

CHAPTER 321 (HB 806)

AN ACT relating to the development and use of natural resources.

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

Section 1. KRS 154.22-010 is amended to read as follows:

The following words and terms as used in KRS 154.22-010 to 154.22-080, unless the context clearly indicates a different meaning, shall have the following meanings:

- (1) "Affiliate" means the following:
 - (a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;
 - (b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;
 - (c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or profits are owned or controlled, directly or indirectly, by or for that individual;
 - (d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:
 1. One (1) or more claims of corporations connected through stock ownership with a common parent corporation if:
 - a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and
 - b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or
 2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;
 - (e) A grantor and a fiduciary of any trust;
 - (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
 - (g) A fiduciary of a trust and a beneficiary of that trust;

- (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;
 - (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
 - (j) A fiduciary of a trust and a limited liability company more than fifty percent (50%) of the capital interest, or the interest in profits, of which is owned directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
 - (k) A corporation and a partnership, including a registered limited liability partnership, if the same persons own:
 - 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 - 2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership, including a registered limited liability partnership;
 - (l) A corporation and a limited liability company if the same persons own:
 - 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 - 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
 - (m) A partnership, including a registered limited liability partnership, and a limited liability company if the same persons own:
 - 1. More than fifty percent (50%) of the capital interest or profits in the partnership, including a registered limited liability partnership; and
 - 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
 - (n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or
 - (o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended.
- (2) "Agribusiness" means any activity involving the processing of raw agricultural products, including timber, or the providing of value-added functions with regard to raw agricultural products.
- (3) ***"Electric generation" means the generation of electricity for resale by means of combusting at least fifty percent (50%) of the total fuel used to generate electricity from coal or from gas derived from coal.***

~~(4)~~~~(3)~~—"Approved company" means any eligible company seeking to locate an economic development project in a qualified county, which eligible company is approved by the authority pursuant to KRS 154.22-010 to 154.22-080.

~~(5)~~~~(4)~~—"Approved costs" means:

- (a) Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
- (b) The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;
- (c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of an economic development project which is not paid by the contractor or contractors or otherwise provided for;
- (d) All costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
- (e) All costs which shall be required to be paid under the terms of any contract or contracts for the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and
- (f) All other costs of a nature comparable to those described above.

~~(6)~~~~(5)~~—"Assessment" means the job development assessment fee authorized by KRS 154.22-010 to 154.22-080.

~~(7)~~~~(6)~~—"Authority" means the Kentucky Economic Development Finance Authority as created in KRS 154.20-010.

~~(8)~~~~(7)~~—"Bonds" means the revenue bonds, notes, or other debt obligations of the authority authorized to be issued by the authority, eligible companies, or other state agency.

~~(9)~~~~(8)~~—"Commonwealth" means the Commonwealth of Kentucky.

~~(10)~~~~(9)~~—(a) "Economic development project" means and includes:

1. The acquisition of ownership in any real estate in a qualified county by the authority, the approved *manufacturing or agribusiness* company, or its affiliate;
2. The present ownership of real estate in a qualified county by the approved *manufacturing or agribusiness* company or its affiliate;
3. The acquisition or present ownership of improvements or facilities, as described in paragraph ~~(b)~~~~(6)~~ of this subsection, on land which is possessed or is to be possessed by the approved *manufacturing or agribusiness* company pursuant to a ground lease having a term of sixty (60) years or more; *and*
4. *The new construction of an electric generation facility.*

(b) For purposes of subparagraphs 1. and 2. of paragraph (a) of this subsection, ownership of real estate shall only include fee ownership of real estate and possession of real

estate pursuant to a capital lease as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976. With respect to subparagraphs 1., 2., and 3. of paragraph (a) or paragraph (b) of this subsection, the construction, installation, equipping, and rehabilitation of improvements, including fixtures and equipment, and facilities necessary or desirable for improvement of the real estate, including surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and provision of drainage, storm water retention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; and the acquisition, installation, equipping, and rehabilitation of manufacturing facilities on the real estate, for use and occupancy by the approved company or its affiliates for manufacturing purposes, **electric generation**, or for agribusiness purposes. Pursuant to subparagraph 3. of paragraph (a) of this subsection, an economic development project shall not include lease payments made pursuant to a ground lease for purposes of the tax credits provided under the provisions of KRS 154.22-010 to 154.22-080.

~~(11)~~~~(10)~~—"Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity engaged in manufacturing, **electric generation**, or in agribusiness.

~~(12)~~~~(11)~~—"Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter.

~~(13)~~~~(12)~~—"Financing agreement" means any agreement entered into, pursuant to KRS 154.22-010 to 154.22-080, on behalf of the authority or other lenders, or both, and an approved company with respect to an economic development project.

~~(14)~~~~(13)~~—"Inducements" means the assessment and the income tax credits allowed by KRS 154.22-060.

~~(15)~~~~(14)~~—"Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property and any activity related to it, together with the storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals.

~~(16)~~~~(15)~~—"Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements under this subchapter.

~~(17)~~~~(16)~~—"Qualified county" means any county certified as such by the authority pursuant to KRS 154.22-010 to 154.22-080.

~~(18)~~~~(17)~~—"Revenues" shall not be considered state funds.

~~(19)~~~~(18)~~—"State agency" shall have the meaning assigned to the term in KRS 56.440(8).

Section 2. KRS 154.22-020 is amended to read as follows:

- (1) The General Assembly hereby finds and declares that the general welfare and material wellbeing of citizens of the Commonwealth, and particularly those residing in qualified counties, depends in large measure upon the development and growth of industry in the Commonwealth.
- (2) The General Assembly hereby finds and declares further that it is in the best interest of the Commonwealth to induce the location of manufacturing facilities, *electric generation*, and agribusiness operations within the qualified counties of the Commonwealth in order to advance the public purposes of relieving unemployment by creating new jobs within the qualified counties that but for the inducements to be offered by the authority to approved companies as herein provided would not exist and of creating new sources of tax revenues for the support of the public services provided by the Commonwealth and qualified counties.
- (3) The General Assembly hereby finds and declares further that the authority granted by KRS 154.22-010 to 154.22-070 and the purposes to be accomplished hereby are proper governmental and public purposes for which public moneys may be expended, and that the inducement of the location of manufacturing facilities, *electric generation*, and agribusiness operations within qualified counties is of paramount importance, mandating that the provisions of KRS 154.22-010 to 154.22-070 be liberally construed and applied in order to advance the public purposes.

Section 3. KRS 154.22-040 is amended to read as follows:

- (1) Each year the authority shall under its Rural Economic Development Assistance Program, on the basis of the final unemployment figures calculated by the Department for Employment Services within the Cabinet for Workforce Development, determine which counties have had a countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth in the most recent five (5) consecutive calendar years, or which have had an average countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth by two hundred percent (200%) in the most recent twelve (12) consecutive months for which unemployment figures are available, and shall certify those counties as qualified counties. If the authority determines that a county which has previously been certified as a qualified county no longer has an unemployment rate that meets the criteria of this subsection, the authority shall decertify that county. The authority shall not finance any facilities in that county and an approved company shall not be eligible for the incentives offered by KRS 154.22-010 to 154.22-070 unless the financing agreements required herein are entered into by all parties prior to July 1 of the year following the calendar year in which the authority decertified that county. ***For economic development projects involving the new construction of electric generation facilities, the authority shall certify every coal producing county as a qualified county. A coal producing county shall mean a county in the Commonwealth of Kentucky that has produced coal upon which the tax imposed under KRS 143.020 was paid at any time.***
- (2) The authority shall establish the procedures and standards for the determination and approval of eligible companies and their economic development projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A. The criteria for approval of eligible companies and economic development projects shall include but not be limited to the creditworthiness of eligible companies; the number of new jobs to be provided by an economic development project to residents of the Commonwealth; and the likelihood of the economic success of the economic development project.

- (3) The economic development project shall involve a minimum investment of one hundred thousand dollars (\$100,000) by the eligible company and shall result in the creation by the eligible company, within two (2) years from the date of the final approval authorizing the economic development project, of a minimum of fifteen (15) new full-time jobs at the site of the economic development project for Kentucky residents to be employed by the eligible company and to be held by persons subject to the personal income tax of the Commonwealth. The authority may extend this two (2) year period upon the written application of an eligible company requesting an extension. No economic development project which will result in the replacement of manufacturing *or electric generation* facilities existing in the state shall be approved by the authority; however, the authority may approve an economic development project that:
- (a) Rehabilitates a manufacturing *or electric generation* facility:
 - 1. Which has not been in operation for a period of ninety (90) or more consecutive days; or
 - 2. The title to which is vested in other than the eligible company or an affiliate of the eligible company and that is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction;
 - (b) Replaces a manufacturing *or electric generation* facility existing in the Commonwealth:
 - 1. The title to which shall have been taken under the exercise of the power of eminent domain, or the title to which shall be the subject of a nonappealable judgment granting the authority to exercise the power of eminent domain, in either event to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
 - 2. Which has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
 - (c) Replaces an existing manufacturing *or electric generation* facility located in the same qualified county, and the existing manufacturing *or electric generation* facility to be replaced cannot be expanded due to the unavailability of real estate at or adjacent to the manufacturing facility to be replaced. Any economic development project satisfying the requirements of this subsection shall only be eligible for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the manufacturing *or electric generation* facility to be replaced. No economic development project otherwise satisfying the requirements of this subsection shall be approved by the authority which results in a lease abandonment or lease termination by the approved company without the consent of the lessor.
- (4) With respect to each eligible company making an application to the authority for inducements, and with respect to the economic development project described in the application, the authority shall request materials and make inquiries of the applicant as necessary or appropriate. Upon review of the application and completion of initial inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and authorizing the undertaking of the economic development project. After preliminary approval and completion by the eligible company of

its bond, loan, or other financing and review thereof by the authority, the authority may by final approval designate an eligible company to be an approved company.

Section 4. KRS 154.22-090 is amended to read as follows:

- (1) If the authority gives its preliminary approval designating an eligible company and authorizing the undertaking of an economic development project prior to July 15, 1996, and the authority by final approval approves the eligible company as an approved company and the project of the eligible company as an economic development project, and the authority and the eligible company enter into a financing agreement no later than June 30, 1997, then the approved company shall not be subject to KRS 154.22-010~~(10)(9)(a)3.~~, and 154.22050(1)(d), (2)(a)2., and (4), and shall be subject to KRS 154.22-010~~(10)(9)~~ and 154.22050(1)(d) and (2)(a)2. as in effect prior to July 15, 1996.
- (2) KRS 154.22-070 only applies to those approved companies which enter into financing agreements with the authority after July 15, 1996.

Section 5. KRS 154.28-010 is amended to read as follows:

As used in KRS 154.28-010 to 154.28-100, unless the context clearly indicates otherwise:

- (1) "Affiliate" means the following:
 - (a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;
 - (b) An individual and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;
 - (c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or the profits interest of which is owned, directly or indirectly, by or for that individual;
 - (d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:
 1. One (1) or more claims of corporations connected through stock ownership with a common parent corporation if:
 - a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and
 - b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing such voting power or value, stock owned directly by the other corporations; or
 2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty

percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;

- (e) A grantor and a fiduciary of any trust;
- (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
- (g) A fiduciary of a trust and a beneficiary of that trust;
- (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;
- (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
- (j) A fiduciary of a trust and a limited liability company of which more than fifty percent (50%) of the capital interest or the profits interest of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
- (k) A corporation and a partnership, including a registered limited liability partnership, if the same persons own:
 - 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 - 2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership, including a registered limited liability partnership;
- (l) A corporation and a limited liability company if the same persons own:
 - 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 - 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
- (m) A partnership, including a registered limited liability partnership, and a limited liability company if the same persons own:
 - 1. More than fifty percent (50%) of the capital interest or profits in the partnership, including a registered limited liability partnership; and
 - 2. More than fifty percent (50%) of the capital interest or profits in the limited liability company;
- (n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or
- (o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation: S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended.

- (2) "Agreement" means an agreement entered into, pursuant to KRS 154.28-090, on behalf of the authority and an approved company with respect to an economic development project;
- (3) "Agribusiness" means any activity involving the processing of raw agricultural products, including timber, or the providing of value-added functions with regard to raw agricultural products;
- (4) ***"Electric generation" means the generation of electricity for resale by means of combusting at least fifty percent (50%) of the total fuel used to generate electricity from coal or from gas derived from coal;***
- (5) "Approved company" means any eligible company, approved by the authority pursuant to KRS 154.28-080, requiring an economic development project;
- ~~(6)(5)~~—"Approved costs" means:
- (a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, rehabilitation, and installation of an economic development project;
 - (b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, rehabilitation, and installation of an economic project which is not paid by the vendor, supplier, deliverymen, contractors, or otherwise else provided;
 - (c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation, and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, rehabilitation, and installation of an economic development project;
 - (d) All costs which shall be required to be paid under the terms of any contract for the acquisition, construction, rehabilitation, and installation of an economic development project;
 - (e) All costs which shall be required for the installation of utilities such as water, sewer, sewer treatment, gas, electricity, communications, railroads, and similar facilities, and including offsite construction of the facilities paid for by the approved company; and
 - (f) All other costs comparable to those described above;
- ~~(7)(6)~~—"Assessment" means the job development assessment fee authorized by this section to KRS 154.28-100;
- ~~(8)(7)~~—"Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;
- ~~(9)(8)~~—"Commonwealth" means the Commonwealth of Kentucky;
- ~~(10)(9)~~—(a) "Economic development project" or "project" means and includes:
- 1. The acquisition of ownership in any real estate by the approved ***manufacturing, electric generation, or agribusiness*** company or its affiliate;
 - 2. The present ownership of real estate by the approved ***manufacturing, electric generation, or agribusiness*** company or its affiliate;~~[-or]~~

3. The acquisition or present ownership of improvements or facilities, as described in paragraph (b) of this subsection, on land which is possessed or is to be possessed by the approved company pursuant to a ground lease having a term of sixty (60) years or more; *or*
4. ***The new construction of an electric generation facility in a coal producing county. A coal producing county shall mean a county in the Commonwealth of Kentucky that has produced coal upon which the tax imposed under KRS 143.020 was paid at any time.***

(b) For purposes of subparagraphs 1. and 2. of paragraph (a) of this subsection, ownership of real estate shall only include fee ownership of real estate and possession of real estate pursuant to a capital lease as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976. With respect to subparagraphs 1., 2., and 3. of paragraph (a) of this subsection, the construction, installation, equipping, and rehabilitating of improvements, including fixtures and equipment directly involved in the manufacturing process, and facilities necessary or desirable for improvement of the real estate shall include: surveys, site tests, and inspections; subsurface site work and excavation; removal of structures, roadways, cemeteries, and other site obstructions; filling, grading, provision of drainage, and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; offsite construction of utility extensions to the boundaries of the real estate; and the acquisition, installation, equipping, and rehabilitation of manufacturing facilities or agribusiness operations on the real estate for the use of the approved company or its affiliates for manufacturing or agribusiness operational purposes. Pursuant to paragraphs (a)3. and (b) of this subsection, an economic development project shall not include lease payments made pursuant to a ground lease for purposes of the tax credits provided under the provisions of KRS 154.28-010 to 154.28-100. An economic development project shall include the equipping of a facility with equipment but, for purposes of the tax credits provided under the provisions of KRS 154.28-010 to 154.28-090, only to the extent of ten thousand dollars (\$10,000) per job created by and maintained at the economic development project;

~~(11)~~~~(10)~~—"Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, trust, or any other entity engaged in manufacturing, ***electric generation***, or agribusiness operations;

~~(12)~~~~(11)~~—"Inducement" means the assessment and the Kentucky income tax credit as set forth in KRS 154.28-090;

~~(13)~~~~(12)~~—"Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property, and any activity functionally related to it, together with storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals; and

~~(14)~~~~(13)~~—"State agency" shall have the meaning assigned to the term in KRS 56.440(8).

Section 6. KRS 154.28-015 is amended to read as follows:

The General Assembly hereby finds and declares that the general welfare and material well-being of the citizens of the Commonwealth depends in large measure upon the development and growth of industry in the Commonwealth, and that it is in the best interest of the Commonwealth to induce the location of agribusiness, *electric generation*, or manufacturing facilities within the Commonwealth in order to advance the public purposes of relieving unemployment by creating new jobs that would not exist if not for the inducements to be offered by the authority to approved companies, and by creating sources of tax revenues for the support of the public services provided by the Commonwealth, and that the authority prescribed by KRS 154.28-015 to 154.28-100, and the purposes to be accomplished under the provisions of KRS 154.28-015 to 154.28-100, are proper governmental and public purposes for which public moneys may be expended, and that the inducement of the location of agribusiness, *electric generation*, or manufacturing facilities is of paramount importance, mandating that the provisions of KRS 154.28-015 to 154.28-100 be liberally construed and applied in order to advance the public purposes.

Section 7. KRS 154.28-080 is amended to read as follows:

- (1) The authority shall promulgate standards for the determination and approval of eligible companies and their economic development projects in accordance with KRS Chapter 13A.
- (2) The standards for approval of eligible companies and economic development projects shall include, but not be limited to: the creditworthiness of eligible companies; the number of new jobs to be provided by an economic development project to the residents of the Commonwealth; and the likelihood of the economic success of the economic development project.
- (3) The economic development project shall involve a minimum investment of one hundred thousand dollars (\$100,000) by the eligible company and shall result in the creation by the eligible company, within two (2) years from the date of the final resolution authorizing the economic development project, of a minimum of fifteen (15) new full-time jobs at the site of the economic development projects for Kentucky residents to be employed by the eligible company and to be held by persons subject to the personal income tax of the Commonwealth. The authority may extend this two (2) year period upon the written application of an eligible company requesting an extension.
- (4) No economic development project which will result in the replacement of a manufacturing, *electric generation*, or agribusiness facility existing within the Commonwealth shall be approved by the authority; however, the authority may approve an economic development project that:
 - (a) Rehabilitates a manufacturing, *electric generation*, or agribusiness facility:
 1. Which has not been in operation for a period of ninety (90) or more consecutive days; or
 2. The title to which is vested in other than the eligible company or an affiliate of the eligible company and that is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction;
 - (b) Replaces a manufacturing *or electric generation* facility existing in the Commonwealth:
 1. The title to which shall have been taken under the exercise of the power of eminent domain, or the title to which shall be the subject of a nonappealable judgment

granting the authority to exercise the power of eminent domain, in either event to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

2. Which has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
- (c) Replaces an existing manufacturing *or electric generation* facility located in the same qualified county that cannot be expanded due to the unavailability of real estate at or adjacent to the manufacturing *or electric generation* facility to be replaced. Any economic development project satisfying the requirements of this subsection shall be eligible only for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the manufacturing *or electric generation* facility to be replaced. No economic development project otherwise satisfying the requirements of this subsection shall be approved by the authority that results in a lease abandonment or lease termination by the eligible company without the consent of the lessor.
- (5) With respect to each eligible company making an application to the authority for inducements, and with respect to these economic development projects described in the application which do not involve an expansion, the authority shall make inquiries and request materials of the applicant, including, but not limited to, written evidence that except for the receipt of inducements authorized by KRS 154.28-015 to 154.28-090 and KRS 141.400, the eligible company will not locate its economic development project within the Commonwealth. Upon the review of the application and completion of initial inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and authorizing the undertaking of the economic development project.
 - (6) After a diligent review of the relevant materials and completion of its inquiries, the authority, by resolution of its board of directors, may designate an eligible company to be an approved company.
 - (7) All meetings of the board of directors of the authority shall be held in accordance with KRS 61.805 to 61.850. The board of directors of the authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company.

Section 8. KRS 154.28-090 is amended to read as follows:

- (1) The authority, upon adoption of an authorizing resolution, may enter into, with any approved company, a financing agreement with respect to its economic development project. The terms and provisions of each agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:
 - (a) The term of an agreement, which shall commence on the date of the agreement, shall not be longer than the earlier of the following:
 1. The maturity of loans or other financing incurred in connection with the economic development project, except that the agreement may be terminated upon the earlier prepayment of loans or other financing incurred in connection with the economic development project; or

2. Ten (10) years from the activation date of the original agreement.
- (b) All proceeds of any loan or other financing incurred in connection with the economic development project shall be expended by the approved company within three (3) years from the date of the financing agreement. In the event that all proceeds of any loan or other financing incurred in connection with the economic development project are not fully expended within the three (3) year period, the authorized inducements shall automatically be reduced to and shall not be greater than the amount of proceeds actually expended by the approved company within the three (3) year period.
 - (c) In consideration for the execution and during the term of the agreement, the approved company shall be permitted either of the following during the term of the agreement:
 1. A credit against Kentucky income tax imposed by KRS 141.020 or 141.040 on the income of the approved company generated by or arising out of the economic development project as determined by KRS 141.400; or
 2. The aggregate assessment withheld by the approved company in each year.
- (2) The agreement shall provide that:
 - (a)
 1. The assessments, if applicable, shall not exceed the annual payments of the total financing agreement by the approved company in any year; however, to the extent that the financing agreement annual payments exceed assessments collected in any year, the excess payment may be recouped from assessment collections in succeeding years.
 2. If in any fiscal year of the approved company during which the financing agreement is in effect the total assessments collected from the wages of the employees equals the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessments collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, and the approved company shall resume normal personal income tax withholdings from employees' wages for the remainder of that fiscal year.
 - (b) The Kentucky income tax credit, in any fiscal year of the approved company, shall not exceed the total debt service paid during the same fiscal year with respect to the loans or other financing incurred in connection with the economic development project; however, to the extent that annual debt service payments exceed the annual income tax credits in any year, the excess debt service payments may be recouped from excess tax credits in succeeding years.
 - (c) The income tax credited to the approved company shall be credited for the fiscal year for which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed under KRS 141.042.
 - (d) The agreement may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.
 - (e) An approved company shall require of any lender to an approved company funding the loans or other financing incurred in connection with the economic development project, written evidence of all annual debt service to the lender, which evidence shall be

provided in writing to the authority within forty-five (45) days following the close of each fiscal year of the financing agreement.

- (f) If an approved company fails to comply with its respective obligations under the financing agreement, the lender to an approved company fails to comply with the provisions of subsection (2)(e) of this section, or an approved company is declared in default under the loans or other financing incurred in connection with the economic development project, the authority, or any of its assignees, may, at its option:
 1. Suspend the availability of the income tax credits or job development assessment fees, as applicable;
 2. Pursue any remedy provided under the financing agreement, including termination of the agreement; and
 3. Pursue any other remedy at law to which it may appear entitled.
- (3) All remedies provided in subsection (2)(f) of this section shall be deemed cumulative.
- (4) Pursuant to this section, the activation date shall be established by the approved company in the financing agreement which shall be at any time in a two (2) year period after the date of final approval of the financing agreement by the authority. To implement the activation date, the approved company shall notify the authority, the Kentucky Revenue Cabinet, and the approved company's employees of the activation date on which implementation of the inducements authorized in the financing agreement shall occur. The activation date shall be the time when the maximum dollar value of equipment that constitutes a portion of an economic development project under KRS 154.28-010(10)~~(9)~~ shall be determined. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.28-080(3) by the activation date, the approved company will not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies these requirements; however, the ten (10) year period for the term of the financing agreement shall begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.28-080(3) within two (2) years from the date of final approval of the financing agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.
- (5) Ninety (90) days after the filing of the tax return of the approved company, the Revenue Cabinet shall certify to the authority the income tax liability, for the preceding fiscal year of the approved company for which the return was filed, of the approved company with respect to an economic development project receiving inducements under the provisions of KRS 154.28-010 to 154.28-090 and KRS 141.400, and the amount of any income tax credits taken pursuant to KRS 154.28-010 to 154.28-090 and KRS 141.400.

Section 9. KRS 154.28-120 is amended to read as follows:

- (1) If the authority gives its preliminary approval designating an eligible company and authorizing the undertaking of an economic development project prior to July 15, 1996, and the authority by final approval approves the eligible company as an approved company and the project of the eligible company as an economic development project, and the authority and the eligible company enter into a financing agreement not later than June 30, 1997, then the approved company shall not be subject to KRS 154.28-010(7)~~(6)~~, 154.28-010(10)~~(9)~~

except to the extent of any reference to a capital lease, 154.28-010(~~12~~)(~~11~~), 154.28-080(3), 154.28-090, and 154.28-110, and shall be subject to KRS 154.28-010(~~10~~)(~~9~~), 154.28-080, and 154.28-090, as in effect prior to July 15, 1996.

- (2) Subject to those approved companies described in subsection (1) of this section, KRS 154.28-110 shall only apply to those approved companies which enter into financing agreements with the authority after July 15, 1996.

SECTION 10. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

The secretary of the Natural Resources and Environmental Protection Cabinet shall facilitate the permitting of coal-fired electric generation plants in the Commonwealth by developing procedures for one (1) stop shopping for environmental permits.

Approved April 5, 2000