

**154.26-080 Standards for determination of eligibility -- Review of application -- Request for emergency declaration -- Authorizing resolution -- Application for and approval of supplemental projects -- Meetings.**

- (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 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:
  - (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 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 initial term of an agreement, or within sixty (60) months after the expiration of the term, an eligible company may apply for, and the authority may approve, a supplemental project when the applicant:
  1. Has expended approved costs of at least fifty million dollars (\$50,000,000) on an approved economic revitalization project;
  2. Employs a minimum of one hundred (100) employees at the site of the economic revitalization project;
  3. Agrees to incur at least five million dollars (\$5,000,000) in additional eligible costs for improvements to a blast furnace that:
    - a. Is located at the economic revitalization project;
    - b. Has burned at least one million (1,000,000) tons of Kentucky coal

- during the initial term of the agreement; and
- c. Was idled due to unfairly traded imports of carbon steel, with resulting layoffs of more than five hundred fifty (550) employees; and
4. Is at risk of closure and carries a significant net loss carry forward for the last three (3) tax years as certified by the approved company.
- (b) The authority may approve a supplemental project by resolution, authorizing the execution of a supplemental project agreement.
- (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.

**Effective:** July 15, 2016

**History:** Amended 2016 Ky. Acts ch. 109, sec. 2, effective July 15, 2016. -- Amended 2014 Ky. Acts ch. 129, sec. 3, effective July 15, 2014. -- Amended 2012 Ky. Acts ch. 119, sec. 2, effective July 12, 2012. -- Amended 2009 Ky. Acts ch. 11, sec. 42, effective June 25, 2009. -- Amended 2007 Ky. Acts ch. 71, sec. 2, effective March 23, 2007. -- Amended 2006 Ky. Acts ch. 211, sec. 74, effective July 12, 2006. -- Amended 2001 Ky. Acts ch. 153, sec. 2, effective March 20, 2001. -- Amended 1996 Ky. Acts ch. 194, sec. 46, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 450, sec. 24, effective July 15, 1994; and ch. 499, sec. 25, effective July 15, 1994. -- Created 1992 Ky. Acts ch. 359, sec. 9, effective July 14, 1992.

**Legislative Research Commission Note** (7/12/2012). 2012 Ky. Acts ch. 119, sec. 4, provides that this statute, as amended by 2012 Ky. Acts ch. 119, sec. 2, "shall apply to taxable years beginning on or after January 1, 2014."

**Legislative Research Commission Note** (3/23/2007). Under the authority of KRS 7.136(1), the Reviser of Statutes in codification has changed the internal numbering system of subsections (2), (3), and (13) of this statute by inserting paragraph divisions (a), (b), and (c). The meaning of the text renumbered is not changed.