

CHAPTER 139**(HB 589)**

AN ACT relating to tax credits for alternative transportation fuels.

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

➔Section 1. KRS 152.715 is amended to read as follows:

As used in KRS 152.710 to 152.725, unless the context requires otherwise:

- (1) "Alternative transportation fuels" means:
 - (a) ***Before August 1, 2010***, crude oil or transportation fuels produced by processes that:
 1. Convert coal, waste coal, or biomass resources; or ~~that~~
 2. Extract oil from oil shale or tar sands;
 to produce crude oil or fuels for powering vehicles, aircraft, and machinery;
 - (b) ***On or after August 1, 2010:***
 1. ***Crude oil or transportation fuels produced by processes that:***
 - a. ***Convert coal, waste coal, or biomass resources; or***
 - b. ***Extract oil from oil shale or tar sands;***
 to produce crude oil or fuels for powering vehicles, aircraft, and machinery;
 2. ***Liquefied fuel produced from natural gas; or***
 3. ***Liquefied petroleum gas produced from natural gas or natural gas liquids.***

"Alternative transportation fuels" may include but are not limited to petroleum, jet fuel, gasoline, diesel fuel, hydrogen derived from coal, and diesel fuel and ethanol derived from biomass;

- (2) "Synthetic natural gas" means pipeline quality or industrial quality natural gas produced from coal through gasification processes;
- (3) "Fossil energy resources" means reserves of coal, oil shale, and natural gas; and
- (4) "Biomass resources" means any organic matter that is available on a renewable or recurring basis, including agricultural crops and trees; wood and wood residues; plants, aquatic plants, and plant oils; grasses; animal fats and animal by-products; animal manure; residue materials; and waste products.

➔Section 2. 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, *thousand (1000) cubic foot units (Mcf) of natural gas, or gallons of natural gas liquids* 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 *or Section 5 of this Act*, and 154.27-060, that were subject to the tax imposed by KRS 143.020 *or 143A.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; or
 - (b) A renewable energy facility meeting the investment requirements of KRS 154.27-020;

- (16) "Estimated labor component" means the projected percentage of the total capital investment attributable to labor;
- (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, *or drilling and production operations for natural gas*;
- (18) "Gasification process" means a process that converts any carbon-containing material into a synthesis gas composed primarily of carbon monoxide and hydrogen;
- (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;
- (20) "Kentucky gross profits" ~~has~~~~shall have~~ the same meaning as in KRS 141.0401;
- (21) "Kentucky gross receipts" ~~has~~~~shall have~~ the same meaning as in KRS 141.0401;
- (22) "Office" means the Governor's Office of Energy Policy created by KRS 152.712;
- (23) "Post-construction incentives" means the incentives available under KRS 154.27-060 and 154.27-080;
- (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;

- (25) "Resident" ~~has~~~~[shall have]~~ the same meaning as in KRS 141.010;
- (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;
- (27) "Synthetic natural gas" has the same meaning as in KRS 152.715;
- (28) "Tax incentive agreement" means an agreement entered into in accordance with KRS 154.27-040;
- (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
- (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 3. 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; or
- (c) 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);~~and~~
- (c) For a renewable energy facility, the minimum capital investment shall be one million dollars (\$1,000,000); *and*
- (d) *For an alternative fuel facility located in Kentucky that is newly constructed on or after August 1, 2010, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 1, 2010, and that, after the new construction, retrofit, or upgrade, primarily produces for sale alternative transportation fuels using natural gas or natural gas liquids as the primary feedstock, the minimum capital investment shall be one million dollars (\$1,000,000); provided that the authority may approve a maximum of five (5) projects that meet the requirements of this paragraph.*
- (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:
 - 1. Coal that is subject to the tax imposed under KRS 143.020 and that is specifically used by an alternative fuel facility or a gasification facility as feedstock for an eligible project, as set forth in KRS 143.024 and 154.27-060; *or*
 - 2. *Natural gas or natural gas liquids that are subject to the tax imposed under KRS 143A.020 and that are specifically used in an alternative fuel facility described in subsection (4)(d) of this section as feedstock for an eligible project, as set forth in Sections 4 and 5 of this Act;*
 - (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 4. KRS 154.27-060 is amended to read as follows:

- (1) (a) Notwithstanding any other provision of KRS 134.580 or KRS Chapter 143, an approved company that purchases or severs coal that:
 - 1. ~~(a)~~ Is subject to the tax imposed under KRS 143.020; and
 - 2. ~~(b)~~ Is used by the approved company exclusively as feedstock for an 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.
- (b) *Notwithstanding any other provision of KRS 134.580 or KRS Chapter 143A, an approved company that purchases or severs natural gas or natural gas liquids on or after August 1, 2010, that:*
 - 1. *Is subject to the tax imposed under KRS 143A.020; and*
 - 2. *Is used by the approved company exclusively as feedstock for an alternative fuel facility described in subsection (4)(d) of Section 3 of this Act;*

may be eligible for an incentive in an amount up to eighty percent (80%) of the taxes paid pursuant to KRS 143.020A on natural gas or natural gas liquids 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 *or purchased or severed natural gas or natural gas liquids subject to the tax imposed under KRS 143A.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 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 5. A NEW SECTION OF KRS CHAPTER 143A IS CREATED 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) *"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 natural gas or natural gas liquids that is subject to the tax imposed under KRS 143A.020 and that is specifically used by the approved company as feedstock for an alternative fuel facility described in subsection (4)(d) of Section 3 of this Act may be eligible for an incentive under Section 4 of this Act.*

(3) *A company approved for incentives under Section 4 of this Act 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 thousand (1000) cubic foot units (Mcf) of natural gas or gallons of natural gas liquids purchased and used or severed and used by the approved company as feedstock for an alternative fuel 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 natural-gas-derived or natural gas liquids-derived alternative transportation fuel; and*
- (e) *Any other information that the department may require.*
- (4) (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 143A.020 on the natural gas and natural gas liquids purchased or severed by the approved company and used as feedstock for an alternative fuel 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 natural gas and natural gas liquids to verify the value of natural gas and natural gas liquids purchased by the approved company and used as feedstock for an alternative fuel facility and the amount of tax paid under KRS 143A.020 on such natural gas and natural gas liquids.*
- (7) *The department shall notify the authority of the incentive distributed to each approved company upon request.*

➔Section 6. KRS 42.450 is amended to read as follows:

- (1) There is hereby established in the State Treasury a fund entitled "Local Government Economic Assistance Fund." The fund may receive state appropriations, gifts, grants, and federal funds and shall be disbursed by the State Treasurer upon the warrant of the secretary of the Finance and Administration Cabinet. Any unallotted or unencumbered balances in the fund shall be invested in United States Government Securities maturing not later than one (1) year from the date of investment and the income earned from the investment shall be prorated for expenditure in coal producing and coal impact counties according to each county's allocable part in the fund.
- (2) Effective July 1, 1981, an amount equal to one-half (1/2) of the tax collected annually on the sale of minerals, exclusive of coal, shall be transferred from the general fund into this fund. The transfers shall be made quarterly, based upon the revenue estimates prevailing at the time each quarterly transfer is due, except that the last quarterly transfer shall be made after the close of the fiscal year accounting records, and shall be adjusted to provide the balance of the annual transfer required by this subsection.
- (3) *Effective October 1, 2010, the quarterly transfer of funds required by subsection (2) of this section shall be made only after the quarterly installment of the annual amount from the prior calendar year allowed as an incentive to an approved company under Sections 4 and 5 of this Act has been made.*

➔Section 7. KRS 154.27-030 is amended to read as follows:

- (1) A company with an eligible project may submit an application for incentives to the authority prior to making any capital investment it will seek to recover.
- (2) The application shall include:
 - (a) The name of the applicant and identification of any affiliates of the applicant;
 - (b) The type of eligible project;
 - (c) A description of the location;
 - (d) A full description of the eligible project scope, including but not limited to:

1. A list and the status of permits, certificates, or approvals required by the federal government, the Commonwealth, or any jurisdiction within the Commonwealth;
 2. A description of the carbon capture readiness of the facility, if the proposed eligible project is an alternative fuel facility or a gasification facility;
 3. Any feasibility studies, including supporting documents;
 4. Anticipated sources of eligible project funding;
 5. The total anticipated capital investment and the time period over which the capital investment will occur;
 6. The proposed feedstock and the estimated volume of feedstock use per year;
 7. A description of the proposed products to be produced by the facility and the process that will be used to produce the products;
 8. The planned capacity of the facility after construction, retrofit, or upgrade;
 9. The estimated output of the facility upon completion; and
 10. A plan for and description of how the company will employ Kentucky residents at the facility and how the company will ensure, to the extent possible, that workers employed during construction, retrofit, or upgrade of the facility are Kentucky residents. The plan shall include projected numbers;
- (e) Identification of the specific incentives sought;
- (f) Payment of any applicable application fees required by the authority to offset reasonable costs of reviewing and processing the application; and
- (g) Other information as required by the authority.
- (3) The authority shall forward the application to the department and the office for review and comment with a date by which comments shall be provided back to the authority. The authority may forward the application to the Center for Applied Energy Research for review and comment as well.
- (4) (a) The authority shall review the application and shall verify that:
1. The applicant has met all of the statutory and regulatory requirements established by this subchapter and regulations promulgated thereunder;
 2. The applicant has secured or is in the process of securing all necessary permits, certificates, or approvals required by the federal government, the Commonwealth, or any jurisdiction within the Commonwealth;
 3. The proposed facility is carbon capture ready, if the proposed facility is an alternative fuel facility or gasification facility;
 4. The company has a plan that includes a projected number of Kentucky residents that will be employed during the construction, retrofit, or upgrade of the facility and at the facility upon completion; and
 5. Any other requirements established by the authority.
- (b) The department shall review the application and shall verify that the company seeking approval and all affiliate companies are in good standing with the department.
- (c) The authority may engage the services of outside consultants to assist in the review of the application. Costs associated with the engagement of outside consultants shall be borne by the applicant.
- (5) (a) Upon the earlier of:
1. The receipt of comments and recommendations from the office, the department, and the Center for Applied Energy Research, if applicable; or
 2. The expiration of the time period established by the authority for receiving comments pursuant to subsection (3) of this section;

- the authority may, through the adoption of a resolution, preliminarily approve an applicant for incentives under this subchapter.
- (b) Preliminary approval shall be based upon representations of the applicant in the application and attachments as well as other information submitted with the application. The authority shall make a finding that, based upon the applicant's representations, the project appears to be eligible for incentives pursuant to this subchapter.
 - (c) Prior to final approval:
 - 1. The applicant shall:
 - a. Provide all supportive data requested by the authority;
 - b. Secure all required permits or take appropriate steps to do so; and
 - c. Cooperate with the authority to obtain opinions or recommendations from any outside consultants; and
 - 2. The authority shall, in consultation with the office or any other entity, verify the representations of the applicant.
 - (d)
 - 1. A preliminarily approved company seeking an advance disbursement employment incentive under KRS 154.27-090 shall, prior to receiving final approval from the authority, provide to the authority a labor market analysis prepared by a public postsecondary education institution in the Commonwealth with knowledge of the labor market in the region in which the eligible project will be located.
 - 2. The labor market analysis shall evaluate the construction market in the region where the proposed project is to be located and the estimated labor component of the proposed project. The public postsecondary education institution may consult with the Center for Applied Energy Research or the office in determining the types of laborers required for the construction, retrofit, or upgrade of the eligible facility.
 - 3. The labor market analysis shall include an estimate of the percentage of the estimated labor component that constitutes wages to be paid to Kentucky residents.
 - (e) Based upon all of the information available, the authority may, through adoption of a resolution, give its final approval and authorize the execution of a tax incentive agreement to be negotiated pursuant to KRS 154.27-040.
- (6) The authority may request any materials and make any inquiries concerning an application that the authority deems necessary.
 - (7) The actual capital investment that may be recovered and percentages of each incentive that an approved company may receive shall be negotiated between the approved company and the authority and shall not exceed the limitations established by KRS 154.27-020.
 - (8) The General Assembly recognizes that the incentives offered under this subchapter include the possibility of the release of incentives to approved companies prior to construction completion, and that the release of these incentives may present more risk for the Commonwealth. The authority is directed to consider the possible increased risk to the Commonwealth when negotiating tax incentive agreements that include incentives prior to construction completion, and to incorporate repayment or similar remedy provisions in the tax incentive agreement to the extent the authority determines such provisions are necessary to protect the investment made by the Commonwealth if the approved company fails to comply with the terms of the tax incentive agreement.
 - (9) The authority and the approved company shall enter into a tax incentive agreement in accordance with KRS 154.27-040.
 - (10) The authority, with input from the office and the department, shall establish additional standards and requirements for the application process through the promulgation of administrative regulations in accordance with KRS Chapter 13A. The standards shall include but not be limited to the creditworthiness of eligible companies and the likelihood of economic success of the economic development project.

- (11) *Notwithstanding any other provision of this subchapter, the authority may approve a maximum of five (5) projects under this subchapter that involve an alternative fuel facility located in Kentucky that:*
- (a) *Is newly constructed on or after August 1, 2010, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 1, 2010;*
 - (b) *After the new construction, retrofit, or upgrade, primarily produces for sale alternative transportation fuels using natural gas or natural gas liquids as the primary feedstock; and*
 - (c) *Has a minimum capital investment of one million dollars (\$1,000,000).*

Signed by Governor April 13, 2010.