

CHAPTER 60**(HB 552)**

AN ACT relating to alternative fuels.

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

➔Section 1. KRS 154.27-010 is amended to read as follows:

As used in this subchapter:

- (1) "Activation date" means the date on which an approved company begins incurring recoverable costs or engaging in recoverable activity pursuant to the tax incentive agreement. The activation date shall be set forth in the tax incentive agreement and shall be a date within five (5) years of the date of final approval of the tax incentive agreement. The authority may extend the five (5) year period to no more than seven (7) years upon written application for an extension by the approved company. To implement the activation date, the approved company shall notify the authority of its intent to activate the tax incentives authorized in the tax incentive agreement. The activation date shall apply to all incentives included in the tax incentive agreement regardless of whether the approved company has met the requirements to receive all incentives at that time. If the approved company does not implement the activation date before the date established in the tax incentive agreement, the activation date shall be the date established in the tax incentive agreement;
- (2) "Affiliate" has the same meaning as in KRS 154.22-010;
- (3) (a) "Alternative fuel facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2007, and that, after the new construction, retrofit, or upgrade, primarily produces for sale alternative transportation fuels. For a retrofit of an existing facility, the new modification or addition within the facility shall primarily produce alternative transportation fuel for sale.

(b) The alternative fuel facility may produce electricity as a by-product if the primary purpose for which the facility is constructed, retrofitted, or upgraded, and the primary function of the facility remains the production and sale of alternative transportation fuels;
- (4) "Alternative transportation fuels" has the same meaning as in KRS 152.715;
- (5) "Approved company" means a corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity approved for incentives for an eligible project;
- (6) "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;
- (7) "Base amount" means the tons of coal purchased and used or severed and used by the approved company as feedstock for an eligible project during the twelve (12) months prior to the month in which the approved company first begins receiving incentives under KRS 143.024 and 154.27-060, that were subject to the tax imposed by KRS 143.020;
- (8) "Biomass resources" has the same meaning as in KRS 152.715;
- (9) (a) "Capital investment" means:
 1. Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project;
 2. The cost of acquiring land or rights in land and any cost incident thereto, including recording fees;
 3. 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, upgrading, or retrofitting of an eligible project which is not paid by the contractor or otherwise provided;
 4. All costs of architectural and engineering services, including test borings, surveys, estimates, plans, specifications, preliminary investigations, supervision of construction, and the performance

of all the duties required by or consequent upon the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project;

5. All costs required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project; and
 6. All other costs of a nature comparable to those described in this subsection.
- (b) "Capital investment" does not include costs described in paragraph (a) of this subsection that are paid for with funds received from the federal government or that are reimbursed by the federal government;
- (10) "Carbon capture ready" means planning for or anticipating capture of carbon dioxide in a manner to facilitate continued operation of the facility in compliance with applicable federal requirements;
- (11) "Center for Applied Energy Research" means the University of Kentucky Center for Applied Energy Research;
- (12) "Commonwealth" means the Commonwealth of Kentucky;
- (13) "Construction period" means the period beginning with the activation date of the eligible project and ending on a date set forth in the tax incentive agreement, which shall be no later than five (5) years from the activation date;
- (14) "Department" means the Department of Revenue;
- (15) "Eligible project" means:
- (a) An alternative fuel facility or a gasification facility meeting the investment requirements of KRS 154.27-020;
 - (b) *An energy-efficient alternative fuel facility meeting the investment requirements of Section 2 of this Act;* or
 - (c)~~(b)~~ A renewable energy facility meeting the investment requirements of KRS 154.27-020;
- (16) *"Energy-efficient alternative fuel facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2010, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2010, and that, after the new construction, retrofit, or upgrade, will produce for sale energy-efficient alternative fuels. For a retrofit of an existing facility, the new modification or addition within the facility shall produce for sale energy-efficient alternative fuels;*
- (17) *"Energy-efficient alternative fuels" means homogeneous fuels that:*
- (a) *Are produced from processes designed to densify feedstock coal, waste coal, or biomass resources; and*
 - (b) *Have an energy content that is greater than the feedstock coal, waste coal, or biomass resource;*
- (18) "Estimated labor component" means the projected percentage of the total capital investment attributable to labor;
- ~~(19)~~~~(17)~~ (a) "Facility" means a single location within the Commonwealth at which machinery and equipment are used in a manufacturing process that transforms raw materials into a product with commercial value.
1. The facility shall include the physical plant structure where the manufacturing process occurs and machinery and equipment within the physical plant structure.
 2. The facility may include:
 - a. On-site machinery and equipment used exclusively for processing coal or other raw materials for use in the manufacturing process at the facility;
 - b. For an alternative fuel facility or gasification facility, on-site power station operations, if those operations are primarily used to produce electricity for the facility;
 - c. On-site refining operations, if those operations are used exclusively to refine and blend fuels produced by the facility; and
 - d. The in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, if the exclusive purpose of the pipeline is to transport carbon dioxide from the facility to a point of sale, storage, or other carbon management applications.

(b) "Facility" shall not include any mining operations;

~~(20)~~~~(18)~~ "Gasification process" means a process that converts any carbon-containing material into a synthesis gas composed primarily of carbon monoxide and hydrogen;

~~(21)~~~~(19)~~ (a) "Gasification facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2007, and that, after the new construction, retrofit, or upgrade, primarily produces for sale:

1. Alternative transportation fuels;
2. Synthetic natural gas;
3. Chemicals;
4. Chemical feedstocks; or
5. Liquid fuels;

from coal, waste coal, coal-processing waste, or biomass resources, through a gasification process. For a retrofit of an existing facility, the new modification or addition within the facility shall primarily produce one (1) or more of the products set forth in this paragraph.

(b) The gasification facility may produce electricity as a by-product if the primary purpose for which the facility is constructed, retrofitted, or upgraded, and the primary function of the facility remains the production and sale of alternative transportation fuels, synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels;

~~(22)~~~~(20)~~ "Kentucky gross profits" ~~has~~~~shall have~~ the same meaning as in KRS 141.0401;

~~(23)~~~~(21)~~ "Kentucky gross receipts" ~~has~~~~shall have~~ the same meaning as in KRS 141.0401;

~~(24)~~~~(22)~~ "Office" means the Governor's Office of Energy Policy created by KRS 152.712;

~~(25)~~~~(23)~~ "Post-construction incentives" means the incentives available under KRS 154.27-060 and 154.27-080;

~~(26)~~~~(24)~~ "Renewable energy facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded after August 30, 2007, and that, after the new construction, retrofit, or upgrade, utilizes:

- (a) Wind power, biomass resources, landfill methane gas, hydropower, or other similar renewable resources to generate electricity in excess of one (1) megawatt for sale to unrelated entities; or
- (b) Solar power to generate electricity in excess of fifty (50) kilowatts for sale to unrelated entities.

For a retrofit of an existing facility, the modification or addition shall primarily result in the production of electricity as described in paragraph (a) or (b) of this subsection;

~~(27)~~~~(25)~~ "Resident" ~~has~~~~shall have~~ the same meaning as in KRS 141.010;

~~(28)~~~~(26)~~ "Retrofit" means a modification or addition to an existing facility that results in the production of a new and different product or uses a new or different process to produce the same product at the facility. Modifications or additions to a facility that maintain, restore, mend, or repair a facility shall not be considered a retrofit of the facility, and shall not be considered part of the capital investment if undertaken at the same time as a retrofit;

~~(29)~~~~(27)~~ "Synthetic natural gas" has the same meaning as in KRS 152.715;

~~(30)~~~~(28)~~ "Tax incentive agreement" means an agreement entered into in accordance with KRS 154.27-040;

~~(31)~~~~(29)~~ "Termination date" means a date established by the tax incentive agreement that is no more than twenty-five (25) years from the activation date; and

~~(32)~~~~(30)~~ "Upgrade" means an investment in an existing facility that results in an increase in the productivity of the facility. Increased productivity shall be measured in relation to the type of products that are required to be produced by that facility to be an eligible project.

➔Section 2. KRS 154.27-020 is amended to read as follows:

- (1) This subchapter shall be known as the "Incentives for Energy Independence Act."
- (2) The General Assembly hereby finds and declares that it is in the best interest of the Commonwealth to induce the location of innovative energy-related businesses in the Commonwealth in order to advance the public purposes of achieving energy independence, creating new jobs and new investment, and creating new sources of tax revenues that but for the inducements to be offered by the authority to approved companies would not exist.
- (3) The purpose of this subchapter is to assist the Commonwealth in moving to the forefront of national efforts to achieve energy independence by reducing the Commonwealth's reliance on imported energy resources. The provisions of this subchapter seek to accomplish this purpose by providing incentives for companies that, in a carbon capture ready manner, construct, retrofit, or upgrade facilities for the purpose of:
 - (a) Increasing the production and sale of alternative transportation fuels;
 - (b) Increasing the production and sale of synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels, from coal, biomass resources, or waste coal through a gasification process;
 - (c) ***Increasing the production and sale of energy-efficient alternative fuels; or***
 - ~~(d)(e)~~ Generating electricity for sale through alternative methods such as solar power, wind power, biomass resources, landfill methane gas, hydropower, or other similar renewable resources.
- (4) To qualify for the incentives provided in this subchapter, the following requirements shall be met:
 - (a) For an alternative fuel facility or gasification facility that uses oil shale, tar sands, or coal as the primary feedstock, the minimum capital investment shall be one hundred million dollars (\$100,000,000);
 - (b) For an alternative fuel facility or gasification facility that uses biomass resources as the primary feedstock, the minimum capital investment shall be twenty-five million dollars (\$25,000,000);
 - (c) ***For an energy-efficient alternative fuel facility, the minimum capital investment shall be twenty-five million dollars (\$25,000,000); and***
 - ~~(d)(e)~~ For a renewable energy facility, the minimum capital investment shall be one million dollars (\$1,000,000).
- (5) The incentives under the Incentives for Energy Independence Act are as follows:
 - (a) An advance disbursement of post-construction incentives for which an approved company has been approved, the maximum amount of which is based upon the estimated labor component of the total capital investment of the eligible project, and the utilization of Kentucky residents during the construction period as set forth in KRS 154.27-090;
 - (b) Sales and use tax incentives of up to one hundred percent (100%) of the taxes paid on purchases of tangible personal property made to construct, retrofit, or upgrade an eligible project, as set forth in KRS 139.517 and 154.27-070;
 - (c) Up to eighty percent (80%) of the severance taxes paid on the purchase or severance of coal that is subject to the tax imposed under KRS 143.020 and that is specifically used by an alternative fuel facility, ***energy-efficient alternative fuel facility***, or a gasification facility as feedstock for an eligible project, as set forth in KRS 143.024 and 154.27-060;
 - (d) Up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.040 or 141.020, and the limited liability entity tax imposed under KRS 141.0401 on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the eligible project, as set forth in KRS 141.421 and 154.27-080; and
 - (e) Authorization for the approved company to impose a wage assessment of up to four percent (4%) of the gross wages of each employee subject to the Kentucky income tax:
 1. Whose job was created as a result of the eligible project;
 2. Who is employed by the approved company to work at the facility; and
 3. Who is on the payroll of the approved company or an affiliate of the approved company;
 as set forth in KRS 154.27-080.

- (6) The maximum recovery from all incentives approved under this subchapter for an eligible project shall not exceed fifty percent (50%) of the capital investment in the eligible project.
- (7) The incentives available to an approved company shall be negotiated with and approved by the authority.
- (8) If a newly constructed facility that qualifies for incentives under this subchapter is later upgraded or retrofitted in a manner that would qualify for incentives under this subchapter, the retrofit or upgrade shall be a separate eligible project, and the minimum investment requirements and carbon capture readiness requirements, if required, shall be met for the retrofit or upgrade to qualify for incentives under this subchapter.
- (9) The General Assembly finds that the authorities granted by this subchapter are proper governmental and public purposes for which public moneys may be expended.

➔Section 3. KRS 154.27-060 is amended to read as follows:

- (1) Notwithstanding any other provision of KRS 134.580 or KRS Chapter 143, an approved company that purchases or severs coal that:
 - (a) Is subject to the tax imposed under KRS 143.020; and
 - (b) Is used by the approved company exclusively as feedstock for an alternative fuel facility, *energy-efficient alternative fuel facility*, or a gasification facility;

may be eligible for an incentive in an amount up to eighty percent (80%) of the taxes paid pursuant to KRS 143.020 on coal purchased or severed by the approved company that is above the base amount.

- (2) An approved company that has purchased or severed coal subject to the tax imposed under KRS 143.020 prior to the execution of a tax incentive agreement shall not create an affiliate, subsidiary, corporation, or other related entity that would result in a base amount of zero (0).
- (3) The incentive may be requested beginning in the first calendar year after the construction of a new facility or the upgrade or retrofit of an existing facility is completed.
- (4) Upon completion of the construction of a new alternative fuel facility, *energy-efficient alternative fuel facility*, or gasification facility or the retrofit or upgrade of an existing facility, an approved company shall notify the authority and the department.
- (5) The approved company may obtain the incentive on an annual basis by filing a request for the incentive with the department as provided in KRS 143.024.
- (6) The department shall notify the authority of the incentives requested and the incentives distributed, upon request of the authority.

➔Section 4. KRS 143.024 is amended to read as follows:

- (1) As used in this section:
 - (a) "Alternative fuel facility" has the same meaning as in KRS 154.27-010;
 - (b) "Approved company" has the same meaning as in KRS 154.27-010;
 - (c) "Authority" has the same meaning as in KRS 154.27-010;
 - (d) "Base amount" has the same meaning as in KRS 154.27-010;
 - (e) "Capital investment" has the same meaning as in KRS 154.27-010;
 - (f) "Eligible project" has the same meaning as in KRS 154.27-010;
 - (g) *"Energy-efficient alternative fuel facility" has the same meaning as in Section 1 of this Act;*
 - (h) "Gasification facility" has the same meaning as in KRS 154.27-010; and
 - (i)~~(h)~~ "Tax incentive agreement" has the same meaning as in KRS 154.27-010.
- (2) Notwithstanding any other provision of KRS 134.580 or this chapter, an approved company that purchases or severs coal that is subject to the tax imposed under KRS 143.020 and that is specifically used by the approved company as feedstock for an alternative fuel facility, *energy-efficient alternative fuel facility*, or gasification facility may be eligible for an incentive under KRS 154.27-060.

- (3) A company approved for incentives under KRS 154.27-060 shall file a request for the incentive with the department within sixty (60) days of the completion of the construction, retrofit, or upgrade of the facility. In subsequent years, the approved company shall file a request for the incentive within sixty (60) days following the end of each calendar year. The request for incentives shall be in the form prescribed by the department through the promulgation of administrative regulations in accordance with KRS Chapter 13A. The request for incentives shall include but not be limited to the following information:
- (a) Verification of the base amount;
 - (b) Verification of the tons of coal purchased and used or severed and used by the approved company as feedstock for an alternative fuel facility, *energy-efficient alternative fuel facility*, or gasification facility during the calendar year for which the request for incentives is being made;
 - (c) Verification that the minimum capital investment as set forth in the tax incentive agreement has been made;
 - (d) Verification of the output of coal-derived alternative transportation fuels, coal-derived synthetic natural gas, coal-derived liquid fuels, *coal-derived energy-efficient alternative fuels*, or other coal-derived chemicals or chemical feedstocks; and
 - (e) Any other information that the department may require.
- (4) To assist in determining the amount of coal purchased and used or severed and used that is eligible for the incentive, the department shall obtain from the University of Kentucky Center for Applied Energy Research a reasonable and typical estimate of the tons of coal needed to produce a given output of coal-derived alternative transportation fuels, coal-derived synthetic natural gas, coal-derived liquid fuels, *coal-derived energy-efficient alternative fuels*, or other coal-derived chemicals or chemical feedstocks, considering:
- (a) The type of coal to be used;
 - (b) Equipment to be employed;
 - (c) Size and output of the facility;
 - (d) Slate of products produced; and
 - (e) Other characteristics of the alternative fuel facility, *energy-efficient alternative fuel facility*, or gasification facility.
- (5) (a) The department and the authority shall review the request for incentives jointly and shall verify that the request for incentives meets all requirements established by statute and administrative regulation.
- (b) The department shall verify the tax paid pursuant to KRS 143.020 on the coal purchased or severed by the approved company and used as feedstock for an alternative fuel facility, *energy-efficient alternative fuel facility*, or gasification facility during the calendar year for which the application was submitted and shall determine the amount of the tax paid that qualifies for distribution to the approved company pursuant to this section.
- (c) The incentive amount shall be distributed to the approved company in quarterly installments beginning on July 1 of the year following the calendar year for which the request for incentives required under this section was submitted.
- (6) The approved company seeking incentives shall execute information-sharing agreements prescribed by the department with vendors from which it purchased coal to verify the value of coal purchased by the approved company and used as feedstock for an alternative fuel facility, *energy-efficient alternative fuel facility*, or gasification facility and the amount of tax paid under KRS 143.020 on such coal.
- (7) The department shall notify the authority of the incentive distributed to each approved company upon request.

Signed by Governor April 6, 2010.