

**CHAPTER 119****( HB 539 )**

AN ACT relating to economic development.

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":
  - (a) 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 subsection (10)(b) of this section; **and**

- (b) *Includes any supplemental project;*
- (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) million tons of coal mined from the economic revitalization project facility 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) *"Supplemental project" means an additional economic revitalization project proposed during the term of a previously approved economic revitalization project by a supplemental project eligible company which may be included in the revitalization agreement by way of amendment, and which may result in increased inducements and an extension of the original project term as set forth in Section 3 of this Act;*
- (18) *"Supplemental project eligible company" means an approved company that:*
- (a) *Has expended approved costs of at least fifty million dollars (\$50,000,000) on an existing approved economic revitalization project; and*
- (b) *Employs a minimum of seven hundred fifty (750) employees at the site of the economic revitalization project;*
- ~~(19)~~~~(17)~~ "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401; and
- ~~(20)~~~~(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 *or supplemental projects* shall include but not be limited to the:
- (a) Need for the project;

- (b) New capital investment in the project *or supplemental project* that will result in financial stability for the manufacturing or coal mining and processing facility; and
  - (c) 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 *or supplemental project eligible company* making an application to the authority for inducements, and with respect to the project *or supplemental 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 *or supplemental project*, assisted by the inducements authorized by KRS 154.26-015 to 154.26-100, the eligible company will:
- (a) Close its manufacturing or coal mining and processing facility; and
  - (b) Permanently lay off its employees and cease operations; or
  - (c) Not resume operations of a closed facility as permitted by KRS 154.26-010(9).
- (4) The eligible company *or supplemental project 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 KRS 154.26-010(9); 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 and Workforce Development 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), (9), or (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 KRS 154.26-010(9) 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 KRS 154.26-010(9).
- (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 KRS 154.26-010(10)(b) 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:
- (a) Declare the jobs then existing at the facility to be lost or the company unable to resume operations as permitted by KRS 154.26-010(9);
  - (b) Give its final approval to the eligible company's application for a project; and
  - (c) 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) (a) *During the term of a revitalization agreement, a supplemental project eligible company may apply for, and the authority may approve, a supplemental project.*
- (b) *In reviewing an application submitted by a supplemental project eligible company, the authority may waive the requirements of subsections (8), (9), (10), (11), (12), and (13) of this section if:*
1. *The authority receives from the eligible company a signed application attesting that the company will close its facility without the supplemental project assisted by the inducements authorized by this subchapter; and*
  2. *The authority determines that it has sufficient information from the original project application and additional information provided through submission of the supplemental project application to approve the supplemental project.*
- (c) *The authority shall approve a supplemental project by resolution, authorizing the execution of an amended project agreement. The adjustment to the initial project shall be made on the total approved costs, and any credits taken prior to the addition of a supplemental project shall then be subtracted from the increased amount of approved costs.*
- (15) 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. KRS 154.26-090 is amended to read as follows:

- (1) The authority, upon adoption of its final approval, may enter into, with any approved company, an agreement with respect to its project *or an amended agreement with respect to its original and supplemental project*. The terms and provisions of each agreement, including the amount of approved costs, ~~the amount of the license tax credit pursuant to KRS 136.0704,~~ and any limitations the authority may deem necessary, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:
- (a) The amount the approved company may recover through inducements under this subchapter shall not exceed seventy-five percent (75%) of approved costs.
  - (b) The agreement shall set a date by which the approved company will have completed the *original project and supplemental project*. Within three (3) months of the completion date *of the original project or supplemental project*, the approved company shall document the actual cost of the project *or supplemental project* in a manner acceptable to the authority. The authority may employ an independent consultant or utilize technical resources to verify the cost of the project *or supplemental project*. The approved company shall reimburse the authority for the cost of the consultant.
  - (c) In consideration of the execution of the agreement, the approved company may be permitted, during *a period* ~~the time~~ not to exceed ten (10) years *commencing on the date of the agreement*, during which the agreement is in effect, *and including any extension of the ten (10) year period negotiated as part of an amended agreement including a supplemental project* ~~which time shall commence on the date of the agreement~~, *the following* ~~for purposes of the~~ inducements:
    1. A credit against the Kentucky tax imposed by KRS 141.020 or 141.040 on the income of the approved company generated by or arising out of the economic revitalization project and a credit against the limited liability entity tax imposed by KRS 141.0401 on Kentucky gross profits or Kentucky gross receipts as determined under KRS 141.403. The ordering of credits shall be as provided in KRS 141.0205; *and*
    2. ~~A credit against the Kentucky license tax imposed by KRS 136.070 as determined under KRS 136.0704; plus~~
    3. ~~The aggregate assessment withheld by the approved company in each year.~~
  - (d) The tax credits allowed to the approved company shall be equal to the lesser of the total amount of the tax liability or the amount that the company may recover under paragraph (a) of this subsection that has not yet been recovered, reduced by any recovery through the collection of assessments and appropriations made under any appropriation agreement. The credit shall be allowed for each fiscal year of the approved company during the term of the agreement and for which a tax return of the approved

company is filed until the amount that the company may recover under paragraph (a) of this subsection has been received through a combination of credits, assessments, if assessments are elected to be imposed, and appropriations made under any appropriation agreement. The approved company shall not be required to pay estimated tax payments as prescribed under KRS 141.044 or 141.305 on income, Kentucky gross profits or Kentucky gross receipts from the economic revitalization project. Ninety (90) days after the filing of the tax return of the approved company, the Department of Revenue of the Commonwealth shall certify to the authority for the preceding fiscal year of an approved company for which a return was filed with respect to an economic revitalization project of the approved company the state tax liability of the approved company receiving inducements under KRS 154.26-015 to 154.26-100 and the amount of any tax credits taken pursuant to this section.

- (e) The agreement shall provide that the term shall not be longer than the earlier of:
  - 1. The date on which the approved company has received inducements or withheld assessments equal to the amount that the company may recover under paragraph (a) of this subsection; or
  - 2. Ten (10) years from the date of the execution of the agreement ***or any longer term negotiated as part of an amended agreement not to exceed an additional ten (10) years, for a total maximum of twenty (20) years if a supplemental project is approved.***
- (f) Prior to execution of the agreement, the eligible company shall secure from all local governmental authorities responsible for collecting local occupational license fees one (1) of the following:
  - 1. A resolution or order of the local governmental entities acknowledging and consenting to the termination or partial termination of the receipt of local occupational license fees paid by the approved company on behalf of its employees to the local government entities resulting from the execution of the agreement; or
  - 2. In lieu of the credit against the local occupational license fee, an appropriation agreement with the authority and the local governmental entities by which the local governmental entities will appropriate funds in an amount equal to the amount of the credit of the local occupational license fee for the benefit of the approved company in a manner consistent with the applicable state laws.
- (g) If more than one (1) local occupational license fee is imposed upon the employees of the approved company, the assessment imposed upon the employees shall be credited against the local occupational license fee and shall be apportioned to each local occupational license fee according to each local occupational license fee's proportion to the total of all local occupational license fees for such employees. No credit, or portion thereof shall be allowed against any local occupational license fee imposed by or dedicated solely to a local board of education.
- (h) If in any fiscal year of the approved company during which the agreement is in effect the total of the tax credits granted to the approved company plus the assessment collected from the wages of the employees exceeds the expended portion of the amount that the approved company may recover under paragraph (a) of this subsection, the approved company shall pay the excess to the Commonwealth as income tax.
- (i) If in any fiscal year of the approved company during which the agreement is in effect the assessment collected from the wages of the employees exceeds the expended portion of the amount that the approved company may recover under paragraph (a) of this subsection, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees' wages next succeeding the first date when the approved company collected excess assessments.
- (j) All proceeds of any loan or other financing incurred in connection with the economic revitalization project shall be expended by the approved company within five (5) years from the date of the revitalization agreement. In the event that all proceeds of any loan or other financing incurred in connection with the economic revitalization project are not fully expended within the five (5) 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 five (5) year period.

- (2) If the approved company elects to utilize the assessment as prescribed in KRS 154.26-100, it shall not assess the wages of an employee who is party to an individual employment contract with the approved company.
- (3) Neither the appropriation agreement nor the agreement shall be transferable or assignable by the approved company without the expressed written consent of the authority.

➔Section 4. This Act shall apply to taxable years beginning on or after January 1, 2014.

**Signed by Governor April 11, 2012.**