

CHAPTER 71**(HB 69)**

AN ACT relating to economic development and declaring an emergency.

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

Section 1. KRS 154.26-010 is amended to read as follows:

As used in this subchapter, unless the context clearly indicates otherwise:

- (1) "Agreement" means a revitalization agreement entered into, pursuant to KRS 154.26-090, on behalf of the authority and an approved company with respect to an economic revitalization project;
- (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) "Appropriation agreement" means an agreement entered into, pursuant to KRS 154.26-090(1)(f)2., among the approved company, the authority, and local governmental entities with respect to appropriations by these local governmental entities for the benefit of the approved company;
- (4) "Approved company" means any eligible company approved by the authority pursuant to KRS 154.26-080 requiring an economic revitalization project;
- (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, equipping, rehabilitation, and installation of an economic revitalization 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, equipping, rehabilitation, and installation of an economic revitalization project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise 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, equipping, rehabilitation, and installation of an economic revitalization project;
 - (d) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;
 - (e) All costs required for the installation of utilities, including but not limited to water, sewer, sewer treatment, gas, electricity, communications, and railroads, and including off-site construction of the facilities paid for by the approved company; and
 - (f) All other costs comparable with those described above;
- (6) "Assessment" means the job revitalization assessment fee authorized by KRS 154.26-100;
- (7) "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;
- (8) "Commonwealth" means the Commonwealth of Kentucky;
- (9) "Economic revitalization project" or "project" means the acquisition, construction, equipping, and rehabilitation of machinery and equipment, constituting fixtures or otherwise, and with respect thereto, the construction, rehabilitation, and installation of improvements of facilities necessary or desirable for the acquisition, construction, installation, and rehabilitation of the machinery and equipment, including surveys; installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are utilized to improve the economic situation of the approved company to allow the approved company to remain in operation and retain or create jobs ***or to resume operations in the case of closed facilities as provided in paragraph (b) of subsection (10) of this section;***
- (10) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity;

- (a) Employing or intending to employ full-time a minimum of twenty-five (25) persons engaged in manufacturing or agribusiness operations at the same facility, whether **acquired**, owned or leased, located and operating within the Commonwealth on a permanent basis for a reasonable period of time preceding the request for approval by the authority of an economic revitalization project, including facilities where manufacturing or agribusiness operations has been temporarily suspended and which meets the standards promulgated by the authority pursuant to KRS 154.26-080; or
 - (b) Having, **or in the case of closed facilities, intending, raw production of at least three (3)**~~a base contract for annual delivery of at least four (4)~~ million tons of coal mined **from the economic revitalization project facility**~~within the Commonwealth~~ and employing, **or in the case of closed facilities, intending to employ**, a minimum of five hundred (500) persons engaged in coal mining and processing operations at facilities, whether owned or leased, located and operating within the Commonwealth on a permanent basis for a reasonable period of time preceding the request for approval by the authority of an economic revitalization project, including facilities on or adjacent to where coal mining and processing operations have been **closed**, temporarily suspended, or severely reduced, and which meets the standards promulgated by the authority under KRS 154.26-080;
- (11) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter;
 - (12) "Inducements" means the Kentucky tax credit and the job revitalization assessment fee as prescribed in KRS 154.26-090 and 154.26-100;
 - (13) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing that results in a change in the condition of the property and any related activity or function, together with the storage, warehousing, distribution, and related office facilities;
 - (14) "Coal mining and processing" means activities resulting in the eligible company being subject to the tax imposed by KRS Chapter 143;
 - (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;
 - (16) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.010, or any board, commission, institution, or division exercising any function of the state which is not an independent municipal corporation or political subdivision;
 - (17) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401; and
 - (18) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401.

Section 2. KRS 154.26-080 is amended to read as follows:

- (1) The authority shall establish standards for the determination and approval of eligible companies and their projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A.
- (2) The criteria for approval of eligible companies and economic revitalization projects shall include but not be limited to the need for the project; the new capital investment in the project that will result in financial stability for the manufacturing or coal mining and processing facility; and the retention or expansion of the greatest number of employees at the manufacturing or coal mining and processing facility.
- (3) With respect to each eligible company making an application to the authority for inducements, and with respect to the project described in the application, the authority shall make inquiries and request materials of the applicant, including but not limited to written evidence that except for a substantial investment in the project, assisted by the inducements authorized by KRS 154.26-015 to 154.26-100, the eligible company will close its manufacturing or coal mining and processing facility, permanently lay off its employees, and cease operations, **or will not resume operations of a closed facility as permitted by subsection (9) of Section 1 of this Act.**
- (4) The eligible company shall, in a manner acceptable to the authority, detail the condition of the facility, including but not limited to financial, efficiency, and productivity matters; explain in detail why the company intends to close the facility **or not resume operations of the facility as permitted by subsection (9) of Section 1 of this Act**; and set out alternatives that are available to the company.
- (5) As a part of its application, an eligible company as described in KRS 154.26-010(10)(b) may request an emergency declaration based upon the urgency of the request and its impact on the local or regional economy.

- (6) A request for an emergency declaration shall be reviewed by the secretary of the Cabinet for Economic Development, the secretary of the Education Cabinet, and the secretary of the Finance and Administration Cabinet and their findings in connection with the emergency declaration shall be delivered to the authority.
- (7) If the emergency declaration is granted in accordance with subsection (6) of this section, the eligible company shall not be subject to the requirements contained in subsection (8), subsection (9), or subsection (11) of this section.
- (8) In accordance with, and after the adoption of a resolution under subsection (10) of this section, the authority shall engage the services of a competent consulting firm or technical resource to analyze the data made available by the company, and to collect and analyze additional information necessary to determine that, in the independent judgment of the consultant, the company will close the facility ***or not resume operations of the facility as permitted by subsection (9) of Section 1 of this Act*** absent a substantial investment in the project, assisted by the inducements authorized by KRS 154.26-015 to 154.26-100. The company shall pay the cost of this evaluation.
- (9) The company shall cooperate with the consultant and provide all of the data which could reasonably be required by the consultant to make a fair assessment of the company's intentions to close the facility ***or not resume operations of the facility as permitted by subsection (9) of Section 1 of this Act***.
- (10) After a review of relevant materials and completion of 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 revitalization project.
- (11) The authority shall review the report of the consultant and other information which has been made available to it in order to assist the authority in determining whether the company intends to close the facility for valid reasons ***or whether it intends or is able to resume operations of the facility in accordance with the requirements of subsection (10)(b) of Section 1 of this Act if inducements are granted***. The authority shall determine the potential of the proposed revitalization project to make the facility stable, productive, and competitive in its market.
- (12) After the review of the consultant's report or if an emergency declaration has been issued in accordance with subsection (6) of this section, the authority shall hold a public hearing to solicit public comment from any person, group, or interested party regarding the proposed project.
- (13) After the public hearing, the authority, by resolution, may declare the jobs then existing at the facility to be lost ***or the company unable to resume operations as permitted by subsection (9) of Section 1 of this Act***; may give its final approval to the eligible company's application for a project; and may grant to the eligible company the status of an approved company. The decision reached by the authority shall be final and no appeal shall be granted.
- (14) All meetings of the authority shall be held in accordance with KRS 61.805 to 61.850. 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 3. Whereas the ability to invoke emergency measures is critical to the preservation and creation of jobs within the Commonwealth, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or its otherwise becoming law.

Approved March 23, 2007.