300	9,045,025,400
Restricted Funds	11,989,300	6,498,035,200	4,785,948,300
Federal Funds	274,526,200	7,352,354,300	7,358,752,900
Road Fund	12,805,700	1,240,178,800	1,261,931,900
Highway Bonds	-0-	350,000,000	-0-
Bond Funds	-0-	1,558,923,000	-0-
Agency Bonds	-0-	471,901,000	-0-
Capital Construction Surplus	-0-	4,107,000	1,045,000
Investment Income	-0-	10,900,000	10,810,000
Other Funds	-0-	210,141,000	17,868,000
Deferred Maintenance	-0-	-0-	-0-
Emergency Repair Maintenance and Replacement	-0-	1,700,000	-0-
TOTAL FUNDS	386,169,400	26,221,583,600	22,575,381,500

The above capital projects are directly funded in Part II, Capital Projects Budget, of this Act. The above Budget Reserve Trust Fund is directly funded in Part III, General Provisions, of this Act.

PART XII

COMPENSATION OF GENERAL ASSEMBLY EMPLOYEES

Notwithstanding KRS 48.310, the following statute is amended to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

Section 1. KRS 6.230 is amended to read as follows:

Employees of the General Assembly shall receive a per diem as follows: chief clerk, one hundred ***twenty dollars ($120)***~~[ten dollars ($110)]~~; assistant clerk, one hundred ***ten*** dollars ***($110)***~~[($100)]~~; enrolling clerk, ***one hundred five dollars ($105)***~~[ninety-five dollars ($95)]~~; sergeant-at-arms, ***eighty-five dollars ($85)***~~[seventy-five dollars ($75)]~~;

doorkeeper, ***eighty-five dollars ($85)***~~[seventy-five dollars ($75)]~~; janitors, ***seventy-five dollars ($75)***~~[sixty-five dollars ($65)]~~; cloakroom keeper, ***seventy-five dollars ($75)***~~[sixty-five dollars ($65)]~~; pages, thirty-five dollars ($35) each.

Section 2. The provisions of Section 1 of this Part relative to the compensation of employees of the House and Senate shall apply to, and be paid for, covered employees of the 2006 Regular Session of the General Assembly effective January 3, 2006, provided that there shall be deducted from the amount due to each employee the amount already paid to the employee for services during the 2006 General Assembly which were rendered prior to the effective date of this Act.

PART XIII

INCOME TAX

Notwithstanding KRS 48.310, the following statutes are amended to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

Section 1. KRS 141.040 is amended to read as follows:

(1) Every corporation doing business in this state, except those corporations listed in paragraphs (a) to (h) of this subsection, shall pay for each taxable year a tax to be computed by the taxpayer on taxable net income or the alternative minimum calculation computed under this section at the rates specified in this section:

(a) Financial institutions, as defined in KRS 136.500, except bankers banks organized under KRS 287.135;

(b) Savings and loan associations organized under the laws of this state and under the laws of the United States and making loans to members only;

(c) Banks for cooperatives;

(d) Production credit associations;

(e) Insurance companies, including farmers or other mutual hail, cyclone, windstorm, or fire insurance companies, insurers, and reciprocal underwriters;

(f) Corporations or other entities exempt under Section 501 of the Internal

Revenue Code;

(g) Religious, educational, charitable, or like corporations not organized or conducted for pecuniary profit; and

(h) Corporations whose only owned or leased property located in this state is located at the premises of a printer with which it has contracted for printing, provided that:

1. The property consists of the final printed product, or copy from which the printed product is produced; and

2. The corporation has no individuals receiving compensation in this state as provided in KRS 141.120(8)(b).

(2) For tax years ending before January 1, 1990, the following rates shall apply:

(a) Three percent (3%) of the first twenty-five thousand dollars ($25,000) of taxable net income;

(b) Four percent (4%) of the amount of taxable net income in excess of twenty-five thousand dollars ($25,000), but not in excess of fifty thousand dollars ($50,000);

(c) Five percent (5%) of the amount of taxable net income in excess of fifty thousand dollars ($50,000), but not in excess of one hundred thousand dollars ($100,000);

(d) Six percent (6%) of the amount of taxable net income in excess of one hundred thousand dollars ($100,000), but not in excess of two hundred fifty thousand dollars ($250,000); and

(e) Seven and twenty-five one hundredths percent (7.25%) of the amount of taxable net income in excess of two hundred fifty thousand dollars ($250,000).

(3) For tax years beginning after December 31, 1989, and before January 1, 2005, the following rates shall apply:

(a) Four percent (4%) of the first twenty-five thousand dollars ($25,000) of taxable net income;

(b) Five percent (5%) of the amount of taxable net income in excess of twenty-five thousand dollars ($25,000) but not in excess of fifty thousand dollars ($50,000);

(c) Six percent (6%) of the amount of taxable net income in excess of fifty thousand dollars ($50,000), but not in excess of one hundred thousand dollars ($100,000);

(d) Seven percent (7%) of the amount of taxable net income in excess of one hundred thousand dollars ($100,000), but not in excess of two hundred fifty thousand dollars ($250,000); and

(e) Eight and twenty-five one hundredths percent (8.25%) of the amount of taxable net income in excess of two hundred fifty thousand dollars ($250,000).

(4) For tax years beginning before January 1, 1990, and ending after December 31, 1989, the tax shall be the sum of the amounts determined in paragraphs (a) and (b) as follows:

(a) Apply the tax rates in subsection (2) of this section to the taxable net income for the year and multiply the result by a fraction, the numerator of which is the number of days from the first day of the taxable year through December 31, 1989, and the denominator of which is the total number of days of the taxable year; and

(b) Apply the tax rates in subsection (3) of this section to the taxable net income for the year and multiply the result by a fraction, the numerator of which is the number of days from January 1, 1990, through the last day of the taxable year and the denominator of which is the total number of days of the taxable year.

(5) For taxable years beginning~~[on or]~~ after ***December 31, 2004, and before*** January 1,

2007~~[2005]~~, corporations subject to the tax imposed by this section shall pay the greater of the tax computed under paragraph (a) of this subsection, the tax computed under paragraph (b)1. or 2. of this subsection, or the minimum tax imposed by subsection ***(7)***~~[(6)]~~ of this section. The tax computed under this subsection is as follows:

(a) 1. Four percent (4%) of the first fifty thousand dollars ($50,000) of taxable net income;

2. Five percent (5%) of taxable net income over fifty thousand dollars ($50,000) up to one hundred thousand dollars ($100,000); ***and***

3. Seven percent (7%) of taxable net income over one hundred thousand dollars ($100,000)~~[for taxable years beginning on or after January 1, 2005, and prior to January 1, 2007; and~~

~~4. For taxable years beginning on or after January 1, 2007, six percent (6%) of taxable net income over one hundred thousand dollars ($100,000)]~~; or

(b) An alternative minimum calculation of an amount equal to the lesser of the amount computed under subparagraph 1. or 2. of this paragraph:

1. Nine and one-half cents ($0.095) per one hundred dollars ($100) of the corporation's gross receipts. For purposes of this paragraph, "gross receipts" means the numerator of the sales factor under the provisions of KRS 141.120(8)(c); or

2. Seventy-five cents ($0.75) per one hundred dollars ($100) of the corporation's Kentucky gross profits.

(6) ***For taxable years beginning on or after January 1, 2007, corporations subject to the tax imposed by this section shall pay the greater of the tax computed under paragraph (a) of this subsection, the tax computed under paragraph (b)1. or 2. of this subsection, or the minimum tax imposed by subsection (7) of this section. The tax computed under this subsection is as follows:***

(a) 1. Four percent (4%) of the first fifty thousand dollars ($50,000) of taxable net income;

2. Five percent (5%) of taxable net income over fifty thousand dollars ($50,000) up to one hundred thousand dollars ($100,000); and

3. Six percent (6%) of taxable net income over one hundred thousand dollars ($100,000); or

(b) An alternative minimum calculation of an amount equal to the lesser of the amount computed under subparagraph 1. or 2. of this paragraph:

1. a. If the corporation's gross receipts from all sources within and without this state are two million dollars ($2,000,000) or less, the alternative minimum calculation shall be zero;

b. If the corporation's gross receipts from all sources within and without this state are greater than two million dollars ($2,000,000) but less than ten million dollars ($10,000,000), the alternative minimum calculation shall be nine and one-half cents ($0.095) per one hundred dollars ($100) of the corporation's gross receipts from doing business in this state, reduced by an amount equal to one thousand nine hundred dollars ($1,900) multiplied by a fraction, the numerator of which is ten million dollars ($10,000,000) less the amount of the corporation's gross receipts from doing business in this state for the taxable year, and the denominator of which is eight million dollars ($8,000,000), but in no case shall the result be less than zero;

c. If the corporation's gross receipts from all sources within and without this state are equal to or greater than ten million dollars ($10,000,000), the alternative minimum calculation shall be nine

and one-half cents ($0.095) per one hundred dollars ($100) of the corporation's gross receipts from doing business in this state; or

2. Seventy-five cents ($0.75) per one hundred dollars ($100) of the corporation's Kentucky gross profits. The entire amount of the corporation's gross receipts shall be considered when making the gross profits calculation.

3. For purposes of this paragraph, "gross receipts" means the numerator of the sales factor under the provisions of KRS 141.120(8)(c).

(7) A minimum of one hundred seventy-five dollars ($175) shall be due for the taxable year from each corporation subject to the tax imposed by this section, regardless of the application of any tax credits provided under this chapter or any other provision of the Kentucky Revised Statutes for which the business entity may qualify.

(8)~~[(7)]~~ The alternative minimum calculation portion of the tax computation provided in ***subsections***~~[subsection]~~ (5) ***and (6)*** of this section shall not apply to:

(a) Public service corporations subject to tax under KRS 136.120;

(b) Open-end registered investment companies organized under the laws of this state and registered under the Investment Company Act of 1940;

(c) Any property or facility which has been certified as a fluidized bed energy production facility as defined in KRS 211.390; and

(d) An alcohol production facility as defined in KRS 247.910.

(9)~~[(8)]~~ (a) As used in this subsection, "qualified exempt organization" means an entity listed in subsection (1)(a) to (h) of this section and shall not include any entity whose exempt status has been disallowed by the Internal Revenue Service.

(b) Notwithstanding any other provisions of this section or KRS 141.010, any

corporation of the type listed in KRS 141.010(24)(b) to (h) that is owned in whole or in part by a qualified exempt organization shall, in calculating its taxable net income, gross receipts, or Kentucky gross profits, exclude the proportionate share of its taxable net income, gross receipts, or Kentucky gross profits attributable to the ownership interest of the qualified exempt organization.

(c) Any corporation that reduces taxable net income, gross receipts, or Kentucky gross profits in accordance with paragraph (b) of this subsection shall disregard the ownership interest of the qualified exempt organization in determining the amount of credit available under KRS 141.420.

(d) The Department of Revenue may promulgate an administrative regulation to further define "qualified exempt organization" to include an entity for which exemption is constitutionally or legally required, or to exclude any entity created primarily for tax avoidance purposes with no legitimate business purpose.

(10) ~~[(9)]~~ (a) To the extent that a corporation identified in KRS 141.010(24)(b) to (h) is doing business in this state, any member, shareholder or partner of the corporation may elect to pay, on behalf of the corporation, his, her or its proportionate share of the tax imposed by this section against the corporation. If an election is made, the electing member, shareholder or partner shall be treated in the same manner as the corporation regarding the proportionate part of the tax paid by the member, shareholder or partner. An election made pursuant to this subsection shall not:

1. Be used by the Department of Revenue or the taxpayer to assert that the party making the election is doing business in Kentucky;
2. Result in an increase of the amount of credit allowable under KRS 141.420; or

3. Apply to any corporation that is required to be included in a consolidated return under KRS 141.200(2) to (5) and (9) to (12).

(b) The Department of Revenue shall prescribe forms and promulgate regulations to execute and administer the provisions of this subsection.

Section 2. KRS 141.011 is amended to read as follows:

(1) Notwithstanding any other provision of this chapter, the net operating loss carryback-carryforward deduction, including casualty loss, allowed under Section 172 of the Internal Revenue Code shall apply only to such losses incurred in taxable years beginning after December 31, 1979, and no such loss shall be carried back to taxable years beginning before January 1, 1980. Any casualty loss carryforward authorized by this section as it existed before January 1, 1980, may be carried forward as an itemized deduction until it has been fully deducted.

(2) The net operating loss carryback deduction shall not be allowed for losses incurred for taxable years beginning on or after January 1, 2005.

(3) For taxable years when the tax due under KRS 141.040 is based on the alternative minimum calculation provided in KRS 141.040~~[(5)(b)]~~, any net operating loss carryforward deduction that is utilized for the taxable year shall be the amount of taxable net income that exceeds the taxable net income equivalent of the alternative minimum calculation. For purposes of this subsection, "taxable net income equivalent" means the taxable net income that would generate an income tax equal to the alternative minimum calculation liability computed under KRS 141.040~~[(5)(b)]~~.

(4) For taxable years beginning on or after January 1, 2005, the net operating loss carryforward deduction of a corporation shall be reduced by the amount of distributive share income, loss, and deduction distributed to an individual or general partnership as defined in KRS 141.206.

(5) The portion of a net operating loss that is not used to offset the income of an

affiliate according to the limits in KRS 141.200(11) shall be available for carryforward, subject to the limitations contained in this section.

Section 3. KRS 141.200 is amended to read as follows:

(1) Subsections (2) to (7) of this section shall apply for taxable periods ending before January 1, 2005, and election periods beginning prior to January 1, 2005.

(2) As used in subsections (2) to (7) of this section, unless the context requires otherwise:

(a) "Affiliated group" means affiliated group as defined in Section 1504(a) of the Internal Revenue Code and related regulations;

(b) "Consolidated return" means a Kentucky corporation income tax return filed by members of an affiliated group in accordance with this section. The determinations and computations required by this chapter shall be made in accordance with the provisions of Section 1502 of the Internal Revenue Code and related regulations, except as required by differences between this chapter and the Internal Revenue Code. Corporations exempt from taxation under KRS 141.040 shall not be included in the return;

(c) "Separate return" means a Kentucky corporation income tax return in which only the transactions and activities of a single corporation are considered in making all determinations and computations necessary to calculate taxable net income, tax due, and credits allowed in accordance with the provisions of this chapter;

(d) "Corporation" means "corporation" as defined in Section 7701(a)(3) of the Internal Revenue Code; and

(e) "Election period" means the ninety-six (96) month period provided for in subsection (4)(d) of this section.

(3) Every corporation doing business in this state, except those exempt from taxation under KRS 141.040, shall, for each taxable year, file a separate return unless the

corporation was, for any part of the taxable year, a member of an affiliated group electing to file a consolidated return in accordance with subsection (4) of this section.

(4) (a) An affiliated group, whether or not filing a federal consolidated return, may elect to file a consolidated return which includes all members of the affiliated group.

(b) An affiliated group electing to file a consolidated return under paragraph (a) of this subsection shall be treated for all purposes as a single corporation under the provisions of this chapter. All transactions between corporations included in the consolidated return shall be eliminated in computing net income in accordance with KRS 141.010(13), and in determining the property, payroll, and sales factors in accordance with KRS 141.120. The gross receipts received by a public service company that is a member of an affiliated group shall be excluded from the calculation of the alternative minimum calculation under the provisions of KRS 141.040~~[(5)(b)]~~. For purposes of this paragraph, "public service company" has the same meaning as provided in KRS 136.120.

(c) Any election made in accordance with paragraph (a) of this subsection shall be made on a form prescribed by the department and shall be submitted to the department on or before the due date of the return including extensions for the first taxable year for which the election is made.

(d) Notwithstanding subsections (9) to (15) of this section, any election to file a consolidated return pursuant to paragraph (a) of this subsection shall be binding on both the department and the affiliated group for a period beginning with the first month of the first taxable year for which the election is made and ending with the conclusion of the taxable year in which the ninety-sixth consecutive calendar month expires.

(e) For each taxable year for which an affiliated group has made an election in

accordance with paragraph (a) of this subsection, the consolidated return shall include all corporations which are members of the affiliated group.

(5) Each corporation included as part of an affiliated group filing a consolidated return shall be jointly and severally liable for the income tax liability computed on the consolidated return, except that any corporation which was not a member of the affiliated group for the entire taxable year shall be jointly and severally liable only for that portion of the Kentucky consolidated income tax liability attributable to that portion of the year that the corporation was a member of the affiliated group.

(6) Every corporation return or report required by this chapter shall be executed by one (1) of the following officers of the corporation: the president, vice president, secretary, treasurer, assistant secretary, assistant treasurer, or chief accounting officer. The Department of Revenue may require a further or supplemental report of further information and data necessary for computation of the tax.

(7) In the case of a corporation doing business in this state that carries on transactions with stockholders or with other corporations related by stock ownership, by interlocking directorates, or by some other method, the department shall require information necessary to make possible accurate assessment of the income derived by the corporation from sources within this state. To make possible such assessment, the department may require the corporation to file supplementary returns showing information respecting the business of any or all individuals and corporations related by one (1) or more of these methods to the corporation. The department may require the return to show in detail the record of transactions between the corporation and any or all other related corporations or individuals.

(8) Subsections (9) to (14) of this section shall apply for taxable years beginning on or after January 1, 2005.

(9) As used in subsections (9) to (14) of this section:

(a) 1. "Affiliated group" means one (1) or more chains of includible

corporations connected through stock ownership, membership interest, or partnership interest with a common parent corporation if:

a. The common parent owns directly an ownership interest meeting the requirements of subparagraph 2. of this paragraph in at least one (1) other includible corporation; and

b. An ownership interest meeting the requirements of subparagraph 2. of this paragraph in each of the includible corporations, excluding the common parent, is owned directly by one (1) or more of the other corporations.

2. The ownership interest of any corporation meets the requirements of this paragraph if the ownership interest encompasses at least eighty percent (80%) of the voting power of all classes of ownership interests and has a value equal to at least eighty percent (80%) of the total value of all ownership interests;

(b) "Common parent corporation" means the member of an affiliated group that meets the ownership requirement of paragraph (a)1. of this subsection;

(c) "Foreign corporation" means a corporation that is organized under the laws of a country other than the United States and is related to a member of an affiliated group through stock ownership;

(d) "Includible corporation" means any corporation that is doing business in this state except:

1. Corporations exempt from corporation income tax under KRS 141.040(1)(a) to (h);

2. Foreign corporations;

3. Corporations with respect to which an election under Section 936 of the Internal Revenue Code is in effect for the taxable year;

4. Real estate investment trusts as defined in Section 856 of the Internal

Revenue Code;

5. Regulated investment companies as defined in Section 851 of the Internal Revenue Code;

6. A domestic international sales company as defined in Section 992(a)(1) of the Internal Revenue Code;

7. An S corporation as defined in Section 1361(a) of the Internal Revenue Code;

8. Any corporation that realizes a net operating loss whose Kentucky property, payroll, and sales factors pursuant to KRS 141.120(8) are de minimis; and

9. Any corporation for which the sum of the property, payroll and sales factors described in KRS 141.120(8) is zero;

(e) "Ownership interest" means stock, a membership interest in a limited liability company, or a partnership interest in a limited partnership or limited liability partnership;

(f) "Consolidated return" means a Kentucky corporation income tax return filed by members of an affiliated group in accordance with this section. The determinations and computations required by this chapter shall be made in accordance with the provisions of the Internal Revenue Code and related regulations, except as required by differences between this chapter and the Internal Revenue Code; and

(g) "Separate return" means a Kentucky corporation income tax return in which only the transactions and activities of a single corporation are considered in making all determinations and computations necessary to calculate taxable net income, tax due, and credits allowed in accordance with the provisions of this chapter.

(10) Every corporation doing business in this state except those exempt from taxation

under KRS 141.040(1)(a) to (h) shall, for each taxable year, file a separate return unless the corporation was, for any part of the taxable year:

(a) An includible corporation in an affiliated group;

(b) A common parent corporation doing business in this state;

(c) A qualified subchapter S Subsidiary that is included in the return filed by the Subchapter S parent corporation; or

(d) A qualified real estate investment trust subsidiary that is included in the return filed by the real estate investment trust parent.

(11) (a) An affiliated group, whether or not filing a federal consolidated return, shall file a consolidated return which includes all includible corporations.

(b) An affiliated group required to file a consolidated return under this subsection shall be treated for all purposes as a single corporation under the provisions of this chapter. All transactions between corporations included in the consolidated return shall be eliminated in computing net income in accordance with KRS 141.010(13), and in determining the property, payroll, and sales factors in accordance with KRS 141.120. Includible corporations that have incurred a net operating loss shall not deduct an amount that exceeds, in the aggregate, fifty percent (50%) of the income realized by the remaining includible corporations that did not realize a net operating loss. The portion of any net operating loss limited by the application of this subsection shall be available for carryforward in accordance with KRS 141.011. The Department of Revenue shall promulgate administrative regulations to establish the manner and extent to which net operating losses attributable to tax periods ending prior to January 1, 2005, may offset income of affiliated groups. The gross receipts received by a public service company that is a member of an affiliated group shall be excluded from the calculation of the alternative minimum calculation under KRS 141.040~~[(5)(b)]~~. For purposes of this

paragraph, "public service company" has the same meaning as provided in KRS 136.120.

(12) Each includible corporation included as part of an affiliated group filing a consolidated return shall be jointly and severally liable for the income tax liability computed on the consolidated return, except that any includible corporation which was not a member of the affiliated group for the entire taxable year shall be jointly and severally liable only for that portion of the Kentucky consolidated income tax liability attributable to that portion of the year that the corporation was a member of the affiliated group.

(13) Every corporation return or report required by this chapter shall be executed by one (1) of the following officers or management of the corporation: the president, vice president, secretary, treasurer, assistant secretary, assistant treasurer, chief accounting officer, manager, member, or partner. The Department of Revenue may require a further or supplemental report of further information and data necessary for computation of the tax.

(14) In the case of a corporation doing business in this state that carries on transactions with stockholders, members or partners, or with other corporations related by ownership, by interlocking directorates, or by some other method, the department shall require that information necessary to make possible an accurate assessment of the income derived by the corporation from sources within this state be provided. To make possible this assessment, the department may require the corporation to file supplementary returns showing information respecting the business of any or all individuals and corporations related by one (1) or more of these methods to the corporation. The department may require the return to show in detail the record of transactions between the corporation and any or all other related corporations or individuals.

(15) For any taxable year ending on or after December 31, 1995, except as provided

under this section and KRS 141.205, nothing in this chapter shall be construed as allowing or requiring the filing of:

(a) A combined return under the unitary business concept; or

(b) A consolidated return.

(16) No assessment of additional tax due for any taxable year ending on or before December 31, 1995, made after December 22, 1994, and based on requiring a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return, shall be effective or recognized for any purpose.

(17) No claim for refund or credit of a tax overpayment for any taxable year ending on or before December, 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return, shall be effective or recognized for any purpose.

(18) No corporation or group of corporations shall be allowed to file a combined return under the unitary business concept or a consolidated return for any taxable year ending before December 31, 1995, unless on or before December 22, 1994, the corporation or group of corporations filed an initial or amended return under the unitary business concept or consolidated return for a taxable year ending before December 22, 1994.

(19) This section shall not be construed to limit or otherwise impair the department's authority under KRS 141.205.

Section 4. KRS 141.347 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Approved company" shall have the same meaning as set forth in KRS 154.22-010;

(b) "Economic development project" shall have the same meaning as set forth in

KRS 154.22-010;

(c) "Tax credit" means the "tax credit" allowed in KRS 154.22-010 to 154.22-070; and

(d) "Gross receipts" means gross receipts as defined in KRS 141.040(5)(b) ***and (6)(b)***.

(2) An approved company shall determine the income tax credit as provided in this section.

(3) An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation subject to tax under KRS 141.040(1) shall:

(a) Compute the~~[income]~~ tax due at the applicable tax rates as provided by KRS 141.020 or~~[whichever of KRS]~~ 141.040~~[(5)(a) or (b) applies]~~ on net income as defined by KRS 141.010(11), taxable net income as defined by KRS 141.010(14), gross receipts, or Kentucky gross profits,~~[as the case may be,]~~ including income, gross receipts, or Kentucky gross profits from an economic development project; and

(b) Compute the~~[income]~~ tax due at the applicable tax rates as provided by KRS 141.020 or~~[whichever of KRS]~~ 141.040~~[(5)(a) or (b) applies]~~ on net income as defined by KRS 141.010(11), taxable net income as defined by KRS 141.010(14), gross receipts, or Kentucky gross profits,~~[as the case may be,]~~ excluding net income, gross receipts, or Kentucky gross profits attributable to an economic development project.

(c) The tax credit shall be the amount by which the tax computed under paragraph (a) of this subsection exceeds the tax computed under paragraph (b) of this subsection; however, the credit shall not exceed the limits set forth in KRS 154.22-050.

(4) (a) Notwithstanding any other provisions of this chapter, an approved company which is a general partnership not subject to tax under KRS 141.040 or a trust

not subject to tax under KRS 141.040 shall be subject to income tax on the net income attributable to an economic development project at the rates provided in KRS 141.020(2).

(b) The amount of the tax credit shall be the same as the amount of the tax computed in this subsection or, upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this paragraph shall be in satisfaction of the tax liability of the partners or beneficiaries of the general partnership or trust, and shall be paid on behalf of the partners or beneficiaries.

(c) The tax credit or estimated payment shall not exceed the limits set forth in KRS 154.22-050.

(d) If the tax computed in this section exceeds the credit, the excess shall be paid by the general partnership or trust at the times provided by KRS 141.160 for filing the returns.

(e) Any estimated tax payment made by the general partnership or trust in satisfaction of the tax liability of partners or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the partner or beneficiary.

(5) Notwithstanding any other provisions of this chapter, the net income subject to tax, the tax credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each partner's or beneficiary's distributive share of net income or credit of a general partnership or trust.

(6) If the economic development project is a totally separate facility:

(a) Net income attributable to the project for the purposes of subsections (3), (4), and (5) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and

losses allowed under this chapter directly attributable to the facility and overhead expenses apportioned to the facility; and

(b) Gross receipts or Kentucky gross profits attributable to the project for the purposes of subsection (3) of this section shall be determined under the separate accounting method reflecting only the gross receipts or Kentucky gross profits directly attributable to the facility.

(7) If the economic development project is an expansion to a previously existing facility:

(a) Net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under this chapter directly attributable to the facility, and the net income attributable to the economic development project for the purposes of subsections (3), (4), and (5) of this section shall be determined by apportioning the separate accounting net income of the entire facility to the economic development project by a formula approved by the Department of Revenue; and

(b) Gross receipts or Kentucky gross profits attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross receipts or Kentucky gross profits directly attributable to the facility, and gross receipts or Kentucky gross profits attributable to the economic development project for the purposes of subsection (3) of this section shall be determined by apportioning the separate accounting gross receipts or Kentucky gross profits of the entire facility to the economic development project by a formula approved by the Department of Revenue.

(8) If an approved company can show to the satisfaction of the Department of Revenue that the nature of the operations and activities of the approved company are such that it is not practical to use the separate accounting method to determine the net

income, gross receipts, or Kentucky gross profits from the facility at which the economic development project is located, the approved company shall determine net income, gross receipts, or Kentucky gross profits from the economic development project using an alternative method approved by the Department of Revenue.

(9) The Department of Revenue may issue administrative regulations and require the filing of forms designed by the Department of Revenue to reflect the intent of KRS 154.22-020 to 154.22-070 and the allowable income tax credit which an approved company may retain under KRS 154.22-020 to 154.22-070.

Section 5. KRS 141.390 is amended to read as follows:

(1) As used in this section:

(a) "Postconsumer waste" means any product generated by a business or consumer which has served its intended end use, and which has been separated from solid waste for the purposes of collection, recycling, composting, and disposition and which does not include secondary waste material or demolition waste;

(b) "Recycling equipment" means any machinery or apparatus used exclusively to process postconsumer waste material and manufacturing machinery used exclusively to produce finished products composed of substantial postconsumer waste materials;

(c) "Composting equipment" means equipment used in a process by which biological decomposition of organic solid waste is carried out under controlled aerobic conditions, and which stabilizes the organic fraction into a material which can easily and safely be stored, handled, and used in a environmentally acceptable manner;

(d) "Recapture period" means:

1. For qualified equipment with a useful life of five (5) or more years, the

period from the date the equipment is purchased to five (5) full years from that date; or

2. For qualified equipment with a useful life of less than five (5) years, the period from the date the equipment is purchased to three (3) full years from that date;

(e) "Useful life" means the period determined under Section 168 of the Internal Revenue Code;

(f) "Baseline tax liability" means the tax liability of the taxpayer for the most recent tax year ending prior to January 1, 2005; and

(g) "Major recycling project" means a project where the taxpayer:

1. Invests more than ten million dollars ($10,000,000) in recycling or composting equipment to be used exclusively in this state;

2. Has more than seven hundred fifty (750) full-time employees with an average hourly wage of more than three hundred percent (300%) of the federal minimum wage; and

3. Has plant and equipment with a total cost of more than five hundred million dollars ($500,000,000).

(2) (a) A taxpayer that purchases recycling or composting equipment to be used exclusively within this state for recycling or composting postconsumer waste materials shall be entitled to a credit against the income taxes imposed pursuant to this chapter, including any tax due under the provisions of KRS 141.040~~[(5)(b)]~~, in an amount equal to fifty percent (50%) of the installed cost of the recycling or composting equipment. The amount of credit claimed in the tax year during which the recycling equipment is purchased shall not exceed ten percent (10%) of the amount of the total credit allowable and shall not exceed twenty-five percent (25%) of the total of each tax liability which would be otherwise due.

(b) For taxable years beginning after December 31, 2004, a taxpayer that has a major recycling project containing recycling or composting equipment to be used exclusively within this state for recycling or composting postconsumer waste material shall be entitled to a credit against the income taxes imposed pursuant to this chapter, including any tax due under the provisions of KRS 141.040~~[(5)(b)]~~, in an amount equal to fifty percent (50%) of the installed cost of the recycling or composting equipment. The credit described in this paragraph shall be limited to a period of ten (10) years commencing with the approval of the recycling credit application. In each taxable year, the amount of credits claimed for all major recycling projects shall be limited to:

1. Fifty percent (50%) of the excess of the total of each tax liability over the baseline tax liability of the taxpayer; or
2. Two million five hundred thousand dollars ($2,500,000), whichever is less.

(c) A taxpayer with one (1) or more major recycling projects shall be entitled to a total credit including the amount computed in paragraph (a) of this subsection plus the amount of credit computed in paragraph (b) of this subsection.

(d) A taxpayer shall not be permitted to utilize a credit computed under paragraph (a) of this subsection and a credit computed under paragraph (b) of this subsection on the same recycling or composting equipment.

(3) Application for a tax credit shall be made to the Department of Revenue on or before the first day of the seventh month following the close of the taxable year in which the recycling or composting equipment is purchased. The application shall include a description of each item of recycling equipment purchased, the date of purchase and the installed cost of the recycling equipment, a statement of where the recycling equipment is to be used, and any other information as the Department of Revenue may require. The Department of Revenue shall review all applications

received to determine whether expenditures for which credits are required meet the requirements of this section and shall advise the taxpayer of the amount of credit for which the taxpayer is eligible under this section. Any corporation as defined in KRS 141.010(24)(b) to (h) may elect to claim the balance of a recycling credit approved prior to March 18, 2005, against its tax liability imposed under KRS 141.040. The election shall be binding on the taxpayer and the Department of Revenue until the balance of the recycling credit is used.

(4) Except as provided in subsection (6) of this section, if a taxpayer that receives a tax credit under this section sells, transfers, or otherwise disposes of the qualifying recycling or composting equipment before the end of the recapture period, the tax credit shall be redetermined under subsection (5) of this section. If the total credit taken in prior taxable years exceeds the redetermined credit, the difference shall be added to the taxpayer's tax liability under this chapter for the taxable year in which the sale, transfer, or disposition occurs. If the redetermined credit exceeds the total credit already taken in prior taxable years, the taxpayer shall be entitled to use the difference to reduce the taxpayer's tax liability under this chapter for the taxable year in which the sale, transfer, or disposition occurs.

(5) The total tax credit allowable under subsection (2) of this section for equipment that is sold, transferred, or otherwise disposed of before the end of the recapture period shall be adjusted as follows:

(a) For equipment with a useful life of five (5) or more years that is sold, transferred, or otherwise disposed of:

1. One (1) year or less after the purchase, no credit shall be allowed.
2. Between one (1) year and two (2) years after the purchase, twenty percent (20%) of the total allowable credit shall be allowed.
3. Between two (2) and three (3) years after the purchase, forty percent (40%) of the total allowable credit shall be allowed.

4. Between three (3) and four (4) years after the purchase, sixty percent (60%) of the total allowable credit shall be allowed.

5. Between four (4) and five (5) years after the purchase, eighty percent (80%) of the total allowable credit shall be allowed.

(b) For equipment with a useful life of less than five (5) years that is sold, transferred, or otherwise disposed of:

1. One (1) year or less after the purchase, no credit shall be allowed.

2. Between one (1) year and two (2) years after the purchase, thirty-three percent (33%) of the total allowable credit shall be allowed.

3. Between two (2) and three (3) years after the purchase, sixty-seven percent (67%) of the total allowable credit shall be allowed.

(6) Subsections (4) and (5) of this section shall not apply to transfers due to death, or transfers due merely to a change in business ownership or organization as long as the equipment continues to be used exclusively in recycling or composting, or transactions to which Section 381(a) of the Internal Revenue Code applies.

(7) The Department of Revenue may promulgate administrative regulations to carry out the provisions of this section.

Section 6. KRS 141.400 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Approved company" shall have the same meaning as set forth in KRS 154.28-010;

(b) "Economic development project" shall have the same meaning as set forth in KRS 154.28-010;

(c) "Tax credit" means the "tax credit" allowed in KRS 154.28-090; and

(d) "Gross receipts" means gross receipts as defined in KRS 141.040(5)(b) ***and (6)(b)***.

(2) An approved company shall determine the income tax credit as provided in this

section.

(3) An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation subject to tax under KRS 141.040(1) shall:

(a) Compute the~~[income]~~ tax due at the applicable tax rates as provided by KRS 141.020 or~~[whichever of KRS]~~ 141.040~~[(5)(a) or (b) applies]~~ on net income as defined by KRS 141.010(11), taxable net income as defined by KRS 141.010(14), gross receipts, or Kentucky gross profits,~~[as the case may be,]~~ including income, gross receipts, or Kentucky gross profits from an economic development project;

(b) Compute the~~[income]~~ tax due at the applicable tax rates as provided by KRS 141.020 or~~[whichever of KRS]~~ 141.040~~[(5)(a) or (b) applies]~~ on net income as defined by KRS 141.010(11), taxable net income as defined by KRS 141.010(14), gross receipts, or Kentucky gross profits,~~[as the case may be,]~~ excluding net income, gross receipts, or Kentucky gross profits attributable to an economic development project; and

(c) The tax credit shall be the amount by which the tax computed under paragraph (a) of this subsection exceeds the tax computed under paragraph (b) of this subsection; however, the credit shall not exceed the limits set forth in KRS 154.28-090.

(4) (a) Notwithstanding any other provisions of this chapter, an approved company which is a general partnership not subject to tax under KRS 141.040, or a trust not subject to tax under KRS 141.040 shall be subject to income tax on the net income attributable to an economic development project at the rates provided in KRS 141.020(2).

(b) The amount of the tax credit shall be the same as the amount of the tax computed in this subsection or, upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated

tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this paragraph shall be in satisfaction of the tax liability of the partners or beneficiaries of the general partnership or trust, and shall be paid on behalf of the partners or beneficiaries.

(c) The tax credit or estimated payment shall not exceed the limits set forth in KRS 154.28-090.

(d) If the tax computed in this section exceeds the credit, the excess shall be paid by the general partnership or trust at the times provided by KRS 141.160 for filing the returns.

(e) Any estimated tax payment made by the general partnership or trust in satisfaction of the tax liability of partners or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the partner or beneficiary.

(5) Notwithstanding any other provisions of this chapter, the net income subject to tax, the tax credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each partner's or beneficiary's distributive share of net income or credit of a partnership or trust.

(6) If the economic development project is a totally separate facility:

(a) Net income attributable to the project for the purposes of subsections (3), (4), and (5) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under this chapter directly attributable to the facility and overhead expenses apportioned to the facility; and

(b) Gross receipts or Kentucky gross profits attributable to the project for purposes of subsection (3) of this section shall be determined under the separate accounting method reflecting only the gross receipts or Kentucky gross profits directly attributable to the facility.

(7) If the economic development project is an expansion to a previously existing facility:

(a) Net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under this chapter directly attributable to the facility and overhead expenses apportioned to the facility, and the net income attributable to the economic development project for the purposes of subsections (3), (4), and (5) of this section shall be determined by apportioning the separate accounting net income of the entire facility to the economic development project by a formula approved by the Department of Revenue; and

(b) Gross receipts or Kentucky gross profits attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross receipts or Kentucky gross profits directly attributable to the facility, and gross receipts or Kentucky gross profits attributable to the economic development project for the purposes of subsection (3) of this section shall be determined by apportioning the separate accounting gross receipts or Kentucky gross profits of the entire facility to the economic development project by a formula approved by the Department of Revenue.

(8) If an approved company can show to the satisfaction of the Department of Revenue that the nature of the operations and activities of the approved company are such that it is not practical to use the separate accounting method to determine the net income, gross receipts, or Kentucky gross profits from the facility at which the economic development project is located, the approved company shall determine net income, gross receipts, or Kentucky gross profits from the economic development project using an alternative method approved by the Department of Revenue.

(9) The Department of Revenue may issue administrative regulations and require the filing of forms designed by the Department of Revenue to reflect the intent of KRS 154.22-020 to 154.22-070 and KRS 154.28-010 to 154.28-090 and this section and the allowable tax credit which an approved company may retain under KRS 154.22-020 to 154.22-070 and KRS 154.28-010 to 154.28-090 and this section.

Section 7. KRS 141.401 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Approved company" shall have the same meaning as set forth in KRS 154.23-010;

(b) "Economic development project" shall have the same meaning as set forth in KRS 154.23-010;

(c) "Tax credit" means the "tax credit" allowed under KRS 154.23-005 to 154.23-079; and

(d) "Gross receipts" means gross receipts as defined in KRS 141.040(5)(b) ***and (6)(b)***.

(2) An approved company shall determine the income tax credit as provided in this section.

(3) An approved company that is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation subject to tax under KRS 141.040(1) shall:

(a) Compute the~~[income]~~ tax due at the applicable tax rates as provided by KRS 141.020 or~~[whichever of KRS]~~ 141.040~~[(5)(a) or (b) applies]~~ on net income as defined by KRS 141.010(11), taxable net income as defined by KRS 141.010(14), gross receipts, or Kentucky gross profits,~~[as the case may be,]~~ including income, gross receipts, or Kentucky gross profits from an economic development project; and

(b) Compute the~~[income]~~ tax due at the applicable tax rates as provided by KRS 141.020 or~~[whichever of KRS]~~ 141.040~~[(5)(a) or (b) applies]~~ on net income

as defined by KRS 141.010(11), taxable net income as defined by KRS 141.010(14), gross receipts, or Kentucky gross profits,~~[as the case may be,]~~ excluding net income, gross receipts, or Kentucky gross profits attributable to an economic development project.

(c) The tax credit shall be the amount by which the tax computed under paragraph (a) of this subsection exceeds the tax computed under paragraph (b) of this subsection; however, the credit shall not exceed the limits set forth in KRS 154.23-005 to 154.23-079.

(4) Notwithstanding any other provisions of this chapter, an approved company that is a general partnership not subject to the tax imposed by KRS 141.040 or trust not subject to the tax imposed by KRS 141.040 shall be subject to income tax on the net income attributable to an economic development project at the rates provided in KRS 141.020(2), as follows:

(a) The amount of the tax credit shall be the same as the amount of the tax computed in this subsection or, upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made in this paragraph shall be in satisfaction of the tax liability of the partners or beneficiaries of the general partnership or trust, and shall be paid on behalf of the partners or beneficiaries.

(b) The tax credit or estimated payment shall not exceed the limits set forth in KRS 154.23-005 to 154.23-079.

(c) If the tax computed in this section exceeds the credit, the excess shall be paid by the general partnership or trust at the times provided by KRS 141.160 for filing the returns.

(d) Any estimated tax payment made by the general partnership or trust in satisfaction of the tax liability of partners or beneficiaries shall not be treated

as taxable income subject to Kentucky income tax by the partner or beneficiary.

(5) Notwithstanding any other provisions of this chapter, the net income subject to tax, the tax credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each partner's or beneficiary's distributive share of net income or credit of a general partnership or trust.

(6) If the economic development project is a totally separate facility:

(a) Net income attributable to the project for the purposes of subsections (3), (4), and (5) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under this chapter directly attributable to the facility and overhead expenses apportioned to the facility; and

(b) Gross receipts or Kentucky gross profits attributable to the project for the purposes of subsection (3) of this section shall be determined under the separate accounting method reflecting only the gross receipts or Kentucky gross profits directly attributable to the facility.

(7) If the economic development project is an expansion to a previously existing facility:

(a) Net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under this chapter directly attributable to the facility, and the net income attributable to the economic development project for the purposes of subsections (3), (4), and (5) of this section shall be determined by apportioning the separate accounting net income of the entire facility to the economic development project by a formula approved by the Department of Revenue; and

(b) Gross receipts or Kentucky gross profits attributable to the entire facility shall

be determined under the separate accounting method reflecting only the gross receipts or Kentucky gross profits directly attributable to the facility, and gross receipts or Kentucky gross profits attributable to the economic development project for the purposes of subsection (3) of this section shall be determined by apportioning the separate accounting gross receipts or Kentucky gross profits of the entire facility to the economic development project by a formula approved by the Department of Revenue.

(8) If an approved company can show to the satisfaction of the Department of Revenue that the nature of the operations and activities of the approved company are such that it is not practical to use the separate accounting method to determine the net income, gross receipts, or Kentucky gross profits from the facility at which the economic development project is located, the approved company shall determine net income, gross receipts, or Kentucky gross profits from the economic development project using an alternative method approved by the Department of Revenue.

(9) The Department of Revenue may issue administrative regulations and require the filing of forms designed by the Department of Revenue to reflect the intent of KRS 154.23-005 to 154.23-079 and the allowable income tax credit that an approved company may retain under KRS 154.23-005 to 154.23-079.

Section 8. KRS 141.403 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Approved company" shall have the same meaning as set forth in KRS 154.26-010;

(b) "Economic revitalization project" shall have the same meaning as set forth in KRS 154.26-010;

(c) "Tax credit" means the tax credit allowed in KRS 154.26-090; and

(d) "Gross receipts" means gross receipts as defined in KRS 141.040(5)(b) ***and***

(6)(b).

(2) An approved company shall determine the income tax credit as provided in this section.

(3) An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation subject to tax under KRS 141.040(1) shall:

(a) Compute the~~[income]~~ tax due at the applicable tax rates as provided by KRS 141.020 or~~[whichever of KRS]~~ 141.040~~[(5)(a) or (b) applies]~~ on net income as defined by KRS 141.010(11) or taxable net income as defined by KRS 141.010(14), gross receipts, or Kentucky gross profits,~~[as the case may be,]~~ including income, gross receipts, or Kentucky gross profits from an economic revitalization project;

(b) Compute the~~[income]~~ tax due at the applicable tax rates as provided by KRS 141.020 or~~[whichever of KRS]~~ 141.040~~[(5)(a) or (b) applies]~~ on net income as defined by KRS 141.010(11), taxable net income as defined by KRS 141.010(14), gross receipts, or Kentucky gross profits,~~[as the case may be,]~~ excluding net income, gross receipts, or Kentucky gross profits attributable to an economic revitalization project; and

(c) The tax credit shall be the amount by which the tax computed under paragraph (a) of this subsection exceeds the tax computed under paragraph (b) of this subsection; however, the credit shall not exceed the limits set forth in KRS 154.26-090.

(4) (a) Notwithstanding any other provisions of this chapter, an approved company which is a general partnership not subject to the tax imposed by KRS 141.040 or trust not subject to the tax imposed KRS 141.040 shall be subject to income tax on the net income attributable to an economic revitalization project at the rates provided in KRS 141.020(2).

(b) The amount of the tax credit shall be the same as the amount of the tax

computed in this subsection or, upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this paragraph shall be in satisfaction of the tax liability of the partners or beneficiaries of the general partnership or trust, and shall be paid on behalf of the partners or beneficiaries.

(c) The tax credit or estimated payment shall not exceed the limits set forth in KRS 154.26-090.

(d) If the tax computed in this section exceeds the tax credit, the difference shall be paid by the general partnership or trust at the times provided by KRS 141.160 for filing the returns.

(e) Any estimated tax payment made by the general partnership or trust in satisfaction of the tax liability of partners or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the partner or beneficiary.

(5) Notwithstanding any other provisions of this chapter, the net income subject to tax, the tax credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each partner's or beneficiary's distributive share of net income or credit of a general partnership or trust.

(6) If the economic revitalization project is a totally separate facility:

(a) Net income attributable to the project for the purposes of subsections (3), (4), and (5) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility; and

(b) Gross receipts or Kentucky gross profits attributable to the project for purposes of subsection (3) of this section shall be determined under the

separate accounting method reflecting only the gross receipts or Kentucky gross profits directly attributable to the facility.

(7) If the economic revitalization project is an expansion to a previously existing facility:

(a) Net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility, and the net income attributable to the economic revitalization project for the purposes of subsections (3), (4), and (5) of this section shall be determined by apportioning the separate accounting net income of the entire facility to the economic revitalization project by a formula approved by the Department of Revenue; and

(b) Gross receipts or Kentucky gross profits attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross receipts or Kentucky gross profits directly attributable to the facility. Gross receipts or Kentucky gross profits attributable to the economic revitalization project for purposes of subsection (3) of this section shall be determined by apportioning the separate accounting gross receipts or Kentucky gross profits of the entire facility to the economic revitalization project pursuant to a formula approved by the Department of Revenue.

(8) If an approved company can show to the satisfaction of the Department of Revenue that the nature of the operations and activities of the approved company are such that it is not practical to use the separate accounting method to determine the net income, gross receipts, or Kentucky gross profits from the facility at which the economic revitalization project is located, the approved company shall determine net income, gross receipts, or Kentucky gross profits from the economic

revitalization project using an alternative method approved by the Department of Revenue.

(9) The Department of Revenue may issue administrative regulations and require the filing of forms designed by the Department of Revenue to reflect the intent of KRS 154.26-010 to 154.26-100 and the allowable income tax credit which an approved company may retain under KRS 154.26-010 to 154.26-100.

Section 9. KRS 141.405 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Approved company" has the same meaning as set forth in KRS 154.12-2084;

(b) "Skills training investment credit" has the same meaning as set forth in KRS 154.12-2084; and

(c) "Gross receipts" means gross receipts as defined in KRS 141.040(5)(b) ***and (6)(b)***.

(2) An approved company shall determine the income tax credit as provided in this section.

(3) (a) An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation subject to tax under KRS 141.040(1) shall compute the~~[income]~~ tax due at the applicable tax rates as provided by KRS 141.020 or~~[whichever of KRS]~~ 141.040~~[(5)(a) or (b) applies]~~ on net income as defined by KRS 141.010(11), taxable net income as defined by KRS 141.010(14), gross receipts, or Kentucky gross profits~~[, as the case may be]~~;

(b) The amount of the skills training investment credit that the Bluegrass State Skills Corporation has given final approval for under KRS 154.12-2088(6) shall be applied against the amount of the tax computed under paragraph (a) of this subsection; and

(c) The skills training investment credit payment shall not exceed the amount of

the final approval awarded by the Bluegrass State Skills Corporation under KRS 154.12-2088(6).

(4) (a) In the case of an approved company which is a general partnership not subject to the tax imposed by KRS 141.040, the amount of the tax credit awarded by the Bluegrass State Skills Corporation in KRS 154.12-2088(6) shall be apportioned among the partners thereof at the same ratio as the partners' distributive shares of income are determined for the tax year during which the final authorization resolution is adopted by the Bluegrass State Skills Corporation in KRS 154.12-2088(6).

(b) The amount of the tax credit apportioned to each partner that may be claimed in any tax year of the partner shall be determined in accordance with KRS 154.12-2086.

(5) (a) In the case of an approved company that is a trust not subject to the tax imposed by KRS 141.040, the amount of the tax credit awarded by the Bluegrass State Skills Corporation in KRS 154.12-2088(6) shall be apportioned to the trust and the beneficiaries on the basis of the income of the trust allocable to each for the tax year during which the final authorizing resolution is adopted by the Bluegrass State Skills Corporation in KRS 154.12-2088(6).

(b) The amount of tax credit apportioned to each trust or beneficiary that may be claimed in any tax year of the trust or beneficiary shall be determined in accordance with KRS 154.12-2086.

(6) The Department of Revenue may promulgate administrative regulations in accordance with KRS Chapter 13A adopting forms and procedures for the reporting of the credit allowed in KRS 154.12-2084 to 154.12-2089.

Section 10. KRS 141.407 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Approved company" shall have the same meaning as set forth in KRS 154.24-010;

(b) "Economic development project" shall have the same meaning as economic development project as set forth in KRS 154.24-010;

(c) "Tax credit" means the tax credit allowed in KRS 154.24-020 to 154.24-150; and

(d) "Gross receipts" means gross receipts as defined in KRS 141.040(5)(b) ***and (6)(b)***.

(2) An approved company shall determine the tax credit as provided in this section.

(3) An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation subject to tax under KRS 141.040(1) shall:

(a) Compute the~~[income]~~ tax due at the applicable tax rates as provided by KRS 141.020 or~~[whichever of KRS]~~ 141.040~~[(5)(a) or (b) applies]~~ on net income as defined by KRS 141.010(11), taxable net income as defined by KRS 141.010(14), gross receipts, or Kentucky gross profits,~~[as the case may be,]~~ including income, gross receipts, or Kentucky gross profits from an economic development project;

(b) Compute the~~[income]~~ tax due at the applicable tax rates as provided by KRS 141.020 or~~[whichever of KRS]~~ 141.040~~[(5)(a) or (b) applies]~~ on net income as defined by KRS 141.010(11), taxable net income as defined by KRS 141.010(14), gross receipts, or Kentucky gross profits,~~[as the case may be,]~~ excluding net income, gross receipts, or Kentucky gross profits attributable to an economic development project; and

(c) The tax credit shall be the amount by which the tax computed under paragraph (a) of this subsection exceeds the tax computed under paragraph (b) of this subsection; however, the credit shall not exceed the limits set forth in KRS 154.24-020 to 154.24-150.

(4) (a) Notwithstanding any other provisions of this chapter, an approved company which is a general partnership not subject to the tax imposed by KRS 141.040 or a trust not subject to the tax imposed by KRS 141.040 shall be subject to income tax on the net income attributable to an economic development project at the rates provided in KRS 141.020(2).

(b) The amount of the tax credit shall be the same as the amount of the tax computed in this subsection or, upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this paragraph shall be in satisfaction of the tax liability of the partners or beneficiaries of the general partnership or trust, and shall be paid on behalf of the partners or beneficiaries.

(c) The tax credit or estimated payment shall not exceed the limits set forth in KRS 154.24-020 to 154.24-150.

(d) If the tax computed herein exceeds the credit, the excess shall be paid by the general partnership or trust at the times provided by KRS 141.160 for filing the returns.

(e) Any estimated tax payment made by the general partnership or trust in satisfaction of the tax liability of partners or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the partner or beneficiary.

(5) Notwithstanding any other provisions of this chapter, the net income subject to tax, the tax credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each partner's or beneficiary's distributive share of net income or credit of a general partnership or trust.

(6) If the economic development project is a totally separate facility:

(a) Net income attributable to the project for the purposes of subsections (3), (4),

and (5) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility; and

(b) Gross receipts or Kentucky gross profits attributable to the project for the purposes of subsection (3) of this section shall be determined under the separate accounting method reflecting only the gross receipts or Kentucky gross profits directly attributable to the facility.

(7) If the economic development project is an expansion to a previously existing facility:

(a) Net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility, and the net income attributable to the economic development project for the purposes of subsections (3), (4), and (5) of this section shall be determined by apportioning the separate accounting net income of the entire facility to the economic development project by a formula approved by the Department of Revenue; and

(b) Gross receipts or Kentucky gross profits attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross receipts or Kentucky gross profits directly attributable to the facility, and gross receipts or Kentucky gross profits attributable to the economic development project for the purposes of subsection (3) of this section shall be determined by apportioning the separate accounting gross receipts or Kentucky gross profits of the entire facility to the economic development project by a formula approved by the Department of Revenue.

(8) If an approved company can show to the satisfaction of the Department of Revenue that the nature of the operations and activities of the approved company are such that it is not practical to use the separate accounting method to determine the net income, gross receipts, or Kentucky gross profits from the facility at which the economic development project is located, the approved company shall determine net income, gross receipts, or Kentucky gross profits from the economic development project using an alternative method approved by the Department of Revenue.

(9) The Department of Revenue may promulgate administrative regulations and require the filing of forms designed by the Department of Revenue to reflect the intent of KRS 154.24-010 to 154.24-150 and the allowable income tax credit which an approved company may retain under KRS 154.24-010 to 154.24-150.

Section 11. KRS 141.410 is amended to read as follows:

As used in KRS 141.410 to 141.414, unless the context requires otherwise:

(1) "Approved costs" means the costs incurred during the taxable year by a qualified farming operation for training and improving the skills of managers and employees involved in a networking project.

(2) "Business network" means a formalized, collaborative mechanism organized by and operating among three (3) or more qualified farming operations, industrial entities, business enterprises, or private sector firms for the purposes of, but not limited to: pooling expertise; improving responses to changing technology or markets; lowering the risks to individual entities of accelerated modernization; encouraging new technology investments, new market development, and employee skills improvement; and developing a system of collective intelligence among participating entities.

(3) "Food producing facilities" means establishments that manufacture or process foods and beverages for human consumption, and which are included under the three (3)

digit NAICS code three hundred eleven (311).

(4) "Networking project" means a project by which farmers and other entities involved in the production of food join together to form a network approved by the Cabinet for Economic Development for the purpose of producing or expanding the production of crops or livestock necessary for the establishment or expansion of secondary food-producing facilities in Kentucky.

(5) "Qualified farming operation" means an individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, or institution, engaged in farming in Kentucky that provides raw materials for food-producing facilities in Kentucky, and that purchases new buildings or equipment, or that incurs training expenses, to support its participation in a networking project.

(6) "NAICS code" means the classification system grouping business operations or enterprises as published in the North American Industry Classification System United States Manual published by Convergence Working Group and the United States Office of Management and Budget, 2002 edition.

(7) "Gross receipts" means gross receipts as defined in KRS 141.040(5)(b) ***or (6)(b)***.

Section 12. KRS 141.414 is amended to read as follows:

(1) A qualified farming operation which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation subject to tax under KRS 141.040~~[(1)]~~ shall:

(a) Compute the~~[income]~~ tax due at the applicable tax rates as provided by KRS 141.020 or~~[whichever of KRS]~~ 141.040~~[(5)(a) or (b) applies]~~ on net income as defined by KRS 141.010(11), taxable net income as defined by KRS 141.010(14), gross receipts, or Kentucky gross profits,~~[as the case may be,]~~ including income, gross receipts, or Kentucky gross profits from the qualified farming operation's participation in a networking project.

(b) Compute the~~[income]~~ tax due at the applicable tax rates as provided by KRS

141.020 or~~[whichever of KRS]~~ 141.040~~[(5)(a) or (b) applies]~~ on net income as defined by KRS 141.010(11), taxable net income as defined by KRS 141.010(14), gross receipts, or Kentucky gross profits,~~[as the case may be,]~~ excluding net income, gross receipts, or Kentucky gross profits attributable to the qualified farming operation's participation in a networking project; and

(c) Be entitled to a tax credit in the amount by which the tax computed under paragraph (a) of this subsection exceeds the tax computed under paragraph (b) of this subsection. The credit shall not exceed the farming operation's approved costs, as defined in KRS 141.410.

(2) Notwithstanding any other provisions of this chapter, a qualified farming operation which is a general partnership not subject to the tax imposed by KRS 141.040 or trust not subject to the tax imposed by KRS 141.040 shall be subject to income tax on the net income attributable to its participation in a networking project at the rates provided in KRS 141.020(2), and the amount of the tax credit shall be the same as the amount of the tax computed in this subsection. The credit shall not exceed the farming operation's approved costs, as defined in KRS 141.410. If the tax computed in this subsection exceeds the tax credit, the difference shall be paid by the general partnership or trust at the times provided by KRS 141.160 for filing the returns.

(3) Notwithstanding any other provisions of this chapter, the net income subject to tax and the tax credit determined under subsection (2) of this section shall be excluded in determining each partner's or beneficiary's distributive share of net income or credit of a partnership or trust.

(4) If the networking entity is a separate facility:

(a) Net income attributable to the project for the purposes of subsections (1), (2), and (3) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the project and

overhead expenses apportioned to the facility; and

(b) Gross receipts or Kentucky gross profits attributable to the project for the purposes of subsection (1) of this section shall be determined under the separate accounting method reflecting only the gross receipts or Kentucky gross profits directly attributable to the facility.

(5) If the networking project is an expansion to a previously existing farming operation:

(a) Net income attributable to the entire operation shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under this chapter directly attributable to the farming operation's participation in the networking project and overhead expenses apportioned to the networking project, and the net income attributable to the networking project for the purposes of subsections (1), (2), and (3) of this section shall be determined by apportioning the separate accounting net income of the entire networking project to the networking project by a formula approved by the Department of Revenue; and

(b) Gross receipts or Kentucky gross profits attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross receipts or Kentucky gross profits directly attributable to the facility, and gross receipts or Kentucky gross profits attributable to the economic development project for the purposes of subsection (1) of this section shall be determined by apportioning the separate accounting gross receipts or Kentucky gross profits of the entire facility to the economic development project by a formula approved by the Department of Revenue.

(6) If an approved company can show to the satisfaction of the Department of Revenue that the nature of the operations and activities of the approved farming operation are such that it is not practical to use the separate accounting method to determine the net income, gross receipts, or Kentucky gross profits from the networking project,

the approved farming operation shall determine net income, gross receipts, or Kentucky gross profits from its participation in the networking project using an alternative method approved by the Department of Revenue.

(7) The Department of Revenue may promulgate administrative regulations pursuant to KRS Chapter 13A and require the filing of forms designed by the Department of Revenue necessary to effectuate KRS 141.0101 and KRS 141.410 to 141.414 and the allowable income tax credit which an approved farming operation may retain under the provisions of KRS 141.412 and this section.

Section 13. KRS 141.415 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Approved company" has the same meaning as set forth in KRS 154.34-010;

(b) "Reinvestment project" has the same meaning as set forth in KRS 154.34-010;

(c) "Tax credit" means the tax credit allowed in KRS 154.34-080; and

(d) "Gross receipts" means gross receipts as defined in KRS 141.040(5)(b) ***and (6)(b)***.

(2) An approved company shall determine the income tax credit as provided in this section.

(3) An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation subject to tax under KRS 141.040(1) shall:

(a) Compute the~~[income]~~ tax due at the applicable tax rates as provided by KRS 141.020 or~~[whichever of KRS]~~ 141.040~~[(5)(a) or (b) applies]~~ on net income as defined by KRS 141.010(11), taxable net income as defined by KRS 141.010(14), gross receipts, or Kentucky gross profits,~~[as the case may be,]~~ including income, gross receipts, or Kentucky gross profits from a reinvestment project;

(b) Compute the~~[income]~~ tax due at the applicable tax rates as provided by KRS 141.020 or~~[whichever of KRS]~~ 141.040~~[(5)(a) or (b) applies]~~ on net income

as defined by KRS 141.010(11), taxable net income as defined by KRS 141.010(14), gross receipts, or Kentucky gross profits,~~[as the case may be,]~~ excluding net income, gross receipts, or Kentucky gross profits attributable to a reinvestment project; and

(c) The tax credit shall be the amount by which the tax computed under paragraph (a) of this subsection exceeds the tax computed under paragraph (b) of this subsection; however, the credit shall not exceed the limits set forth in KRS 154.34-080.

(4) (a) Notwithstanding any other provisions of this chapter, an approved company which is a general partnership not subject to the tax imposed by KRS 141.040 or trust not subject to the tax imposed by KRS 141.040 shall be subject to income tax on the net income attributable to a reinvestment project at the rates provided in KRS 141.020(2).

(b) The amount of the tax credit shall be the same as the amount of the tax computed in this subsection or, upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this paragraph shall be in satisfaction of the tax liability of the partners or beneficiaries of the general partnership or trust, and shall be paid on behalf of the partners or beneficiaries.

(c) The tax credit or estimated payment shall not exceed the limits set forth in KRS 154.34-080.

(d) If the tax computed in this section exceeds the tax credit, the difference shall be paid by the general partnership or trust at the times provided by KRS 141.160 for filing the returns.

(e) Any estimated tax payment made by the general partnership or trust in satisfaction of the tax liability of partners or beneficiaries shall not be treated

as taxable income subject to Kentucky income tax by the partner or beneficiary.

(5) Notwithstanding any other provisions of this chapter, the net income subject to tax, the tax credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each partner's or beneficiary's distributive share of net income or credit of a general partnership or trust.

(6) If the reinvestment project is a totally separate facility:

(a) Net income attributable to the project for the purposes of subsections (3), (4), and (5) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility; and

(b) Gross receipts or Kentucky gross profits attributable to the project for the purposes of subsection (3) of this section shall be determined under the separate accounting method reflecting only the gross receipts or Kentucky gross profits directly attributable to the facility.

(7) If the reinvestment project is an expansion to a previously existing facility:

(a) Net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility, and the net income attributable to the reinvestment project for the purposes of subsections (3), (4), and (5) of this section shall be determined by apportioning the separate accounting net income of the entire facility to the reinvestment project by a formula approved by the Department of Revenue; and

(b) Gross receipts or Kentucky gross profits attributable to the entire facility shall

be determined under the separate accounting method reflecting only the gross receipts or Kentucky gross profits directly attributable to the facility, and gross receipts or Kentucky gross profits attributable to the economic development project for the purposes of subsection (3) of this section shall be determined by apportioning the separate accounting gross receipts or Kentucky gross profits of the entire facility to the economic development project by a formula approved by the Department of Revenue.

(8) If an approved company can show to the satisfaction of the Department of Revenue that the nature of the operations and activities of the approved company are such that it is not practical to use the separate accounting method to determine the net income or gross receipts from the facility at which the reinvestment project is located, the approved company shall determine net income or gross receipts from the reinvestment project using an alternative method approved by the Department of Revenue.

(9) The Department of Revenue may issue administrative regulations and require the filing of forms designed by the Department of Revenue to reflect the intent of KRS 154.34-010 to 154.34-100 and the allowable income tax credit which an approved company may retain under KRS 154.34-010 to 154.34-100.

Section 14. KRS 141.420 is amended to read as follows:

(1) (a) Every corporation identified in KRS 141.010(24)(b) to (h) that is doing business in this state shall, on or before the fifteenth day of the fourth month following the close of its annual accounting period, file a copy of its applicable federal return with the form prescribed and furnished by the department.

(b) For a corporation filing a return under paragraph (a) of this subsection, the individual partner's, member's, or shareholder's distributive share of net income, gain, loss, or deduction shall be computed as nearly as practicable in

a manner identical to that required for federal income tax purposes except to the extent required by differences between this chapter and the federal income tax law and regulations.

(2) (a) Resident individuals who are members, partners, or shareholders of a corporation required to file a return under subsection (1)(a) of this section shall report and pay tax on the distributive share of net income, gain, loss, or deduction as determined in subsection (1)(b) of this section.

(b) Nonresident individuals who are members, partners, or shareholders of a corporation required to file a return under subsection (1)(a) of this section shall report and pay tax on the distributive share of net income, gain, loss, or deduction as determined in subsection (1)(b) of this section multiplied by the apportionment fraction in KRS 141.120(8).

(3) (a) Resident and nonresident individuals who are members, shareholders, or partners of a corporation required to file a return under paragraph (a) of subsection (1) of this section shall be entitled to a nonrefundable credit against the tax imposed under KRS 141.020.

(b) The credit determined under this subsection shall be the member's, shareholder's, or partner's proportionate share of the tax due from the corporation as determined under KRS 141.040, before the application of any credits identified in KRS 141.0205(4) and reduced by the required minimum imposed by KRS 141.040*(7)*~~[(6)]~~.

(c) Notwithstanding the provisions of paragraph (a) of this subsection, for taxable years beginning after December 31, 2004, and before January 1, 2007, the portion of the credit computed under paragraph (b) of this subsection that exceeds the credit that would have been utilized if the corporation's income were taxed at the rates in KRS 141.020 shall be refundable. The refundable portion of the credit shall be the individual member's, shareholder's, or

partner's proportionate share of the amount computed by multiplying the amount the corporation's income exceeds two hundred sixteen thousand six hundred dollars ($216,600) by one percent (1%).

(d) The credit determined under paragraphs (a) and (b) of this subsection shall not operate to reduce the member's, shareholder's, or partner's tax due to an amount that is less than what would have been payable were the income attributable to doing business in this state by the corporation ignored.

(4) For purposes of computing the basis of an ownership interest or stock in a corporation identified in KRS 141.010(24)(b) to (h), the basis attributable to a member, partner, or shareholder shall be adjusted by the distributive share of the items of net income, gain, loss and deduction as though the items had been passed through to the member, partner, or shareholder.

(5) Except as otherwise provided in this chapter, distributions by or from a corporation shall be treated in the same manner as they are treated for federal tax purposes.

PART XIV

SALES AND USE TAX

Notwithstanding KRS 48.310, the following statutes are created or amended to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

SECTION 1. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO READ AS FOLLOWS:

(1) The county clerk shall collect any applicable sales and use tax for the following tangible personal property purchased out of state at the time the property is offered for titling or first registration:

(a) Recreational vehicles as defined in KRS 186.650;

(b) Manufactured homes as defined in KRS 186.650;

(c) Motorboats as defined in KRS 235.010;

(d) Vessels as defined in KRS 235.010; and

(e) Any other tangible personal property offered for titling or first registration in Kentucky.

(2) The tax shall be collected unless the owner:

(a) Presents a tax receipt from the seller verifying that the tax has been previously paid;

(b) Demonstrates that the transfer of the property is exempt under KRS 139.470(4); or

(c) Provides a properly executed resale certificate or certificate of exemption in accordance with KRS 139.270.

(3) The tax collected by the county clerk shall be reported and remitted to the department on forms provided by the department.

(4) For services provided in collecting the tax, the county clerk shall deduct a fee of three percent (3%) of the tax collected and remit the balance to the department as provided in Section 2 of this Part.

Section 2. KRS 138.464 is amended to read as follows:

The county clerk shall report each Monday to the Department of Revenue all moneys collected during the previous week, together with a duplicate of all receipts issued by him during the same period. The clerk shall deposit motor vehicle usage tax ***and sales and use tax*** collections not later than the next business day following receipt in a Commonwealth of Kentucky, Department of Revenue account in a bank designated as a depository for state funds. The clerk may be required to then cause the funds to be transferred from the local depository bank to the State Treasury in whatever manner and at times prescribed by the commissioner of the Department of Revenue or his designee. Failure to forward duplicates of all receipts issued during the reporting period or failure to file the weekly report of moneys collected shall subject the clerk to a penalty of two and one-half percent (2.5%) of the amount of moneys collected during the reporting period for

each month or fraction thereof until the documents are filed. Failure to deposit or, if required, transfer collections as required above shall subject the clerk to a penalty of two and one-half percent (2.5%) of the amount not deposited or, if required, not transferred for each day until the collections are deposited or transferred as required above. The penalty for failure to deposit or transfer money collected shall not be less than fifty dollars ($50) nor more than five hundred dollars ($500) per day. The penalties provided in this section shall not apply if the failure of the clerk is due to reasonable cause. The department may in its discretion grant a county clerk a reasonable extension of time to file his report or make any transfer of deposits as required above. The extension, however, must be requested prior to the end of the seven (7) day period and shall begin to run at the end of said period. All penalties collected under this provision shall be paid into the State Treasury as a part of the revenue collected under KRS 138.450 to 138.729 ***and Section 1 of this Part***.

Section 3. KRS 186.655 is amended to read as follows:

(1) Before any owner or operator of a trailer, semitrailer, or recreational vehicle may operate upon the highways, the owner shall apply for registration to the county clerk of the county in which he resides or in which the vehicles are principally operated. The application shall be retained by the clerk and shall be accompanied by:

(a) A manufacturer's certificate of origin, if the application is for the registration of a new trailer, semitrailer, or recreational vehicle;

(b) The owner's registration receipt, if the trailer, semitrailer, or recreational vehicle was last registered in this state;

(c) A bill of sale and the previous registration receipt, if last registered in another state that does not require the owner of a trailer, semitrailer, or recreational vehicle to obtain a certificate of title or ownership;

(d) A certificate of title, if last registered in another state that requires the owner of a trailer, semitrailer, or recreational vehicle to obtain a certificate of title or

ownership;

(e) An affidavit from the owner of a trailer, semitrailer, or recreational vehicle assembled or constructed for his personal use on the highways; or

(f) An affidavit from the owner of a trailer, semitrailer, or recreational vehicle where the bill of sale for the vehicle has been lost, destroyed, or stolen.

(2) The affidavit required in paragraph (e) of subsection (1) of this section shall contain the owner's name, address, date, brief description, and a statement that the trailer was constructed by the owner for use on the highways and additional information the cabinet may require by administrative regulation promulgated pursuant to KRS Chapter 13A.

(3) The affidavit required in paragraph (f) of subsection (1) of this section shall contain the owner's name, address, date, make, year made, serial or identification number, name of the person from whom purchased, date of purchase, a statement that the person making the affidavit is the sole owner, the circumstances under which the bill of sale was lost, destroyed, or stolen, and additional information the cabinet may require by administrative regulation promulgated pursuant to KRS Chapter 13A.

(4) After initial registration of his vehicles in this state, the owner shall register his trailer, semitrailer, or recreational vehicle on or before April 1 of each year. Registration with the clerk shall be deemed to be registration with the cabinet.

~~[(5) A county clerk or other officer shall not issue license tags to the owner of a recreational vehicle when it is offered for registration in this state, unless the owner presents a tax receipt from the seller verifying that the Kentucky sales tax has been paid. If the owner is unable to present evidence of payment of tax, he shall furnish to the clerk a bill of sale indicating the purchase price of the recreational vehicle on which price the sales tax shall be assessed. If he cannot furnish a bill of sale indicating the purchase price, the clerk shall assess the value in accordance with~~

~~information prescribed by the Department of Revenue. The clerk shall collect the tax, deduct a fee of five percent (5%) of the amount collected and remit the balance to the Department of Revenue.~~]

Section 4. The provisions of this Part shall be effective January 1, 2007.

PART XV

APPORTIONED VEHICLES

Notwithstanding KRS 48.310, the following statutes are created or amended to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

SECTION 1. A NEW SECTION OF KRS CHAPTER 132 IS CREATED TO READ AS FOLLOWS:

(1) There shall be exempt from ad valorem tax for state and local purposes trucks, tractors, and buses used on routes or in systems that are partly within and partly outside Kentucky, and that are subject to the fee imposed by Section 2 of this Part.

(2) There shall be exempt from ad valorem tax for state and local purposes semitrailers as defined in KRS 189.010(12) and trailers as defined in KRS 189.010(17) that are used on a route or in a system that is partly within and partly outside Kentucky. Semitrailers or trailers required to be registered under KRS 186.655 that are used only in Kentucky shall be subject to the ad valorem tax imposed by KRS 132.487.

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

(1) Notwithstanding KRS 132.487, any truck, tractor, or bus which is operated on a route or as part of a system that is partly within and partly outside Kentucky shall be subject to an annual fee at the time the vehicle is registered with and the registration fee is paid to the Transportation Cabinet pursuant to KRS 186.020

and KRS 186.050(3) and (13). The fee shall be imposed on the vehicle's owner or the owner's legal designee as of January 1 of each year. Such payment shall be made to the Transportation Cabinet either directly, in the case of a vehicle based in Kentucky, or indirectly, through the International Registration Plan, in the case of a vehicle based outside of Kentucky.

(2) The fee imposed by subsection (1) of this section replaces the state and local ad valorem property tax the Department of Revenue previously imposed and centrally collected against trucks, tractors, and buses operated on a route or as part of a system that is partly within and partly outside Kentucky. The fee imposed by subsection (1) of this section shall not be construed as a fee imposed upon the registration, operation, or use of the vehicles on public highways. The Department of Revenue shall use the following method for determining the rate for fixing the assessed value of the property and for determining the annual fee amount:

(a) The Department of Revenue shall determine the assessed value on an annual basis by multiplying the purchase price of the truck, tractor, or bus by a depreciation value expressed as a percentage of the original cost from an authoritative source that the Department of Revenue prescribes by promulgation of an administrative regulation;

(b) The Department of Revenue shall determine an aggregate state and local rate on an annual basis. The state rate shall be the weighted average commercial and industrial tangible personal property tax rate, and the local rate shall be determined using the method set forth in KRS 136.180(3) and (4);

(c) The Department of Revenue shall determine the amount subject to the annual fee by multiplying the total assessed value of all vehicles by an apportionment factor. The apportionment factor shall be determined as

provided in KRS 186.050(13)(a); and

(d) The annual fee shall be determined by multiplying the amount subject to the annual fee by the rate determined in paragraph (b) of this subsection.

The Department of Revenue shall provide the Transportation Cabinet with the information needed to collect the fee.

(3) The Transportation Cabinet shall forward the money it collects from the fee imposed by subsection (1) of this section to the Department of Revenue on a monthly basis. The Department of Revenue shall divide and distribute the money among the state, counties, cities, urban-counties, charter counties, consolidated local governments, school districts, and special taxing districts in the same manner as the Department of Revenue divided and distributed the state and local ad valorem property tax previously imposed and centrally collected.

(4) Pick-up and delivery vehicles operating from a terminal within this state and vehicles that do not leave the state in the normal course of business shall not be required to pay the fee imposed by subsection (1) of this section, but shall instead be subject to the ad valorem tax under KRS 132.487.

(5) Any person paying the fee imposed by subsection (1) of this section shall have forty-five (45) days from the date the person is notified of the fee amount to protest. The protest shall be filed with the Commonwealth of Kentucky, Department of Revenue, in accordance with the provisions of KRS 131.110. Notification by any state's or Canadian province's or territory's registration authority of the amount due shall satisfy the notification requirement of KRS 131.110(1).

(6) No protest or appeal shall delay the collection or payment of the fee imposed by subsection (1) of this section. The fee amount due as determined in subsection (2) of this section shall be paid at the time of registration. If the fee is not paid, the Commonwealth of Kentucky, Transportation Cabinet shall not register the

vehicle for which registration is sought. Persons registering vehicles in other states or Canada shall be subject to requirements of those registration authorities.

Section 3. KRS 136.1873 is amended to read as follows:

The provisions of this section shall apply to assessments made prior to January 1, 2007.

(1) Notwithstanding the provisions of KRS 132.487, trucks, trailers, tractors, semitrailers, and buses of any person, corporation, partnership, or any other business association whose route or system is partly within this state and partly within another state or states, shall be assessed by the Department of Revenue for purposes of taxation as of January 1 each year.

(2) The proportion of miles operated in this state compared to the total miles operated everywhere shall be considered in fixing the value of the property for taxation. Other reasonable evidence shall be considered in fixing the value. However, pick-up and delivery vehicles operating from a terminal within this state or vehicles which do not leave this state in the normal course of business shall not be valued on an apportioned basis.

Section 4. KRS 136.1875 is amended to read as follows:

On or before April 15, 1991, and ***prior to January 1, 2007***~~[each year thereafter]~~, each person, corporation, partnership, or other business association owning or operating trucks, tractors, trailers, semitrailers, and buses whose route or system is partly within this state and partly within another state or states, shall on forms provided by the Department of Revenue provide the department with a detailed description of all its vehicles operating within this state along with the necessary mileage data to be used in apportioning the value ***on an annual basis***.

Section 5. KRS 136.1877 is amended to read as follows:

The provisions of this section shall apply to assessments made prior to January 1,

2007.

(1) The Department of Revenue shall immediately, after fixing the assessed value of the trucks, tractors, trailers, semitrailers, and buses, notify the taxpayer of the valuation determined. Any taxpayer who has been assessed by the department in the manner outlined in KRS 136.1873 shall have forty-five (45) days from the date of the department's notice of the tentative assessment to protest as provided by KRS 131.110.

(2) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of KRS 134.390 shall apply to the tax bill.

(3) The state and local taxes on the property are due forty-five (45) days from the date of notice and shall be collected directly by the Department of Revenue.

(4) The Department of Revenue shall annually calculate an aggregate local rate to be used in determining the local taxes to be collected. The rate shall be the statewide average motor vehicle tax rate for each type of local taxing district multiplied by a fraction, the numerator of which is the commercial and industrial tangible personal property assessment subject to full local rates and the denominator of which is the total commercial and industrial tangible personal property assessment.

(5) The local taxes collected by the Department of Revenue shall be distributed to each local taxing district levying a tax on motor vehicles based on the statewide average rate for each type of local taxing district. However, prior to distribution any fees owed to the Department of Revenue by any local taxing district under the provisions of KRS 136.180(6) shall be deducted.

Section 6. The provisions of this Part take effect on January 1, 2007.

PART XVI

ADMINISTRATIVE OFFSETS FOR DELINQUENT TAXES AND LIQUIDATED DEBTS

Notwithstanding KRS 48.310, the following statutes are created or amended to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

Section 1. KRS 44.030 is amended to read as follows:

(1) No money shall be paid to any person on a claim against the state in his own right, or as an assignee of another, when ***the person***~~[he]~~ or ***the person's***~~[his]~~ assignor is indebted to the state ***or any county, city, urban-county government, consolidated local government, or charter county government duly organized in this state***. The claim, to the extent it is allowed, shall ***first*** be credited to the account of the person so indebted ***to the state***, and if there is any balance due ***the person***~~[him]~~ after settling the whole demand of the state***, any certified liquidated debts of any county, city, urban-county government, consolidated local government, or charter county government of this state shall be paid. If there is any balance due the person after settling the whole demand of the state, counties, cities, urban-county governments, consolidated local governments, or charter county governments, and if there are not liquidated debts certified against the claim pursuant to Section 2 of this Part,*** that balance shall be paid to ***the person***~~[him]~~.

(2) ***In case of multiple claims by state agencies the claims shall be paid as follows:***

(a) First, to any claim made by the Cabinet for Health and Family Services for past due child support obligations;

(b) Second, to any claim filed by the Finance and Administration Cabinet, Department of Revenue for taxes owed the Commonwealth; and

(c) Third, to all other state agencies in the order that the claims were filed with

the Treasury.

(3) In the case of multiple claims filed by any county, city, urban-county government, consolidated local government, or charter county government duly organized in this state, the claims shall be paid in the order that the claims were filed with the Treasury.

(4) The Finance and Administration Cabinet shall provide the Cabinet for Health and Family Services with a quarterly report of all tort claims made against the state by individuals that the Cabinet for Health and Family Services shall compare with the child support database to match individuals who have a child support arrearage and may receive a settlement from the state.

~~*(5)*~~[~~(3)~~] Each organizational unit and administrative body in the executive branch of state government, as defined in KRS 12.010, and the Court of Justice in the judicial branch of state government shall provide information to the State Treasurer concerning any debt it has referred to the Department of Revenue for collection under KRS 45.241.

~~*(6)*~~[~~(4)~~] Each agency and the Court of Justice shall provide information to the State Treasurer concerning any debt referred to the Department of Revenue for collection under KRS 45.237.

SECTION 2. A NEW SECTION OF KRS CHAPTER 44 IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding any other provision of the Kentucky Revised Statutes, and pursuant to the provisions of 31 U.S.C. sec. 3716(b) and (h)(1), the Finance and Administration Cabinet, at the request of any executive, judicial, or legislative agency of the Commonwealth, may enter into a reciprocal agreement with the United States government to offset the claim of any person against the Commonwealth to any debt of that person owed to the United States government which has been certified by the United States government as final, due, and

owing, with all appeals and legal actions having been waived or exhausted, and to offset any nontax claim of any person against the United States government to any liquidated debt of that person owed to the Commonwealth.

(2) Notwithstanding any other provision of the Kentucky Revised Statutes, the Finance and Administration Cabinet, at the request of any executive, judicial, or legislative agency of the Commonwealth, may enter into a reciprocal agreement with any state, as defined in KRS 446.010(30), to offset the claim of any person against the Commonwealth to any debt of that person owed to any state which has certified the debt as final, due, and owing, with all appeals and legal actions having been waived or exhausted, and to offset any claim of any person against any state to any liquidated debt of that person owed to the Commonwealth.

(3) In the case of multiple creditors who have certified liquidated debt against the same person on a claim against the Commonwealth, pursuant to this section and Section 1 of this Part, the debts of the Commonwealth, counties, cities, urban-county governments, consolidated local governments, and charter county governments shall be credited first in the priority established in Section 1 of this Part, and if there is any balance due the claimant after settling the whole demands of the Commonwealth, counties, cities, urban-county governments, consolidated local governments, and charter county governments, the balance shall be credited to the liquidated debts certified by the United States government and any other state, as defined in KRS 446.010(30), in the order that the claims were filed with the Treasury. If there is a balance due the claimant after satisfaction of all liquidated debts as itemized in this section or any court-ordered payments, the balance shall be paid to the claimant.

Section 3. KRS 131.560 is amended to read as follows:

Notwithstanding the provisions of KRS 44.030 or 131.190, the Department of Revenue shall withhold the Kentucky individual income tax refund otherwise due a taxpayer under

KRS Chapter 141 who owes overdue child support or is indebted to any state agency, officer, board, commission, corporation, institution, cabinet, department or other state organization, ***or any county, city, urban-county government, consolidated local government, or charter county government duly organized in this state,*** which has complied with the requirements of KRS 131.565. After satisfaction of any undisputed delinquent tax liability due the Department of Revenue from such taxpayer, the tax refund balance so withheld shall, except as provided in KRS 131.565, be transmitted as soon as practicable to the state agency, ***or the county, city, urban-county government, consolidated local government, or charter county government duly organized in this state,*** having established a claim therefor. In the case of multiple state agency ***or any county, city, urban-county government, consolidated local government, or charter county government duly organized in this state,*** claims against the same tax refund, the ***state*** agency having the larger pending claim shall have priority after satisfaction of any undisputed delinquent tax liabilities due the Department of Revenue, ***followed by other state agency claims. After all state agency claims have been satisfied, the claims of any county, city, urban-county government, consolidated local government, or charter county government duly organized in this state shall be satisfied with the larger pending claims satisfied first, and other claims satisfied in descending order***.

PART XVII

ELECTRONIC LEVIES FOR DELINQUENT TAX COLLECTIONS

Notwithstanding KRS 48.310, the following statutes are created to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

SECTION 1. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 4 of this Part:

(1) "Debt" means a liquidated debt as defined in KRS 45.241(1)(b);

(2) "Debtor" means any person liable for a debt;

(3) "Department" means the Department of Revenue;

(4) "Delinquent taxpayer" means a person who has been assessed for a tax, the collection of which is administered by the Department of Revenue, and who has not sought administrative or judicial review of the assessment as provided in KRS 131.110, or who has sought but exhausted all administrative and judicial review so that the assessment is final, due, and owing. For a person to be considered a "delinquent taxpayer," the following conditions must also be met:

(a) The tax remains unpaid after thirty (30) days from demand for payment by the department; and

(b) The person is not making current timely installment payments on the tax liability under agreement with the department; and

(5) "Financial institution" means:

(a) A depository institution and an institution-affiliated party as defined in 12 U.S.C. sec. 1813(c) and (u);

(b) Any federal or state credit union, including an institution-affiliated party as defined in 12 U.S.C. secs. 1752 and 1786(r); or

(c) Any benefit association, insurance company, safe deposit company, money market mutual fund, brokerage firm, trust company, or similar entity authorized to do business in the Commonwealth.

SECTION 2. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

(1) To assist the department in the collection of delinquent taxes and debts owed to the Commonwealth, the department shall design, develop, implement, and operate a financial institution match system for the purpose of identifying and seizing the financial assets of delinquent taxpayers and debtors as identified by the department. The provisions of Sections 1 to 4 of this Part shall be applied uniformly to all financial institutions within the Commonwealth as feasible.

(2) Each financial institution in the Commonwealth shall, in conjunction with the department, develop and operate a data match system to facilitate the identification and seizure of financial assets of delinquent taxpayers and debtors identified by the department. If a financial institution has a data match system developed pursuant to KRS 205.774(2) for the purpose of administering the child support enforcement programs of the Commonwealth, and if the system is compatible with the requirements of Sections 1 to 4 of this Part, the financial institution may utilize that system to comply with the provisions of this subsection.

(3) (a) When the department determines that the name, record address, and either Social Security number or taxpayer identification number of an account with a financial institution matches the name, record address, and either the Social Security number or taxpayer identification number of a delinquent taxpayer or debtor, a lien or levy shall, subject to the provisions of subsection (4) of this section, arise against the assets in the account at the time of receipt of the notice by the financial institution at which the account is maintained.

(b) The department shall provide notice of the following to the debtor or delinquent taxpayer and the financial institution:

1. The match;

2. The lien or levy arising therefrom; and

3. The action to be taken to surrender or encumber the account with the lien or levy for delinquent taxes.

Notice shall be provided to the debtor or delinquent taxpayer within two (2) business days of the date the notice is sent to the financial institution.

(4) A financial institution ordered to surrender or encumber an account shall be entitled to collect its normally scheduled account activity fees to maintain the

account during the period of time the account is seized or encumbered.

(5) A financial institution may charge an account levied on by the department a fee of not more than twenty dollars ($20) which may be deducted from the account prior to remitting any funds to the department.

(6) The department shall bear the cost or, if paid by the delinquent taxpayer or debtor, reimburse the delinquent taxpayer or debtor for any bank charges incurred as a result of any erroneous lien or levy by the department, provided the erroneous lien or levy was caused by department error and, prior to the issuance of the erroneous lien or levy, the delinquent taxpayer or debtor timely responded to all contacts by the department and provided information or documentation sufficient to establish his or her position.

(7) The department may promulgate administrative regulations to implement Sections 1 to 4 of this Part.

SECTION 3. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

(1) Financial institutions doing business in the Commonwealth shall provide identifying information each calendar quarter to the department for each delinquent taxpayer or debtor identified by the department that is indebted to the Commonwealth for delinquent taxes or debts and who maintains an account at the institution.

(2) The financial institution shall be paid a fee for conducting data matches from the delinquent taxpayer's account, not to exceed the actual cost.

(3) Except for the exchange of information between the department and financial institutions necessary for the enforcement of Sections 1 to 4 of this Part, any information obtained by the department from financial institutions shall be subject to confidentiality restrictions imposed on the department by KRS 131.190.

(4) A financial institution shall not be liable for encumbering or surrendering any

assets held by the financial institution in response to a lien or notice of levy issued by the department, or any other action taken in good faith to comply with the requirements of Sections 1 to 4 of this Part.

SECTION 4. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

(1) A financial institution furnishing a report or providing asset information about a delinquent taxpayer or debtor to the department shall not disclose to the delinquent taxpayer or debtor that the name of that person has been received from or furnished to the department. A financial institution may disclose to its depositors or account holders that under the financial institution match system the department has the authority to request certain identifying information on certain depositors or account holders.

(2) If a financial institution willfully violates the provisions of this section, the institution shall pay to the department the lesser of one thousand dollars ($1,000) or the amount on deposit or in the account of the person to whom the disclosure was made.

(3) A financial institution shall incur no obligation or liability to a depositor or account holder or any other person arising from the furnishing of a report or information to the department pursuant to Sections 1 to 4 of this Part, or from the failure to disclose to a depositor or account holder that the name of the person was included in a list or report furnished by the financial institution to the department.

(4) A financial institution shall not give notice to an account holder or customer of the financial institution that the financial institution has provided information or taken any action pursuant to Sections 1 to 4 of this Part and shall not be liable for failure to provide that notice; provided, however, that a financial institution may disclose to its depositors or account holders that, under the data match

system, the department has the authority to request certain identifying information on certain depositors or account holders. The department shall notify, not less than annually, affected depositors or account holders who have not otherwise received notification.

PART XVIII

MOTOR FUELS TAX

Notwithstanding KRS 48.310, the following statutes are amended to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

Section 1. KRS 138.210 is amended to read as follows:

As used in KRS 138.220 to 138.446, unless the context requires otherwise:

(1) "Accountable loss" means loss or destruction of "received" gasoline or special fuel through wrecking of transportation conveyance, explosion, fire, flood or other casualty loss, or contaminated and returned to storage. The loss shall be reported within thirty (30) days after discovery of the loss to the department in a manner and form prescribed by the department, supported by proper evidence which in the sole judgment of the department substantiates the alleged loss or contamination and which is confirmed in writing to the reporting dealer by the department. The department may make any investigation deemed necessary to establish the bona fide claim of the loss;

(2) "Gasoline dealer" or "special fuels dealer" means any person who is:

(a) Regularly engaged in the business of refining, producing, distilling, manufacturing, blending, or compounding gasoline or special fuels in this state;

(b) Regularly importing gasoline or special fuel, upon which no tax has been paid, into this state for distribution in bulk to others;

(c) Distributing gasoline from bulk storage in this state;

(d) Regularly engaged in the business of distributing gasoline or special fuels

from bulk storage facilities primarily to others in arm's-length transactions;

(e) In the case of gasoline, receiving or accepting delivery within this state of gasoline for resale within this state in amounts of not less than an average of one hundred thousand (100,000) gallons per month during any prior consecutive twelve (12) months' period, when in the opinion of the department, the person has sufficient financial rating and reputation to justify the conclusion that he will pay all taxes and comply with all other obligations imposed upon a dealer; or

(f) Regularly exporting gasoline or special fuels;

(3) "Department" means the Department of Revenue;

(4) (a) "Gasoline" means all liquid fuels, including liquids ordinarily, practically, and commercially usable in internal combustion engines for the generation of power, and all distillates of and condensates from petroleum, natural gas, coal, coal tar, vegetable ferments, and all other products so usable which are produced, blended, or compounded for the purpose of operating motor vehicles, showing a flash point of 110 degrees Fahrenheit or below, using the Eliott Closed Cup Test, or when tested in a manner approved by the United States Bureau of Mines, are prima facie commercially usable in internal combustion engines. The term "gasoline" as used herein shall include casing head, absorption, natural gasoline, and condensates when used without blending as a motor fuel, sold for use in motors direct, or sold to those who blend for their own use, but shall not include: propane, butane, or other liquefied petroleum gases, kerosene, cleaner solvent, fuel oil, diesel fuel, crude oil or casing head, absorption, natural gasoline and condensates when sold to be blended or compounded with other less volatile liquids in the manufacture of commercial gasoline for motor fuel, industrial naphthas, rubber solvents, Stoddard solvent, mineral spirits, VM and P & naphthas,

turpentine substitutes, pentane, hexane, heptane, octane, benzene, benzine, xylol, toluol, aromatic petroleum solvents, alcohol, and liquefied gases which would not exist as liquids at a temperature of sixty (60) degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute, unless the products are used wholly or in combination with gasoline as a motor fuel;

(b) "Special fuels" means and includes all combustible gases and liquids capable of being used for the generation of power in an internal combustion engine to propel vehicles of any kind upon the public highways, including diesel fuel, and dyed diesel fuel used exclusively for nonhighway purposes in off-highway equipment and in nonlicensed motor vehicles, except that it does not include gasoline, aviation jet fuel, kerosene unless used wholly or in combination with special fuel as a motor fuel, or liquefied petroleum gas as defined in KRS 234.100;

(c) "Diesel fuel" means any liquid other than gasoline that, without further processing or blending, is suitable for use as a fuel in a diesel powered highway vehicle. Diesel fuel does not include unblended kerosene, No. 5, and No. 6 fuel oil as described in ASTM specification D 396 or F-76 Fuel Naval Distillate MILL-F-166884;

(d) "Dyed diesel fuel" means diesel fuel that is required to be dyed under United States Environmental Protection Agency rules for high sulfur diesel fuel, or is dyed under the Internal Revenue Service rules for low sulfur fuel, or pursuant to any other requirements subsequently set by the United States Environmental Protection Agency or the Internal Revenue Service;

(5) "Received" or "received gasoline" or "received special fuels" shall have the following meanings:

(a) Gasoline and special fuels produced, manufactured, or compounded at any refinery in this state or acquired by any dealer and delivered into or stored in

refinery, marine, or pipeline terminal storage facilities in this state shall be deemed to be received when it has been loaded for bulk delivery into tank cars or tank trucks consigned to destinations within this state. For the purpose of the proper administration of this chapter and to prevent the evasion of the tax and to enforce the duty of the dealer to collect the tax, it shall be presumed that all gasoline and special fuel loaded by any licensed dealer within this state into tank cars or tank trucks is consigned to destinations within this state, unless the contrary is established by the dealer, pursuant to rules and regulations prescribed by the department; and

(b) Gasoline and special fuel acquired by any dealer in this state, and not delivered into refinery, marine, or pipeline terminal storage facilities, shall be deemed to be received when it has been placed into storage tanks or other containers for use or subject to withdrawal for use, delivery, sale, or other distribution. Dealers may sell gasoline or special fuel to licensed bonded dealers in this state in transport truckload, carload, or cargo lots, withdrawing it from refinery, marine, pipeline terminal, or bulk storage tanks, without paying the tax. In such instances, the licensed bonded dealer purchasing the gasoline or special fuel shall be deemed to have received such fuel at the time of withdrawal from the seller's storage facility and shall be responsible to the state for the payment of the tax thereon;

(6) "Refinery" means any place where gasoline or special fuel is refined, manufactured, compounded, or otherwise prepared for use;

(7) "Storage" means all gasoline and special fuel produced, refined, distilled, manufactured, blended, or compounded and stored at a refinery storage or delivered by boat at a marine terminal for storage, or delivered by pipeline at a pipeline terminal, delivery station, or tank farm for storage;

(8) "Transporter" means any person who transports gasoline or special fuel on which

the tax has not been paid or assumed;

(9) "Bulk storage facility" means gasoline or special fuel storage facilities of not less than twenty thousand (20,000) gallons owned or operated at one (1) location by a single owner or operator for the purpose of storing gasoline or special fuel for resale or delivery to retail outlets or consumers;

(10) "Average wholesale price" shall mean:

(a) The weighted average per gallon wholesale tank wagon price of gasoline, exclusive of the nine cents ($0.09) per gallon federal tax in effect on January 1, 1984, any increase in the federal gasoline tax after July 1, 1984, and any fee on imported oil imposed by the Congress of the United States after July 1, 1986, as determined by the Department of Revenue from information furnished by licensed gasoline dealers or from information available through independent statistical surveys of gasoline prices. Dealers shall furnish within twenty (20) days following the end of the first month of each calendar quarter, the information regarding wholesale selling prices for the previous month required by the department;

(b) Notwithstanding the provisions of paragraph (a) of this subsection, for purposes of the taxes levied in KRS 138.220, 138.660, and 234.320, in no case shall "average wholesale price" be deemed to be less than one dollar and ***thirty-four and two-tenths cents ($1.342)***~~[twenty-two cents ($1.22)]~~ per gallon, and in no case shall "average wholesale price" be deemed to be more than one dollar and fifty cents ($1.50) per gallon on or before June 30, 1982. In fiscal year 1982-83, the "average wholesale price" shall not be deemed to increase more than ten percent (10%) over the "average wholesale price" at the close of fiscal year 1981-82; in each subsequent fiscal year the "average wholesale price" shall not be deemed to increase more than ten percent (10%) over the "average wholesale price" at the close of the previous fiscal year;

(11) "Motor vehicle" means any vehicle, machine, or mechanical contrivance propelled by an internal combustion engine and licensed for operation and operated upon the public highways and any trailer or semitrailer attached to or having its front end supported by the motor vehicles;

(12) "Public highways" means every way or place generally open to the use of the public as a matter or right for the purpose of vehicular travel, notwithstanding that they may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair, or reconstruction;

(13) "Agricultural purposes" means purposes directly related to the production of agricultural commodities and the conducting of ordinary activities on the farm;

(14) "Retail filling station" means any place accessible to general public vehicular traffic where gasoline or special fuel is or may be placed into the fuel supply tank of a licensed motor vehicle; and

(15) "Financial instrument" means a bond issued by a corporation authorized to do business in Kentucky, a line of credit, or an account with a financial institution maintaining a compensating balance.

Section 2. KRS 138.220 is amended to read as follows:

(1) An excise tax at the rate of nine percent (9%) of the average wholesale price rounded to the third decimal when computed on a per gallon basis shall be paid on all gasoline and special fuel received in this state. For the purposes of the allocations in KRS 177.320(1) and (2) and 177.365, the amount calculated under this subsection shall be reduced by the amount calculated in subsection (3) of this section. Except as provided by KRS Chapter 138, no other excise or license tax shall be levied or assessed on gasoline or special fuel by the state or any political subdivision of the state. The tax herein imposed shall be paid by the dealer receiving the gasoline or special fuel to the State Treasurer in the manner and within the time specified in KRS 138.230 to 138.340 and all such tax may be added to the

selling price charged by the dealer or other person paying the tax on gasoline or special fuel sold in this state. Nothing herein contained shall authorize or require the collection of the tax upon any gasoline or special fuel after it has been once taxed under the provisions of this section, unless such tax was refunded or credited.

(2) In addition to the excise tax provided in subsection (1) of this section, there is hereby levied a supplemental highway user motor fuel tax to be paid in the same manner and at the same time as the tax provided in subsection (1) of this section. Such tax shall be calculated, starting with the quarter beginning July 1, 1986, by taking the excise tax resulting from the calculation provided for in subsection (1) of this section and adjusting such tax calculated, for each quarter, to reflect decreases in the average wholesale price, as defined in KRS 138.210(10)(a). The adjustment shall be made by calculating the difference between the average wholesale price computed for the quarter beginning October 1, 1985, as provided for in subsection (4) of this section, and the average wholesale price computed for the quarter beginning July 1, 1986 and each succeeding quarter, as provided for in subsection (4) of this section. In the event of a decrease in the average wholesale price computed for the quarter beginning October 1, 1985, and ending December 31, 1985, and the average wholesale price computed for the quarter beginning July 1, 1986, and each succeeding quarter, the excise tax shall be adjusted upward for that quarter. The upward adjustment shall equal one-half (1/2) of the decrease between the two (2) quarterly periods, rounded to the third decimal. In no case shall the adjustment provided by this subsection result in a supplemental highway user motor fuel tax greater than five cents ($0.05) on gasoline or two cents ($0.02) on special fuel and, notwithstanding any adjustment which may be calculated as provided by this subsection, in no case shall the supplemental highway user motor fuel tax for any quarter be less than the previous quarter. The supplemental highway user motor fuel tax provided by this subsection and the provisions of subsections (1) and (3) of

this section shall constitute the tax on motor fuels imposed by KRS 138.220.

(3) Effective July 1, 2005, one cent ($0.01)***, and effective July 1, 2006, two and one-tenth cents ($0.021),*** of the tax collected under subsection (1) of this section shall be excluded from the calculations in KRS 177.320(1) and (2) and 177.365. The funds identified in this subsection shall be deposited into the state road fund.

(4) Effective with the calendar quarter beginning July 1, 1980, the department shall determine on a consistent basis the average wholesale price for each calendar quarter, on the basis of sales data accumulated for the first month of the preceding quarter. Notification of the average wholesale price shall be given to all licensed dealers at least twenty (20) days in advance of the first day of each calendar quarter.

(5) Dealers with a tax-paid gasoline or special fuel inventory at the time an average wholesale price becomes effective, shall be subject to additional tax or appropriate tax credit to reflect the increase or decrease in the average wholesale price for the new quarter. The department shall promulgate such rules and regulations to properly administer this provision.

PART XIX

VOLUNTARY ASSIGNMENT OF MSA TOBACCO ESCROW PAYMENTS

Notwithstanding KRS 48.310, the following statute is amended to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

Section 1. KRS 131.602 is amended to read as follows:

(1) Any tobacco product manufacturer selling cigarettes to consumers within this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, after June 30, 2000, shall do one (1) of the following:

(a) Become a participating manufacturer, as that term is defined in section II(jj) of the master settlement agreement, and generally perform its financial obligations under the master settlement agreement; or

(b) Place into a qualified escrow fund by April 15 of the year following the year

in question the following amounts, as such amounts are adjusted for inflation:

1. For 2000: $0.0104712 per unit sold after June 30, 2000;
2. For each of 2001 and 2002: $0.0136125 per unit sold;
3. For each of 2003 through 2006: $0.0167539 per unit sold; and
4. For 2007 and each year thereafter: $0.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to subsection (1)(b) of this section shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(a) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by Kentucky or any releasing party located or residing in Kentucky. Funds shall be released from escrow under this paragraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement;

(b) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the master settlement agreement payments, as determined pursuant to section IX(i) of that agreement, including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(c) To the extent not released from escrow under paragraph (a) or (b) of this subsection, funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five (25) years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to subsection (1)(b) of this section shall annually certify to the Attorney General that it is in compliance with subsections (1)(b) and (2) of this section. The Attorney General may bring a civil action on behalf of Kentucky against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(a) Be required within fifteen (15) days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of subsection (1)(b) or (2) of this section, may impose a civil penalty, to be paid to the general fund of Kentucky, in an amount not to exceed five percent (5%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld from escrow;

(b) In the case of a knowing violation, be required within fifteen (15) days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of subsection (1)(b) or (2) of this section, may impose a civil penalty, to be paid to the general fund of Kentucky, in an amount not to exceed fifteen percent (15%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent (300%) of the original amount improperly withheld from escrow; and

(c) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within Kentucky, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two (2) years.

Each failure to make an annual deposit required under this section shall constitute a

separate violation.

(4) Notwithstanding the provisions of subsection (2) of this section, a tobacco product manufacturer that elects to place funds into escrow pursuant to subsection (1)(b) of this section may make an irrevocable assignment of its interest in the funds to the benefit of the Commonwealth of Kentucky. Such assignment shall be permanent and apply to all funds in the subject escrow account or that may subsequently come into such account, including those deposited into the escrow account prior to the assignment being executed, those deposited into the escrow account after the assignment is executed, and interest or other appreciation on such funds. The tobacco product manufacturer, the Attorney General, and the financial institution where the escrow account is maintained may make such amendments to the qualified escrow account agreement as may be necessary to effectuate an assignment of rights executed pursuant to this subsection or a withdrawal of funds from the escrow account pursuant to subsection (5) of this section. An assignment of rights executed pursuant to this subsection shall be in writing, signed by a duly authorized representative of the tobacco product manufacturer making the assignment, and shall become effective upon delivery of the assignment to the Attorney General and the financial institution where the escrow account is maintained.

(5) Notwithstanding the provisions of subsection (2) of this section, any escrow funds assigned to the Commonwealth pursuant to subsection (4) of this section shall be withdrawn by the Commonwealth upon request by the Treasurer of the Commonwealth and approval of the Attorney General. Any funds withdrawn pursuant to this subsection shall be deposited in the general fund and shall be calculated on a dollar-for-dollar basis as a credit against any judgment or settlement described in subsection (2)(a) of this section which may be obtained against the tobacco product manufacturer who has assigned the funds in the

subject escrow account. Nothing in this subsection or in subsection (4) of this section shall be construed to relieve a tobacco product manufacturer from any past, current, or future obligations the manufacturer may have pursuant to this chapter.

(6) Notwithstanding subsections (4) and (5) of this section, no assignment of escrows created pursuant to subsection (1)(b) of this section shall be made by a tobacco product manufacturer, or shall be accepted by the Treasurer of the Commonwealth, unless and until the Attorney General has provided an opinion to the Treasurer, with a copy of the opinion provided to the Governor and the Legislative Research Commission, that amendments to KRS 131.600 and subsections (4) and (5) of this section will not jeopardize the Commonwealth's payments under the master settlement agreement in the form of a nonparticipating manufacturer adjustment.

PART XX

TOBACCO AMNESTY COMPENSATION

Notwithstanding KRS 48.310, the following statute is amended to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

Section 1. KRS 248.480 is amended to read as follows:

(1) As used in this section:

(a) "Settlement trust" means the national tobacco grower settlement trust established between tobacco companies and states with tobacco growers and tobacco quota owners in accordance with the master settlement agreement between certain tobacco companies and states' attorneys general dated November 23, 1998;

(b) "Settlement trust agreement" means the agreement to provide economic assistance from the national tobacco grower settlement trust directly to tobacco growers and tobacco quota holders in the Commonwealth;

(c) "Trustee of the settlement trust" means the entity legally responsible for management of the national tobacco grower settlement trust; and

(d) "Corporation" means the Kentucky Tobacco Settlement Trust Corporation created by this section.

(2) The Kentucky Tobacco Settlement Trust Corporation is created and established as a de jure municipal corporation and political subdivision of the Commonwealth to perform essential governmental and public functions by assisting in the implementation of the national tobacco grower settlement trust agreement. The corporation shall be attached to the Finance and Administration Cabinet for administrative purposes. The corporation shall be a public agency within the meaning of KRS 61.805, KRS 61.870, and other applicable statutes.

(3) The corporation shall be directed by a board of directors, which shall include:

(a) The Governor, who shall serve as chair of the corporation;

(b) The Commissioner of Agriculture, who shall serve as vice chair of the corporation;

(c) The Attorney General, who shall serve as secretary of the corporation;

(d) One (1) member of the Senate appointed by the President of the Senate to serve as an ex officio, nonvoting member of the board;

(e) One (1) member of the House of Representatives appointed by the Speaker of the House of Representatives to serve as an ex officio, nonvoting member of the board;

(f) Six (6) citizen members who are tobacco growers or tobacco quota owners appointed by the Governor for a term of four (4) years;

(g) One (1) citizen member with a distinguished record of public service appointed by the Governor for a term of four (4) years; and

(h) Two (2) members appointed by the Governor for a term of four (4) years from a list of six (6) nominees selected and submitted to the Governor by the state's

congressional delegation.

(4) Members of the board shall not receive compensation for their services but be reimbursed for necessary travel and lodging expenses incurred in the performance of their duties.

(5) A quorum of the board shall consist of six (6) voting members. A majority of the voting members present may act upon any matter legally before the corporation. The board shall keep minutes and records of all meetings of the corporation and shall record all official actions.

(6) The corporation shall be a body corporate with full corporate powers. The board may develop articles of incorporation and other appropriate documentation to establish the corporation's existence as a corporation authorized by law. The corporation shall not in any form hold, receive, or manage any proceeds from the National Tobacco Growers Settlement Trust.

(7) The corporation's duties shall include, but not be limited to:

(a) Performing all duties and responsibilities of a state certification body as defined and directed under the terms of the settlement trust agreement;

(b) Preparing and submitting a plan to the trustee of the settlement trust for its approval. The plan shall identify those tobacco growers and tobacco quota owners who are to receive direct payment from the settlement trust and shall determine the respective amount each of the tobacco growers or tobacco quota owners is to receive;

(c) Determining the amount of any administrative expenses to be paid to the corporation under the terms of the settlement trust agreement;

(d) Appointing an officer to conduct executive functions for the corporation. The officer may be a state officer or employee who shall serve as a borrowed servant at no cost to the corporation;

(e) Requesting the trustee of the settlement trust to set aside reserve amounts in

anticipation of a decrease in annual payments;

(f) Submitting information required by the trustee of the settlement trust;

(g) Establishing policies and procedures and contracting with other persons or entities if necessary to effectuate its purposes and functions;

(h) Discharging additional powers, duties, and functions as necessary or convenient to carry out the purposes of this section;

(i) Enacting bylaws concerning the conduct of its business and other administrative procedures as it deems necessary;~~[and]~~

(j) Provide for the distribution of state funds appropriated in 2005 Ky. Acts ch. 173, Parts I and II to the beneficiaries of the National Tobacco Growers Settlement Trust in a manner consistent with this section***; and***

(k) Provide for the distribution of one-time payments under the amnesty compensation program described in subsection (8) of this section.

(8) ***(a) The corporation shall establish an amnesty compensation program for tobacco quota owners who did not receive payments under the plan adopted by the corporation on March 22, 2004. The program shall grant one-time payments to eligible tobacco quota owners, defined in the March 22, 2004, plan, who did not attain certification status with the corporation in 2004. Tobacco quota owners who attained certification with the corporation in 2004 shall not be eligible for the amnesty compensation payments for any 2003 basic quota pounds that were certified previously by the corporation. The program developed by the corporation shall:***

1. Determine those quota owners not certified previously under the March 22, 2004, plan and institute an application process for those noncertified quota owners;

2. Make a one-time payment to newly certified quota owners under the amnesty compensation program at the same rate per pound as those

quota owners who were certified previously under the March 22, 2004, plan provisions; and

3. Limit the application process to ninety (90) days, with an ending date no later than October 31, 2006, and make payments to certified beneficiaries within ninety (90) days after the application process has ended.

(b) Funds required under the amnesty compensation program, including administrative costs of the plan, shall be provided by the Governor's Office of Agricultural Policy under Part X, Section B.1.a.(3) of this Act. In the event funds provided under Part X of this Act are insufficient to fully carry out the provisions of paragraph (a)2. of this subsection, then the one-time payments to newly certified quota owners shall be made in accordance with paragraph (a)2. of this subsection, on a proportionate basis, until all available funds provided in Part X of this Act are expended.

(c) The provisions of this subsection shall expire on June 30, 2007.

(9) There shall be no liability on the part of, and no cause of action for damages shall arise against, the corporation or any member, officer, administrator, agent, or employee of the corporation, either as a part of the corporation's operations or as an individual as a result of any act, omission, proceeding, conduct, or decision relating to the official duties, functions, and responsibilities of the corporation.

PART XXI

LEGAL NOTICES

Notwithstanding KRS 48.310, the following statute is amended to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

Section 1. KRS 424.180 is amended to read as follows:

Any advertisement which a state officer, department or agency is required by law to have published shall, if intended to give statewide notice, be published in such newspaper or

newspapers, to be designated by the Finance and Administration Cabinet, as will provide reasonable statewide coverage, ***unless the Finance and Administration Cabinet approves an alternative and cost-effective method of delivery***. If the advertisement particularly affects a local area it shall be published, for each county in the area, in a newspaper qualified under KRS 424.120 to publish advertisements for such county, ***unless the Finance and Administration Cabinet approves an alternative and cost-effective method of delivery***. The latter publication shall be in addition to the former, if the advertisement affects the state at large as well as the local area.

PART XXII

HOME INCARCERATION

Notwithstanding KRS 48.310, the following statute is amended to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

Section 1. KRS 532.260 is amended to read as follows:

(1) Any Class C or Class D felon who is serving a sentence in a state-operated prison, ***contract facility, or county jail*** shall, at the discretion of the commissioner, be eligible to serve the remainder of his or her sentence outside the walls of the detention facility under terms of home incarceration using an approved monitoring device as defined in KRS 532.200, if the felon:

(a) 1. Has not been convicted of, pled guilty to, or entered an Alford plea to a violent felony as defined by the Department of Corrections classification system; or

2. Has not been convicted of, pled guilty to, or entered an Alford plea to a sex crime as defined in KRS 17.500;

(b) Has ***ninety (90)***~~[sixty (60)]~~ days or less to serve on his or her sentence;

(c) Has voluntarily participated in a discharge planning process with the department to address his or her:

1. Education;

2. Employment, technical, and vocational skills; and

3. Housing, medical, and mental health needs; and

(d) Has needs that may be adequately met in the community where he or she will reside upon release.

(2) A person who is placed under terms of home incarceration pursuant to subsection (1) of this section shall remain in the custody of the Department of Corrections. Any unauthorized departure from the terms of home incarceration may be prosecuted as an escape pursuant to KRS Chapter 520 and shall result in the person being returned to prison.

(3) The Department of Corrections shall promulgate administrative regulations to implement the provisions of this section.

PART XXIII

INSURANCE COVERAGE, AFFORDABILITY AND RELIEF TO SMALL EMPLOYERS (ICARE) PROGRAM

Section 1. As used in Sections 1 to 8 of this Part, unless the context requires otherwise:

(1) "Consumer-driven health plan" means a health benefit plan, including a high deductible health plan as defined in 26 U.S.C. sec. 223(c)(2)(A), or a health reimbursement arrangement that meets the requirements of Internal Revenue Code, Notice 2002-45, 2002-2 C.B. 93;

(2) "Eligible employer" or "employer" means an individual that employs two to 25 employees, a corporation, including a foreign corporation, other than a governmental entity, that employs one or more residents of the Commonwealth, or a corporation or an unincorporated entity that is exempt from taxation under the provisions of 26 U.S.C. sec. 501(c), as amended and in effect for the taxable year. An eligible employer must employ no more than 25 employees and meet the eligibility requirements set forth in administrative regulations promulgated by the office. The method of determining the

number of employees an employer has and the amount and types of subsidies shall be determined by the office or a third-party administrator selected in accordance with Section 5 of this Part;

(3) "Eligible employee" or "employee" means an employee of an eligible employer whose business is located in the Commonwealth, who has not attained age 65 or is Medicare eligible, and who meets the financial and other eligibility standards set forth in administrative regulations promulgated by the office;

(4) "Health risk assessment" means an assessment to prevent or minimize risk factors for disease and maintain wellness;

(5) "High-cost condition" means a diagnosed specific list of conditions representing the top 20 high-cost conditions in the small group market;

(6) "ICARE Program participating insurer" means any insurer who offers a health benefit plan in the small group market;

(7) "Office" means the Office of Insurance; and

(8) "Qualified health benefit plan" means a health benefit plan as described in Section 3(2) of this Part.

Section 2. (1) There is hereby created and established, under the supervision of the Office of Insurance, the Insurance Coverage, Affordability and Relief to Small Employers (ICARE) Program, which is designed to make health insurance more affordable for small employer groups. The program shall be piloted for a four year period in the small group market and shall be limited to those employer groups with two to 25 employees, including small groups with two to 25 employees who are members of an employer-organized association.

(2) All insurers that issue health benefit plans to employers with two to 25 employees, including employers participating in an employer-organized association, as a condition of doing business in Kentucky, shall be deemed an ICARE Program participating insurer.

(3) The Office of Insurance may, subject to the provisions of this section, establish an employer health care incentive program for certain employers for the purpose of reducing the amount of contributions or payments made by those employers and employees toward the cost of qualified medical insurance and which shall consist of the following two programs:

(a) An employer health care incentive program for the purpose of reducing the cost to employers and employees for providing qualified health benefit plan coverage under Section 3(2)(a) or (b) of this Part for an eligible employer with low-income employees if the eligible employer pays 50 percent or more of the premium cost of that qualified health benefit plan coverage and meets the insurers participation requirements as allowed under KRS 304.17A-200(3). The office may limit premium payments or enrollment under this program, to the extent funding is available. The ICARE Program shall be available to employer groups that have not provided employer-sponsored health benefit plan coverage to their employees within the previous 12 months; and

(b) An employer health care incentive program for the purpose of reducing the cost to employers and employees for the purpose of obtaining or maintaining qualified health benefit plan coverage under Section 3(2)(a), (b), or (c) of this Part for an eligible employer and employees if the eligible employer pays 50 percent or more of the premium cost of that health benefit plan coverage and meets the insurers participation requirements as allowed under KRS 304.17A-200(3). The office may limit premium payments or enrollment under this program, to the extent funding is available. The ICARE Program shall be available to employer groups that have at least one employee with a high-cost condition. The office shall promulgate administrative regulations to establish a list of high-cost conditions for the ICARE Program.

(4) In order for an eligible employer to qualify for the ICARE Program, the average annual salary of the employer group shall not exceed 300 percent of the federal poverty level. This shall not include the annual salary of any person with an ownership

interest in the employer group.

(5) The office shall promulgate administrative regulations to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program.

Section 3. (1) Sections 1 to 8 of this Part shall not apply to an insurer that provides coverage solely to Medicaid recipients, Medicare beneficiaries, CHAMPUS insureds, or self-insured groups.

(2) Each ICARE Program participating insurer shall offer at least three qualified health benefit plans to employers. A qualified health benefit plan shall be:

(a) A consumer-driven health benefit plan, including a health reimbursement arrangement or health savings account;

(b) A basic health benefit plan, as described in KRS 304.17A-096 and 304.17A-097; or

(c) An enriched health benefit plan.

(3) Each ICARE Program participating insurer shall offer at least one of each of the plans listed in subsection (2)(a), (b), or (c) of this section. These plans shall be subject to the provisions of KRS 304.17A-220.

(4) An ICARE Program participating insurer shall conduct a health risk assessment for each employee enrolled in the ICARE Program and offer a wellness program, case management services, and disease management services.

(5) On and after July 1, 2007, an insurer shall be required to offer a premium rate that includes a healthy lifestyle discount for employers participating in the ICARE Program.

(6) A separate class of business may be established for health benefit plan rate filings offered under the ICARE Program in accordance with KRS 304.17A-0952(8)(b).

Section 4. (1) The amount of health care incentive paid shall be as follows:

(a) Forty dollars per employee per month for eligible employers as defined in Section 2(3)(a) of this Part. The amount shall be reduced annually, at the time of renewal, in incremental rates of ten dollars; and

(b) Sixty dollars per employee per month for eligible employers as defined in Section 2(3)(b) of this Part. The amount shall be reduced annually, at the time of renewal, in incremental rates of $15.

(2) The office may, in lieu of cash payments, issue to individuals vouchers or other documents certifying that the office will pay a specified amount for health benefit plan coverage under specified circumstances.

(3) Any allocated surplus remaining in the ICARE Program shall be carried forward to the next fiscal year and be used for the ICARE Program in subsequent years through the end of the pilot period as provided for under Section 2(1) of this Part.

(4) The office may limit enrollment for the ICARE Program so not to exceed annual program funding.

(5) A group shall be determined ineligible if the most recent coverage under any health benefit plan terminated or nonrenewed because of any of the following:

(a) The group failed to pay premiums or contributions in accordance with the terms of the plan or the insurer had not received timely premium payments;

(b) The group or any individual in the group performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage; or

(c) The group or any individual engaged in intentional and abusive noncompliance with health benefit plan provisions.

Section 5. (1) The office may select a third-party administrator to administer the ICARE Program. The third-party administrator shall be an administrator licensed under this chapter by the office. The office shall consider criteria in selecting a third-party

administrator that shall include but not be limited to the following:

(a) A third-party administrator's proven ability to demonstrate performance of the following: eligibility determinations, enrollment, payment issuance, reconciliation processes, and data collection and reporting;

(b) The total cost to administer the ICARE Program;

(c) A third-party administrator's proven ability to demonstrate that the ICARE Program be administered in a cost-efficient manner; and

(d) A third-party administrator's financial condition and stability.

(2) In addition to any duties and obligations set forth in the contract with the third-party administrator, the third-party administrator shall:

(a) Develop and establish policies and procedures for eligibility determinations, enrollment, payment issuance, reconciliation processes, data collection and reporting, and other responsibilities determined by the office;

(b) Submit reports to the office regarding the operation and financial condition of the ICARE Program. The frequency, content, and form of the reports shall be determined by the office; and

(c) Submit a monthly and annual report to the office. Both reports shall include:

1. Number of applicants;

2. Enrolled employer groups by insurance company;

3. Number of groups previously uninsured for a period of 12 months by insurance company;

4. Average premium per group by insurance company;

5. Number of groups eligible due to an individual with a high-cost condition by insurance company;

6. Total amount of health care incentive paid listed by insurance company; and

7. Any other information requested by the office.

(3) The third-party administrator shall be paid for necessary and reasonable

expenses as provided in the contract between the office and the third-party administrator.

Section 6. (1) The office shall establish and maintain the ICARE Program fund. All funds shall be held at interest, in a single depository designated in accordance with KRS 304.8-090(1) under a written trust agreement in accordance with KRS 304.8-095. All expense and revenue transactions of the fund shall be posted to the Management Administrative Reporting System (MARS) and its successors; and

(2) The office shall work with the Office of Health Policy within the Cabinet for Health and Family Services to review the availability of federal funds for the ICARE Program.

Section 7. (1) The office may implement Sections 1 to 8 of this Part through arrangements with other agencies of the Commonwealth.

(2) The provisions of this section shall not give rise to, nor be construed as giving rise to, enforceable legal rights for any party or an enforceable entitlement to benefits other than to the extent that such rights or entitlements exist pursuant to the administrative regulations of the executive director of insurance.

Section 8. (1) Each insurer authorized to offer health benefit plans in the Commonwealth shall disclose the availability of the health insurance purchasing program as authorized in 42 U.S.C. sec. 1396e to eligible employer groups. In connection with the initial offering and renewal of any health benefit plan, an insurer shall make a disclosure as part of its solicitation, sales material, and renewal information of the availability of the ICARE Program;

(2) The manner and content of the disclosure as described in subsection (1) of this section shall be established through promulgation of administrative regulations by the Office of Insurance in coordination with the Cabinet for Health and Family Services.

Section 9. (1) All insurers as defined in KRS 304.17A-005(24) shall provide upon request to the Cabinet for Health and Family Services, by electronic means and in the format prescribed by the cabinet, information in accordance with KRS 205.623.

(2) All information obtained by the cabinet pursuant to this section shall be confidential and shall not be open to public inspection.

Section 10. Pursuant to terms and conditions of Subtitle 17A of KRS Chapter 304, the Commonwealth of Kentucky seeks to explore the feasibility of an Interstate Reciprocal Health Benefit Plan Compact (IRHBPC) with contiguous states to allow the residents of the Commonwealth of Kentucky and the residents of contiguous states to purchase health benefit plan coverage among the states participating with the compact. The purposes of this compact are, through means of joint and cooperative action among the compacting states:

(1) To promote and protect the interest of consumers purchasing health benefit plan coverage;

(2) To develop uniform minimum standards for health benefit plan products covered under the compact, while ensuring that the standards established in Kentucky law and regulation are maintained and protected;

(3) To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform minimum standards; and

(4) To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

Section 11. (1) The Office of Insurance shall conduct a study to determine the impact on the insured of being billed by health care providers for the amount between the health care provider's regular charges and the amount that the health care provider has agreed to through a contractual relationship with an insurer. The report based on the study shall include:

(a) Statistical information related to the prevalence of inappropriate billing to insured, by region; and

(b) Recommendations to prevent inappropriate billing by health care providers.

(2) The Office of Insurance shall submit the report on the study no later than

December 31, 2006, to the Interim Joint Committee on Banking and Insurance, the Interim Joint Committee on Health and Welfare, the Interim Joint Committee on Licensing and Occupations, and the Governor.

Section 12. Any insurer violating Section 9 of this Part shall be fined not less than one hundred dollars ($100) for each offense. Failure to respond to each request made by the Cabinet for Health and Family Services, as required under Section 9 of this Part, shall constitute a separate offense.

Section 13. Notwithstanding KRS 304.17A.0952(8)(b), an insurer may establish a separate class of business to reflect substantial differences in expected claims experience or administrative cost because the insurer is offering a qualified health benefit plan under the ICARE Program pursuant to Section 3(3) of this Part.

Section 14. Notwithstanding KRS 216.2921(1), the Cabinet for Health and Family Services shall make every effort to make health data findings that can serve as a basis to educate consumers on the cost and quality of health care and providers for the purpose of improving patient morbidity and mortality outcomes available to the public, and state and local leaders in health policy, through the cost-effective and timely use of the media and the Internet and through distribution of the findings to health facilities and health-care providers for further dissemination to their patients.

Section 15. Notwithstanding KRS 216.2923(2)(a), for the purposes of carrying out the provisions of KRS 216.2920 to 216.2929, the Secretary of the Cabinet for Health and Family Services shall publish and make publicly available, pursuant to Section 18 of this Part, information on charges, quality, and outcomes of health care services provided, and information that relates to the health care financing and delivery system and health insurance premiums and benefits that is in the public interest.

Notwithstanding KRS 216.2923(2)(f), the cabinet advisory committee shall utilize the Health Services Data Advisory Committee as a subcommittee, which shall include a member of the Division of Women's Physical and Mental Health, to define quality

outcome measurements and to advise the cabinet on technical matters including review of administrative regulations promulgated pursuant to KRS Chapter 13A, proper interpretation of the data, and the most cost-effective manner in which it should be published and disseminated to the public. The Health Services Data Advisory Committee shall review and make recommendations to the secretary's advisory committee regarding exploration of technical matters related to data from other health care providers. The committee shall make recommendations on methods for risk adjusting any data prepared and published by the cabinet.

Section 16. Notwithstanding KRS 216.2925(1), every hospital and ambulatory facility shall be required to report, on a quarterly basis, information regarding the charge for, quality, and outcomes of the procedures and health-care services performed therein, and as stipulated by administrative regulations promulgated pursuant to KRS Chapter 13A. The cabinet shall accept data which, at the option of the provider is submitted through a third party, including but not limited to organizations involved in the processing of claims for payment, so long as the data elements conform to the requirements established by the cabinet. On at least a biennial basis, the cabinet shall conduct a statistical survey that addresses the status of women's health, specifically including data on patient age, ethnicity, geographic region, and payor sources. The cabinet shall rely on data from readily available reports and statistics whenever possible.

Notwithstanding KRS 216.2925(2), the cabinet shall require for quarterly submission to the cabinet by any group of providers, except for physicians providing services or dispensaries, first aid stations, or clinics located within business or industrial establishments maintained solely for the use of their employees, including those categories within the definition of provider contained in KRS 216.2920 and any further categories determined by the cabinet, as provided by cabinet promulgation of administrative regulations pursuant to KRS Chapter 13A, the following:

(a) A list of medical conditions, health services, and procedures for which data on

charge, quality, and outcomes shall be collected and published;

(b) A timetable for filing the information provided for under paragraph (a) above on a quarterly basis;

(c) A list of data elements that are necessary to enable the cabinet to analyze and disseminate risk-adjusted charge, quality, and outcome information, including mortality and morbidity data;

(d) An acceptable format for data submission which shall include use of the uniform:

1. Health claim form pursuant to KRS 304.14-135 or any other universal health claim form to be determined by the cabinet, if in the form of hard copy; or

2. Electronic submission formats as required under the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Chapter 6A, sec. 300gg et seq., in the form of magnetic computer tape, computer diskettes, or other electronic media through an electronic network;

(e) Procedures to allow health-care providers at least thirty (30) days to review information generated from any data required to be submitted by them, with any reports generated by the cabinet to reflect valid corrections by the provider before the information is released to the public; and

(f) Procedures pertaining to the confidentiality of data collected.

Notwithstanding KRS 216.2925(3), the data-gathering activities of the cabinet shall be coordinated with and not duplicative of other data-collection activities conducted by the Office of Insurance, as well as other state and national agencies and organizations that collect the same or substantially similar health-related service, utilization, quality, outcome, financial, or health-care personnel data, and shall review all administrative regulations promulgated pursuant to KRS 216.2920 to 216.2929 to prevent duplicate filing requirements. The cabinet shall periodically review the use of all data collected under KRS 216.2920 to 216.2929 to assure its use is consistent with legislative intent.

Notwithstanding KRS 216.2925(4), the cabinet shall conduct outcome analyses and effectiveness studies and prepare other reports pertaining to issues involving health-care charges and quality.

Notwithstanding KRS 216.2925(7), the Cabinet for Health and Family Services shall collect all data elements under this section using only the uniform health insurance claim form pursuant to KRS 304.14-135, the Professional 837 (ASC X12N 837) format or its successor as adopted by the Centers for Medicare and Medicaid Services, or the Institutional 837 (ASC X12N 837) format or its successor as adopted by the Centers for Medicare and Medicaid Services.

Section 17. Notwithstanding KRS 216.2927(3), no less than 60 days after reports are published and except as otherwise provided, the Cabinet for Health and Family Services shall make all aggregate data which does not allow disclosure of the identity of any individual patient, and which was obtained for the annual period covered by the reports, available to the public. The Health Services Data Advisory Committee shall review at least annually current protocols related to the release of data referenced in this section and shall make recommendations to the cabinet advisory committee referenced in KRS 216.2923. Persons or organizations requesting use of these data shall agree to abide by a public use data agreement and by HIPAA privacy rules referenced in 45 C.F.R. 164. The public use data agreement shall include at a minimum:

(a) A prohibition against the sale or further release of data; and

(b) Guidelines for the use and analysis of the data released to the public related to provider quality, outcomes, or charges.

Notwithstanding KRS 216.2925(3), the cabinet may impose a fee for providing electronic or multiple printed copies of the data.

Section 18. Notwithstanding KRS 216.2929(1), the Cabinet for Health and Family Services shall make available on its Web site information on charges for health care services, which is updated at least annually, in understandable language with

sufficient explanation to allow consumers to draw meaningful comparisons between every hospital and ambulatory facility in the Commonwealth, and other provider groups as relevant data become available. Any charge information compiled and reported by the cabinet shall include the median charge and other percentiles to describe the typical charges for all of the patients treated by a provider and the total number of patients represented by the charges, and shall be risk adjusted according to the recommendations of the Health Data Advisory Committee. The report shall clearly identify the sources of data used in the report and explain limitations of the data and why differences between provider charges may be misleading. Every provider that is specifically identified in any report shall be given 30 days to verify the accuracy of its data prior to public release and shall be afforded the opportunity to submit comments on its data that shall be included on the Web site and as part of any printed report of the data. The cabinet shall only provide linkages to organizations that publicly report comparative charge data for Kentucky providers using data for all patients treated regardless of payor source, which may be adjusted for outliers, is risk adjusted, and permits identified providers the opportunity to comment on their data and includes such comments on the Web site and as part of any printed report of the data.

The Cabinet for Health and Family Services shall make information available on its Web site, describing quality and outcome measures, in understandable language with sufficient explanation to allow consumers to draw meaningful comparison between every hospital and ambulatory facility in the Commonwealth, and other provider groups as relevant data become available.

(a) The cabinet shall utilize only national quality indicators that have been endorsed and adopted by the Agency for Healthcare Research and Quality, the National Quality Forum, or the United States Centers for Medicare and Medicaid Services, or shall provide linkages only to the following organizations that publicly report quality and outcome measures on Kentucky providers:

1. The United States Centers for Medicare and Medicaid Services;

2. The Agency for Healthcare Research and Quality;

3. The Joint Commission on the Accreditation of Health Care Organizations; and

4. Other organizations that publicly report relevant outcome data for Kentucky health care providers, as determined by the Health Services Data Advisory Committee.

(b) The cabinet shall utilize or refer the general public to only those nationally endorsed quality indicators that:

1. Are based upon current scientific evidence or relevant national professional consensus; and

2. Have definitions and calculation methods openly available to the general public at no charge.

Any report the cabinet disseminates or refers the public to shall:

(a) Not include data for a provider whose caseload of patients is insufficient to make the data a reliable indicator of the provider's performance;

(b) Afford providers specifically identified in the report 30 days to verify the accuracy of their data prior to the data's public release and the opportunity to submit comments on their data, which shall be included on the Web site and as part of any printed report of the data;

(c) Clearly identify the sources of data used in the report and explain the analytical methods used in preparing the data included in the report; and

(d) Explain any limitations of the data and how the data should be used by consumers.

Section 19. Notwithstanding KRS 304.17A-700, as used in KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123, "health care provider" or "provider" means a provider licensed in Kentucky as defined in KRS 304.17A-005 and, for the purposes of KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123 only, shall include physical therapists licensed under KRS Chapter 327,

psychologists licensed under KRS Chapter 319, social workers licensed under KRS Chapter 335, and durable medical equipment dealers holding an active Medicare DME provider number. Nothing contained in KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123 shall be construed to include physical therapists, psychologists, social workers, and durable medical equipment dealers holding an active Medicare DME provider number as a health care provider or provider under KRS 304.17A-005.

Section 20. Notwithstanding KRS 304.17A-704, within five business days from the time of acknowledgment under KRS 304.17A.704(1)(a), an insurer, its agent, or designee shall notify the provider, its billing agent, or designee that submitted the claim electronically, of all information that is missing from the billing instrument, of any errors in the billing instrument, or of any other circumstances which preclude it from being a clean claim.

Notwithstanding KRS 304.17A-704(2), at the time of acknowledgment under paragraph (b) of KRS 304.17A-704(1), an insurer, its agent, or designee, shall notify the provider, its billing agent, or designee that submitted the claim, in writing, of all information that is missing from the billing instrument, any errors in the billing instrument, or of any other circumstances which preclude it from being a clean claim.

Section 21. Notwithstanding KRS 304.17A-730(1), an insurer that fails to pay, deny, or settle a clean claim in accordance with KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123 shall pay interest according to the following schedule on the amount of the claim that remains unpaid:

(a) For claims that are paid between one and 30 days from the date that payment was due under KRS 304.17A-702, interest at a rate of 12 percent per annum shall accrue from the date payment was due under KRS 304.17A-702; and

(b) For claims that are paid more than 31 days from the date that payment was due under KRS 304.17A-702, interest at a rate of 14 percent per annum shall accrue from

the date payment was due under KRS 304.17A-702.

Section 22. Sections 1 to 8 of this Part take effect January 1, 2007.

PART XXIV

PHARMACY SCHOLARSHIP PROGRAM

Notwithstanding KRS 48.310, the following statute is created to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

SECTION 1. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) It is the intent of the General Assembly to establish a scholarship program to provide eligible Kentucky students the opportunity to attend an accredited school of pharmacy at a private four (4) year institution of higher education with a main campus located in an Appalachian Regional Commission county in the Commonwealth and become certified pharmacists in the Commonwealth.

(2) The Kentucky Higher Education Assistance Authority may award scholarships, to the extent funds are available for that purpose, to persons who declare an intent to enroll in a Pharm.D. program at an institution in the Commonwealth and practice in the Commonwealth and who are eligible under subsection (3) of this section.

(3) The authority may award scholarships to students who meet the following criteria:

(a) Kentucky residents who are United States citizens as determined by the institution in accordance with criteria established by the Council on Postsecondary Education for the purposes of admission and tuition assessment;

(b) Students who are enrolled or accepted for enrollment in an eligible program of study, on a full-time basis, or eligible students who have a disability defined by Title II of the Americans with Disabilities Act, 42 U.S.C. secs.

12131 et seq., certified by a licensed physician to be unable to attend the eligible program of study full-time because of the disability;

(c) Students who agree to render one (1) year of qualified service in the Commonwealth for each year the scholarship was awarded. "Qualified service" means a full-time practice in the Commonwealth of Kentucky as a licensed pharmacist for a majority of the calendar year, except that an individual having a disability defined by Title II of the Americans with Disabilities Act, 42 U.S.C. secs. 12131 et seq., whose disability, certified by another licensed physician, prevents him or her from practicing full-time, shall be deemed to perform qualified service by practicing the maximum time permitted by the attending physician; and

(d) Students who sign a promissory note as evidence of the scholarship awarded and the obligation to repay the scholarship amount or render medical service as agreed in lieu of payment.

(4) The amount of the scholarship awarded to an eligible student by the authority shall be equal to the difference between:

(a) The amount charged for in-state tuition at the University of Kentucky College of Pharmacy; and

(b) The prevailing amount charged for tuition at the institution in which the student is enrolled.

(5) The authority shall require a promissory note to be executed by the student as evidence of the obligation. The recipient shall render one (1) year of qualified service for each year the scholarship was awarded. Upon completion of each year of qualified service, the authority shall cancel the appropriate number of promissory notes. Promissory notes shall be canceled by qualified service in the order in which the promissory notes were executed. Service credit shall not include residency service. In the event a recipient fails to complete an eligible

program of study, or fails to render service as a pharmacist as agreed in subsection (3) of this section, the recipient shall be liable for the total repayment of the sum of all outstanding promissory notes and accrued interest.

(6) A scholarship shall not be awarded or a promissory note cancellation shall not be granted to any person who is in default on any obligation to the authority under any program administered by the authority under KRS 164.740 to 164.785 until financial obligations to the authority are satisfied, except that ineligibility for this reason may be waived by the authority for cause.

(7) A repayment obligation imposed by this section shall not be voidable by reason of the age of the recipient at the time of executing the promissory note.

(8) Failure to meet repayment obligations imposed by this section shall be cause for the revocation of the scholarship recipient's license to practice pharmacy, subject to the procedures set forth in KRS Chapter 311.

(9) Notwithstanding KRS 164.753(3), the authority shall establish by administrative regulation procedures or the terms of promissory notes from the administration of this program, including the execution of appropriate contracts and promissory notes, cancellation of the obligation, the rate of repayment and deferment of repayment of outstanding debt, and the priority of awarding scholarships if funds are insufficient to honor all requests.

(10) Notwithstanding any other statute to the contrary, the maximum interest rate applicable to repayment of a promissory note under this section shall be twelve percent (12%) per annum, except that if a judgment is rendered to recover payment, the judgment shall bear interest at the rate of five percent (5%) greater than the rate actually charged on the promissory note.

(11) (a) The Pharmacy Scholarship Program is hereby created as a special trust fund in the State Treasury administered by the Kentucky Higher Education Assistance Authority for the purpose of providing funds for scholarships to

eligible students studying pharmacy in schools in the Commonwealth.

(b) Funding shall be transferred to the special trust fund from the coal severance tax revenue levied under KRS 143.020 in an amount that permits each Kentucky resident eligible under subsection (3) of this section to be awarded a scholarship in the amount established under subsection (4) of this section. No more than four percent (4%) of the coal severance tax revenues levied under KRS 143.020 and collected annually shall be transferred to the trust fund. To the extent this appropriation and other funds are available, the authority shall award scholarships to all renewal applicants and eligible students in accordance with the formula for determining the amount of the scholarship award established in this section.

(c) The trust fund may also receive state appropriations, gifts, and grants from public and private sources, and federal funds. Any unallotted or unencumbered balances in the trust fund shall be invested as provided in KRS 42.500(9). Income earned from the investments shall be credited to the trust fund. Any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year and continuously appropriated only for the purposes specified in this section. A general statement that all continuing appropriations are repealed, discontinued, or suspended shall not operate to repeal, discontinue, or suspend this fund or to repeal this action.

(d) All moneys repaid to the authority under this section shall be added to the appropriations made for purposes of this section, and the funds and unobligated appropriations shall not lapse.

(12) On or before August 1 of each year, sixty-five percent (65%) of the amount of funding provided in subsection (11)(b) of this section shall be transferred to the

special trust fund, and the remaining thirty-five percent (35%) shall be transferred on or before December 1 of each year. The revenue transfers shall be based upon the revenue estimates prevailing at the time each transfer is due.

(13) The calculation and transfer of funds under subsection (11) of this section shall be made only after the quarterly installment of the annual nineteen million dollars ($19,000,000) allocation of coal severance tax revenues has been credited to the benefit reserve fund within the Workers' Compensation Funding Commission as required by KRS 342.122.

PART XXV

BLOCK GRANTS

Notwithstanding KRS 48.310, the following statute is amended to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

Section 1. KRS 45.3511 is amended to read as follows:

(1) State administering agencies shall not have continuation block grant application requests. Each application for a block grant shall be deemed a new application.

(2) No state administering agency shall receive or expend any block grant or other funds included in a block grant application to a federal administering agency, which has not previously been specifically approved as a block grant by the General Assembly in the biennial budget process as having complied with the criteria specified in KRS 45.353, unless the application is found to be in compliance with the standards and criteria as prescribed in KRS 45.353, as well as the applicable federal and state laws.

(3) If a county contains no incorporated area, that county shall be permitted to submit two (2) applications per year, one (1) as a county and one (1) as a city, for any block grant program or any category of a block grant program that provides funding on a competitive basis.

PART XXVI

AMUSEMENT RIDES AND ATTRACTIONS

Notwithstanding KRS 48.310, the following statutes are amended to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

Section 1. KRS 247.232 is amended to read as follows:

As used in KRS 247.232 to 247.236:

(1) "Amusement ride" means any mechanized device or combination of devices which carry passengers along, around, or over a fixed or restricted course for the purpose of giving its passengers amusement, pleasure, thrills, or excitement. "Amusement ride" does not include coin-operated amusement devices, unless designated by administrative regulation promulgated by the Commissioner;[, and] devices regulated by the Federal Aviation Administration, the Kentucky Transportation Cabinet, ***or*** the federal railroad commission;[, and] vessels under the jurisdiction of the United States Coast Guard or the Kentucky Department of Fish and Wildlife Resources; ***or other devices that may be designated by administrative regulation promulgated by the Commissioner;***

(2) "Amusement attraction" means any building or structure around, over, or through which people may walk, climb, slide, jump, or move that provides amusement, pleasure, thrills, or excitement. ***Unless designated by administrative regulation promulgated by the Commissioner,*** "amusement attraction" does not include tractor pulls;[,] auto or motorcycle events;[,] horse shows;[,] rodeos and other animal shows;[,] games and concessions; ***or***[,] nonmechanical playground equipment, such as swings, seesaws, rider-propelled merry-go-rounds, stationary spring-mounted animal devices, and physical fitness equipment. ***The Commissioner may,***[, unless designated] by administrative regulation, ***designate other devices that are not included in the definition of "amusement attraction"***[promulgated by the Commissioner];

(3) "Owner" means any person who owns an amusement ride or attraction; and

(4) "Commissioner" means the Commissioner of Kentucky Department of Agriculture or his authorized representative.

Section 2. KRS 247.234 is amended to read as follows:

(1) No amusement ride or attraction shall be operated in this state without a permit of operation issued by the Commissioner to the owner of the equipment. The permit shall be kept on site and viewable upon request.

(2) (a) The permit of operation required by this section shall be valid for a period of one (1) year and shall be issued in accordance with administrative regulations promulgated by the Commissioner;

(b) A permit shall be issued to each owner to operate any amusement ride or attraction in this state. ***An inspection fee, which shall be determined by administrative regulations promulgated by the Commissioner,*** ~~[A fee of fifty dollars ($50)]~~ shall be levied for each amusement ride or attraction. ***The fee shall be based on the complexity of the ride or attraction and shall not be less than ten dollars ($10) nor more than five hundred dollars ($500). The cost of all inspections shall be paid by the owner of the amusement ride or attraction and may be prepaid, but shall be paid no later than the day of the inspection***;

(c) The applicant shall furnish proof of liability insurance in effect on the operation of each amusement ride or attraction providing coverage, with an insurer authorized to issue a policy in this state, in the amount of ***not less than five hundred thousand dollars ($500,000)*** ~~[three hundred thousand dollars ($300,000)]~~ due to all bodily injuries or deaths per occurrence, or in lieu thereof, if the applicant's amusement ride or amusement attraction is one that is permanently located or erected on a site in this state, the applicant shall be required only to provide proof of~~[liability insurance in the sum of one hundred thousand dollars ($100,000) or proof of]~~ financial responsibility in

the sum of ***five hundred thousand dollars ($500,000)***~~[one hundred thousand dollars ($100,000)]~~. Every insurance carrier of these policies shall notify the Commissioner at least thirty (30) days prior to cancellation of a policy for mobile amusement rides or attractions and at least ten (10) days prior to cancellation of a policy for permanent amusement rides or attractions. In addition to proof of adequate insurance coverage, the applicant shall furnish any other information the Commissioner may require, including, but not limited to, written notice of each intended operating site to be received by the Commissioner at least fourteen (14) days prior to operation at that site. In cases of emergency, notice of a change in future plans may be given to the Commissioner by telephone. Insurance requirements for amusement rides and attractions operated at the Kentucky State Fair may be adjusted by the Commissioner to any amount reasonably necessary to ensure adequate coverage;

(d) The Commissioner shall provide for an inspection of each amusement ride or attraction before it may be operated in this state. The Commissioner shall designate persons qualified by education or experience, who are capable of determining amusement safety in accordance with administrative regulations promulgated in accordance with KRS 247.232 to 247.236, as amusement safety inspectors; and

(e) A Kentucky inspection seal shall be affixed to every individual amusement ride or attraction, or other location as determined by the Commissioner, before it may be operated in this state.

(3) (a) In addition to a mandatory initial inspection, required in subsection (2)(d) of this section, the Commissioner may inspect amusement rides and attractions without notice at any time while operating in this state. There will be no charge for additional inspections in which safety violations are not found. In

regard to situations in which safety violations are found, the Commissioner may charge an inspection fee not to exceed five hundred dollars ($500) for any future inspection necessary. The corrections of these safety violations shall comply with accepted standards of safety, and shall be accomplished prior to operating the equipment in this state;

(b) In regard to situations in which safety violations are found that cannot be corrected immediately, the amusement ride or attraction shall cease to operate in this state by order of the amusement safety inspector. In addition, the amusement safety inspector shall conspicuously post a public notice on or near the amusement ride or attraction. The notice shall adequately inform the public of the safety violation present. Only an amusement safety inspector employed by the department may remove the public notice;

(c) Any owner who continues to operate an amusement ride or attraction after an order to cease operation has been issued shall have his permit of operation revoked and may be subject to further penalties provided in KRS 247.990 and this section. In addition, the county attorney of each county and the Commissioner of Agriculture or his agents are hereby authorized to seek an injunction against the owner or operator of any amusement ride or attraction being operated in violation of KRS 247.232 to 247.236; and

(d) Revenue generated by this section shall be used for the implementation and administration of KRS 247.232 to 247.236; the balance, if any, shall ***not lapse but shall be carried forward to the next fiscal year***~~[be paid into the general fund of this state]~~.

Section 3. Sections 1 and 2 of this Part take effect January 1, 2007.

PART XXVII

JUDICIAL BRANCH CAPITAL PROJECTS BUDGET

1. Local Facilities Projects

a. Authorized Local Facilities Projects and Deferred Use Allowance

Rank	Project	Project Scope	Maximum Annualized Use Allowance	Total Funds
001.	Campbell	29,284,000	2,621,000	4,886,000
002.	Wolfe	11,395,000	1,020,000	1,772,000
003.	Todd	9,537,000	854,000	1,469,000
004.	Garrard	11,598,000	1,038,000	1,793,000
005.	Franklin	29,114,000	2,606,000	4,701,000
006.	Hancock	11,715,000	1,049,000	1,793,000
007.	Mercer	11,963,000	1,071,000	1,929,000
008.	Russell	11,720,000	1,049,000	1,813,000
009.	Hopkins	20,492,000	1,834,000	3,305,000
010.	Owen	11,471,000	1,027,000	1,791,000
011.	Breckinridge	11,481,000	1,027,600	1,756,000
012.	Fleming	11,536,000	1,033,000	1,778,000
013.	Whitley	18,901,000	1,692,000	2,953,000
014.	Monroe	11,207,000	1,003,000	1,710,000
015.	Rowan	13,044,000	1,168,000	2,024,000
016.	Pike	28,413,000	2,545,000	4,606,000
017.	Marion	11,781,000	1,055,000	1,821,000

(1) Deferred Funding: General Fund support to provide operating support totaling $4,927,300, annualized use allowance payments totaling $23,692,600, and non-recurring furniture and equipment costs totaling $15,560,000, less offsetting payments made for existing facilities totaling $2,279,600, for the above local facilities projects is deferred to the 2008-2010 fiscal biennium pending action of the 2008 General Assembly.

2. Local Facility Project – Additional Scope

a. Pendleton – Additional Scope 8,010,100 -0-

3. Bond Refinancings

Any savings realized from bonds refinanced after November 1, 2005, associated with a court facility constructed or renovated after July 1, 1994, shall be shared by the local unit of government and the Court of Justice based on the proportional share of the original project costs borne by the local unit of government and the Court of Justice. The length of the term of the refinancing shall not extend beyond the original maturity date of the prior bonds.

The local unit of government may use the savings to make needed improvements to the court facility, if the annual lease payment of the state is not increased as a result of the refinancing. Improvements may consist of but are not limited to holding cells, additional parking, removing physical barriers in order to comply with the American Disabilities Act requirements, space additions for the holding of family court, and other needed improvements as determined by the local unit of government after consulting with the Administrative Office of the Courts.

~~[Any debt obligations issued by or on behalf of a unit of government to finance a court facility leased to the Administrative Office of the Courts shall be publicly bid by the owner of the court facility in accordance with KRS 66.141.]~~ *(Veto #28)*

PART XXVIII

OMNIBUS ASSISTANCE TO VETERANS AND MILITARY FAMILIES

Notwithstanding KRS 48.310, the following statutes are created or amended to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

SECTION 1. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

(1) The military family assistance trust fund is created as a separate revolving fund. The trust fund shall consist of grants, contributions, appropriations, or other

moneys made available for the purpose of the trust fund.

(2) Trust fund amounts not expended at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year.

(3) Any interest earnings of the trust fund shall become a part of the trust fund and shall not lapse.

SECTION 2. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

(1) (a) The Military Family Assistance Trust Fund Board is hereby created for the purpose of administering the trust fund created under Section 1 of this Part. The board shall be attached to the Department of Military Affairs for administrative purposes. The board shall be composed of six (6) members as follows:

1. Three (3) members, expert in military family matters, appointed by the Governor;

2. One (1) member, expert in military family matters, appointed by the President of the Senate;

3. One (1) member, expert in military family matters, appointed by the Speaker of the House of Representatives; and

4. The adjutant general who shall serve as a nonvoting member.

(b) Appointments referred to in paragraph (a) of this subsection shall be made within sixty (60) days of the effective date of this Act.

(2) The adjutant general, or a majority of the board members, shall arrange for the first board meeting as soon as possible after all board members are appointed, but no later than June 15, 2006.

(3) Appointed board members shall serve without compensation but may receive reimbursement for their actual and necessary expenses incurred in the performance of their duties.

(4) The term of each appointed member shall be four (4) years.

(5) An appointed member whose term has expired may continue to serve until a successor is appointed and qualifies. A member who is appointed to an unexpired term shall serve the rest of the term and until a successor is appointed and qualifies. A member may serve two (2) consecutive four (4) year terms and shall not be reappointed for four (4) years after the completion of those terms.

(6) A majority of the full membership of the board shall constitute a quorum.

(7) (a) Except as provided in paragraph (b) of this subsection, at the first meeting, the board shall elect, by majority vote, a president who shall preside at all meetings and coordinate the functions and activities of the board. The president shall be elected or reelected each calendar year thereafter.

(b) The adjutant general shall not serve as the president of the board.

(8) The board shall meet at least two (2) times annually but may meet more frequently, as deemed necessary, subject to call by the president or by request of a majority of the board members.

SECTION 3. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

(1) During active duty of a regular member of the United States Armed Forces deployed outside the United States who names Kentucky as Home of Record for military purposes, or any federal active duty of a member of a state National Guard or a Reserve component, who names Kentucky as Home of Record for military purposes, and for ninety (90) days following the end of deployment outside the United States or deactivation, as appropriate, trust fund moneys shall be used to support:

(a) The person who names Kentucky Home of Record for military purposes;

(b) The person's Kentucky resident spouse; and

(c) The person's dependent or dependents.

(2) An application for a trust fund grant may be filed by the member who names Kentucky as Home of Record for military purposes or his or her Kentucky resident spouse. The application shall be accompanied by an appropriate authorization to access personnel information contained in the military database Defense Enrollment Reporting System (DEERS) for verification purposes.

(3) Subject to the availability of trust fund moneys, the adjutant general shall award a grant to an applicant if that person's application is need-based, and the amount of the grant does not exceed the dollar cap established by the board through the promulgation of administrative regulations. An application shall be need-based if:

(a) Funds are requested for necessary expenses incurred, or to be incurred. Necessary expenses shall include but not be limited to:

1. Housing;

2. Utilities;

3. Groceries;

4. Health insurance copay; and

5. Child care;

(b) The necessary expenses created, or will create, an undue hardship on a person referred to in subsection (1) of this section;

(c) The undue hardship is directly related to the member's deployment outside the United States or federal active duty, as appropriate;

(d) The applicant does not have reasonable access to any other funding source, whether public or private; and

(e) The military family assistance trust fund is the last resort.

(4) (a) The adjutant general shall award or decline to award a grant within sixty (60) days of receiving an application.

(b) If the adjutant general awards or declines to award a grant, he or she shall

state in writing the reason for the decision and keep the writing on file.

(c) If the adjutant general declines to award a grant, he or she shall provide the applicant with a copy of the writing referred to in paragraph (b) of this subsection. In addition, if the adjutant general declines to award a grant due to the availability of public or private funds, the adjutant general shall identify the source of available funds for the applicant and provide assistance with regard to seeking funds from that source.

(5) No later than August 15, 2006, the Military Family Assistance Trust Fund Board shall promulgate emergency administrative regulations to carry out the provisions of this section. These emergency regulations shall, at a minimum, enhance administrative efficiency and limit the dollar amount that a person may receive in grants per twelve (12) month period.

SECTION 4. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

Each year between August 15 and September 1, the Military Family Assistance Trust Fund Board shall provide a written report to the Governor, the Legislative Research Commission, and the Interim Joint Committee on Seniors, Veterans, Military Affairs, and Public Protection. The written report shall provide:

(1) The board's activities during the previous fiscal year;

(2) What moneys were spent out of the military family assistance trust fund for what purposes;

(3) The amount of money left in the fund; and

(4) Any recommendations for future initiatives with regard to the trust fund and its administration.

SECTION 5. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

(1) The Department of Military Affairs shall establish a Mission: Welcome Home

Program to ensure that a supportive community shall meet every member of a state National Guard, who names Kentucky as Home of Record for military purposes, returning from federal active duty.

(2) The department shall employ any appropriate means to carry out Mission: Welcome Home, including but not limited to:

(a) Providing every returning member of a state National Guard, who names Kentucky as Home of Record for military purposes, with a Mission: Welcome Home packet that states what will be done to help the member as he or she rejoins his or her Kentucky life;

(b) Identifying a veteran who will serve as the contact for the returning member and his or her family with regard to Mission: Welcome Home and other benefits and services; and

(c) Identifying National Guard members, veterans, civilians, businesses, and community organizations willing to provide hands-on assistance to the returning member and his or her family with regard to establishing or reestablishing a career and reentering civilian life.

SECTION 6. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Department of Military Affairs shall establish procedures to assist the spouses of military personnel acquiring and obtaining professional and occupational licenses, certificates, registrations, permits, or other credentials. A person shall be eligible for assistance under this section if he or she is the spouse of a member of the United States Armed Forces, including a member of a state's National Guard or Reserve on federal active duty who moves into Kentucky when the member of the United States Armed Forces is reassigned by the military. The department shall:

(a) Establish a process by which the department shall verify whether or not the

military spouse has relocated because of the reassignment of his or her spouse by the military;

(b) Work directly with other states, testing providers, and organizations issuing credentials to accelerate the application process for obtaining state licenses, certifications, registrations, or permits. To fulfill this directive, the department shall seek input from and disseminate information to state agencies and credentialing boards on ways to accelerate the process by which eligible military spouses moving into the Commonwealth may obtain the credentials required for occupational and professional credentialing as expeditiously as possible; and

(c) Coordinate the activities of other state agencies and credentialing boards to establish a clearinghouse by which information on obtaining licenses, certificates, registration, and permits may be accessed. In coordinating the information, the department shall compile information from other state agencies and credentialing boards on the occupations and professions requiring a state permit, registration, certification, license, or other qualifying document and the name, telephone number, and address of a contact person for each such occupation or profession.

(2) Any state agency or credentialing board issuing permits, registrations, certificates, or licenses that are a prerequisite to a person engaging in an occupation or profession shall assist the Kentucky Department of Military Affairs in expediting the application process for such permits, registrations, certificates, or licenses for military spouses who come into Kentucky because their spouses are reassigned by the military.

(3) The department shall prepare and issue an annual report on its activities in meeting the directives of this section by June 1 of each year. A copy of the report shall be submitted to the Interim Joint Committee on Licensing and Occupations

and the Interim Joint Committee on Seniors, Veterans, Military Affairs, and Public Protection.

Section 7. KRS 198A.040 is amended to read as follows:

The corporation shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter including, but without limiting the generality of the foregoing, the power:

(1) To make or participate in the making of insured construction loans to sponsors of land development or residential housing; provided, however, that such loans shall be made only upon the determination by the corporation that construction loans have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;

(2) To make or participate in the making of insured mortgage loans to sponsors of residential housing; provided, however, that such loans shall be made only upon the determination by the corporation that mortgage loans have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;

(3) To purchase or participate in the purchase of insured mortgage loans made to sponsors of residential housing or to persons of lower and moderate income for residential housing; provided, however, that any such purchase shall be made only upon the determination by the corporation that mortgage loans have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;

(4) To make temporary loans from the housing development fund;

(5) To collect and pay reasonable fees and charges in connection with making, purchasing and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness;

(6) To acquire real property, or any interest therein, by purchase, foreclosure, lease,

sublease, or otherwise; to own, manage, operate, hold, clear, improve, and rehabilitate such real property; and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber such real property where such use of real property is necessary or appropriate to the purpose of the Kentucky Housing Corporation;

(7) To sell, at public or private sale, all or any part of any mortgage or other instrument or document securing a construction, land development, mortgage, or temporary loan of any type permitted by this chapter;

(8) To procure insurance against any loss in connection with its operations in such amounts, and from such insurers, as it may deem necessary or desirable;

(9) To consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purposes, to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms of any mortgage loan, mortgage loan commitment, construction loan, temporary loan, contract, or agreement of any kind to which the corporation is a party;

(10) To acquire, establish, operate, lease, and sublease residential housing for persons and families of lower and moderate income and to enter into agreements or other transactions with any federal, state, or local governmental agency for the purpose of providing adequate living quarters for such persons and families in cities and counties where a need has been found for such housing and where no local housing authorities or other organizations exist to fill such need;

(11) To include in any borrowing such amounts as may be deemed necessary by the corporation to pay financing charges, interest on the obligations for a period not exceeding two (2) years from their date, consultant, advisory, and legal fees and such other expenses as are necessary or incident to such borrowing;

(12) To make and publish rules and regulations respecting its lending programs and such other rules and regulations as are necessary to effectuate its corporate purposes;

(13) To provide technical and advisory services to sponsors of residential housing and to residents and potential residents thereof, including but not limited to, housing selection and purchase procedures, family budgeting, property use and maintenance, household management, and utilization of community resources;

(14) To promote research and development in scientific methods of constructing low cost residential housing of high durability;

(15) To encourage community organizations to participate in residential housing development;

(16) To make, execute, and effectuate any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, or other organization or entity, necessary to accomplish the purposes of this chapter;

(17) To accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source whatsoever and to agree to, and to comply with, conditions attached thereto;

(18) To sue and be sued in its own name, plead and be impleaded;

(19) To maintain an office in the city of Frankfort and at such other place or places as it may determine;

(20) To adopt an official seal and alter the same at pleasure;

(21) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties;

(22) To employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the corporation and to fix and pay their compensation from funds available to the corporation therefor, provided that any personal service contracts entered into shall be subject to review by the Government Contract Review Committee of the Legislative Research Commission;

(23) To invest any funds held in reserve or in sinking fund accounts or any moneys not required for immediate disbursement in obligations guaranteed by the Commonwealth, the United States, or their agencies or instrumentalities; provided, however, that the return on such investments shall not violate any rulings of the Internal Revenue Service regarding the investment of the proceeds of any federally tax exempt bond issue;

(24) To make or participate in the making of rehabilitation loans to the sponsors or owners of residential housing; provided, however, that any such rehabilitation loan shall be made only upon the determination by the corporation that the rehabilitation loan was not otherwise available wholly or in part from private lenders upon reasonably equivalent terms and conditions;

(25) To insure or reinsure construction, mortgage, and rehabilitation loans on residential housing; provided, however, that any such insurance, reinsurance, or waiver shall be made only upon the determination by the corporation:

(a) That such insurance or reinsurance is not otherwise available wholly or in part from private insurers upon reasonably equivalent terms and conditions; and

(b) That such loan is a reasonably sound business investment; and provided further that insurance may be waived only where the corporation finds that the amount of the loan does not exceed eighty-five percent (85%) of the development costs, or eighty-five percent (85%) of the value of the property secured by the mortgage as determined by at least two (2) appraisers who are independent of the sponsors, builders, and developers;

(26) To make grants from appropriated funds, agency and trust funds, and any other funds from any source available to the corporation, to sponsors, municipalities, local housing authorities, and to owners of residential housing for the development, construction, rehabilitation, or maintenance of residential housing and such facilities related thereto as corporation shall deem important for a proper living

environment, all on such terms and conditions as may be deemed appropriate by the corporation;

(27) To make periodic grants to reduce principal and interest payments on mortgages or rentals payable by persons and families of lower and moderate income; and

(28) ***(a) To make a grant to reduce principal and interest payments on a mortgage or a rental payable by a member of a state National Guard or a Reserve component, who names Kentucky as Home of Record for military purposes, during that member's federal active duty. To qualify for a grant, a member of a state National Guard or a Reserve component shall meet reasonable standards established by the corporation, including having family income equal to or less than two hundred percent (200%) of the state or area median income; and***

(b) To provide a member of a state National Guard or a Reserve component, who names Kentucky as Home of Record for military purposes, and that member's Kentucky resident spouse with the educational, technical, and ombudsman services that are necessary to maintain a mortgage during that member's federal active duty.

The Kentucky Housing Corporation shall be exempt from the regulations of the Office of Insurance and the laws of the Commonwealth relating thereto.

Section 8. KRS 18A.190 is amended to read as follows:

(1) State offices shall be closed and state employees shall be given a holiday on the following days:

(a) The first day of January plus one (1) extra day;

(b) The third Monday in January;

(c) Good Friday, one-half (1/2) day;

(d) The last Monday in May;

(e) The fourth day of July;

(f) The first Monday in September;

(g) The eleventh day of November;

(h) Presidential election day as required under KRS 2.190;

(i) The fourth Thursday in November plus one (1) extra day; and

(j) The twenty-fifth day of December plus one (1) extra day.

(2) When any of the days enumerated in subsection (1) falls on a Saturday, the preceding Friday shall be observed as the holiday, and when any of the days enumerated in subsection (1) falls on a Sunday, the following Monday shall be observed as the holiday. When one (1) extra day is mentioned in paragraphs (a), (i) and (j) of subsection (1), the Governor shall designate the extra day.

(3) ***Any state employee who is the spouse of a member of the United States Armed Forces, including a member of a state National Guard or a Reserve component on federal active duty, shall receive, at the discretion of the state employee, one (1) day off, with pay, from work when the member is deployed and one (1) day off, with pay, from work when the member returns from deployment.***

(4) The holidays set out in this section are in addition to vacation leave and other benefits of state employees.

Section 9. KRS 159.035 is amended to read as follows:

(1) Notwithstanding the provisions of any other statute, any student in a public school who is enrolled in a properly organized 4-H club shall be considered present at school for all purposes when participating in regularly scheduled 4-H club educational activities, provided, the student is accompanied by or under the supervision of a county extension agent or the designated 4-H club leader for the 4-H club educational activity participated in.

(2) Except as provided in paragraph (e) of this subsection, a public school principal shall give a student an excused absence of up to ten (10) school days to pursue an educational enhancement opportunity determined by the principal to be of

significant educational value, including but not limited to participation in an educational foreign exchange program or an intensive instructional, experiential, or performance program in one (1) of the core curriculum subjects of English, science, mathematics, social studies, foreign language, and the arts.

(a) A student receiving an excused absence under this subsection shall have the opportunity to make up school work missed and shall not have his or her class grades adversely affected for lack of class attendance or class participation due to the excused absence.

(b) Educational enhancement opportunities under this subsection shall not include nonacademic extracurricular activities, but may include programs not sponsored by the school district.

(c) If a request for an excused absence to pursue an educational enhancement opportunity is denied by a school principal, a student may appeal the decision to the district superintendent, who shall make a determination whether to uphold or alter the decision of the principal. If a superintendent upholds a principal's denial, a student may appeal the decision to the local board of education, which shall make a final determination. A principal, superintendent, and local board of education shall make their determinations based on the provisions of this subsection and the district's school attendance policies adopted in accordance with KRS 158.070 and KRS 159.150.

(d) A student receiving an excused absence under the provisions of this subsection shall be considered present in school during the excused absence for the purposes of calculating average daily attendance as defined by KRS 157.320 under the Support Education Excellence in Kentucky program.

(e) A student shall not be eligible to receive an excused absence under the provisions of this subsection for an absence during a school's testing window established for assessments of the Commonwealth Accountability Testing

System under KRS 158.6453 or during a testing period established for the administration of additional district-wide assessments at the school, except if a principal determines that extenuating circumstances make an excused absence to pursue an educational enhancement opportunity appropriate.

(3) (a) If a student's parent, de facto custodian, or other person with legal custody or control of the student is a member of the United States Armed Forces, including a member of a state National Guard or a Reserve component called to federal active duty, a public school principal shall give the student:

1. An excused absence for one (1) day when the member is deployed; and

2. An additional excused absence for one (1) day when the service member returns from deployment.

(b) A student receiving an excused absence under this subsection shall have the opportunity to make up school work missed and shall not have his or her class grades adversely affected for lack of class attendance or class participation due to the excused absence.

(c) A student receiving an excused absence under this subsection shall be considered present in school during the excused absence for the purposes of calculating average daily attendance as defined by KRS 157.320 under the Support Education Excellence in Kentucky program.

Section 10. KRS 403.340 is amended to read as follows:

(1) As used in this section, "custody" means sole or joint custody, whether ordered by a court or agreed to by the parties.

(2) No motion to modify a custody decree shall be made earlier than two (2) years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe that:

(a) The child's present environment may endanger seriously his physical, mental, moral, or emotional health; or

(b) The custodian appointed under the prior decree has placed the child with a de facto custodian.

(3) If a court of this state has jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act, the court shall not modify a prior custody decree unless after hearing it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that the modification is necessary to serve the best interests of the child. When determining if a change has occurred and whether a modification of custody is in the best interests of the child, the court shall consider the following:

(a) Whether the custodian agrees to the modification;

(b) Whether the child has been integrated into the family of the petitioner with consent of the custodian;

(c) The factors set forth in KRS 403.270(2) to determine the best interests of the child;

(d) Whether the child's present environment endangers seriously his physical, mental, moral, or emotional health;

(e) Whether the harm likely to be caused by a change of environment is outweighed by its advantages to him; and

(f) Whether the custodian has placed the child with a de facto custodian.

(4) In determining whether a child's present environment may endanger seriously his physical, mental, moral, or emotional health, the court shall consider all relevant factors, including, but not limited to:

(a) The interaction and interrelationship of the child with his parent or parents, his de facto custodian, his siblings, and any other person who may significantly affect the child's best interests;

(b) The mental and physical health of all individuals involved;

(c) Repeated or substantial failure, without good cause as specified in KRS 403.240, of either parent to observe visitation, child support, or other provisions of the decree which affect the child, except that modification of custody orders shall not be made solely on the basis of failure to comply with visitation or child support provisions, or on the basis of which parent is more likely to allow visitation or pay child support;

(d) If domestic violence and abuse, as defined in KRS 403.720, is found by the court to exist, the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents.

(5) ***(a) Except as provided in paragraph (b) of this subsection, any court-ordered modification of a child custody decree, based in whole or in part on:***

1. The active duty of a parent or a de facto custodian as a regular member of the United States Armed Forces deployed outside the United States; or

2. Any federal active duty of a parent or a de facto custodian as a member of a state National Guard or a Reserve component;

shall be temporary and shall revert back to the previous child custody decree at the end of the deployment outside the United States or the federal active duty, as appropriate.

(b) A parent or de facto custodian identified in paragraph (a) of this subsection may consent to a modification of a child custody decree that continues past the end of the deployment outside the United States or the federal active duty, as appropriate.

(6) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

Section 11. KRS 341.370 is amended to read as follows:

(1) A worker shall be disqualified from receiving benefits for the duration of any period

of unemployment with respect to which:

(a) He has failed without good cause either to apply for available, suitable work when so directed by the employment office or the secretary or to accept suitable work when offered him, or to return to his customary self-employment when so directed by the secretary; or

(b) He has been discharged for misconduct or dishonesty connected with his most recent work, or from any work which occurred after the first day of the worker's base period and which last preceded his most recent work, but legitimate activity in connection with labor organizations or failure to join a company union shall not be construed as misconduct; or

(c) He has left his most recent suitable work or any other suitable work which occurred after the first day of the worker's base period and which last preceded his most recent work voluntarily without good cause attributable to the employment. No otherwise eligible worker shall be disqualified from receiving benefits for:

1. Leaving his next most recent suitable work which was concurrent with his most recent work;[, or for]

2. Leaving work which is one hundred (100) road miles or more, as measured on a one (1) way basis, from his home to accept work which is less than one hundred (100) road miles from his home;[, or for otherwise]

3. Accepting work which is a bona fide job offer with a reasonable expectation of continued employment; or

4. a. Leaving work to accompany the worker's spouse to a different state when the spouse is reassigned by the military.

b. Subdivision a. of this subparagraph shall apply only if the state of relocation has adopted a statute substantially similar to that

subdivision.

(2) A worker shall be disqualified from receiving benefits for any week with respect to which he knowingly made a false statement to establish his right to or the amount of his benefits, and, within the succeeding twenty-four (24) months, for the additional weeks immediately following the date of discovery, not to exceed a total of fifty-two (52), as may be determined by the secretary.

(3) No worker shall be disqualified under paragraph (b) or (c) of subsection (1) of this section unless the employer, within a reasonable time as prescribed by regulations promulgated by the secretary, notifies the Cabinet for Workforce Development and the worker in writing of the alleged voluntary quitting or the discharge for misconduct. Nothing in this subsection shall restrict the right of the secretary to disqualify a worker whose employer has refused or failed to notify the Cabinet for Workforce Development of the alleged voluntary quitting or discharge for misconduct, if the alleged voluntary quitting or discharge for misconduct is known to the secretary prior to the time benefits are paid to the worker. The exercise of the right by the secretary, in the absence of timely notice from the employer, shall not relieve the employer's reserve account or reimbursing employer's account of benefit charges under the provisions of subsection (3) of KRS 341.530.

(4) As used in this section and in subsection (3) of KRS 341.530, "most recent" work shall be construed as that work which occurred after the first day of the worker's base period and which last preceded the week of unemployment with respect to which benefits are claimed; except that, if the work last preceding the week of unemployment was seasonal, intermittent, or temporary in nature, most recent work may be construed as that work last preceding the seasonal, intermittent, or temporary work.

(5) No worker shall be disqualified or held ineligible under the provisions of this section or KRS 341.350, who is separated from employment pursuant to a labor

management contract or agreement, or pursuant to an established employer plan, program, or policy, which permits the employer to close the plant or facility for purposes of vacation or maintenance.

(6) "Discharge for misconduct" as used in this section shall include but not be limited to, separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge; knowing violation of a reasonable and uniformly enforced rule of an employer; unsatisfactory attendance if the worker cannot show good cause for absences or tardiness; damaging the employer's property through gross negligence; refusing to obey reasonable instructions; reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer's premises during working hours; conduct endangering safety of self or co-workers; and incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction, which results in missing at least five (5) days work.

(7) "Duration of any period of unemployment," as that term is used in this section, shall be the period of time beginning with the worker's discharge, voluntary quitting, or failure to apply for or accept suitable work and running until the worker has worked in each of ten (10) weeks, whether or not consecutive, and has earned ten (10) times his weekly benefit rate in employment covered under the provisions of this chapter or a similar law of another state or of the United States.

Section 12. KRS 61.315 is amended to read as follows:

(1) As used in this section, "police officer" means every paid police officer, sheriff, or deputy sheriff, corrections employee with the power of a peace officer pursuant to KRS 196.037, any auxiliary police officer appointed pursuant to KRS 95.445, or any citation or safety officer appointed pursuant to KRS 83A.087 and 83A.088, elected to office, or employed by any county, airport board created pursuant to KRS Chapter 183, city, or by the state; "firefighter" means every paid firefighter or

volunteer firefighter who is employed by or volunteers his services to the state, airport board created pursuant to KRS Chapter 183, any county, city, fire district, or any other organized fire department recognized, pursuant to KRS 95A.262, as a fire department operated and maintained on a nonprofit basis in the interest of the health and safety of the inhabitants of the Commonwealth and shall include qualified civilian firefighters employed at Kentucky-based military installations.

(2) The spouse of any police officer, sheriff, deputy sheriff, corrections employee with the power of a peace officer pursuant to KRS 196.037, any auxiliary police officer appointed pursuant to KRS 95.445, or any citation or safety officer appointed pursuant to KRS 83A.087 and 83A.088, firefighter, or member of the Kentucky National Guard on state active duty pursuant to KRS 38.030***, or a member of a state National Guard or a Reserve component on federal active duty who names Kentucky as Home of Record for military purposes***, whose death occurs on or after July 1, 2002, as a direct result of an act in the line of duty shall receive a lump-sum payment of ***eighty thousand dollars ($80,000)***~~[seventy-five thousand dollars ($75,000)]~~ if there are no surviving children, which sum shall be paid by the State Treasurer from the general expenditure fund of the State Treasury. If there are surviving children and a surviving spouse, the payment shall be apportioned equally among the surviving children and the spouse. If there is no surviving spouse, the payment shall be made to the surviving children, eighteen (18) or more years of age. For surviving children less than eighteen (18) years of age, the State Treasurer shall:

(a) Pay ***thirty-five***~~[thirty]~~ thousand dollars ***($35,000)***~~[($30,000)]~~ to the surviving children; and

(b) Hold forty-five thousand dollars ($45,000) in trust divided into equal accounts at appropriate interest rates for each surviving child until the child reaches the age of eighteen (18) years.

If a child dies before reaching the age of eighteen (18) years, his account shall be

paid to his estate. If there are no surviving children, the payment shall be made to any parents of the deceased.

(3) The Commission on Fire Protection Personnel Standards and Education shall be authorized to promulgate administrative regulations establishing criteria and procedures applicable to the administration of this section as it pertains to both paid and volunteer firefighters, including, but not limited to, defining when a firefighter has died in line of duty. Administrative hearings promulgated by administrative regulation under authority of this subsection shall be conducted in accordance with KRS Chapter 13B.

(4) The Justice Cabinet may promulgate administrative regulations establishing criteria and procedures applicable to the administration of this section as it pertains to police officers, including, but not limited to, defining when a police officer has died in line of duty. Administrative hearings promulgated by administrative regulation under authority of this subsection shall be conducted in accordance with KRS Chapter 13B.

(5) The Department of Corrections shall promulgate administrative regulations establishing the criteria and procedures applicable to the administration of this section as it pertains to correctional employees, including, but not limited to, defining which employees qualify for coverage and which circumstances constitute death in the line of duty.

(6) The benefits payable under this section shall be in addition to any benefits now or hereafter prescribed under any police, sheriff, firefighter's, volunteer firefighter's, or National Guard ***or Reserve*** retirement or benefit fund established by the federal government or by any state, county, or any municipality.

(7) Any funds appropriated for the purpose of paying the death benefits described in subsection (2) of this section shall be allotted to a self-insuring account. These funds shall not be used for the purpose of purchasing insurance.

SECTION 13. A NEW SECTION OF KRS CHAPTER 40 IS CREATED TO READ AS FOLLOWS:

No later than June 30, 2008, the Kentucky Department of Veterans' Affairs shall employ no fewer than five (5) veterans' benefits regional administrators and no fewer than twenty (20) veterans' benefits field representatives.

(1) The duties of a veterans' benefits regional administrator shall include but not be limited to supervision of veterans' benefits field representatives in an assigned region and representation of veterans in administrative hearings and before the Board of Veterans' Appeals.

(2) The duties of a veterans' benefits field representative shall include but not be limited to providing assistance to veterans and their dependents with initiation, preparation, documentation, and adjudication of claims to benefits under federal, state, or local laws.

Section 14. KRS 186.020 is amended to read as follows:

(1) Before the owner of a motor vehicle, other than a motor vehicle engaged in the transportation of passengers for hire operating under a certificate of convenience and necessity, may operate it or permit its operation upon a highway, the owner shall apply for registration in accordance with administrative regulations promulgated by the cabinet, except that a person who purchases a motor vehicle, or brings a motor vehicle into the Commonwealth from another state shall make application for registration within fifteen (15) days. The bill of sale or assigned title must be in the motor vehicle during this fifteen (15) day period. If the owner of a motor vehicle is an individual and resides in the Commonwealth, the motor vehicle shall be registered with the county clerk of the county in which he resides. If the owner of a motor vehicle does not reside in the Commonwealth, the motor vehicle shall be registered with the county clerk of the county in which the motor vehicle is principally operated. If the owner of a motor vehicle is other than an individual and

resides in the Commonwealth, the motor vehicle shall be registered with the county clerk of either county. The application when presented to the county clerk for registration shall be accompanied by:

(a) A bill of sale and a manufacturer's certificate of origin if the application is for the registration of a new motor vehicle;

(b) The owner's registration receipt, if the motor vehicle was last registered in this state;

(c) A bill of sale and the previous registration receipt, if last registered in another state where the law of that state does not require the owner of a motor vehicle to obtain a certificate of title or ownership;

(d) A certificate of title, if last registered in another state where the law of that state requires the owner of a motor vehicle to obtain a certificate of title or ownership;

(e) An affidavit from an officer of a local government saying that the motor vehicle has been abandoned and that the provisions of KRS 82.630 have been complied with, for local governments which elect to use the provisions of KRS 82.600 to 82.640; and

(f) The application from a person who has brought a motor vehicle into the Commonwealth from another state shall be accompanied by proof that the motor vehicle is insured in compliance with KRS 304.39-080.

(2) After that, ***except as provided in subsection (6) of this section,*** the owner of any motor vehicle registered under KRS 186.050(1) or (2) shall register his motor vehicle on or before the date on which his certificate of registration expires. If, before operating the motor vehicle in this state, the owner registers it at some later date and pays the fee for the full year, he will be deemed to have complied with the law. Insofar as the owner is concerned, registration with the clerk shall be deemed to be registration with the cabinet.

(3) After that, the owner of any commercial vehicle registered under KRS 186.050(3) to (14) shall register his commercial vehicle on or before April 1 of each year. If, before operating a commercial vehicle in this state, the owner registers it at some later date and pays the required fee, he will be deemed to have complied with the law. Insofar as the owner is concerned, registration with the clerk shall be deemed to be registration with the cabinet, except the owner of any commercial motor vehicle to be registered pursuant to the International Registration Plan under KRS 186.050(13) shall register his commercial motor vehicles on or before the last day of the month of registration established pursuant to KRS 186.051(3).

(4) The application and documents presented therewith, including the sheriff's certificate of inspection, shall be affixed to the Transportation Cabinet copy of the certificate of title or registration and sent to the Transportation Cabinet by the clerk.

(5) At least forty-five (45) days prior to the expiration of registration of any motor vehicle previously registered in the Commonwealth as provided by KRS 186A.035, the owner of the vehicle shall be notified by mail on the same notice required by KRS 134.805(5) of the date of expiration. In addition, the department shall provide appropriate forms and information to permit renewal of motor vehicle registration to be completed by mail. Any registration renewal by mail shall require payment of an additional two dollar ($2) fee which shall be received by the county clerk. Nonreceipt of the notice herein shall not constitute a defense to any registration related offense.

(6) (a) If an individual has been serving in the United States military stationed or assigned to a base or other location outside the boundaries of the United States, he or she shall renew the registration on the vehicle within thirty (30) days of his or her return, if:

1. The motor vehicle has been stored on a military base during the time of deployment and has not been operated on the public highways

during that time; and

2. The vehicle's registration expired during the individual's absence.

(b) An individual who meets the criteria in paragraph (a) of this subsection shall not be convicted or cited for driving a vehicle with expired registration within thirty (30) days after the individual's return to the Commonwealth if the individual can provide proof of meeting the eligibility criteria under paragraph (a) of this subsection.

(c) When an individual presents evidence of meeting the criteria under paragraph (a) of this subsection when applying to renew the registration on the motor vehicle, the county clerk:

1. Shall not charge the individual any penalties or interest or lien filing fees for delinquent ad valorem taxes that have accrued under Section 15 of this Part;

2. Shall remove, without charge, any lien for delinquent taxes filed under the provisions of Section 15 of this Part; and

3. Shall, when applicable, treat the registration as a prorated renewal under KRS 186.051, and charge the individual a registration fee only for the number of months of the registration year the vehicle will be used on the public highways.

Section 15. KRS 134.148 is amended to read as follows:

(1) The sheriff may, at the time he settles his accounts with the fiscal court, pursuant to KRS 134.310 provide the county clerk with a list of taxpayers whose tax bills on motor vehicles or trailers are delinquent.

(2) ***Except as provided for in subsection (6) of Section 14 of this Part,*** the county clerk may file a lien on such vehicle or trailer on behalf of the state, county, city, special district and school district and record such lien on the face of the certificate of title and registration and in the manner in which lis pendens are recorded.

Delinquent tax bills shall be subject to interest at the rate of one percent (1%) per month or fraction thereof from the date the lien is filed until paid.

(3) (a) No licensed automobile dealer shall be responsible for any tax lien not recorded on the certificate of title and registration presented to the dealer by the seller at the time of the dealer's purchase of the motor vehicle or trailer.

(b) In the event that a tax lien was recorded on the clerk's copy of the certificate of title and registration, but not on the copy of the certificate of title and registration presented to the dealer by the seller at the time of the dealer's purchase of the motor vehicle or trailer, prior to the purchase of the motor vehicle or trailer by the dealer, upon presentation of proof to the county clerk that such was the case, the county clerk shall file such proof with his copy of the certificate of title and registration and shall remove the lien.

(4) In the event that a bona fide purchaser for value without notice purchases a motor vehicle or a trailer on which no lien has been filed on the certificate of title of such motor vehicle or trailer as provided for in subsection (2) of this section, such person shall not be held responsible for paying delinquent ad valorem taxes or lien fees on the certificate of title of such motor vehicle or trailer if such lien was placed on the certificate of title after same person's purchase of the motor vehicle or trailer.

(5) Upon proof being presented to the county clerk that the motor vehicle or trailer was transferred to a bona fide purchaser for value without notice prior to the placing of a lien on a certificate of title and registration, the clerk shall file such proof with the certificate of title and registration and shall then remove the lien.

(6) ***Except as provided for in subsection (6) of Section 14 of this Part,*** the lien filing fee, as provided for in KRS 64.012, shall be added to the tax bill and be payable with the lien releasing fee by the registrant at the time of payment of the delinquent tax to the county clerk.

(7) The county clerk shall give a receipt to the registrant and make a report to the

Department of Revenue, the county treasurer and the other proper officials of all taxing districts that are due proceeds from the payment on the last working day of each month. He shall pay to the Department of Revenue for deposit with the State Treasurer all moneys collected by him due to the state, to the county treasurer, all moneys due to the county and to the proper officials of all other taxing districts, the amount due each district. He shall pay the amount of fees, costs, commissions, and penalties to the persons, agencies or parties entitled thereto.

Section 16. KRS 141.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Commissioner" means the commissioner of the Department of Revenue;

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

(3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2004, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2004, that would otherwise terminate, and as modified by KRS 141.0101, except that for property placed in service after September 10, 2001, only the depreciation and expense deductions allowed under Sections 168 and 179 of the Internal Revenue Code in effect on December 31, 2001, exclusive of any amendments made subsequent to that date, shall be allowed, and including the provisions of the Military Family Tax Relief Act of 2003, Pub. L. No. 108-121, effective on the dates specified in that Act;

(4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;

(5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;

(6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;

(7) "Individual" means a natural person;

(8) "Modified gross income" means adjusted gross income as defined in Section 62 of the Internal Revenue Code of 1986, including any subsequent amendments in effect on December 31 of the taxable year, and adjusted as follows:

(a) Include interest income derived from obligations of sister states and political subdivisions thereof; and

(b) Include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);

(9) "Gross income" in the case of taxpayers other than corporations means "gross income" as defined in Section 61 of the Internal Revenue Code;

(10) "Adjusted gross income" in the case of taxpayers other than corporations means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;

(b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and

161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;

(e) Exclude Social Security and railroad retirement benefits subject to federal income tax;

(f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;

(g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;

(h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the Armed Forces of the United States or any dependent of such person who served in Vietnam;

(i) 1. For taxable years ending prior to December 31, 2005, exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.

The "applicable amount" shall be:

a. Twenty-five percent (25%), but not more than six thousand two hundred fifty dollars ($6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;

b. Fifty percent (50%), but not more than twelve thousand five hundred dollars ($12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;

c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars ($18,750), for taxable years beginning

after December 31, 1996, and before January 1, 1998; and

d. One hundred percent (100%), but not more than thirty-five thousand dollars ($35,000), for taxable years beginning after December 31, 1997.

2. For taxable years beginning after December 31, 2005, exclude up to forty-one thousand one hundred ten dollars ($41,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.

3. As used in this paragraph:

a. "Distributions" includes, but is not limited to, any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;

b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and

c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code;

(j) 1. a. Exclude the portion of the distributive share of a shareholder's net income from an S corporation subject to the franchise tax imposed

under KRS 136.505 or the capital stock tax imposed under KRS 136.300; and

b. Exclude the portion of the distributive share of a shareholder's net income from an S corporation related to a qualified subchapter S subsidiary subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300.

2. The shareholder's basis of stock held in a S corporation where the S corporation or its qualified subchapter S subsidiary is subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300 shall be the same as the basis for federal income tax purposes;

(k) Exclude for taxable years beginning after December 31, 1998, to the extent not already excluded from gross income, any amounts paid for health insurance, or the value of any voucher or similar instrument used to provide health insurance, which constitutes medical care coverage for the taxpayer, the taxpayer's spouse, and dependents during the taxable year. Any amounts paid by the taxpayer for health insurance that are excluded pursuant to this paragraph shall not be allowed as a deduction in computing the taxpayer's net income under subsection (11) of this section;

(l) Exclude income received for services performed as a precinct worker for election training or for working at election booths in state, county, and local primary, regular, or special elections;

(m) Exclude any amount paid during the taxable year for insurance for long-term care as defined in KRS 304.14-600;

(n) Exclude any capital gains income attributable to property taken by eminent domain;

(o) Exclude any amount received by a producer of tobacco or a tobacco quota

owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;

(p) Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;

(q) Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted;

(r) Exclude any amount received as a result of a tobacco quota buydown program that all quota owners and growers are eligible to participate in;~~[and]~~

(s) Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner; ***and***

(t) Exclude all income from all sources for active duty and reserve members and officers of the Armed Forces of the United States or National Guard who are killed in the line of duty, for the year during which the death occurred and the year prior to the year during which the death occurred. For the purposes of this paragraph, "all income from all sources" shall include all federal and state death benefits payable to the estate or any beneficiaries;

(11) "Net income" in the case of taxpayers other than corporations means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction allowed by KRS 141.0202, minus any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families, and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that

deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

(a) Any deduction allowed by the Internal Revenue Code for state or foreign taxes measured by gross or net income, including state and local general sales taxes allowed in lieu of state and local income taxes under the provisions of Section 164(b)(5) of the Internal Revenue Code;

(b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);

(c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and

(d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

(12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and

adjusted as follows:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;

(b) Exclude all dividend income received after December 31, 1969;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;

(e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;

(f) Include the amount calculated under KRS 141.205;

(g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income;

(h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);

(i) Exclude any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;

(j) Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;

(k) Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted;

(l) Exclude any amount received as a result of a tobacco quota buydown program that all quota owners and growers are eligible to participate in;

(m) Exclude the distributive share income or loss received from a corporation subject to the tax imposed by KRS 141.040 ; and

(n) Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner;

(13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202, minus any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families, and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:

(a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;

(b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;

(c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;

(d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item

to be deducted more than once;

(e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);

(f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained; and

(g) Any deduction prohibited by KRS 141.205;

(14) (a) "Taxable net income," in the case of corporations that are taxable in this state, means "net income" as defined in subsection (13) of this section;

(b) "Taxable net income," in the case of corporations that are taxable in this state and taxable in another state, means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120. A corporation is taxable in another state if, in any state other than Kentucky, the corporation is required to file a return for or pay a net income tax, franchise tax measured by net income, franchise tax for the privilege of doing business, or corporate stock tax;

(c) "Taxable net income" in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as

defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year; and

(d) "Taxable net income" in the case of a corporation that meets the requirements established under Section 856 of the Internal Revenue Code to be a real estate investment trust, means "real estate investment trust taxable income" as defined in Section 857(b)(2) of the Internal Revenue Code;

(15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;

(16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the commissioner, "taxable year" means the period for which the return is made;

(17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;

(18) "Nonresident" means any individual not a resident of this state;

(19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;

(20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;

(21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding

exemptions claimed shall be considered to be zero;

(22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;

(23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;

(24) "Corporations" means:

(a) "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;

(b) S corporations as defined in Section 1361(a) of the Internal Revenue Code;

(c) A foreign limited liability company as defined in KRS 275.015(6);

(d) A limited liability company as defined in KRS 275.015(8);

(e) A professional limited liability company as defined in KRS 275.015(19);

(f) A foreign limited partnership as defined in KRS 362.401(4);

(g) A limited partnership as defined in KRS 362.401(7);

(h) A registered limited liability partnership as defined in KRS 362.155(7);

(i) A real estate investment trust as defined in Section 856 of the Internal Revenue Code;

(j) A regulated investment company as defined in Section 851 of the Internal Revenue Code;

(k) A real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code;

(l) A financial asset securitization investment trust as defined in Section 860L of the Internal Revenue Code; and

(m) Other similar entities created with limited liability for their partners, members, or shareholders.

"Corporation" shall not include any publicly traded partnership as defined by Section 7704(b) of the Internal Revenue Code that is treated as a partnership for

federal tax purposes under Section 7704(c) of the Internal Revenue Code or its publicly traded partnership affiliates. "Publicly traded partnership affiliates" shall include any limited liability company or limited partnership for which at least eighty percent (80%) of the limited liability company member interests or limited partner interests are owned directly or indirectly by the publicly traded partnership;

(25) "Doing business in this state" includes but is not limited to:

(a) Being organized under the laws of this state;

(b) Having a commercial domicile in this state;

(c) Owning or leasing property in this state;

(d) Having one (1) or more individuals performing services in this state;

(e) Maintaining an interest in a general partnership doing business in this state;

(f) Deriving income from or attributable to sources within this state, including deriving income directly or indirectly from a trust doing business in this state; or

(g) Directing activities at Kentucky customers for the purpose of selling them goods or services.

Nothing in this subsection shall be interpreted in a manner that goes beyond the limitations imposed and protections provided by the United States Constitution or Pub. L. No. 86-272;

(26) "Cost of goods sold" means the cost of goods sold calculated using the same method specified by the Internal Revenue Service for the purpose of computing federal income tax. In determining cost of goods sold:

(a) Labor costs shall be limited to direct labor costs as defined in subsection (28) of this section; and

(b) Bulk delivery costs as defined in subsection (29) of this section may be included;

(27) "Kentucky gross profits" means Kentucky gross receipts reduced by returns and

allowances attributable to Kentucky gross receipts, less the cost of goods sold attributable to Kentucky gross receipts;

(28) "Direct labor" means labor that is incorporated into the product sold or is an integral part of the manufacturing process; and

(29) "Bulk delivery costs" means the cost of delivering the product to the consumer if the product is delivered in bulk and requires specialized equipment that generally precludes commercial shipping and is taxable under KRS 138.220.

Section 17. The amendment in Section 12 of this Part shall apply retroactively to July 1, 2002.

Section 18. The amendment in Section 16 of this Part is applicable for tax years beginning after December 31, 2001.

PART XXIX

SELF-INSURED PLAN FOR STATE EMPLOYEES

Notwithstanding KRS 48.310, the following statute is created to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

SECTION 1. A NEW SECTION OF KRS CHAPTER 18A IS CREATED TO READ AS FOLLOWS:

(1) Based on the recommendation of the secretary of the Personnel Cabinet, the secretary of the Finance and Administration Cabinet, in lieu of contracting with one (1) or more insurers licensed to do business in this state, shall procure, in compliance with KRS 45A.080, 45A.085, and 45A.090, and reviewed by the Government Contract Review Committee pursuant to KRS 45A.705, a contract with one (1) or more third-party administrators licensed to do business in the Commonwealth pursuant to KRS 304.9-052 to administer a self-insured plan offered to the Public Employee Health Insurance Program for public employees. The requirements for the self-insured plan shall be as follows:

(a) The secretary of the Personnel Cabinet shall incorporate by reference in an

administrative regulation, pursuant to KRS 13A.2251, the summary plan description for public employees covered under the self-insured plan. Prior to filing an administrative regulation with the Legislative Research Commission, the secretary of the Personnel Cabinet shall submit the administrative regulation to the secretary of the Cabinet for Health and Family Services for review;

(b) The self-insured plan offered by the program shall cover hospice care at least equal to the Medicare benefit;

(c) The Personnel Cabinet shall provide written notice of any formulary change to employees covered under the self-insured plan who are directly impacted by the formulary change and to the Kentucky Group Health Insurance Board fifteen (15) days before implementation of any formulary change. If, after consulting with his or her physician, the employee still disagrees with the formulary change, the employee shall have the right to appeal the change. The employee shall have sixty (60) days from the date of the notice of the formulary change to file an appeal with the Personnel Cabinet. The cabinet shall render a decision within thirty (30) days from the receipt of the request for an appeal. After a final decision is rendered by the Personnel Cabinet, the employee shall have a right to file an appeal pursuant to the utilization review statutes in KRS 304.17A-600 to 304.17A-633. During the appeal process, the employee shall have the right to continue to take any drug prescribed by his or her physician that is the subject of the formulary changes;

(d) The Personnel Cabinet shall develop the necessary capabilities to ensure that an independent review of each formulary change is conducted and includes but is not limited to an evaluation of the fiscal impact and therapeutic benefit of the formulary change. The independent review shall

be conducted by knowledgeable medical professionals and the results of the independent review shall be posted on the Web sites of the Personnel Cabinet and the Cabinet for Health and Family Services and made available to the public upon request within thirty (30) days of the notice from the Personnel Cabinet required in paragraph (c) of this subsection;

(e) If the self-insured plan restricts pharmacy benefits to a drug formulary, the plan shall comply with and have an exceptions policy in accordance with KRS 304.17A-535;

(f) Premiums for all plans offered by the Public Employee Health Insurance Program to employees shall be based on the experience of the entire group;

(g) The plan year for the Public Employee Health Insurance Program, whether for fully insured or self-insured benefits, shall be on a calendar year basis.

(2) In addition to any fully insured health benefit plans or self-insured plans, beginning January 1, 2007, the Personnel Cabinet shall offer a health reimbursement account for public employees insured under the Public Employee Health Insurance Program.

(a) If a public employee waives coverage provided by his or her employer under the Public Employee Health Insurance Program, the employer shall forward a monthly amount to be determined by the secretary of the Personnel Cabinet, but not less than one hundred seventy-five dollars ($175), for that employee as an employer contribution to the health reimbursement account.

(b) The administrative fees associated with the health reimbursement account shall be an authorized expense to be charged to the public employee health insurance trust fund.

(3) (a) The public employee health insurance trust fund is established in the Personnel Cabinet. The purpose of the public employee health insurance

trust fund is to provide funds to pay medical claims and other costs associated with the administration of the Public Employee Health Insurance Program self-insured plan under a competitively bid contract as provided by KRS Chapter 45A and reviewed by the Government Contract Review Committee pursuant to KRS 45A.705. The trust fund shall not utilize funds for any other purpose, except by approval of the General Assembly. The following moneys shall be directly deposited into the trust fund:

1. Employer and employee premiums collected under the self-insured plan;

2. Interest and investment returns earned by the self-insured plan;

3. Rebates and refunds attributed to the self-insured plan; and

4. All other receipts attributed to the self-insured plan.

(b) Any balance remaining in the public employee health insurance trust fund at the end of a fiscal year shall not lapse. Any balance remaining at the end of a fiscal year shall be carried forward to the next fiscal year and be used solely for the purpose established in paragraph (a) of this subsection. The balance of funds in the public employee health insurance trust fund shall be invested by the Office of Financial Management consistent with the provisions of KRS Chapter 42, and interest income shall be credited to the trust fund.

(c) The Auditor of Public Accounts shall be responsible for a financial audit of the books and records of the trust fund. The audit shall be conducted in accordance with generally accepted accounting principles~~[, shall be paid for by the trust fund,]~~ *(Veto #29)* ***and shall be completed within ninety (90) days of the close of the fiscal year. All audit reports shall be filed with the Governor, the President of the Senate, the Speaker of the House of***

Representatives, and the secretary of the Personnel Cabinet.

(d) ~~***[Within thirty (30) days of the end of each calendar quarter,]***~~ *(Veto #30)* ***the secretary of the Personnel Cabinet shall file a report on the status of the trust fund with the Governor, the Interim Joint Committee on Appropriations and Revenue, the Kentucky Group Health Insurance Board, and the Advisory Committee of State Health Insurance Subscribers. The first status report shall be submitted no later than July 30, 2006. The report shall include the following:***

1. The current balance of the trust fund;

2. A detailed description of all income to the trust fund since the last report;

3. A detailed description of any receipts due to the trust fund;

4. A total amount of payments made for medical claims from the trust fund;

5. A detailed description of all payments made to the third-party administrator of the self-insured plan by the trust fund;

6. Current enrollment data, including monthly enrollment since the last report, of the Public Employee Health Insurance Program self-insured plan;

7. Any other information the secretary may include;

8. Any other information requested by the Interim Joint Committee on Appropriations and Revenue concerning the operation of the Public Employee Health Insurance Program self-funded plan or the trust fund; and

9. In addition to the information required under subparagraphs 1. to 8. of this paragraph, the quarterly report filed in July and January shall also include the following:

a. A projection of the medical claims incurred but not yet reported that are considered liabilities to the trust fund;

b. A statement of any other trust fund liabilities;

c. A detailed calculation outlining proposed premium rates for the next plan year, including base claims, trend assumptions, administrative fees, and any proposed plan or benefit changes; and

d. A detailed description of the current in-state and out-of-state networks provided under the plan, any changes to the networks since the last report, and any proposed changes to the in-state or out-of-state networks during the next six (6) months.

e. Specific data regarding the third-party administrator's performance under the contract. The data shall include the following:

1. Any results or outcomes of disease management and wellness programs;

2. Results of case management audits and educational and communication efforts; and

3. Comparison of actual measurable results to contract performance guarantees.

PART XXX

TAX INCREMENT FINANCING

Notwithstanding KRS 48.310, the following statute is amended to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

Section 1. KRS 65.490 is amended to read as follows:

As used in KRS 65.490 to 65.499, unless the context otherwise requires:

(1) "Agency" means an urban renewal and community development agency of a taxing

district located within a county containing a consolidated local government or a city of the first class, established under KRS Chapter 99; a development authority located within a county containing a consolidated local government or a city of the first class established under KRS Chapter 99; a nonprofit corporation located within a county containing a consolidated local government or a city of the first class ~~[established under KRS Chapter 58]~~; or a designated department, division, or office of a county containing a consolidated local government or of a city of the first class;

(2) "Development area" means an area no less than one (1) square mile, nor more than six (6) square miles, designated in need of public improvements by a local or state government in a county containing a consolidated local government or a city of the first class, a project area as defined in KRS 99.615, or a public project as defined in KRS 58.010 in a county containing a consolidated local government or a city of the first class. "Development area" includes an existing economic development asset;

(3) "Increment" means that amount of money received by any taxing district or the state that is determined by subtracting the amount of old revenues from the amount of new revenues in any year for which a taxing district or the state and an agency have agreed upon under the terms of a contract of release or a grant contract;

(4) "Local government" means a county containing a consolidated local government or a city of the first class;

(5) "New revenues" means the revenues received by any taxing district or the state from a development area in any year after the establishment of the development area;

(6) "Old revenues" means the amount of revenues received by any taxing district or the state from a development area in the last year prior to the establishment of the development area;

(7) "Project" means any urban renewal, redevelopment, or public project undertaken in accordance with the provisions of KRS 65.490 to 65.497, any project undertaken in accordance with KRS 99.610 to 99.680, ~~[or]~~ any project undertaken in accordance

with the provisions of KRS Chapter 58; ***or any "public project" as that term is defined in KRS 58.010 undertaken by a nonprofit corporation located within a county containing a consolidated local government or a city of the first class;***

(8) "Release" or "contract of release" or "grant contract" means that agreement by which a taxing district or the state permits the payment to an agency of a portion of increments or an amount equal to a portion of increments received by it in return for the benefits accrued to the taxing district or the state by reason of a project undertaken by an agency in a development area;

(9) "Taxing district" means a consolidated local government, a county containing a city of the first class, a city of the first class that encompasses all or part of a development area, or the state, but does not mean a school district; and

(10) "Pilot program" means a tax increment financing program or a grant program created by an agency within a consolidated local government or a county containing a city of the first class which shall exist for a period of twenty (20) years after which time it shall continue only after reauthorization by the General Assembly.

PART XXXI

KENTUCKY PREPAID TUITION TRUST FUND

Notwithstanding KRS 48.310, the following statutes are amended or created to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

Section 1. KRS 164A.700 is amended to read as follows:

As used in KRS 164A.700 to 164A.709, unless the context requires otherwise:

(1) "Academic year" means the time period specified by each eligible educational institution;

(2) "Board" means the board of directors of the Kentucky Higher Education Assistance Authority acting in the capacity of the board of directors of the Commonwealth postsecondary education prepaid tuition trust fund;

(3) "Eligible educational institution" means an institution defined in the Internal Revenue Code of 1986, as amended, 26 U.S.C. sec. 529(e)(5);

(4) "Fund" means the prepaid tuition payment fund created in KRS 164A.701 and known as the "Commonwealth Postsecondary Education Prepaid Tuition Trust Fund" ***or***~~[which shall be marketed under the name]~~ "Kentucky's Affordable Prepaid Tuition" ***(KAPT)***;

(5) "Prepaid tuition" means the amount of tuition estimated by the board for the tuition plan under the prepaid tuition contract;

(6) "Prepaid tuition academic year conversion" means the difference between the amount of prepaid tuition required in the original prepaid tuition contract and the amount of prepaid tuition required in an amended prepaid tuition contract as the result of the change in the academic year;

(7) "Prepaid tuition academic year conversion shortfall" means the amount by which the prepaid tuition required in an amended prepaid tuition contract as the result of the change in the academic year exceeds the amount of prepaid tuition required in the original prepaid tuition contract;

(8) "Prepaid tuition account" means the account for a qualified beneficiary as specified in the prepaid tuition contract;

(9) "Prepaid tuition contract" means the contract entered into by the board and the purchaser for the purchase of prepaid tuition for a qualified beneficiary to attend any eligible educational institution as provided in KRS 164A.700 to 164A.709;

(10) "Prepaid tuition conversion" means the difference between the value of a prepaid tuition account and the tuition at an eligible educational institution;

(11) "Prepaid tuition conversion shortfall" means the amount by which the actual tuition cost at an eligible educational institution exceeds the amount of the value of a prepaid tuition account;

(12) "Purchaser" means a person, corporation, association, partnership, or other legal

entity who enters into a prepaid tuition contract;

(13) "Qualified beneficiary" means a designated beneficiary, as defined in 26 U.S.C. sec. 529(e)(1), who is:

(a) A Kentucky resident designated as beneficiary at the time a purchaser enters into a prepaid tuition contract; or

(b) A nonresident designated at the time a purchaser enters into a prepaid tuition contract who intends to attend an eligible institution in Kentucky; or

(c) A new beneficiary, in the case of a change of beneficiaries under provisions of KRS 164A.707; or

(d) An individual receiving a scholarship in the case of a prepaid tuition contract purchased by a state or local government or agency or instrumentality thereof or an organization described in 26 U.S.C. sec. 501(c)(3), and exempt from federal income taxation pursuant to 26 U.S.C. sec. 501(a) as part of a scholarship program offered by the government entity or the organization;

(14) "Qualified postsecondary education expenses" means qualified higher education expenses as defined in 26 U.S.C. sec. 529(e)(3);

(15) "Tuition" means the prevailing tuition and all mandatory fees charged as a condition of full-time enrollment in an undergraduate program for an academic year for a qualified beneficiary to attend an eligible educational institution;

(16) "Tuition Account Program Office" or "office" means the office in the Kentucky Higher Education Assistance Authority that is responsible for administering the prepaid tuition program and its accounts;

(17) "Tuition plan" means a tuition plan approved by the board and provided under a prepaid tuition contract; and

(18) "Value of a prepaid tuition account" means the amount which the fund is obligated to pay for tuition for an academic period based on full payment of the purchaser's tuition plan; except, under a tuition plan for private colleges and universities, tuition

shall be calculated based on the same percentage that University of Kentucky tuition is increased from the year the prepaid tuition contract is purchased to the year of payment.

SECTION 2. A NEW SECTION OF KRS 164A.700 TO 164A.709 IS CREATED TO READ AS FOLLOWS:

(1) (a) All prepaid tuition contracts in existence on the effective date of this Act shall be supported by the full faith and credit of the Commonwealth.

(b) If the report of the actuary submitted under subsection (7) of Section 4 of this Part reflects that there will be a real liability expected to accrue for contracts in existence on the effective date of this Act during the next biennium, the secretary of the Finance and Administration Cabinet shall include in the budget request for the cabinet an appropriation to the board in an amount necessary to meet the real liability in each fiscal year of the biennium, and the General Assembly shall appropriate the necessary funds to meet the liability.

(2) (a) New contracts entered into after the effective date of this Act for a tuition plan approved by the board shall contain actuarially sound premiums sufficient to prevent their contribution to a program fund deficit.

(b) Payments received from contracts entered into after the effective date of this Act shall be maintained separately from contracts in existence on the effective date of this Act.

(c) The Commonwealth shall have no obligation to support contracts entered into after the effective date of this Act with appropriations if a shortfall occurs.

Section 3. KRS 164A.701 is amended to read as follows:

(1) (a) There is hereby created an instrumentality of the Commonwealth to be known as the "Commonwealth postsecondary education prepaid tuition trust fund", to

be governed by ***the***~~[a]~~ board~~[of directors]~~ and administered by the Tuition Account Program Office. The fund shall be attached to the Kentucky Higher Education Assistance Authority for administrative and reporting purposes, ***and***~~[but]~~ shall be governed, managed, and administered as a separate and distinct instrumentality of the Commonwealth ***under the provisions of***~~[with its own powers specified in]~~ KRS 164A.700 to 164A.709.

(b) The fund shall consist of payments received from prepaid tuition contracts under KRS 164A.700 to 164A.709. ***Payments received relating to contracts in existence on the effective date of this Act and income earned from the investment of those payments shall be maintained separately from payments received relating to contracts entered into after the effective date of this Act and*** income earned from the investment of ***those payments. Income earned from the investment of payments to*** the fund shall remain in the fund and be credited to it.

(c) Notwithstanding any other statute to the contrary, all moneys received under the authority of KRS 164A.700 to 164A.709 and 393.015 shall be deemed to be trust funds to be held and applied solely for payment to qualified beneficiaries and purchasers and to meet the expenses necessary for the administration and maintenance of the fund as provided in KRS 164A.700 to 164A.709.

(d) The fund shall not constitute an investment company as defined in KRS 291.010.

(e) Obligations under a prepaid tuition contract incurred in accordance with the provisions of KRS 164A.700 to 164A.709 shall not be deemed to constitute a debt, liability, or obligation of the Kentucky Higher Education Assistance Authority, but shall be payable solely from the fund. Each prepaid tuition contract shall contain a statement that the obligation shall be payable solely

from the fund.

(2) The purposes of the fund are:

(a) To provide affordable access to participating institutions for the qualified beneficiaries; and

(b) To provide students and their parents economic protection against rising tuition costs.

(3) The Tuition Account Program Office and the facilities of the Kentucky Higher Education Assistance Authority shall be used and employed in the administration of the fund including, but not limited to, the keeping of records, the employment of staff to assist in the administration of the fund, the management of accounts and other investments, the transfer of funds, and the safekeeping of securities evidencing investments.~~[The Kentucky Higher Education Assistance Authority shall jointly market, as appropriate, the Commonwealth Prepaid Tuition Plan and the Savings Plan established in KRS 164A.300.]~~

(4) (a) Assets of the fund shall be invested in any of the following security types that are deemed appropriate by the board:

1. Government and agency bonds;

2. Investment grade asset-backed securities and corporate bonds;

3. Mortgages, excluding interest-only (IO), principal-only (PO), and inverse floaters; and

4. Equities.

(b) Equities shall constitute no greater than sixty percent (60%) of the entire portfolio, including up to ten percent (10%) in equities from outside the United States.

(c) The duration of the fixed-income portion of the portfolio shall reflect the future liability of the fund for tuition payments.

(d) Assets may be pooled for investment purposes with any other investment of

the Commonwealth that is eligible for asset pooling.

(e) Leveraging is strictly prohibited.

(5) The board may receive and deposit into the fund gifts made by any individual or agency as deemed acceptable by the board together with funds that are obtained from sources legally available and determined by the board to be applicable for the purposes of KRS 164A.700 to 164A.709.

(6) There is created a separate account within the Kentucky Higher Education Assistance Authority to be known as the prepaid postsecondary tuition administrative account for the purposes of implementing and maintaining the fund.

(a) Moneys shall be transferred from the fund to the administrative account to meet the expenses necessary for the administration and maintenance of the fund. Expenses incurred by the board and the Tuition Account Program Office in carrying out the provisions of KRS 164A.700 to 164A.709 shall be made payable from the fund through the administrative account, and no administrative expenses shall be incurred by the Kentucky Higher Education Assistance Authority beyond those for which moneys are provided by the fund.

(b)~~[Funds may be transferred from the property abandoned under KRS Chapter 393 to the administrative account and shall be repaid to the abandoned property fund no later than three (3) years after the transfer.~~

~~(c)]~~ The board may establish administrative fees for handling prepaid tuition contracts and deposit the ***funds attributable to the fees***~~[money]~~ in ***the administrative***~~[this]~~ account.

Section 4. KRS 164A.704 is amended to read as follows:

The board shall:

(1) Promulgate administrative regulations, set fees, and adopt procedures as are necessary to implement the provisions of KRS 164A.700 to 164A.709;

(2) Enter into contractual agreements, including contracts for legal, actuarial, financial, and consulting services;

(3) Invest moneys in the fund in any instruments, obligations, securities, or property as permitted by KRS 164A.701(4) and deemed appropriate by the board;

(4) Procure insurance to protect against any loss in connection with the fund's property, assets, or activities and to indemnify board members from personal loss or accountability from liability arising from any action or inaction as a board member;

(5) Make arrangements with eligible educational institutions in the Commonwealth to fulfill obligations under prepaid tuition contracts, including, but not limited to, payment from the fund of the tuition cost on behalf of a qualified beneficiary to attend an eligible educational institution in which the beneficiary is admitted and enrolled;

(6) Develop requirements, procedures, and guidelines regarding prepaid tuition contracts, including but not limited to, the termination, withdrawal, or transfer of payments under a prepaid tuition contract; tuition shortfalls; number of participants; time limitations for prepaid tuition contracts and the use of tuition benefits; tuition conversions; payment schedules; payroll deductions; penalties for failure of purchasers to adhere to contracts; and transfer of prepaid tuition credits towards private education in the Commonwealth or for out-of-state institutions;

(7) Have the actuarial soundness of the fund evaluated by a nationally recognized independent actuary ***annually, by October 1 of each year, to***~~[on an annual basis and]~~ determine~~[prior to each academic year]~~:

(a) The amount of prepaid tuition for each tuition plan; and for each eligible educational institution for specific academic years, the corresponding value; ~~[and]~~

(b) Whether additional assets are necessary to defray the obligations of the ***portion of the*** fund ***relating to contracts entered into before the effective date***

of this Act, and when those funds will be needed.

1. For purposes of this paragraph, a "real liability expected to accrue during the next biennium" exists if the amount in the fund representing contracts entered into before the effective date of this Act is not sufficient to meet all anticipated distributions under contracts entered into before the effective date of this Act and the expense of maintaining and operating the fund for the upcoming biennium.

2. If the report of the actuary submitted in an odd-numbered year reflects that there will be a real liability expected to accrue during the next biennium, the secretary of the Finance and Administration Cabinet shall include in the budget request for the cabinet an appropriation to the board in an amount necessary to meet the real liability in each fiscal year of the biennium, and the General Assembly shall appropriate the necessary funds.

(c) Whether additional assets are necessary to defray the obligations of the portion of the fund relating to contracts entered into after the effective date of this Act, and when those funds will be needed. If the assets of the ***portion of the*** fund ***relating to contracts entered into after the effective date of this Act*** are insufficient to ensure the actuarial soundness of ***that portion of*** the fund, as reported by the actuary, the board shall adjust the price of subsequent purchases of prepaid tuition contracts to the extent necessary to restore the actuarial soundness of the fund. The board may suspend the sale of prepaid tuition contracts until the next annual actuarial evaluation is completed if the board determines the action is needed to restore the actuarial soundness of the fund. During a suspension of sales of contracts, the board and Tuition Account Program Office shall continue to service existing contract accounts and meet all obligations under existing prepaid tuition contracts; ***and***

(8) Make an annual report each year ***by November 1*** to the Legislative Research Commission ***and the Governor*** showing the fund's condition***, and whether additional assets will be necessary to defray the obligations of the fund***[~~;~~

~~(9) Market and promote participation in the fund; and~~

~~(10) Develop, sponsor, and maintain a scholarship program, if deemed feasible by the board, to provide the benefits of the fund to financially disadvantaged families and students of Kentucky under criteria established by the board to encourage students to obtain postsecondary education in Kentucky and otherwise consistent with the purposes of the fund~~].

Section 5. KRS 164A.705 is amended to read as follows:

(1) The prepaid tuition contract entered into by the purchaser and the board shall constitute an irrevocable pledge and guarantee by the fund to pay for the tuition of a qualified beneficiary upon acceptance and enrollment at an eligible educational institution in accordance with the tuition plan purchased.

(2) A board member[~~, officer of the fund,~~] or ***any*** employee of the Tuition Account Program Office or the Kentucky Higher Education Assistance Authority shall not be subject to any personal liability by reason of his or her issuance or execution of a prepaid tuition contract under KRS 164A.700 to 164A.709.

(3) Under a tuition plan for private colleges and universities, tuition shall be paid based on the same percentage that University of Kentucky tuition is increased from the year the prepaid tuition contract is purchased to the year of payment.

(4) The purchaser or qualified beneficiary shall pay to the eligible educational institution the amount of any prepaid tuition academic year conversion shortfall and the amount of any prepaid tuition conversion shortfall.

(5) A qualified beneficiary attending an eligible educational institution may apply the value of a prepaid tuition account to a specific academic year at the maximum course load or maximum number of credit hours generally permitted to full-time

undergraduates at that institution.

(6) The value of a prepaid tuition account remaining after tuition is paid may be used for other qualified educational expenses under administrative regulations promulgated by the board in compliance with 26 U.S.C. sec. 529. The board may permit the use of the value of a prepaid tuition account for part-time undergraduate enrollment or graduate programs at eligible educational institutions.

(7) *If*~~[In the event]~~ a qualified beneficiary attends an eligible educational institution for which payment of tuition is not guaranteed by the fund in whole or in part, and if the cost of tuition exceeds the value of a prepaid tuition account, the fund shall have no responsibility to pay the difference. If the value of a prepaid tuition account exceeds the cost of tuition, the excess may be used for other qualified postsecondary education expenses as directed by the purchaser.

(8) The value of a prepaid tuition account shall not be used in calculating personal asset contribution for determining eligibility and need for student loan programs, student grant programs, or other student aid programs administered by any agency of the Commonwealth, except as otherwise may be provided by federal law.

Section 6. KRS 164A.707 is amended to read as follows:

(1) Purchasers buying prepaid tuition for a qualified beneficiary shall enter into prepaid tuition contracts with the board. These contracts shall be in a form as shall be determined by the office. The contract shall provide for the purchase of a tuition plan for prepaid tuition for the qualified beneficiary from one (1) to five (5) specific academic years.~~[Beginning on March 20, 2005, new prepaid tuition contracts entered into for a tuition plan approved by the board shall contain actuarially sound premiums sufficient to prevent their contribution to a program fund deficit. No general fund moneys or abandoned property funds shall be available for the support of the Commonwealth postsecondary education prepaid tuition trust fund.]~~

(2) Upon written notification to the office a purchaser may amend the prepaid tuition

contract to change:

(a) The qualified beneficiary, in accordance with 26 U.S.C. sec. 529;

(b) The academic year or years for which prepaid tuition is purchased;

(c) A tuition plan designation to another tuition plan designation;

(d) The number of years for which prepaid tuition is purchased; or

(e) Other provisions of the prepaid tuition contract as permitted by the board.

(3) A prepaid tuition account shall not be subject to attachment, levy, or execution by any creditor of a purchaser or qualified beneficiary. Prepaid tuition accounts shall be exempt from all state and local taxes including, but not limited to, intangible personal property tax levied under KRS 132.020, individual income tax levied under KRS 141.020, and the inheritance tax levied under KRS Chapter 140. Payments from a prepaid tuition account used to pay qualified postsecondary education expenses, or disbursed due to the death or disability of the beneficiary, or receipt of a scholarship by the beneficiary shall be exempt from tax liabilities.

(4) Nothing in KRS 164A.700 to 164A.709 or in a prepaid tuition contract shall be construed as a promise or guarantee that a qualified beneficiary shall be admitted to an eligible educational institution, be allowed to continue to attend an eligible educational institution after having been admitted, or be graduated from an eligible educational institution.

(5) Prepaid tuition contract payments shall not be made in real or personal property other than cash and shall not exceed the prepaid tuition. Prepaid tuition contract payments may be made in ***a*** lump-sum ***or*** installments.

(6) The purchaser shall designate the qualified beneficiary at the time the purchaser enters into a prepaid tuition contract, except for a prepaid tuition contract purchased in accordance with KRS 164A.700(13)(d). In the case of gifts made to the fund, the board shall designate a qualified beneficiary at the time of the gift.

(7) The prepaid tuition contract shall provide that the purchaser and the qualified

beneficiary shall not directly or indirectly or otherwise control the investment of the prepaid tuition account or earnings on the account. Payments made for prepaid tuition shall be accounted for separately for each qualified beneficiary. No interest or earnings on a prepaid tuition contract of the purchaser or qualified beneficiary shall be pledged or otherwise encumbered as security of a debt.

(8) A prepaid tuition contract does not constitute a security as defined in KRS 292.310 or an annuity as defined in KRS 304.5-030.

(9) Each prepaid tuition contract is subject to, and shall incorporate by reference, all operating procedures and policies adopted by the board, the statutes governing prepaid tuition contracts in KRS 164A.700 to 164A.709 and 393.015, and administrative regulations promulgated thereunder. Any amendments to statutes, administrative regulations, and operating procedures and policies shall automatically amend prepaid tuition contracts, with retroactive or prospective effect, as applicable.

Section 7. KRS 164A.709 is amended to read as follows:

(1) A purchaser may terminate a prepaid tuition contract at any time upon written request to the office.

(2) Upon termination of a prepaid tuition contract at the request of a purchaser, the office shall pay from the fund to the purchaser:

(a) The value of the prepaid tuition account if the contract is terminated for:

1. The death of the qualified beneficiary; or

2. The disability of the qualified beneficiary that, in the opinion of the office, would make attendance by the beneficiary at an eligible educational institution impossible or unreasonably burdensome; or

3. A request made on or after July 1 of the initial projected year of enrollment of the qualified beneficiary; and

(b) The amounts paid on the purchaser's prepaid tuition contract if the contract is

terminated and a request for refund is made before July 1 of the qualified beneficiary's initial projected year of enrollment. The board may determine a rate of interest to accrue for payment on the amount otherwise payable under this paragraph.

(3) At the option of the purchaser, the value of the prepaid tuition account may be carried forward to another academic year or distributed by the fund upon the purchaser's request.

(4) All refunds paid shall be net of administrative fees as determined by the board. The office may impose a fee upon termination of the account for administrative costs and deduct the fee from the amount otherwise payable under this section.

(5) If a qualified beneficiary is awarded a scholarship that covers tuition costs included in a prepaid tuition contract, the purchaser may request a refund consisting of the amount of the value of the prepaid tuition account, not to exceed the amount of the scholarship.

(6) If the purchaser wishes to transfer funds from the prepaid tuition account to the Kentucky Educational Savings Plan Trust, the purchaser may do so under administrative regulations promulgated by the board and the board of directors of the Kentucky Educational Savings Plan Trust under ***KRS*** 164A.325.

(7) If the purchaser wishes to transfer funds from the prepaid tuition account to another qualified tuition program as defined in 26 U.S.C. sec. 529(b)(1), the purchaser may do so under administrative regulations promulgated by the board.

(8) The board may terminate a prepaid tuition contract at any time due to the fraud or misrepresentation of a purchaser or qualified beneficiary with respect to the prepaid tuition contract.

SECTION 8. A NEW SECTION OF KRS 48.100 TO 48.195 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision of law, if the report of the actuary submitted in an

odd-numbered year pursuant to paragraph (b) of subsection (7) of Section 4 of this Part reflects that there will be a real liability expected to accrue during the upcoming biennium that cannot be met with existing resources of the Commonwealth postsecondary education prepaid tuition trust fund created pursuant to Section 3 of this Part, the Governor shall include in the budget recommendation for the executive branch and in the draft branch budget bill for the executive branch submitted to the General Assembly an appropriation to the board in an amount necessary to meet the real liability expected to accrue in each fiscal year of the biennium.

PART XXXII

ROLL-YOUR-OWN TOBACCO EXCISE TAX

Notwithstanding KRS 48.310, the following statutes are amended to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

Section 1. KRS 131.600 is amended to read as follows:

As used in this section and KRS 131.602:

(1) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the master settlement agreement.

(2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned," and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent (10%) or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(3) "Allocable share" means allocable share as that term is defined in the master settlement agreement.

(4) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(a) Any roll of tobacco wrapped in paper or in any substance not containing

tobacco;

(b) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(c) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this subsection.

The term "cigarette" includes "roll-your-own", i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette," nine-hundredths (0.09) ounces of "roll-your-own" tobacco shall constitute one (1) individual "cigarette."

(5) "Master settlement agreement" means the settlement agreement and related documents entered into on November 23, 1998, by Kentucky and leading United States tobacco product manufacturers.

(6) "Qualified escrow fund" means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars ($1,000,000,000) where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with KRS 131.602(2).

(7) "Released claims" means released claims as that term is defined in the master settlement agreement.

(8) "Releasing parties" means releasing parties as that term is defined in the master

settlement agreement.

(9) "Tobacco product manufacturer" means an entity that after June 30, 2000, directly and not exclusively through any affiliate:

(a) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer, except where such importer is an original participating manufacturer, as that term is defined in the master settlement agreement, that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of the master settlement agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States;

(b) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(c) Becomes a successor of an entity described in paragraph (a) or (b) of this subsection.

The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of the definitions described in paragraph (a), (b), or (c) of this subsection.

(10) "Units sold" means the number of individual cigarettes sold in Kentucky by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by Kentucky on packs or "roll-your-own" tobacco~~[containers bearing the excise tax stamp of Kentucky]~~. The Department of Revenue shall promulgate such regulations as are necessary to ascertain the amount

of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

Section 2. KRS 138.140 is amended to read as follows:

(1) A tax shall be paid on the sale of cigarettes within the state at a proportionate rate of three cents ($0.03) on each twenty (20) cigarettes. This tax shall be paid only once, regardless of the number of times the cigarettes may be sold in this state.

(2) Effective June 1, 2005, a surtax shall be paid in addition to the tax levied in subsection (1) of this section at a proportionate rate of twenty-six cents ($0.26) on each twenty (20) cigarettes. This tax shall be paid only once, at the same time the tax imposed by subsection (1) of this section is paid, regardless of the number of times the cigarettes may be sold in the state.

(3) Effective June 1, 2005, a surtax shall be paid in addition to the tax levied in subsection (1) of this section and in addition to the surtax levied by subsection (2) of this section, at a proportionate rate of one cent ($0.01) on each twenty (20) cigarettes. This tax shall be paid only once, at the same time the tax imposed by subsection (1) of this section and the surtax imposed by subsection (2) of this section are paid, regardless of the number of times the cigarettes may be sold in the state.

(4) (a) Effective August 1, 2005, ***an excise***~~[a]~~ tax shall be imposed upon all wholesalers of other tobacco products at the rate of seven and one-half percent (7.5%) of the gross receipts of any wholesaler derived from wholesale sales made within the Commonwealth.

(b) This ***excise*** tax shall be paid only once, regardless of the number of times the tobacco product may be sold in the state.

(5) Effective August 1, 2005, a tax shall be imposed upon all wholesalers of snuff at a rate of nine and one-half cents ($0.095) per unit. As used in this section unit means a hard container not capable of containing more than one and one-half (1-1/2)

ounce. In determining the quantity subject to the tax under this subsection, if a package on which the tax is levied, contains more than an individual unit, the taxable quantity shall be calculated by multiplying the total number of individual units by the rate set in this subsection. The tax imposed under this subsection shall be paid only once, regardless of the number of times the snuff may be sold in this state.

(6) The General Assembly recognizes that increasing taxes on tobacco products should reduce consumption, and therefore result in healthier lifestyles for Kentuckians. The relative taxes on tobacco products proposed in this section reflect the growing data from scientific studies suggesting that although smokeless tobacco poses some risks, those health risks are significantly less than the risks posed by other forms of tobacco products. Moreover, the General Assembly acknowledges that some in the public health community recognize that tobacco harm reduction should be a complementary public health strategy regarding tobacco products. Taxing tobacco products according to relative risk is a rational tax policy and may well serve the public health goal of reducing smoking-related mortality and morbidity and lowering health care costs associated with tobacco-related disease.

PART XXXIII

CIGARETTE PAPERS EXCISE TAX

Notwithstanding KRS 48.310, the following statutes are amended to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

Section 1. KRS 138.130 is amended to read as follows:

As used in KRS 138.130 to 138.205, unless the context requires otherwise:

(1) "Department" means the Department of Revenue.

(2) "Manufacturer" means any person who manufactures or produces cigarettes, snuff, or other tobacco products within or without this state.

(3) "Retailer" means any person who sells to a consumer or to any person for any

purpose other than resale.

(4) "Sale at retail" means a sale to any person for any other purpose other than resale.

(5) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, excepting tobacco.

(6) "Sale" or "sell" means any transfer for a consideration, exchange, barter, gift, offer for sale, advertising for sale, soliciting an order for cigarettes, other tobacco products, or snuff, and distribution in any manner or by any means whatsoever.

(7) "Tax evidence" means any stamps, metered impressions, or other indicia prescribed by the department by regulation as a means of denoting the payment of tax.

(8) "Person" means any individual, firm, copartnership, joint venture, association, municipal or private corporation whether organized for profit or not, the Commonwealth of Kentucky or any of its political subdivisions, an estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular.

(9) "Resident wholesaler" means any person who purchases at least seventy-five percent (75%) of all cigarettes, other tobacco products, or snuff purchased by the wholesaler directly from the manufacturer on which the tax provided for in KRS 138.130 to 138.205 is unpaid, and who maintains an established place of business in this state where the wholesaler attaches cigarette tax evidence, or receives untaxed cigarettes, other tobacco products, or snuff.

(10) "Nonresident wholesaler" means any person who purchases cigarettes, other tobacco products, or snuff directly from the manufacturer and maintains a permanent location or locations outside this state where Kentucky cigarette tax evidence is attached or from where Kentucky cigarette tax is reported and paid.

(11) "Sub-jobber" means any person who purchases cigarettes, other tobacco products,

or snuff from a wholesaler licensed under KRS 138.195 on which the tax imposed by KRS 138.140 has been paid and makes them available to retailers for resale. No person shall be deemed to make cigarettes, other tobacco products, or snuff available to retailers for resale unless the person certifies and establishes to the satisfaction of the department that firm arrangements have been made to regularly supply at least five (5) retail locations with Kentucky tax-paid cigarettes, other tobacco products, or snuff for resale in the regular course of business.

(12) "Vending machine operator" means any person who operates one (1) or more cigarette, other tobacco products, or snuff vending machines.

(13) "Transporter" means any person transporting untax-paid cigarettes, other tobacco products, or snuff obtained from any source to any destination within this state, other than cigarettes, other tobacco products, or snuff transported by the manufacturer thereof.

(14) "Unclassified acquirer" means any person in this state who acquires cigarettes, other tobacco products, or snuff from any source on which the tax imposed by KRS 138.140 has not been paid, and who is not a person otherwise required to be licensed under the provisions of KRS 138.195.

(15) "Other tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, cavendish, plug and twist tobacco, fine-cut, and other chewing tobacco, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco prepared in a manner to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing or smoking but does not include cigarettes as defined in subsection (5) of this section, or snuff.

(16) "Wholesale sale" means a sale made for the purpose of resale in the regular course of business.

(17) "Cigarette paper" means paper or a similar product suitable for use and likely to

be offered to, or purchased by, consumers of roll-your-own tobacco.

Section 2. KRS 138.140 is amended to read as follows:

(1) A tax shall be paid on the sale of cigarettes within the state at a proportionate rate of three cents ($0.03) on each twenty (20) cigarettes. This tax shall be paid only once, regardless of the number of times the cigarettes may be sold in this state.

(2) Effective June 1, 2005, a surtax shall be paid in addition to the tax levied in subsection (1) of this section at a proportionate rate of twenty-six cents ($0.26) on each twenty (20) cigarettes. This tax shall be paid only once, at the same time the tax imposed by subsection (1) of this section is paid, regardless of the number of times the cigarettes may be sold in the state.

(3) Effective June 1, 2005, a surtax shall be paid in addition to the tax levied in subsection (1) of this section and in addition to the surtax levied by subsection (2) of this section, at a proportionate rate of one cent ($0.01) on each twenty (20) cigarettes. This tax shall be paid only once, at the same time the tax imposed by subsection (1) of this section and the surtax imposed by subsection (2) of this section are paid, regardless of the number of times the cigarettes may be sold in the state.

(4) (a) Effective August 1, 2005, a tax shall be imposed upon all wholesalers of other tobacco products at the rate of seven and one-half percent (7.5%) of the gross receipts of any wholesaler derived from wholesale sales made within the Commonwealth.

(b) This tax shall be paid only once, regardless of the number of times the tobacco product may be sold in the state.

(5) Effective August 1, 2005, a tax shall be imposed upon all wholesalers of snuff at a rate of nine and one-half cents ($0.095) per unit. As used in this section unit means a hard container not capable of containing more than one and one-half (1-1/2) ounce. In determining the quantity subject to the tax under this subsection, if a

package on which the tax is levied, contains more than an individual unit, the taxable quantity shall be calculated by multiplying the total number of individual units by the rate set in this subsection. The tax imposed under this subsection shall be paid only once, regardless of the number of times the snuff may be sold in this state.

(6) ***(a) Effective June 1, 2006, every person licensed under KRS 138.195 to affix tax evidence, every wholesaler required to pay the tax imposed by subsection (4) of this section, and every other person selling cigarette paper at wholesale in this state shall pay an excise tax on the sale of cigarette paper.***

(b) The tax shall be in the amount of twenty-five cents ($0.25) per package of thirty-two (32) sheets. For packages greater than thirty-two (32) sheets, the tax shall be calculated at one and twenty-eight one-hundredths cents ($0.0128) per sheet.

(c) The tax shall be remitted to the Department of Revenue at the same time and in the same manner as the tax imposed in subsection (4) of this section.

(7) The department may prescribe forms and promulgate administrative regulations to execute and administer the provisions of this section.

(8) The General Assembly recognizes that increasing taxes on tobacco products should reduce consumption, and therefore result in healthier lifestyles for Kentuckians. The relative taxes on tobacco products proposed in this section reflect the growing data from scientific studies suggesting that although smokeless tobacco poses some risks, those health risks are significantly less than the risks posed by other forms of tobacco products. Moreover, the General Assembly acknowledges that some in the public health community recognize that tobacco harm reduction should be a complementary public health strategy regarding tobacco products. Taxing tobacco products according to relative risk is a rational tax policy and may well serve the public health goal of reducing smoking-related mortality and morbidity and

lowering health care costs associated with tobacco-related disease.

PART XXXIV

CAPTIVE INSURERS

Notwithstanding KRS 48.310, the following statutes are created or amended to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

SECTION 1. A NEW SECTION OF KRS 304.49-010 TO 304.49-230 IS CREATED TO READ AS FOLLOWS:

(1) A captive insurer shall engage a manager who is a resident of this state.

(2) The captive manager shall maintain the books and records of the captive insurer's business, transactions, and affairs at a location that is in this state or shall make them available to the executive director at a location that is in this state.

(3) The captive manager shall promptly notify the executive director of any failure of the captive insurer to comply with this section.

(4) The executive director may require a captive insurer to discharge a captive manager for failure to substantively fulfill the captive manager's duties under this subtitle.

SECTION 2. A NEW SECTION OF KRS 304.49-010 TO 304.49-230 IS CREATED TO READ AS FOLLOWS:

The executive director may promulgate administrative regulations to set minimum standards for the formation, structure, examination, and operation of a special purpose captive insurer or an agency captive insurer.

SECTION 3. A NEW SECTION OF KRS 304.49-010 TO 304.49-230 IS CREATED TO READ AS FOLLOWS:

(1) If there is any material change in the financial condition or management of a captive insurer, the captive insurer shall notify the executive director, in writing,

within ten (10) business days of the change.

(2) No captive insurer shall voluntarily take any of the following material actions without providing the executive director at least thirty (30) days prior written notice and receiving the executive director's approval of the action within the thirty (30) day period:

(a) The dissolution of the captive insurer;

(b) Any sale, exchange, lease, mortgage, assignment, pledge, or other transfer of, or granting of a security interest in, all or substantially all of the assets of the captive insurer;

(c) Any incurrence of material indebtedness by the captive insurer;

(d) Any making of a material loan or other material extension of credit by the captive insurer;

(e) Any payment or distribution that materially reduces capital and surplus;

(f) Any merger or consolidation to which the captive insurer is a constituent party;

(g) Any conversion of the captive insurer to another business form;

(h) Any transfer to or domestication in any jurisdiction by the captive insurer; or

(i) Any material amendment of the organizational documents of the captive insurer.

SECTION 4. A NEW SECTION OF KRS 304.49-010 TO 304.49-230 IS CREATED TO READ AS FOLLOWS:

A sponsored captive insurer may establish and maintain one (1) or more protected cells to insure risks of one (1) or more participants, subject to the following conditions:

(1) The owners of a sponsored captive insurer shall be limited to its participants and sponsors, provided that a sponsored captive insurer may issue nonvoting securities or interests to other persons on terms approved by the executive

director;

(2) The assets of each protected cell shall be held and accounted for separately on the books and records of the sponsored captive insurer to reflect the financial condition and results of operations of the protected cell, net income or loss of the protected cell, dividends or other distributions to participants of the protected cell, and other factors regarding the protected cell as may be provided in the applicable participant contract or required by the executive director;

(3) The assets of a protected cell shall not be chargeable with liabilities of any other protected cell or, unless otherwise agreed in the applicable participant contract, of the sponsored captive insurer generally;

(4) No sale, or transfer of assets, or dividend or other distribution, may be made with respect to a protected cell by such sponsored captive insurer without the consent of the participants of each affected protected cell;

(5) No sale, exchange, or transfer of assets, or dividend or other distribution, other than a payment to a sponsor in accordance with the applicable participant contract, may be made with respect to a protected cell to a sponsor or a participant without the executive director's approval;

(6) Each sponsored captive insurer shall annually file with the executive director financial reports as the executive director shall require, which shall include, without limitation, accounting statements detailing the financial experience of each protected cell;

(7) Each sponsored captive insurer shall notify the executive director, in writing, within ten (10) business days of any protected cell that has become insolvent or is otherwise unable to meet its claim or expense obligations;

(8) No participant contract shall take effect without the executive director's prior written approval. The addition of each new protected cell and withdrawal of any participant or termination of any existing protected cell shall constitute a change

in the plan of operation of the sponsored captive insurer requiring the executive director's prior written approval; and

(9) (a) The business written by a sponsored captive insurer, with respect to each protected cell, shall be:

1. Fronted by an insurance company licensed under the laws of this state or any other state;

2. Reinsured by a reinsurer authorized or approved by this state;

3. Secured by a trust fund in this state for the benefit of policyholders and claimants; or

4. Funded by an irrevocable letter of credit or other arrangement that is approved in writing by the executive director.

(b) The amount of security provided shall be no less than the reserves associated with those liabilities which are neither fronted nor reinsured, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the protected cell.

(c) The executive director may, for any reason, require the sponsored captive insurance company to increase the funding of any security arrangement established under this subsection in order to protect claimants or potential claimants.

(d) If the form of security is a letter of credit, the letter of credit shall be established, issued, or confirmed by a financial institution chartered by or licensed or otherwise authorized to do banking business in this state, or by any other financial institution approved by the executive director.

(e) A trust maintained pursuant to this subsection shall be established in a form and upon such terms as approved by the executive director.

Section 5. KRS 304.49-010 is amended to read as follows:

As used in KRS 304.49-010 to 304.49-230, unless the context requires otherwise:

(1) "Affiliated company" means any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.

(2) ***"Agency captive insurer" means a captive insurer that is owned by one (1) or more business entities that are licensed insurance producers and that only insure risks on policies placed through their owners.***

(3) "Captive insurer" means any pure captive insurer, consortium captive insurer, sponsored captive insurer, or industrial insured captive insurer formed or issued a certificate of authority under the provisions of KRS 304.49-010 to 304.49-230. For purposes of KRS 304.49-010 to 304.49-230, a branch captive insurer shall be a pure captive insurer with respect to operations in Kentucky, unless otherwise permitted by the executive director.

(4)~~[(3)]~~ "Consortium" means any legal association of individuals, corporations, partnerships, or associations that has been in continuous existence for at least one (1) year, the member organizations of which collectively, or which does itself:

(a) Own, control, or hold with power to vote all of the outstanding voting securities of a consortium captive insurer incorporated as a stock insurer; or

(b) Have complete voting control over a consortium captive insurer incorporated as a mutual insurer; or

(c) The member organizations of which collectively constitute all of the subscribers of a consortium captive insurer formed as a reciprocal insurer.

(5)~~[(4)]~~ "Consortium captive insurer" means any company that insures risks of the member organizations of the consortium and their affiliated companies.

(6)~~[(5)]~~ "Excess workers' compensation insurance" means, in the case of an employer that has insured or self-insured its workers' compensation risks in accordance with applicable state or federal law, insurance in excess of a specified per incident or

aggregate limit established by the executive director.

(7)~~[(6)]~~ "Industrial insured" means an insured as defined in KRS 304.11-020(1).

(8)~~[(7)]~~ "Industrial insured captive insurer" means any company that insures risks of the industrial insureds that comprise the industrial insured group, and their affiliated companies.

(9)~~[(8)]~~ "Industrial insured group" means any group that meets either of the following criteria:

(a) Any group of industrial insureds that collectively:

1. Own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurer incorporated as a stock insurer;

2. Have complete voting control over an industrial insured captive insurer incorporated as a mutual insurer; or

3. Constitute all of the subscribers of an industrial insured captive insurer formed as a reciprocal insurer; or

(b) Any group which is created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. secs. 3901 et seq., as amended, as a corporation or other limited liability association.

(10)~~[(9)]~~ "Member organization" means any individual, corporation, partnership, or association that belongs to a consortium.

(11)~~[(10)]~~ "Parent" means a corporation, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent (50%) of the outstanding voting securities of a pure captive insurer.

(12)~~[(11)]~~ "Pure captive insurer" means any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.

(13)~~[(12)]~~ "Controlled unaffiliated business" means any company:

(a) That is not in the corporate system of a parent and affiliated companies;

(b) That has an existing contractual relationship with a parent or affiliated company; and

(c) Whose risks are managed by a pure captive insurer in accordance with KRS 304.49-170.

(14) ~~[(13)]~~ "Foreign captive insurer" means any insurer formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of any state other than Kentucky which imposes statutory or regulatory standards in a form acceptable to the executive director on companies transacting the business of insurance in that jurisdiction. Under KRS 304.49-010 to 304.49-230, captive insurers formed under the laws of any jurisdiction other than a state of the United States shall be treated as a foreign captive insurer unless the context requires otherwise.

(15) ~~[(14)]~~ "Branch business" means any insurance business transacted by a branch captive insurer in Kentucky.

(16) ~~[(15)]~~ "Branch captive insurer" means any foreign captive insurer issued a certificate of authority by the executive director to transact the business of insurance in Kentucky through a business unit with a principal place of business in Kentucky.

(17) ~~[(16)]~~ "Branch operations" means any business operations of a branch captive insurer in Kentucky.

(18) ~~[(17)]~~ "Participant" means an entity as defined in KRS 304.49-210, and any affiliates thereof, that are insured by a sponsored captive insurer, where the losses of the participant are limited through a participant contract to the assets of a protected cell.

(19) ~~[(18)]~~ "Participant contract" means a contract by which a sponsored captive insurer insures the risks of a participant and limits the losses of the participant to the assets of a protected cell.

(20) ~~[(19)]~~ "Protected cell" means a separate account established and maintained by a sponsored captive insurer for one (1) participant.

(21)[~~(20)~~] "Reciprocal insurer" means an insurer engaging in reciprocal insurance as defined by KRS 304.27-010.

(22) "Special purpose captive insurer" means any person that is licensed under this chapter and designated as a special purpose captive insurer by the executive director. A person may be designated as a special purpose captive insurer if it is established for one (1) specific purpose or transaction, and where it is desirable to isolate the purpose or transaction from the other activities of a party or parties involved in the transaction, or where the transaction dictates that the vehicle should not be treated as controlled or owned by any other party to that transaction.

(23)[~~(21)~~] "Sponsor" means any entity that meets the requirements of KRS 304.49-200 and is approved by the executive director to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurer.

(24)[~~(22)~~] "Sponsored captive insurer" means any captive insurer:

(a) In which the minimum capital and surplus required by applicable law is provided by one (1) or more sponsors;

(b) That is formed or issued a certificate of authority under the provisions of this subtitle;

(c) That insures the risks of separate participants through contract; and

(d) That segregates each participant's liability through one (1) or more protected cells.

Section 6. KRS 304.49-020 is amended to read as follows:

(1) Any captive insurer, when permitted by its articles of incorporation, charter, or other organizational document, may apply to the executive director for a certificate of authority to engage in any and all kinds of insurance defined in Subtitle 5 of this chapter; provided, however, that:

(a) No pure captive insurer may insure any risks other than those of its parent and affiliated companies or controlled unaffiliated business;

(b) No consortium captive insurer may insure any risks other than those of the member organizations of its consortium and their affiliated companies;

(c) No industrial insured captive insurer may insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

(d) No captive insurer may provide personal motor vehicle or homeowner's insurance coverage or any component thereof;

(e) No captive insurer may accept or cede reinsurance except as provided in KRS 304.49-110;

(f) ***No captive insurer that is issued an initial certificate of authority on or after July 1, 2006, shall directly provide workers' compensation insurance; however,*** any captive insurer may provide excess workers' compensation insurance to its parent and affiliated companies, unless prohibited by the laws of the state having jurisdiction over the transaction. Any captive insurer may reinsure workers' compensation of a qualified self-insured plan of its parent and affiliated companies;

(g) Any captive insurer which insures risks described in KRS 304.5-020 and 304.5-040 shall comply with all applicable state laws;

(h) No branch captive insurer may write any business in Kentucky except insurance or reinsurance of the employee benefit business of its parent and affiliated companies which is subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended; and

(i) No sponsored captive insurer may insure any risks other than those of its participants.

(2) No captive insurer shall do any insurance business in Kentucky unless:

(a) It first obtains from the executive director a certificate of authority authorizing it to do insurance business in Kentucky;

(b) Its board of directors, or in the case of a reciprocal insurer, its subscribers' advisory committee, holds at least one (1) meeting each year in Kentucky; and

(c) It maintains its principal place of business in Kentucky or, in the case of a branch captive insurer, maintains the principal place of business for its branch operations in Kentucky.

(3) Before receiving a certificate of authority, a captive insurer formed as a corporation shall file with the executive director a certified copy of its charter and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the executive director;

(4) Before receiving a certificate of authority, a captive insurer formed as a reciprocal insurer shall:

(a) File with the executive director a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the executive director; and

(b) Submit to the executive director a sample of the coverages, deductibles, coverage limits, and rates, together with any additional information required by the executive director. In the event of any subsequent material change in any item in the samples, the reciprocal captive insurer shall submit to the executive director for approval an appropriate revision. The reciprocal captive insurer shall not offer any coverage until the forms are approved by the executive director. The reciprocal captive insurer shall not use any initial rate until it is approved by the executive director and shall inform the executive director of any material change in rates within thirty (30) days of the adoption of the change.

(5) In addition to the information required by subsections (3) or (4) of this section, each applicant captive insurer shall file with the executive director evidence of the following:

(a) The amount and liquidity of its assets relative to the risks to be assumed;

(b) The adequacy of the expertise, experience, and character of the person or persons who will manage it;

(c) The overall soundness of its plan of operation;

(d) The adequacy of the loss prevention programs of its parent, member organizations, or industrial insureds as applicable; and

(e) Any other factors deemed relevant by the executive director in ascertaining whether the proposed captive insurer will be able to meet its policy obligations.

(6) In addition to the information required by subsections (3), (4), and (5) of this section, each applicant-sponsored captive insurer shall file with the executive director the following:

(a) A business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the executive director and how it will report the experience to the executive director;

(b) A statement acknowledging that all financial records of the sponsored captive insurer, including records pertaining to any protected cells, shall be made available for inspection or examination by the executive director;

(c) All contracts or sample contracts between the sponsored captive insurer and any participants; and

(d) Evidence that expenses shall be allocated to each protected cell in a fair and equitable manner.

(7) ***All portions of license applications reasonably designated confidential by the***

applicant, and all examination reports, preliminary examination reports, working papers, recorded information, other documents, and any copies of any of the foregoing, produced or obtained by or submitted or disclosed to the executive director related to an examination pursuant to this subtitle shall, unless the prior written consent of the captive insurer to which it pertains has been obtained, be given confidential treatment, and shall not be subject to civil subpoena, made public by the executive director, or provided or disclosed to any other person at any time except to:

(a) The insurance department of any state, country, or alien jurisdiction; or

(b) To a law enforcement official or agency of the Commonwealth of Kentucky, any other state, or alien jurisdiction, as long as the official or agency agrees in writing to hold it confidential and in a manner consistent with this section~~[Information submitted under this section shall be confidential by law and privileged but may be used, received, and shared in accordance with Subtitle 2 of this chapter]~~.

(8) Each captive insurer shall pay to the executive director a nonrefundable fee as stated in KRS 304.4-010 for examining, investigating, and processing its application for certificate of authority. The executive director is authorized to retain legal, financial, and examination services from outside the office to assist in examining and investigating the applicant, the reasonable cost of which may be charged against the applicant. In addition, each captive insurer shall pay a certificate of authority fee for the year of registration and a renewal fee for each year thereafter.

Section 7. KRS 304.49-040 is amended to read as follows:

(1) No captive insurer shall be issued a certificate of authority unless it shall possess and thereafter maintain unimpaired paid-in capital and surplus of:

(a) In the case of a pure captive insurer, not less than two hundred fifty thousand dollars ($250,000);

(b) In the case of an consortium captive insurer, not less than seven hundred fifty thousand dollars ($750,000);

(c) In the case of an industrial insured captive insurer, not less than five hundred thousand dollars ($500,000);~~[and]~~

(d) In the case of a sponsored captive insurer, not less than one million dollars ($1,000,000)**;**

(e) In the case of an agency captive insurer, not less than five hundred thousand dollars ($500,000); and

(f) In the case of a special purpose captive insurer, not less than two hundred fifty thousand dollars ($250,000), or another amount determined by the executive director.

(2) Notwithstanding the requirements of subsection (1) of this section, no captive insurer organized as a reciprocal insurer under KRS 304.49-010 to 304.49-230 shall be issued a certificate of authority unless it shall possess and thereafter maintain free surplus of one million dollars ($1,000,000).

(3) The executive director may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

(4) Capital and surplus may be in the form of cash or an irrevocable letter of credit issued by a bank approved by the executive director and chartered by the Commonwealth of Kentucky or a member bank of the Federal Reserve System***, or other assets as may be approved by the executive director***.

(5) In the case of a branch captive insurer, as security for the payment of liabilities attributable to the branch operations, the executive director shall require that a separate trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed, by the branch captive insurer

through its branch operations. The amount of this security may be no less than the capital and surplus required in this section and the reserves on the insurance policies or the reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums with regard to business written through the branch operations; provided, however, the executive director may permit a branch captive insurer that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the reinsurer. If the form of security selected is a letter of credit, the letter of credit must be established by, or issued or confirmed by, a bank chartered in Kentucky or a member bank of the Federal Reserve System.

Section 8. KRS 304.49-060 is amended to read as follows:

(1) A pure captive insurer or a sponsored captive insurer shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(2) A consortium captive insurer or an industrial insured captive insurer may be:

(a) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders; or

(b) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its consortium; or

(c) Organized as a reciprocal insurer in accordance with Subtitle 27 of this chapter.

(3) ***A special purpose captive insurer may be:***

(a) Incorporated as a stock corporation;

(b) Incorporated as a nonstock corporation;

(c) Formed as a limited liability company;

(d) Formed as a partnership;

(e) Formed as a limited partnership;

(f) Formed as a statutory trust; or

(g) Such other person approved by the executive director, other than a natural person in his or her individual capacity.

(4) A sponsored captive insurer may be:

(a) Incorporated as a stock corporation;

(b) Incorporated as a nonstock corporation;

(c) Formed as a limited liability company;

(d) Formed as a partnership;

(e) Formed as a limited partnership; or

(f) Formed as a statutory trust.

(5) A risk retention group may take any form permitted under the Liability Risk Retention Act of 1986, 15 U.S.C. sec. 3901 et seq., as amended.

(6) A captive insurer incorporated or organized in Kentucky shall have not less than three (3) incorporators or two (2) organizers.

(7)~~[(4)]~~ In the case of a captive insurer, the executive director shall find, in order to issue a certificate of authority, that the establishment and maintenance of the proposed captive insurer will promote the general good of the state. In arriving at such a finding, the executive director shall consider:

(a) The character, reputation, financial standing, and purposes of the incorporators or organizers;

(b) The character, reputation, financial responsibility, insurance experience, and business qualifications of the persons responsible for the conduct of the captive insurer's affairs; and

(c) Any other aspects the executive director deems advisable.

(8)~~[(5)]~~ The capital stock of a captive insurer incorporated as a stock insurer may be authorized with no par value.

(9)~~[(6)]~~ Captive insurance companies formed as corporations under the provisions of

KRS 304.49-010 to 304.49-230 shall have the privileges and be subject to the provisions of KRS Chapter 271B as well as the applicable provisions contained in KRS 304.49-010 to 304.49-230. If there is a conflict between the provisions of KRS Chapter 271B and the provisions of this chapter, the latter shall control. The provisions of this chapter, pertaining to mergers, consolidations, conversions, mutualizations, and redomestications, shall apply in determining the procedures to be followed by captive insurance companies in carrying out any of the transactions described therein, except that:

(a) The executive director may, upon request of an insurer party to a merger authorized under this subsection, waive the requirement of KRS 304.24-390(4); and

(b) The executive director may waive or modify the requirements for public notice and hearing in accordance with rules which the executive director may adopt addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing, then the executive director may cancel the hearing.

(10) ~~[(7)]~~ Captive insurance companies formed as reciprocal insurers under the provisions of KRS 304.49-010 to 304.49-230 shall have the privileges and be subject to the provisions of Subtitle 27 of this chapter in addition to the applicable provisions of this subtitle. In the event of a conflict between the provisions of Subtitle 27 of this chapter and the provisions of this subtitle, the latter shall control. To the extent a reciprocal insurer is made subject to other provisions of this subtitle pursuant to Subtitle 27 of this chapter, those provisions shall not be applicable to a reciprocal insurer formed under KRS 304.49-010 to 304.49-230 unless the provisions are expressly made applicable to captive insurance companies under KRS 304.49-010 to 304.49-230.

(11) ~~[(8)]~~ In addition to the provisions of subsection ***(10)*** ~~[(7)]~~ of this section, captive

insurance companies organized as reciprocal insurers that are industrial insured groups as defined in this subtitle shall have the privileges and be subject to the provisions of Subtitle 45 of this chapter, in addition to the applicable provisions of this subtitle.

(12)~~[(9)]~~ The articles of incorporation or bylaws of a captive insurer formed as a corporation may authorize a quorum of a board of directors to consist of no fewer than one-third (1/3) of the fixed or prescribed number of directors.

(13)~~[(10)]~~ The subscribers' agreement or other organizing document of a captive insurer formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of no fewer than one-third (1/3) of the number of its members.

(14) Each owner of an agency captive insurer shall be licensed as an insurance producer.

Section 9. KRS 304.49-070 is amended to read as follows:

(1) Captive insurance companies shall not be required to make any annual report except as provided in KRS 304.49-010 to 304.49-230.

(2) On or before March 1 of each year, each captive insurer shall submit to the executive director a report of its financial condition, verified by oath of two (2) of its executive officers. Each captive insurer shall report using generally accepted accounting principles, unless the executive director approves the use of statutory accounting principles ***or international accounting standards***, with any ***appropriate***~~[useful]~~ or necessary modifications or adaptations thereof required or approved or accepted by the executive director for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the executive director. ***Any captive insurer whose use of statutory accounting principles are approved by the executive director may make modifications and adaptations as are necessary to record as admitted the full value of all investments by the captive insurer permitted under this subtitle and,***

subject to the executive director's approval, to make its reports under this section consistent with the purposes of this subtitle. Except as otherwise provided, all captive insurers, with the exception of those formed as a risk retention group, shall file reports on a form prescribed by the executive director through administrative regulation. A captive insurer formed as a risk retention group shall file reports pursuant to KRS 304.2-205, with additional information or modification as the executive director may prescribe~~[Except as otherwise provided, each consortium captive insurer and each industrial insured captive insurer insuring the risks of an industrial insured group defined in KRS 304.49-010(8)(b) shall file its report in the form of and as required by KRS 304.2-205]~~. The executive director shall by administrative regulation propose the forms in which ***captive insurers***~~[pure captive insurance companies and industrial insured captive insurance companies insuring the risks of an industrial insured group defined in KRS 304.49-010(8)(a)]~~ shall report.

(3) Any pure captive insurer or an industrial insured captive insurer insuring the risks of industrial insured groups as defined in KRS 304.49-010***(9)***~~[(8)]~~(a) may make written application for filing the required report on a fiscal year end. If an alternative reporting date is granted, the annual report is due sixty (60) days after the fiscal year end.

(4) Sixty (60) days after the fiscal year end, a branch captive insurer shall file with the executive director a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the foreign captive insurer is formed, verified by oath of two (2) of its executive officers. If the executive director is satisfied that the annual report filed by the foreign captive insurer in its domiciliary jurisdiction provides adequate information concerning the financial condition of the foreign captive insurer, the executive director may waive the requirement for completion of the captive annual statement for business written in the foreign jurisdiction.

Section 10. KRS 304.49-100 is amended to read as follows:

(1) A consortium captive insurer, sponsored captive insurer, and an industrial insured captive insurer insuring the risks of an industrial insured group defined in KRS 304.49-010*(9)*~~[(8)]~~(b) shall comply with the investment requirements contained in Subtitle 7 of this chapter. Notwithstanding any other provision of this chapter, the executive director may approve the use of alternative reliable methods of valuation and rating.

(2) No pure captive insurer or industrial insured captive insurer insuring the risks of an industrial insured group as defined in KRS 304.49-010(8)(a) shall be subject to any restrictions on allowable investments whatever, including those limitations contained in Subtitle 7 of this chapter; provided, however, that the executive director may prohibit or limit any investment that threatens the solvency or liquidity of any such company.

(3) Only a pure captive insurer may make loans to its parent company or affiliates. No loans to a parent company or any affiliate shall be permitted without prior written approval of the executive director and shall be evidenced by a note in a form approved by the executive director.

(4) All captive insurers are subject to KRS 304.37-030 regarding material transactions.

Section 11. KRS 304.49-180 is amended to read as follows:

(1) A consortium captive insurer or industrial insured group formed as a stock or mutual corporation may be converted to or merged with and into a reciprocal insurer in accordance with a plan therefor and the provisions of this section.

(2) Any plan for such conversion or merger shall be fair and equitable to the shareholders, in the case of a stock insurer, or the policyholders, in the case of a mutual insurer.

(3) In the case of a conversion authorized under subsection (1) of this section:

(a) The conversion shall be accomplished under any reasonable plan and

procedure approved by the executive director, but the executive director shall not approve any plan of conversion unless the plan:

1. Satisfies the provisions of subsection (2) of this section;
2. Provides for a hearing, of which notice has been given to the insurer, its directors, officers, and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom shall have the right to appear at the hearing, except that the executive director may waive or modify the requirements for the hearing, provided that if a notice of hearing is required, but no hearing is requested, the executive director may cancel the hearing;
3. Provides for the conversion of existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer, proportionate to stockholder or policyholder interests in the stock or mutual insurer; and
4. Is approved:
   a. In the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;
   b. In the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;

(b) The executive director shall approve the plan of conversion if the executive director finds that the conversion will promote the general good of the state in conformity with those standards set forth in KRS 304.49-060*(7)*~~[(4)]~~;

(c) If the executive director approves the plan, the executive director shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue an amended certificate of authority to the

company's attorney-in-fact;

(d) Upon the issuance of an amended certificate of authority of a reciprocal insurer by the executive director, the conversion shall be effective; and

(e) Upon the effectiveness of the conversion, the corporate existence of the converting insurer shall cease and the resulting reciprocal insurer shall notify the Secretary of State of the conversion.

(4) A merger authorized under subsection (1) of this section shall be accomplished substantially in accordance with the procedures set forth in KRS 304.24-390, except that, solely for purposes of the merger:

(a) The plan of merger shall satisfy the provisions of subsection (2) of this section;

(b) The subscribers' advisory committee of a reciprocal insurer shall be equivalent to the board of directors of a stock or mutual insurer;

(c) The subscribers of a reciprocal insurer shall be the equivalent of the policyholders of a mutual insurer;

(d) If a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties shall be deemed the president or secretary of the committee;

(e) The executive director may, upon request of an insurer party to a merger authorized under subsection (1) of this section, waive the requirement of KRS 304.24-390(4);

(f) The executive director shall approve the articles of merger if the executive director finds that the merger will promote the general good of the state in conformity with those standards set forth in KRS 304.49-060*(7)*~~[(4)]~~. If the executive director approves the articles of merger, the executive director shall indorse his or her approval thereon and the surviving insurer shall present and file them with the Secretary of State;

(g) Notwithstanding KRS 304.49-040, the executive director may permit the formation, without surplus, of a captive insurer organized as a reciprocal insurer, into which an existing captive insurer may be merged for the purpose of facilitating a transaction under this section; however, there shall be no more than one (1) authorized insurer surviving the merger; and

(h) An alien insurer may be a party to a merger authorized under subsection (1) of this section, provided that the requirements for a merger between a domestic and a foreign insurer under KRS 304.24-390 shall apply to a merger between a domestic and an alien insurer under this subsection. The alien insurer shall be treated as a foreign insurer under KRS 304.24-390 and the other jurisdictions shall be the equivalent of a state for purposes of KRS 304.24-390.

PART XXXV

VALUATION FLOOR FOR MOTOR VEHICLES

Notwithstanding KRS 48.310, the following statutes are amended to read as follows and shall have permanent effect, subject to future actions by the General Assembly:

Section 1. KRS 138.450 is amended to read as follows:

As used in KRS 138.455 to 138.470, unless the context requires otherwise:

(1) "Current model year" means a motor vehicle of either the model year corresponding to the current calendar year or of the succeeding calendar year, if the same model and make is being offered for sale by local dealers;

(2) "Dealer" means "motor vehicle dealer" as defined in KRS 190.010;

(3) "Dealer demonstrator" means a new motor vehicle or a previous model year motor vehicle with an odometer reading of least one thousand (1,000) miles that has been used either by representatives of the manufacturer or by a licensed Kentucky dealer, franchised to sell the particular model and make, for demonstration;

(4) "Historic motor vehicle" means a motor vehicle registered and licensed pursuant to KRS 186.043;

(5) "Motor vehicle" means any vehicle that is propelled by other than muscular power and that is used for transportation of persons or property over the public highways of the state, except road rollers, mopeds, vehicles that travel exclusively on rails, and vehicles propelled by electric power obtained from overhead wires;

(6) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour;

(7) "New motor vehicle" means a motor vehicle of the current model year which has not previously been registered in any state or country;

(8) "Previous model year motor vehicle" means a motor vehicle not previously registered in any state or country which is neither of the current model year nor a dealer demonstrator;

(9) "Total consideration given" means the amount given, valued in money, whether received in money or otherwise, at the time of purchase or at a later date, including consideration given for all equipment and accessories, standard and optional[~~, as attested to in a notarized affidavit signed by both the buyer and the seller. The signatures of the buyer and seller shall be individually notarized~~]. "Total consideration given" shall not include:

(a) Any amount allowed as a manufacturer or dealer rebate if the rebate is provided at the time of purchase and is applied to the purchase of the motor vehicle;

(b) Any interest payments to be made over the life of a loan for the purchase of a motor vehicle; and

(c) The value of any items that are not equipment or accessories including but not limited to extended warranties, service contracts, and items that are given away as part of a promotional sales campaign;

(10) "Trade-in allowance" means*:*

(a) The value assigned by the seller of a motor vehicle to a motor vehicle ***registered to the purchaser and*** offered in trade by the purchaser as part of the total consideration given by the purchaser and included in the notarized affidavit attesting to total consideration given; ***or***

(b) In the absence of a notarized affidavit, the value of the vehicle being offered in trade as established by the department through the use of the reference manual;

(11) "Used motor vehicle" means a motor vehicle which has been previously registered in any state or country;

(12) ***(a)*** "Retail price" ~~[of motor vehicles shall be determined as follows:~~

~~(a)~~]for*:*

1. New ***motor vehicles;***~~[,]~~

2. Dealer demonstrator ***vehicles;***~~[,]~~

3. Previous model year motor vehicles*;* and

4. U-Drive-It motor vehicles that have been transferred within one hundred eighty (180) days of being registered as a U-Drive-It and that have less than five thousand (5,000) miles,

means~~["retail price" shall be]~~ the total consideration given~~[at the time of purchase or at a later date]~~, including any trade-in allowance*,* as attested to in a notarized affidavit.

(b) If a notarized affidavit~~[signed by both the buyer and seller]~~ is not available~~[to establish total consideration given]~~, "retail price" ***means***~~[shall be]~~:

1. Ninety percent (90%) of the manufacturer's suggested retail price of the

vehicle with all equipment and accessories, standard and optional, and transportation charges; or

2. Eighty-one percent (81%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges in the case of new trucks of gross weight in excess of ten thousand (10,000) pounds.[; and]

(c)[3.] "Retail price" shall not include that portion of the price of the vehicle attributable to equipment or adaptive devices necessary to facilitate or accommodate an operator or passenger with physical disabilities;

(13)[(b)] ***"Retail price"*** for historic motor vehicles[, "retail price"] shall be one hundred dollars ($100);

(14)[(c)] ***"Retail price"*** for used motor vehicles being registered by a new resident for the first time in Kentucky whose values appear in the[automotive] reference manual ***means***[prescribed by the Department of Revenue, "retail price" shall be] the[average] trade-in value given in the reference manual;

(15)[(d)] ***"Retail price"*** for[the] older used motor vehicles being registered by a new resident for the first time in Kentucky whose values no longer appear in the[automotive] reference manual[, "retail price"] shall be one hundred dollars ($100);

(16) (a) ***"Retail price"***[(e) For used motor vehicles previously registered in another state or country that were purchased out-of-state by a Kentucky resident who is registering the vehicle in Kentucky for the first time, "retail price" shall be the total consideration given at the time of purchase or at a later date, including the average trade-in value given in the automotive reference manual prescribed by the Department of Revenue for any vehicle given in trade;

(f)] for:

1. Used motor vehicles***, except those vehicles for which the retail price is***

established in subsection (13), (14), (15), (17), or (19) of this section;~~[previously registered in Kentucky that are sold in Kentucky,]~~ and

2. U-Drive-It motor vehicles that are not transferred within one hundred eighty (180) days of being registered as a U-Drive-It or that have more than five thousand (5,000) miles,~~["retail price"]~~

means the total consideration given, excluding any amount allowed as a trade-in allowance by the seller***, as attested to in a notarized affidavit, provided that the retail price established by the notarized affidavit shall not be less than fifty-percent (50%) of the difference between the trade-in value, as established by the reference manual, of the motor vehicle offered for registration and the trade-in value, as established by the reference manual, of any motor vehicle offered in trade as part of the total consideration given***.

(b) The trade-in allowance shall ***also*** be disclosed in the notarized affidavit~~[signed by the buyer and the seller attesting to the total consideration given]~~.

(c) If a notarized affidavit~~[signed by both the buyer and the seller]~~ is not available~~[to establish the total consideration given for a motor vehicle]~~, "retail price" shall be established by the department~~[of Revenue]~~ through the use of the~~[automotive]~~ reference manual~~[prescribed by the Department of Revenue]~~;

(17)~~[(g)]~~ Except as provided in KRS 138.470(6), if a motor vehicle is received by an individual as a gift and not purchased or leased by the individual, "retail price" shall be the~~[average]~~ trade-in value given in the~~[automotive]~~ reference manual~~[prescribed by the Department of Revenue]~~;

(18)~~[(h)]~~ If a dealer transfers a motor vehicle which he has registered as a loaner or rental motor vehicle within one hundred eighty (180) days of the registration, and if less than five thousand (5,000) miles have been placed on the vehicle during the period of its registration as a loaner or rental motor vehicle, then the "retail price" of

the vehicle shall be the same as the retail price determined by paragraph (a) of~~[this]~~ subsection ***(12) of this section*** computed as of the date on which the vehicle is transferred;~~[and]~~

(19) "Retail price" for motor vehicles titled pursuant to KRS 186A.520, 186A.525, 186A.530, or 186A.555 means the total consideration given as attested to in a notarized affidavit;

(20)~~[(13)]~~ "Loaner or rental motor vehicle" means a motor vehicle owned or registered by a dealer and which is regularly loaned or rented to customers of the service or repair component of the dealership;

(21) "Department" means the Department of Revenue;

(22) "Notarized affidavit" means a dated affidavit signed by the buyer and the seller on which the signature of the buyer and the signature of the seller are individually notarized; and

(23) "Reference manual" means the automotive reference manual prescribed by the department.

Section 2. KRS 138.460 is amended to read as follows:

(1) A tax levied upon its retail price at the rate of six percent (6%) shall be paid on the use in this state of every motor vehicle, except those exempted by KRS 138.470, at the time and in the manner provided in this section.

(2) The tax shall be collected by the county clerk or other officer with whom the vehicle is required to be titled or registered:

(a) When the fee for titling or registering a motor vehicle the first time it is offered for titling or registration in this state is collected; or

(b) Upon the transfer of title or registration of any motor vehicle previously titled or registered in this state.

(3) The tax imposed by subsection (1) of this section and collected under subsection (2) of this section shall not be collected if the owner provides to the county clerk a

signed affidavit of nonhighway use, on a form provided by the department, attesting that the vehicle will not be used on the highways of the Commonwealth. If this type of affidavit is provided, the clerk shall, in accordance with the provisions of KRS Chapter 139, immediately collect the applicable sales and use tax due on the vehicle.

(4) (a) The tax collected by the county clerk under this section shall be reported and remitted to the Department~~[of Revenue]~~ on forms ***prescribed and*** provided by the department~~[and on those forms as the department may prescribe]~~. The department shall provide each county clerk affidavit forms which the clerk shall provide to the public free of charge to carry out the provisions of KRS 138.450 and subsection (3) of this section. The county clerk shall for his services in collecting the tax be entitled to retain an amount equal to three percent (3%) of the tax collected and accounted for.

(b) The sales and use tax collected by the county clerk under subsection (3) of this section shall be reported and remitted to the department on forms which the department shall prescribe and provide at no cost. The county clerk shall, for his or her services in collecting the tax, be entitled to retain an amount equal to three percent (3%) of the tax collected and accounted for.

(c) Motor vehicle dealers licensed pursuant to KRS Chapter 190 shall not owe or be responsible for the collection of sales and use tax due under subsection (3) of this section.

(5) A county clerk or other officer shall not title, register or issue any license tags to the owner of any motor vehicle subject to the tax imposed by subsection (1) of this section or the tax imposed by KRS Chapter 139, when the vehicle is being offered for titling or registration for the first time, or transfer the title of any motor vehicle previously registered in this state, unless the owner or his agent pays the tax levied under subsection (1) of this section or the tax imposed by KRS Chapter 139, if

applicable, in addition to any title, registration, or license fees.

(6) (a) When a person offers a motor vehicle:

1. For titling on or after March 20, 2005; or

2. For registration;

for the first time in this state which was registered in another state that levied a tax substantially identical to the tax levied under this section, the person shall be entitled to receive a credit against the tax imposed by this section equal to the amount of tax paid to the other state. A credit shall not be given under this subsection for taxes paid in another state if that state does not grant similar credit for substantially identical taxes paid in this state.

(b) When a resident of this state offers a motor vehicle for registration for the first time in this state:

1. Upon which the Kentucky sales and use tax was paid by the resident offering the motor vehicle for registration at the time of titling under subsection (3) of this section; and

2. For which the resident provides proof that the tax was paid;

a nonrefundable credit shall be given against the tax imposed by subsection (1) of this section for the sales and use tax paid.

(7) A county clerk or other officer shall not title, register, or issue any license tags to the owner of any motor vehicle subject to this tax, when the vehicle is then being offered for titling or registration for the first time, unless the seller or his agent delivers to the county clerk a notarized affidavit, if required, and available under KRS 138.450 attesting to the total and actual consideration paid or to be paid for the motor vehicle. If a notarized affidavit is not available, the clerk shall follow the procedures under KRS 138.450(12)***(b)***~~[(a)]~~ for new vehicles, and KRS 138.450***(14)***~~[(12)(c), (d),]~~ or ***(15)***~~[(c)]~~ for used vehicles. The clerk shall attach the notarized affidavit, if available, or other documentation attesting to the retail price

of the vehicle as the department[of Revenue] may prescribe by administrative regulation promulgated under KRS Chapter 13A to the copy of the certificate of registration and application for title mailed to the department.

(8) Notwithstanding the provisions of KRS 138.450, the tax shall not be less than six dollars ($6) upon titling or first registration of a motor vehicle in this state, except where the vehicle is exempt from tax under KRS 138.470 or 154.45-090.

(9) Where a motor vehicle is sold by a dealer in this state and the purchaser returns the vehicle for any reason to the same dealer within sixty (60) days for a vehicle replacement or a refund of the purchase price, the purchaser shall be entitled to a refund of the amount of usage tax received by the department[of Revenue] as a result of the registration of the returned vehicle. In the case of a new motor vehicle, the registration of the returned vehicle shall be canceled and the vehicle shall be considered to have not been previously registered in Kentucky when resold by the dealer.

(10) When a manufacturer refunds the retail purchase price or replaces a new motor vehicle for the original purchaser within ninety (90) days because of malfunction or defect, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the department[of Revenue] as a result of the first titling or registration. A person shall not be entitled to a refund unless the person has filed with the department[of Revenue] a report from the manufacturer identifying the vehicle that was replaced and stating the date of replacement.

(11) Notwithstanding the time limitations of subsections (9) and (10) of this section, when a dealer or manufacturer refunds the retail purchase price or replaces a motor vehicle for the purchaser as a result of formal arbitration or litigation, or, in the case of a manufacturer, because ordered to do so by a dispute resolution system established under KRS 367.865 or 16 C.F.R. 703, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the department[of

~~Revenue~~] as a result of the titling or registration. A person shall not be entitled to a refund unless the person files with the department[~~ of Revenue~~] a report from the dealer or manufacturer identifying the vehicle that was replaced.

(12) (a) An owner who has paid the tax levied under this section on a used motor vehicle or U-Drive-It vehicle based upon the retail price as defined in KRS 138.450(16)(a) shall be entitled to a refund of any tax overpayment, plus applicable interest as provided in KRS 131.183, if the owner:

1. Files for a refund with the department within four (4) years from the date the tax was paid as provided in KRS 134.580; and

2. Documents to the satisfaction of the department that the condition of the vehicle merits a retail price lower than the retail price as defined in KRS 138.450(16)(a).

(b) The department shall promulgate administrative regulations to develop the forms and the procedures by which the owner can apply for a refund and document the condition of the vehicle. The department shall provide the information to each county clerk.

(c) The refund shall be based upon the difference between the tax paid and the tax determined to be due by the department at the time the owner titled or registered the vehicle.

Section 3. KRS 138.4605 is amended to read as follows:

(1) A motor vehicle dealer who operates a service or repair component in his dealership may register a motor vehicle to be used exclusively as a loaner or rental motor vehicle to the customers of this service or repair department. The dealer may pay usage tax on the loaner or rental motor vehicle as provided in KRS 138.460, or, subject to the provisions of this section, may pay a usage tax of twenty-five dollars ($25) per month on the loaner or rental motor vehicle.

(2) A dealer shall pay the usage tax on a loaner or rental motor vehicle in the manner

provided by KRS 138.460 unless the dealer shows to the satisfaction of the Department of Revenue that he is regularly engaged in the servicing or repair of motor vehicles and loans or rents the loaner or rental motor vehicle to a retail customer while the customer's motor vehicle is at the dealership for repair or service.

(3) For a dealer to be eligible to pay the usage tax on a loaner or rental motor vehicle under this section, the dealer shall identify the motor vehicle as a loaner or rental motor vehicle to the Department of Revenue and shall maintain records, as required by the Department of Revenue, which show all uses of the loaner or rental motor vehicle.

(4) The tax due under subsection (1) of this section shall be remitted to the Department of Revenue monthly on forms prescribed by and in accordance with administrative regulations promulgated by the department.

(5) Failure of a motor vehicle dealer to remit the taxes applicable to a loaner or rental motor vehicle under this section shall be sufficient cause for the Department of Revenue to revoke the authority to use that motor vehicle as a loaner or rental motor vehicle and cause the usage tax on that motor vehicle to be due and payable in accordance with KRS 138.460 on the retail price of that motor vehicle when it was first registered as a loaner or rental motor vehicle.

(6) A motor vehicle no longer covered under the loaner permit program shall be taxed in the same manner as motor vehicles under KRS 138.450(12) ***or (16)***.

Section 4. KRS 138.464 is amended to read as follows:

(1) The county clerk shall report each Monday to the department~~[of Revenue]~~ all moneys collected during the previous week, together with a duplicate of all receipts issued by him during the same period.

(2) The clerk shall deposit motor vehicle usage tax collections not later than the next business day following receipt in a Commonwealth of Kentucky, Department of

Revenue account in a bank designated as a depository for state funds. The clerk may be required to then cause the funds to be transferred from the local depository bank to the State Treasury in whatever manner and at times prescribed by the commissioner of the department~~[of Revenue]~~ or his designee.

(3) Failure to forward duplicates of all receipts issued during the reporting period or failure to file the weekly report of moneys collected shall subject the clerk to a penalty of two and one-half percent (2.5%) of the amount of moneys collected during the reporting period for each month or fraction thereof until the documents are filed.

(4) Failure to deposit or, if required, transfer collections as required above shall subject the clerk to a penalty of two and one-half percent (2.5%) of the amount not deposited or, if required, not transferred for each day until the collections are deposited or transferred as required above. The penalty for failure to deposit or transfer money collected shall not be less than fifty dollars ($50) nor more than five hundred dollars ($500) per day.

(5) The penalties provided in this section shall not apply if the failure of the clerk is due to reasonable cause.

(6) The department may in its discretion grant a county clerk a reasonable extension of time to file his report or make any transfer of deposits as required above. The extension, however, must be requested prior to the end of the seven (7) day period and shall begin to run at the end of said period.

(7) All penalties collected under this provision shall be paid into the State Treasury as a part of the revenue collected under KRS 138.450 to 138.729.

Section 5. This Part takes effect January 1, 2007.

PART XXXVI

SALES OF MOTOR VEHICLES TO NONRESIDENTS

Notwithstanding KRS 48.310, the following statutes are amended or created to read

as follows and shall have permanent effect, subject to future actions by the General Assembly:

Section 1. KRS 139.470 is amended to read as follows:

There are excluded from the computation of the amount of taxes imposed by this chapter:

(1) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property which this state is prohibited from taxing under the Constitution or laws of the United States, or under the Constitution of this state;

(2) Gross receipts from sales of, and the storage, use, or other consumption in this state of:

(a) Nonreturnable and returnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; and

(b) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling;

As used in this section the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers";

(3) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property used for the performance of a lump-sum, fixed-fee contract of public works executed prior to February 5, 1960;

(4) Gross receipts from occasional sales of tangible personal property and the storage, use, or other consumption in this state of tangible personal property, the transfer of which to the purchaser is an occasional sale;

(5) Gross receipts from sales of tangible personal property to a common carrier, shipped by the retailer via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state

destination for use by the carrier in the conduct of its business as a common carrier;

(6) Gross receipts from sales of tangible personal property sold through coin-operated bulk vending machines, if the sale amounts to fifty cents ($0.50) or less, if the retailer is primarily engaged in making the sales and maintains records satisfactory to the department. As used in this subsection, "bulk vending machine" means a vending machine containing unsorted merchandise which, upon insertion of a coin, dispenses the same in approximately equal portions, at random and without selection by the customer;

(7) Gross receipts from sales to any cabinet, department, bureau, commission, board, or other statutory or constitutional agency of the state and gross receipts from sales to counties, cities, or special districts as defined in KRS 65.005. This exemption shall apply only to purchases of property or services for use solely in the government function. A purchaser not qualifying as a governmental agency or unit shall not be entitled to the exemption even though the purchaser may be the recipient of public funds or grants;

(8) (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky residents for use in heating, water heating, cooking, lighting, and other residential uses. As used in this subsection, "fuel" shall include but not be limited to natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood. Determinations of eligibility for the exemption shall be made by the Department of Revenue;

(b) In making the determinations of eligibility, the department shall exempt from taxation all gross receipts derived from sales:

1. Classified as "residential" by a utility company as defined by applicable tariffs filed with and accepted by the Public Service Commission;

2. Classified as "residential" by a municipally owned electric distributor which purchases its power at wholesale from the Tennessee Valley

Authority;

3. Classified as "residential" by the governing body of a municipally owned electric distributor which does not purchase its power from the Tennessee Valley Authority, if the "residential" classification is reasonably consistent with the definitions of "residential" contained in tariff filings accepted and approved by the Public Service Commission with respect to utilities which are subject to Public Service Commission regulation.

If the service is classified as residential, use other than for "residential" purposes by the customer shall not negate the exemption;

(c) The exemption shall not apply if charges for sewer service, water, and fuel are billed to an owner or operator of a multi-unit residential rental facility or mobile home and recreational vehicle park other than residential classification; and

(d) The exemption shall apply also to residential property which may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight (98) years;

(9) Any rate increase for school taxes and any other charges or surcharges added to the total amount of a residential telephone bill;

(10) Gross receipts from sales to an out-of-state agency, organization, or institution exempt from sales and use tax in its state of residence when that agency, organization, or institution gives proof of its tax-exempt status to the retailer and the retailer maintains a file of the proof;

(11) Gross receipts derived from the sale of, and the storage, use, or other consumption in this state of, tangible personal property to be used in the manufacturing or

industrial processing of tangible personal property at a plant facility and which will be for sale. The property shall be regarded as having been purchased for resale. "Plant facility" shall have the same meaning as defined in KRS 139.170(3). For purposes of this subsection, a manufacturer or industrial processor includes an individual or business entity that performs only part of the manufacturing or industrial processing activity and the person or business entity need not take title to tangible personal property that is incorporated into, or becomes the product of, the activity.

(a) Industrial processing includes refining, extraction of petroleum and natural gas, mining, quarrying, fabricating, and industrial assembling. As defined herein, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property which will be for sale shall mean:

1. Materials which enter into and become an ingredient or component part of the manufactured product.

2. Other tangible personal property which is directly used in manufacturing or industrial processing, if the property has a useful life of less than one (1) year. Specifically these items are categorized as follows:

a. Materials. This refers to the raw materials which become an ingredient or component part of supplies or industrial tools exempt under subdivisions b. and c. below.

b. Supplies. This category includes supplies such as lubricating and compounding oils, grease, machine waste, abrasives, chemicals, solvents, fluxes, anodes, filtering materials, fire brick, catalysts, dyes, refrigerants, explosives, etc. The supplies indicated above need not come in direct contact with a manufactured product to be exempt. "Supplies" does not include repair, replacement, or spare parts of any kind.

c. Industrial tools. This group is limited to hand tools such as jigs, dies, drills, cutters, rolls, reamers, chucks, saws, spray guns, etc., and to tools attached to a machine such as molds, grinding balls, grinding wheels, dies, bits, cutting blades, etc. Normally, for industrial tools to be considered directly used in manufacturing, they shall come into direct contact with the product being manufactured.

3. Materials and supplies that are not reusable in the same manufacturing process at the completion of a single manufacturing cycle, excluding repair, replacement, or spare parts of any kind. A single manufacturing cycle shall be considered to be the period elapsing from the time the raw materials enter into the manufacturing process until the finished product emerges at the end of the manufacturing process.

(b) It shall be noted that in none of the three (3) categories is any exemption provided for repair, replacement, or spare parts. Repair, replacement, or spare parts shall not be considered to be materials, supplies, or industrial tools directly used in manufacturing or industrial processing. "Repair, replacement, or spare parts" shall have the same meaning as set forth in KRS 139.170;

(12) Any water use fee paid or passed through to the Kentucky River Authority by facilities using water from the Kentucky River basin to the Kentucky River Authority in accordance with KRS 151.700 to 151.730 and administrative regulations promulgated by the authority;

(13) Gross receipts from the sale of newspaper inserts or catalogs purchased for storage, use, or other consumption outside this state and delivered by the retailer's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer or an agent

or representative of the purchaser or retailer, or whether the F.O.B. is retailer's shipping point or purchaser's destination.

(a) As used in this subsection:

1. "Catalogs" means tangible personal property that is printed to the special order of the purchaser and composed substantially of information regarding goods and services offered for sale; and

2. "Newspaper inserts" means printed materials that are placed in or distributed with a newspaper of general circulation.

(b) The retailer shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the department;

(14) Gross receipts from the sale of water used in the raising of equine as a business;

(15) Gross receipts from the sale of metal retail fixtures manufactured in this state and purchased for storage, use, or other consumption outside this state and delivered by the retailer's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer or an agent or representative of the purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or the purchaser's destination.

(a) As used in this subsection, "metal retail fixtures" means check stands and belted and nonbelted checkout counters, whether made in bulk or pursuant to specific purchaser specifications, that are to be used directly by the purchaser or to be distributed by the purchaser.

(b) The retailer shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the department;

(16) Gross receipts from the sale of unenriched or enriched uranium purchased for

ultimate storage, use, or other consumption outside this state and delivered to a common carrier in this state for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer, or is an agent or representative of the purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or purchaser's destination;

(17) Amounts received from a tobacco buydown. As used in this subsection, "buydown" means an agreement whereby an amount, whether paid in money, credit, or otherwise, is received by a retailer from a manufacturer or wholesaler based upon the quantity and unit price of tobacco products sold at retail that requires the retailer to reduce the selling price of the product to the purchaser without the use of a manufacturer's or wholesaler's coupon or redemption certificate;

(18) Gross receipts from the sale of property returned by a purchaser when the full sales price is refunded either in cash or credit. This exclusion shall not apply if the purchaser, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned;

(19) Gross receipts from the sales of gasoline and special fuels subject to tax under KRS Chapter 138;

(20) The amount of any tax imposed by the United States upon or with respect to retail sales, whether imposed on the retailer or the consumer, not including any manufacturer's excise or import duty;

(21) Gross receipts from the sale of any motor vehicle as defined in KRS 138.450 which is:

(a) Sold to a Kentucky resident, registered for use on the public highways, and upon which any applicable tax levied by KRS 138.460 has been paid; ***or***

(b) Sold to a nonresident of Kentucky if the nonresident registers the motor vehicle in a state that:

1. Allows residents of Kentucky to purchase motor vehicles without

payment of that state's sales tax at the time of sale; or

2. Allows residents of Kentucky to remove the vehicle from that state within a specific period for subsequent registration and use in Kentucky without payment of that state's sales tax;

(22) Gross receipts from the sale of a semi-trailer as defined in KRS 189.010(12) and trailer as defined in KRS 189.010(17);

(23) Gross receipts from the sale of distilled spirits, wine, and malt beverages not consumed on the premises licensed for their sale under the provisions of KRS Chapter 243; and

(24) Gross receipts from the first fifty thousand dollars ($50,000) in sales of admissions to county fairs held in Kentucky in any calendar year by a nonprofit county fair board.

SECTION 2. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO READ AS FOLLOWS:

All tax receipts, interest, and penalties resulting from the sale of a motor vehicle subject to sales tax under KRS 139.200 and not otherwise exempt from sales tax under Section 1 of this Part shall be deposited in the road fund, unless the motor vehicle has been exempted from the motor vehicle usage tax under KRS 138.460(3) for nonhighway use. All tax receipts, interest, and penalties resulting from the sale of a motor vehicle, as defined in KRS 138.450, which is purchased for nonhighway use shall continue to be deposited in the general fund.

Section 3. This Part takes effect August 1, 2006.