

AN ACT relating to economic development incentives for the coal industry.

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

➔Section 1. KRS 154.31-010 is amended to read as follows:

As used in this subchapter:

- (1) "Agreement" means an agreement entered into pursuant to KRS 154.31-030 between the authority and an approved company;
- (2) "Approved company" means an eligible company that has received approval from the authority for a sales and use tax incentive under this subchapter;
- (3) "Approved recovery amount" means the maximum sales and use tax incentive recoverable by an approved company as established in the agreement;
- (4) "Authority" means the Kentucky Economic Development Finance Authority;
- (5) **"Coal mining or processing" means activities resulting in the eligible company being subject to the tax imposed by KRS Chapter 143;**
- (6)** "Department" means the Department of Revenue;
- (7)**~~(6)~~ "Economic development project" means:
  - (a) 1. The acquisition or construction of a new facility; or
  2. The expansion or rehabilitation of an existing facility; and
  - (b) The installation and equipping of the facility;
 by an eligible company at a specific site in the Commonwealth to be used in a service or technology, manufacturing, **coal mining or processing,** or tourism attraction activity conducted by the approved company;
- (8)**~~(7)~~ "Electronic processing" means the use of technology having electronic, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities, now in existence or later developed to perform a service or technology activity;
- (9)**~~(8)~~ (a) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or other legal entity that is primarily engaged in manufacturing, **coal mining or**

**processing**, or service or technology activities, or in operating or developing a tourism attraction.

- (b) "Eligible company" does not include any company whose primary activity is retail sales;

~~(10)~~~~(9)~~ "Eligible expenses" means the amount expended for:

- (a) Building and construction materials permanently incorporated as an improvement to real property as part of an economic development project; or
- (b) Equipment used for research and development or electronic processing at an economic development project;

if the Kentucky sales and use tax imposed by KRS Chapter 139 is paid on the purchase of the materials or equipment at the time of purchase;

~~(11)~~~~(10)~~ (a) "Equipment" means tangible personal property which is subject to depreciation under Sections 167 and 168 of the Internal Revenue Code, including assets which are expensed under Section 179 of the Internal Revenue Code, and that is used in the operation of a business.

- (b) "Equipment" does not include any tangible personal property used to maintain, restore, mend, or repair machinery or equipment, consumable operating supplies, office supplies, or maintenance supplies;

**(12) (a) "Facility" means, solely as it relates to eligible companies conducting coal mining or processing activities, a specific site in the Commonwealth at which equipment is used in a process that:**

- 1. Mines coal by physically removing it from the earth; or**
- 2. Increases the commercial value of coal through processing.**

**(b) "Facility" includes the physical plant structure where the mining or processing described in paragraph (a) of this subsection occurs;**

~~(13)~~~~(11)~~—(a) "Manufacturing" means to make, assemble, process, produce, or perform any activity that changes the form or conditions of raw materials and other

property, and shall include any ancillary activity to the manufacturing process, such as storage, warehousing, distribution, and related office facilities[-

~~(b) "Manufacturing" does not include any activity involving the performance of work classified by the divisions, including successor divisions, of mining in accordance with the "North American Industry Classification System," as revised by the United States Office of Management and Budget from time to time, or any successor publication];~~

~~(14)~~~~(12)~~ "Project term" means the time for which an agreement shall be in effect. The project term shall be established in the agreement and shall not exceed seven (7) years;

~~(15)~~~~(13)~~ (a) "Research and development" means experimental or laboratory activity that has as its ultimate goal the development of new products, the improvement of existing products, the development of new uses for existing products, or the development or improvement of methods for producing products.

(b) "Research and development" does not include testing or inspection of materials or products for quality control purposes, efficiency surveys, management studies, consumer surveys or other market research, advertising or promotional activities, or research in connection with literary, historical, or similar projects; and

~~(16)~~~~(14)~~ "Service or technology" means any nonretail activity using technology or providing a service, including but not limited to:

- (a) Administration and processing activities;
- (b) Research and development;
- (c) Telephone or Internet sales or services;
- (d) Distribution or fulfillment of orders;
- (e) Data processing; and

(f) Similar activities;

provided to customer or affiliate entities primarily outside the Commonwealth and designed to serve a multistate, national, or international market.

➔Section 2. KRS 154.32-010 is amended to read as follows:

- (1) "Activation date" means the date established in the tax incentive agreement that is within two (2) years of final approval;
- (2) "Advance disbursement" means the disbursement of incentives prior to the activation date;
- (3) "Affiliate" has the same meaning as in KRS 154.48-010 and, in addition, shall include two (2) or more limited liability companies if the same persons own more than fifty percent (50%) of the capital interest or are entitled to more than fifty percent (50%) of the capital profits in the limited liability companies;
- (4) "Agribusiness" means the processing of raw agricultural products, including but not limited to timber and industrial hemp, or the performance of value-added functions with regard to raw agricultural products;
- (5) "Approved company" means an eligible company that has received final approval to receive incentives under this subchapter;
- (6) "Approved costs" means the amount of eligible costs approved by the authority at final approval;
- (7) "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;
- (8) "Capital lease" means a lease classified as a capital lease by the Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976, as amended;
- (9) **"Coal mining or processing" means activities resulting in the eligible company being subject to the tax imposed by KRS Chapter 143;**
- (10)** "Commonwealth" means the Commonwealth of Kentucky;

~~(11)~~~~(10)~~ "Confirmed approved costs" means:

- (a) For owned economic development projects, the documented eligible costs incurred on or before the activation date; or
- (b) For leased economic development projects:
  - 1. The documented eligible costs incurred on or before the activation date; and
  - 2. Estimated rent to be incurred by the approved company throughout the term of the tax incentive agreement.

For both owned and leased economic development projects, "confirmed approved costs" may be less than approved costs, but shall not be more than approved costs;

~~(12)~~~~(11)~~ "Department" means the Department of Revenue;

~~(13)~~~~(12)~~ "Economic development project" means:

- (a)
  - 1. The acquisition, leasing, or construction of a new facility; or
  - 2. The acquisition, leasing, rehabilitation, or expansion of an existing facility; and
- (b) The installation and equipping of the facility;

by an eligible company. "Economic development project" does not include any economic development project that will result in the replacement of facilities existing in the Commonwealth, except as provided in KRS 154.32-060;

~~(14)~~~~(13)~~ (a) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity with a proposed economic development project that is engaged in or is planning to be engaged in one (1) or more of the following activities within the Commonwealth:

- 1. Manufacturing;
- 2. Agribusiness;
- 3. Nonretail service or technology;~~[-or]~~

4. National or regional headquarters operations, regardless of the underlying business activity of the company; **or**

**5. Coal mining or processing.**

(b) "Eligible company" does not include companies where the primary activity to be conducted within the Commonwealth is forestry, fishing, mining **or processing of any minerals other than coal**~~[, coal or mineral processing]~~, the provision of utilities, construction, wholesale trade, retail trade, real estate, rental and leasing, educational services, accommodation and food services, or public administration services;

~~(15)~~~~(14)~~ "Eligible costs" means:

- (a) For owned economic development projects:
1. Start-up costs;
  2. Obligations incurred for labor and amounts paid to contractors, subcontractors, builders, and materialmen in connection with the economic development project;
  3. The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;
  4. The cost of contract bonds and of insurance of all kinds that may be required or necessary for completion of an economic development project which is not paid by a contractor or otherwise provided for;
  5. All costs of architectural and engineering services, including test borings, surveys, estimated plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required for construction of the economic development project;
  6. All costs which are required to be paid under the terms of any contract for the economic development project;

7. All costs incurred for construction activities, including site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and providing drainage and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electric, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; construction and installation of railroad spurs as needed to connect the economic development project to existing railways; or similar activities as the authority may determine necessary for construction of the economic development project; and
  8. All other costs of a nature comparable to those described above; and
- (b) For leased economic development projects:
1. Start-up costs; and
  2. Fifty percent (50%) of the estimated annual rent for each year of the tax incentive agreement.

Notwithstanding any other provision of this subsection, for economic development projects that are not in enhanced incentive counties, the cost of equipment eligible for recovery as an eligible cost shall not exceed twenty thousand dollars (\$20,000) for each new full-time job created as of the activation date;

~~(16)~~~~(15)~~ "Employee benefits" means nonmandated payments by an approved company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k), or similar plans;

~~(17)~~~~(16)~~ "Enhanced incentive counties" means counties certified by the authority pursuant to KRS 154.32-050;

~~(18)~~ **(a) "Facility" means, solely as it relates to eligible companies conducting coal mining or processing activities, a specific site in the Commonwealth at which equipment is used in a process that:**

**1. Mines coal by physically removing it from the earth; or**

**2. Increases the commercial value of coal through processing.**

**(b) "Facility" includes the physical plant structure where the mining or processing described in paragraph (a) of this subsection occurs;**

~~(19)~~~~(17)~~ "Final approval" means the action taken by the authority authorizing the eligible company to receive incentives under this subchapter;

~~(20)~~~~(18)~~ "Full-time job" means a job held by a person who:

(a) Is a Kentucky resident subject to the Kentucky individual income tax imposed by KRS 141.020; and

(b) Is required to work a minimum of thirty-five (35) hours per week;

~~(21)~~~~(19)~~ "Incentives" means the incentives available under this subchapter, as listed in KRS 154.32-020(3);

~~(22)~~~~(20)~~ "Job target" means the annual average number of new full-time jobs that the approved company commits to create and maintain at the economic development project, which shall not be less than ten (10) new full-time jobs;

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

~~(24)~~~~(22)~~ "Kentucky gross profits" has the same meaning as in KRS 141.0401;

~~(25)~~~~(23)~~ "Lease agreement" means an agreement between an approved company and an unrelated entity conveying the right to use property, plant, or equipment, the terms of which reflect an arms' length transaction. "Lease agreement" does not include a capital lease;

~~(26)~~~~(24)~~ "Leased project" means an economic development project site occupied by an approved company pursuant to a lease agreement;

~~(27)~~~~(25)~~ "Loan agreement" means the agreement between the authority and a preliminarily approved company establishing the terms and conditions of an advance disbursement;

~~(28)~~~~(26)~~ "Manufacturing" means any activity involving the processing, assembling, or

production of any property, including the processing resulting in a change in the conditions of the property and any activity related to the processing, assembling, or production of property. "Manufacturing" also includes storage, warehousing, distribution, and office activities related to the manufacturing activity;

~~(29)~~~~(27)~~ "Minimum wage target" means the average minimum wage amount that the approved company commits to meet for all new full-time jobs created and maintained as a result of the economic development project, which shall not be less than:

- (a) One hundred twenty-five percent (125%) of the federal minimum wage in enhanced incentive counties; or
- (b) One hundred fifty percent (150%) of the federal minimum wage in all other counties;

~~(30)~~~~(28)~~ (a) "Nonretail service or technology" means any activity where:

- 1. Service or technology is:
  - a. Provided predominantly outside the Commonwealth; and
  - b. Designed to serve a multistate, national, or international market; or
- 2. Service or technology is provided by a national or regional headquarters as a support to other business activities conducted by the eligible company.

(b) "Nonretail service or technology" includes but is not limited to call centers, centralized administrative or processing centers, telephone or Internet sales order or processing centers, distribution or fulfillment centers, data processing centers, research and development facilities, and other similar activities;

~~(31)~~~~(29)~~ "Owned project" means an economic development project owned in fee simple by the approved company or an affiliate, or possessed by the approved company or an affiliate pursuant to a capital lease;

~~(32)~~~~(30)~~ "Preliminary approval" means the action taken by the authority preliminarily

approving an eligible company for incentives under this subchapter;

~~(33)~~~~(31)~~ "Rent" means the actual annual rent or fee paid by an approved company under a lease agreement;

~~(34)~~~~(32)~~ "Start-up costs" means costs incurred to furnish and equip a facility for an economic development project, including costs incurred for:

- (a) Computers, furnishings, office equipment, manufacturing equipment, and fixtures;
  - (b) The relocation of out-of-state equipment; and
  - (c) Nonrecurring costs of fixed telecommunications equipment;
- as certified to the authority in accordance with KRS 154.32-030;

~~(35)~~~~(33)~~ "Tax incentive agreement" means the agreement entered into pursuant to KRS 154.32-040 between the authority and an approved company; and

~~(36)~~~~(34)~~ "Term" means the period of time for which a tax incentive agreement may be in effect, which shall not exceed fifteen (15) years for an economic development project located in an enhanced incentive county, or ten (10) years for an economic development project not located in any other county.

➔Section 3. KRS 154.32-020 is amended to read as follows:

(1) The purposes of this subchapter are:

- (a) To provide incentives for eligible companies and to encourage the location or expansion of manufacturing facilities, agribusiness operations, nonretail service or technology facilities, coal mining or processing facilities, and regional or national corporate headquarters in the Commonwealth to advance the public purposes of:
  - 1. Creation of new jobs that, but for the incentives offered by the authority, would not exist within the Commonwealth;
  - 2. Creation of new sources of tax revenues for the support of public services provided by the Commonwealth; and

3. Improvement in the quality of life for Kentucky citizens through the creation of sustainable jobs with higher salaries; and
- (b) To provide enhanced incentives for companies that locate in enhanced incentive counties in recognition of the depressed economic conditions in those counties and the increased need for the growth and development caused by the depressed economic conditions.
- (2) (a) To qualify for the incentives provided by subsection (3) of this section, an approved company shall:
    1. Incur eligible costs of at least one hundred thousand dollars (\$100,000);
    2. Create at least ten (10) new full-time jobs and maintain an annual average number of at least ten (10) new full-time jobs; and
    3. a. Pay at least ninety percent (90%) of all new full-time employees whose jobs were created as a result of the economic development project a minimum wage of at least one hundred twenty-five percent (125%) of the federal minimum wage in enhanced incentive counties, and one hundred fifty percent (150%) of the federal minimum wage in other counties throughout the term of the economic development project; and
    - b. Provide employee benefits for all new full-time jobs equal to at least fifteen percent (15%) of the minimum wage target established by the tax incentive agreement. If the eligible company does not provide employee benefits equal to at least fifteen percent (15%) of the minimum wage target established by the tax incentive agreement, the eligible company may still qualify for incentives if it provides the full-time employees hired as a result of the economic development project total hourly compensation equal to or greater than one hundred fifteen percent (115%) of the

minimum wage target established in the tax incentive agreement through increased hourly wages combined with employee benefits.

- (b) To qualify for the advance disbursement provided by KRS 154.32-080, an approved company shall commit to meeting the job and wage requirements established by paragraph (a) of this subsection, and shall provide documentation indicating that the proposed economic development project will require investment of at least five hundred million dollars (\$500,000,000).
- (3) The incentives available under this subchapter are as follows:
  - (a) Tax credits 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 economic development project, as set forth in KRS 141.415 and 154.32-070;
  - (b) Authorization for the approved company to impose a wage assessment against the gross wages of each new employee subject to the Kentucky income tax as provided in KRS 154.32-090; and
  - (c) For economic development projects with an investment of more than five hundred million dollars (\$500,000,000), an advance disbursement as provided in KRS 154.32-080.
- (4) The General Assembly hereby finds and declares that the authority granted in this subchapter and the purposes accomplished hereby are proper governmental and public purposes for which public moneys may be expended, and that the inducement of the location of economic development projects within the Commonwealth is of paramount importance to the economic well-being of the Commonwealth.

→Section 4. KRS 154.32-030 is amended to read as follows:

- (1) The application, approval, and review process under this subchapter shall be as follows:
  - (a) An eligible company with a proposed economic development project may submit an application to the authority. The application shall include the information required by subsection (3) of this section;
  - (b)
    1. Upon review of the application and any additional information submitted, the authority may, by resolution, give preliminary approval to an eligible company and authorize the negotiation and execution of a memorandum of agreement. The memorandum of agreement shall establish a preliminary job target, minimum wage target, including employee benefits, and maximum total approved cost for the economic development project, and shall only allow the recovery of eligible costs incurred after preliminary approval. Upon preliminary approval, the preliminarily approved company may undertake the project in accordance with the memorandum of agreement, and may begin to hire employees that may be counted toward the minimum full-time job requirements established by the memorandum of agreement.
    2. If the preliminary approval includes an advance disbursement, a separate loan agreement shall also be negotiated establishing the terms for the advance disbursement in accordance with KRS 154.32-080;
  - (c) After preliminary approval but before final approval, the authority shall post the preliminarily approved company's name, the location of the economic development project, and the incentives that have been preliminarily approved on the Cabinet for Economic Development's Web site;
  - (d) The preliminarily approved company shall submit any documentation required by the authority upon request of the authority;

- (e) To obtain final approval, the preliminarily approved company shall submit:
1. Documentation required by the authority to confirm that the requirements established by the memorandum of agreement have been met; and
  2. Documentation of official action taken by a local governmental entity detailing the manner and level of local contribution, if applicable.

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 tax incentive agreement between the authority and the approved company pursuant to KRS 154.32-040. The tax incentive agreement shall establish an activation date, which shall be within two (2) years of final approval;

- (f) 1. On or before the activation date, the approved company shall notify the authority of its intention to activate the tax incentive agreement. The approved company shall submit:
- a. Documentation that it has met the minimum full-time job, minimum investment, and minimum wage and employee benefits requirements established by KRS 154.32-020 as of the date of activation; and
  - b. The confirmed approved costs incurred as of the date of activation, which shall be the total eligible costs that may be recovered by the approved company.
2. If the approved company fails to meet any of the minimum investment, full-time job, or wage requirements, including employee benefits, established by KRS 154.32-020 on the activation date, the tax incentive agreement shall be canceled and the approved company shall not be eligible for incentives.

3. If an approved company meets the minimum investment, full-time job, and wage requirements, including employee benefits, established by KRS 154.32-020, but fails to meet higher job targets and minimum wage targets, including employee benefits, established in the tax incentive agreement, then the provisions of subsection (4) of this section shall apply in determining the incentives for which the approved company qualifies.
4. Upon activation of a tax incentive agreement, the authority shall notify the department, and shall provide the department with the information necessary to monitor and track the incentives taken by the approved company; and
  - (g) 1. The authority shall monitor the tax incentive agreement at least annually, and the approved company shall submit all documentation necessary for the authority to monitor the agreement.
  2. The authority shall, based on the documentation provided, confirm that the approved company is in continued compliance with the provisions of the tax incentive agreement and, therefore, eligible for incentives.
  3. Upon annual review, if the approved company meets the minimum job and wage requirements, including employee benefits, established by KRS 154.32-020, but fails to meet the job target and minimum wage target, including employee benefits, established in the tax incentive agreement, then the provisions of subsection (4) of this section shall apply in determining the incentives for which the approved company qualifies in any year.
  4. 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

incentives by the approved company. If, at any time during the term of the tax incentive agreement, an approved company becomes ineligible for incentives, the authority shall notify the department, and the department shall discontinue the availability of incentives for the approved company.

- (2) (a) The authority may establish procedures and standards for the review and approval of eligible companies and their economic development projects through the promulgation of administrative regulations in accordance with KRS Chapter 13A.
- (b) Standards to be used by the authority in reviewing and approving an eligible company and its economic development project shall include but not be limited to:
1. The creditworthiness of the eligible company;
  2. The proposed capital investment to be made;
  3. The number of new full-time jobs to be provided for the residents of the Commonwealth and the wages to be paid;
  4. Support of the local community; and
  5. The likelihood of the economic success of the economic development project.
- (3) The application shall include but not be limited to:
- (a) The name of the applicant and identification of any affiliates of the applicant who will have some relation to the economic development project;
  - (b) A description of the economic development project, including its location, the total investment in the economic development project, and total proposed eligible costs;
  - (c) The projected number of new full-time jobs to be created as a result of the economic development project and identification of any affiliates who may

- employ persons hired to fill those jobs;
- (d) The number of existing full-time jobs at the site of the economic development project on the date of the application and a description and breakdown of the relevant affiliated employers;
  - (e) Proposed wage and employee benefit amounts for the new full-time jobs to be created as a result of the proposed economic development project;
  - (f) For proposed economic development projects new to the Commonwealth:
    - 1. Other than new coal mining facilities, certification by the eligible company that the economic development project could reasonably and efficiently locate outside of the Commonwealth and, without the incentives offered by the authority, the eligible company would likely locate outside the Commonwealth; and
    - 2. Consisting of new coal mining facilities, certification by the eligible company that the economic development project would likely not open without the incentives offered by the authority;
  - (g) For eligible companies with an existing location in the Commonwealth considering an expansion, certification that the tax incentives are necessary for the expansion to occur;
  - (h) A letter of support from a local governmental entity in the city or county where the economic development project will be located; and
  - (i) Any other information the authority may require.
- (4) (a) An approved company that meets the minimum job and wage requirements, including employee benefits established by KRS 154.32-020, but fails to meet the job target and minimum wage target, including employee benefits established by the tax incentive agreement, shall be eligible to receive the incentives authorized by the tax incentive agreement as provided in this subsection.

- (b) If, upon activation or annual review, an approved company achieves at least ninety percent (90%) of both the job target and minimum wage target, including employee benefits established by the tax incentive agreement, and no other default has occurred, then the approved company shall be eligible to receive full incentives as provided in the tax incentive agreement.
- (c) If, upon activation or annual review, an approved company achieves less than ninety percent (90%) of either the job target or minimum wage target, including employee benefits established in the tax incentive agreement, and no other default has occurred, then the incentives available to the approved company for the following year shall be reduced by a percentage equal to the percentage representing the difference between the job target or minimum wage target, including employee benefits established in the tax incentive agreement, and the actual average number of full-time jobs or average wage, including employee benefits, paid. If both the number of actual average full-time jobs and average wages paid, including employee benefits, are below ninety percent (90%) of the targets on the same measurement date, then the greater percentage reduction of the two (2) shall be applied rather than reducing the incentives available by the sum of the two (2).
- (d) If, upon annual review, either the actual number of new full-time jobs or the average wages paid for those jobs, including employee benefits, is less than the minimum requirements established by KRS 154.32-020, then the economic development project may be suspended automatically or, with approval of the authority, terminated.

➔Section 5. KRS 154.32-060 is amended to read as follows:

- (1) The authority shall not approve an economic development project that otherwise meets the requirements of this subchapter if the economic development project will result in the replacement of facilities existing in the state except as provided in this

section.

- (2) The authority may approve an economic development project that:
- (a) Rehabilitates an existing facility used for manufacturing, *coal mining or processing*, agribusiness, or nonretail service or technology, or as a national or regional corporate headquarters, if:
1. The facility has not been in operation for a period of ninety (90) or more consecutive days; or
  2.
    - a. The current occupant of the facility has advertised a notice of closure; and
    - b. The eligible company proposing the economic development project is not an affiliate of the current occupant of the facility; or
  3.
    - a. The facility is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction; and
    - b. The title to the facility prior to the sale is not vested in the eligible company or an affiliate of the eligible company;
- (b) Replaces an existing manufacturing, *coal mining or processing*, agribusiness, nonretail service or technology, or national or regional corporate headquarters facility if:
1.
    - a. Title to the facility:
      - i. Is held by exercise of the power of eminent domain; or
      - ii. May be taken pursuant to a nonappealable judgment granting authority to exercise the power of eminent domain; and
    - b. Normal operations at the facility cannot be resumed within twelve (12) months; or
  2. The facility has been damaged or destroyed by fire or other casualty to

the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

- (c) Replaces an existing facility located in the same county if the existing facility cannot be expanded due to the unavailability of real estate at or adjacent to the facility to be replaced. Any economic development project satisfying the requirements of this paragraph shall be eligible for incentives under this subchapter only to the extent of the expansion. No incentives shall be available for the equivalent of the facility to be replaced or rehabilitated.
- (3) The authority shall not approve an economic development project under this section which results in a lease abandonment or lease termination by the approved company without the consent of the lessor.

➔Section 6. The Cabinet for Economic Development shall work in conjunction with the Kentucky World Trade Center, federal trade agencies, national, state, and local chambers of commerce, the Commonwealth's international representative offices operated by the Cabinet in Asia and Europe, and other interested parties to promote increased exports of Kentucky coal to the greatest extent possible. These efforts shall include but not be limited to raising awareness of export opportunities among Kentucky coal companies and related industries through informational reports, training, and seminars, and active promotion of Kentucky coal and coal-related industries in the national and international energy marketplace.