

AN ACT relating to energy efficiency.

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

➔Section 1. KRS 154.34-010 is amended to read as follows:

As used in this subchapter:

- (1) "Approved company" means an eligible company approved for a reinvestment project;
- (2) "Approved costs" means the sum of the:
  - (a) Eligible equipment and related costs; and
  - (b) Eligible skills upgrade training costs;approved by the authority that may be recovered by an approved company through the incentives authorized by this subchapter;
- (3) "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;
- (4) "Commonwealth" means the Commonwealth of Kentucky;
- (5) "Department" means the Department of Revenue;
- (6) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity engaged in manufacturing at a facility located and operating within the Commonwealth on a permanent basis for a reasonable period of time preceding the request for approval of a reinvestment project by the authority;
- (7) (a) "Eligible equipment and related costs" means:
  1. 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 a reinvestment project;
  2. 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 a reinvestment project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;

3. 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 a reinvestment project;
4. All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, rehabilitation, and installation of a reinvestment project;
5. All costs required for the installation of utilities, including but not limited to water, sewer, sewer treatment, gas, electricity, communications, and access to transportation, and including off-site construction of the facilities paid for by the approved company; and
6. All other costs of a nature comparable to those described in this paragraph.

(b) "Eligible equipment and related costs" does not include costs related to the replacement or repair of existing machinery or equipment resulting from normal wear and usage of the machinery, *except as related to energy efficiency reinvestment projects*;

(8) "Eligible skills upgrade training costs" means costs incurred by an approved company in connection with an occupational training program for full-time employees specifically related to training or retraining employees as part of the reinvestment project, including the following:

(a) Fees or salaries paid to instructors, whether those instructors are employees of

- the approved company, contractors, or consultants;
- (b) Administrative fees paid to educational institutions;
  - (c) Amounts paid for supplies, materials, and equipment used exclusively for the occupational training program;
  - (d) Amounts paid to lease a training facility if sufficient training space is not available at the approved company or at an educational institution;
  - (e) Amounts paid to employees as wages for attending the occupational training program;
  - (f) Amounts paid for travel expenses for employees; and
  - (g) All other costs of a nature comparable to those described in this subsection;
- (9) **"Energy efficiency mechanisms" include but are not limited to:**
- (a) Energy efficient lighting systems;**
  - (b) High efficiency heating, ventilation, and air conditioning systems;**
  - (c) Energy management systems;**
  - (d) Energy recovery systems;**
  - (e) Facility shell improvements;**
  - (f) Load management projects; and**
  - (g) Other equipment or physical improvements that increase the energy efficiency of the facility as determined by the authority upon advice from the Energy and Environment Cabinet;**
- (10)** "Equipment" means:
- (a) For production reinvestment projects,** manufacturing machinery installed by the approved company as part of the reinvestment project; **or**
  - (b) For energy efficiency reinvestment projects, energy efficiency mechanisms installed by the approved company as part of the reinvestment project;**
- (11)**~~(10)~~ "Final approval" means the action taken by the authority designating a preliminarily approved eligible company as an approved company;

- ~~(12)~~~~(11)~~ "Full-time" means a minimum of thirty-five (35) hours per week;
- ~~(13)~~~~(12)~~ "Kentucky gross profits" has the same meaning as in KRS 141.0401;
- ~~(14)~~~~(13)~~ "Kentucky gross receipts" has the same meaning as in KRS 141.0401;
- ~~(15)~~~~(14)~~ "Manufacturing" means any activity involving the processing, assembling, or production of any property, including activities that result in a change in the condition of the property. "Manufacturing" includes any activity or function related to the manufacturing activity, including storage, warehousing, distribution, and related office facilities;
- ~~(16)~~~~(15)~~ "Preliminary approval" means the action taken by the authority designating an eligible company as a preliminarily approved company;
- ~~(17)~~~~(16)~~ "Reinvestment agreement" means the agreement entered into pursuant to KRS 154.34-080 between the authority and an approved company with respect to a reinvestment project; and
- ~~(18)~~~~(17)~~ "Reinvestment project" means~~[-~~:
- ~~(a)~~~~A~~ reinvestment in the physical plant of a manufacturing facility, and in the full-time employees of a manufacturing facility. **A reinvestment project may include the development of an occupational training program to train or retrain the full-time employees of the company to support the project. There shall be two (2) categories of reinvestment projects:**~~[- through:]~~
- ~~(a)~~ ~~1.~~ **"Production reinvestment project" means** the acquisition, construction, and installation of new equipment and~~[- with respect thereto,]~~ the construction, rehabilitation, and installation of improvements to facilities necessary to house the new equipment, including surveys; installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; or off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located; and

**(b) "Energy efficiency reinvestment project" means:**

- 1. Installation of energy efficiency mechanisms at the physical plant of a manufacturing facility;**
- 2. Rehabilitation or replacement of existing equipment to increase energy efficiency;**
- 3. Acquisition, construction, and installation of new equipment to increase energy efficiency; or**
- 4. Construction or rehabilitation of facilities necessary to house new or existing equipment under this paragraph.**

~~[2. The development of an occupational training program to train or retrain the full-time employees of the company to support the reinvestment in the manufacturing facility, if applicable, for the purpose of improving the economic and operational situation of a company; and~~

~~(b) The expenditure of at least two million five hundred thousand dollars (\$2,500,000) in eligible equipment and related costs.]~~

➔Section 2. KRS 154.34-070 is amended to read as follows:

- (1) The application and approval process under this subchapter shall be as follows:
  - (a) An eligible company with a proposed reinvestment project may submit an application to the authority. The application shall include the information required by subsection (4) of this section;
  - (b) Upon review of the application and any additional information submitted, the authority may, by resolution, give preliminary approval to a reinvestment project and authorize the negotiation and execution of a memorandum of agreement. The memorandum of agreement shall establish the minimum job retention requirements and maximum total approved cost for the reinvestment project, shall only allow the recovery of costs incurred after preliminary approval, and may include any other terms as agreed to by the parties to the

- agreement. Upon preliminary approval, the preliminarily approved company may undertake the project in accordance with the memorandum of agreement;
- (c) **In the case of energy efficiency reinvestment projects, the authority may give preliminary approval for no more than three million dollars (\$3,000,000) in approved costs in each calendar year;**
- (d) The preliminarily approved company shall submit any documentation required by the authority upon request of the authority;
- ~~(e)~~(d) The preliminarily approved company shall have up to three (3) years from the date of preliminary approval to obtain final approval. Upon the earlier of completion of the project or the passage of three (3) years from the date of preliminary approval, the preliminarily approved company shall submit documentation required by the authority, and the authority shall confirm that the minimum investment and job retention requirements established by the memorandum of agreement have been met. Upon review and confirmation of the documentation, the authority may, by resolution, give final approval to the preliminarily approved company and authorize the execution of a reinvestment agreement between the authority and the approved company pursuant to KRS 154.34-080. As part of the reinvestment agreement, the approved costs shall be finally determined, not to exceed the maximum approved costs as determined at preliminary approval, and the approved company shall be eligible to receive incentives in accordance with the provisions of the reinvestment agreement;
- ~~(f)~~(e) **For energy efficiency reinvestment projects, the three (3) year maximum period for final approval shall include at least one (1) calendar quarter of measured energy data as required in this subchapter;**
- (g) The authority shall monitor the reinvestment agreement at least annually, and the approved company shall submit all documentation necessary for the

authority to monitor the agreement. The authority shall, based on the documentation provided, confirm that the approved company is in continued compliance with the provisions of the reinvestment agreement and, therefore, eligible for incentives; and

~~(h)~~ Upon final approval, the authority shall notify the department that an approved company is eligible for incentives and shall provide the department with the information necessary to monitor the use of credits by the approved company. If, at any time during the term of the reinvestment agreement, an approved company becomes ineligible for incentives, the authority shall notify the department, and the department shall discontinue the availability of credits for the approved company.

(2) (a) The authority may establish standards for preliminary and final approval of eligible companies and their projects through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.

*(b) Regarding the measurement of and compliance with the energy savings targets set out in the reinvestment agreement for energy efficiency reinvestment projects, the authority may promulgate administrative regulations in accordance with KRS Chapter 13A, in consultation with the Energy and Environment Cabinet.*

(3) The criteria for preliminary and final approval of eligible companies and reinvestment projects shall include but not be limited to the need for the project, the eligible equipment and related~~other~~ costs and eligible skills upgrade training costs to be expended by the eligible company, and the number of jobs created or retained as a result of the project.

(4) The application shall include:

(a) A description of the condition of the existing facility, including but not limited

to the status of the physical plant, the financial situation of the company, and:~~]~~  
~~the efficiency and productivity of the facility;]~~

1. For production reinvestment projects, metrics concerning the efficiency and productivity of the existing facility;
  2. For energy efficiency reinvestment projects, quarterly energy use, energy use per unit of productivity, and energy cost data for facilities directly affected by the new, rehabilitated, or replaced equipment for the three (3) years immediately preceding the application; and total projected energy savings, projected energy savings per unit of productivity, and projected energy cost savings data for the first calendar quarter and year following the completion of the project;
- (b) For energy efficiency reinvestment projects, a reasonable plan to achieve an energy savings target of:
1. At least twenty percent (20%) for the calendar quarter immediately following completion of the project. The savings shall be measured against an average of the same calendar quarter of the three (3) preceding years; or
  2. At least twenty percent (20%) for the year immediately following completion of the project. The savings shall be measured against the average of the three (3) preceding years;
- (c) A description of the proposed reinvestment project, including anticipated sources of funding, the total anticipated equipment and related costs and skills upgrade training costs, the impact of the proposed reinvestment project on full-time employment at the facility, and an explanation of why reinvestment in the facility and its full-time employees is necessary;
- ~~(d)~~~~(e)~~ A timeline for the proposed reinvestment project;
- ~~(e)~~~~(d)~~ A description of the other alternatives that are available to the eligible



company, if incentives are not provided;

~~(f)(e)~~ The amount of incentives sought, and an explanation of why the requested incentives are needed;

~~(g)(f)~~ A certification from the company that the reinvestment project would not be economically feasible for the company, but for the incentives available under this subchapter;

~~(h)(g)~~ Payment of any applicable application fees required by the authority; and

~~(i)(h)~~ Any additional information relating to the proposed reinvestment project that the authority may require.

(5) The authority may request any materials and make any inquiries concerning an application that the authority deems necessary.

➔Section 3. KRS 154.34-080 is amended to read as follows:

The authority, upon final approval of a company, may enter into a reinvestment agreement with the approved company. The terms and conditions of the reinvestment agreement shall be negotiated between the authority and the approved company. The terms of the reinvestment agreement shall include but not be limited to the following provisions:

- (1) That the authority may employ an independent consultant or utilize technical resources to verify the cost of the project, and that the approved company shall reimburse the authority for the cost of a consultant or other technical resources employed by the authority;
- (2) The maximum approved costs that may be recovered;
- (3) A set employment retention goal, which shall be at least eighty-five percent (85%) of the number of full-time employees employed at the facility on the date the company receives preliminary approval;
- (4) That approval of the company is not a guarantee of incentives and that eligibility for incentives shall be contingent on the approved company meeting the requirements

established by the reinvestment agreement and this subchapter;

(5) **If a project meets the definition of both a production reinvestment project and an energy efficiency reinvestment project, it shall be deemed to be a production reinvestment project and shall require the higher minimum investment;**

(6) The term of the reinvestment agreement, which shall not be longer than the earlier of:

(a) The date on which the approved company has received incentives equal to the approved costs of its reinvestment project; or

(b) Ten (10) years from the date of final approval granted by the authority;

~~(7)(6)~~ That the authority may reduce the incentives, suspend the incentives, or terminate the agreement if the approved company fails to comply with provisions of the reinvestment agreement, **or proportionately reduce incentives for failure to achieve those targets including but not limited to a failure to achieve energy savings targets in the case of an energy efficiency reinvestment project;**

~~(8)(7)~~ That both the authority and the department shall have the right to pursue any remedy provided under this reinvestment agreement and any other remedy at law to which it may be entitled;

~~(9)(8)~~ That the approved company shall make available to the department and the authority all of its records pertaining to the reinvestment project, including but not limited to payroll records, records relating to the expenditure of eligible equipment and related costs, eligible skills upgrade training costs, ~~and~~ approved costs, **records relating to facility energy cost and use data,** and any other records pertaining to the project as the authority or the department may require;

~~(10)(9)~~ That the authority may share information with the department for the purposes of monitoring and enforcing the terms of the reinvestment agreement;

~~(11)(10)~~ That the agreement shall not be transferred or assigned by the approved company without the expressed written consent of the authority; ~~and~~

(12) For energy efficiency reinvestment projects, a statement of actual quarterly energy use, actual energy use per unit of productivity, and actual energy cost data for facilities directly affected by the new, rehabilitated, or replaced equipment for the three (3) years immediately preceding the application; and projected energy savings, projected energy savings per unit of productivity, and projected energy cost savings data for the first calendar quarter and year beginning immediately on completion of the project. The company shall continue to report these energy data annually throughout the term of the agreement;

(13) For energy efficiency reinvestment projects, an energy savings target of:

(a) At least twenty percent (20%) for the calendar quarter immediately following completion of the project. The savings shall be measured against the average of the same quarter of the three (3) preceding years; or

(b) At least twenty percent (20%) for the year immediately following completion of the project. The savings shall be measured against the average of the three (3) preceding years;

(14) For a production reinvestment project, the company shall invest a minimum of two million five hundred thousand dollars (\$2,500,000) in eligible equipment and related costs;

(15) For an energy efficiency reinvestment project, the company shall invest a minimum of one hundred thousand dollars (\$100,000) in eligible equipment and related costs; and

(16)~~(14)~~ Any other provisions not inconsistent with this subchapter and determined to be necessary or appropriate by the parties to the reinvestment agreement.

➔Section 4. KRS 154.34-110 is amended to read as follows:

(1) The purpose of this subchapter is to provide a means for the Commonwealth to promote job retention by providing incentives for existing businesses to reinvest in existing manufacturing operations in Kentucky.

- (2) (a) To qualify for the incentives provided in this subchapter, an approved company shall:
1. **For a production reinvestment project,** incur eligible equipment and related costs of at least two million five hundred thousand dollars (\$2,500,000);
  2. **For an energy efficiency reinvestment project, incur eligible equipment and related costs of at least one hundred thousand dollars (\$100,000);**
  3. Agree to maintain a full-time employment base of at least eighty-five percent (85%) at the facility on the date of preliminary approval; and
  4. ~~3.~~ Not have been awarded incentives under Subchapter 26 of this chapter for a period of at least five (5) years prior to applying for incentives under this subchapter.
- (b) An approved company meeting the expenditure and employment retention requirements established by this subsection shall be eligible to recover up to fifty percent (50%) of the amount expended for eligible equipment and related costs, and up to one hundred percent (100%) of job skills upgrade training costs. The actual amount that an approved company may recover shall be negotiated with the authority, and may be less than the maximum amount for which the approved company is eligible.
- (3) An approved company shall be eligible for tax incentives of up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.020 or 141.040 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 154.34-120.
- (4) **For energy efficiency reinvestment projects, the Energy and Environment**

**Cabinet shall review the application and make a recommendation to the authority with regard to the appropriate amount that an approved company may recover for each project.**

- (5)** The General Assembly finds and declares that:
- (a) The general welfare and material well-being of the citizens of the Commonwealth depend in large measure upon the reinvestment and development of existing industry in the Commonwealth;
  - (b) It is in the best interest of the Commonwealth to induce reinvestment in existing manufacturing facilities within the Commonwealth in order to advance the public purposes of relieving unemployment by preserving jobs that may be lost if not for the incentives to be offered by the authority to approved companies, and by preserving and creating sources of tax revenues for the support of public services provided by the Commonwealth; and
  - (c) The authority prescribed by this subchapter and the purposes to be accomplished under this subchapter are proper governmental and public purposes for which public moneys may be expended.

➔Section 5. This Act takes effect January 1, 2016.