

1 AN ACT relating to economic development incentives.

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

3 ➔Section 1. KRS 154.32-010 is amended to read as follows:

- 4 (1) "Activation date" means the date established in the tax incentive agreement that is
5 within two (2) years of final approval;
- 6 (2) "Advance disbursement" means the disbursement of incentives prior to the
7 activation date;
- 8 (3) "Affiliate" has the same meaning as in KRS 154.48-010 and, in addition, shall
9 include two (2) or more limited liability companies if the same persons own more
10 than fifty percent (50%) of the capital interest or are entitled to more than fifty
11 percent (50%) of the capital profits in the limited liability companies;
- 12 (4) "Agribusiness" means the processing of raw agricultural products, including but not
13 limited to timber and industrial hemp, or the performance of value-added functions
14 with regard to raw agricultural products;
- 15 (5) "Approved company" means an eligible company that has received final approval to
16 receive incentives under this subchapter;
- 17 (6) "Approved costs" means the amount of eligible costs approved by the authority at
18 final approval;
- 19 (7) "Authority" means the Kentucky Economic Development Finance Authority
20 established by KRS 154.20-010;
- 21 (8) "Capital lease" means a lease classified as a capital lease by the Statement of
22 Financial Accounting Standards No. 13, Accounting for Leases, issued by the
23 Financial Accounting Standards Board, November 1976, as amended;
- 24 (9) "Commonwealth" means the Commonwealth of Kentucky;
- 25 (10) "Confirmed approved costs" means:
26 (a) For owned economic development projects, the documented eligible costs
27 incurred on or before the activation date; or

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

6 For both owned and leased economic development projects, "confirmed approved

7 costs" may be less than approved costs, but shall not be more than approved costs;

8 (11) "Department" means the Department of Revenue;

9 (12) "Economic development project" means:

- 10 (a) 1. The acquisition, leasing, or construction of a new facility; or
- 11 2. The acquisition, leasing, rehabilitation, or expansion of an existing
- 12 facility; and

13 (b) The installation and equipping of the facility;

14 by an eligible company. "Economic development project" does not include any

15 economic development project that will result in the replacement of facilities

16 existing in the Commonwealth, except as provided in KRS 154.32-060;

17 (13) (a) "Eligible company" means any corporation, limited liability company,

18 partnership, limited partnership, sole proprietorship, business trust, or any

19 other entity with a proposed economic development project that is engaged in

20 or is planning to be engaged in one (1) or more of the following activities

21 within the Commonwealth:

- 22 1. Manufacturing;
- 23 2. Agribusiness;
- 24 3. Nonretail service or technology; or
- 25 4. National or regional headquarters operations, regardless of the
- 26 underlying business activity of the company.

27 (b) "Eligible company" does not include companies where the primary activity to

1 be conducted within the Commonwealth is forestry, fishing, mining, coal or
2 mineral processing, the provision of utilities, construction, wholesale trade,
3 retail trade, real estate, rental and leasing, educational services,
4 accommodation and food services, or public administration services;

5 (14) "Eligible costs" means:

6 (a) For owned economic development projects:

- 7 1. Start-up costs;
- 8 2. Obligations incurred for labor and amounts paid to contractors,
9 subcontractors, builders, and materialmen in connection with the
10 economic development project;
- 11 3. The cost of acquiring land or rights in land and any cost incidental
12 thereto, including recording fees;
- 13 4. The cost of contract bonds and of insurance of all kinds that may be
14 required or necessary for completion of an economic development
15 project which is not paid by a contractor or otherwise provided for;
- 16 5. All costs of architectural and engineering services, including test
17 borings, surveys, estimated plans and specifications, preliminary
18 investigations, and supervision of construction, as well as for the
19 performance of all the duties required for construction of the economic
20 development project;
- 21 6. All costs which are required to be paid under the terms of any contract
22 for the economic development project;
- 23 7. All costs incurred for construction activities, including site tests and
24 inspections; subsurface site work; excavation; removal of structures,
25 roadways, cemeteries, and other surface obstructions; filling, grading,
26 and providing drainage and storm water retention; installation of utilities
27 such as water, sewer, sewage treatment, gas, electric, communications,

1 and similar facilities; off-site construction of utility extensions to the
2 boundaries of the real estate; construction and installation of railroad
3 spurs as needed to connect the economic development project to existing
4 railways; or similar activities as the authority may determine necessary
5 for construction of the economic development project; and

6 8. All other costs of a nature comparable to those described above; and

7 (b) For leased economic development projects:

8 1. Start-up costs; and

9 2. Fifty percent (50%) of the estimated annual rent for each year of the tax
10 incentive agreement.

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

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

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

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

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

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

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

26 (19) "Incentives" means the incentives available under this subchapter, as listed in KRS
27 154.32-020(3);

- 1 (20) "Job target" means the annual average number of new full-time jobs that the
2 approved company commits to create and maintain at the economic development
3 project, which shall not be less than ten (10) new full-time jobs;
- 4 (21) "Kentucky gross receipts" has the same meaning as in KRS 141.0401;
- 5 (22) "Kentucky gross profits" has the same meaning as in KRS 141.0401;
- 6 (23) "Lease agreement" means an agreement between an approved company and an
7 unrelated entity conveying the right to use property, plant, or equipment, the terms
8 of which reflect an arms' length transaction. "Lease agreement" does not include a
9 capital lease;
- 10 (24) "Leased project" means an economic development project site occupied by an
11 approved company pursuant to a lease agreement;
- 12 (25) "Loan agreement" means the agreement between the authority and a preliminarily
13 approved company establishing the terms and conditions of an advance
14 disbursement;
- 15 (26) "Manufacturing" means any activity involving the processing, assembling, or
16 production of any property, including the processing resulting in a change in the
17 conditions of the property and any activity related to the processing, assembling, or
18 production of property. "Manufacturing" also includes storage, warehousing,
19 distribution, and office activities related to the manufacturing activity;
- 20 (27) (a) "Minimum ***weekly*** wage~~[target]~~" means the~~[average]~~ minimum ***weekly*** wage
21 amount that the approved company commits to meet for all new full-time jobs
22 created and maintained as a result of the economic development project,
23 which ***at the time of application,*** shall not be less than ***the average weekly***
24 ***wage from the Quarterly Census of Employment and Wages published by***
25 ***the United States Department of Labor, Bureau of Statistics, for the most***
26 ***recently available quarter for the county in which the economic***
27 ***development project will be located and shall include data for total private***

1 employment, all employees, all establishment sizes, and across all
 2 industries.

3 (b) "Minimum weekly wage" does not include any wages for work performed
 4 in excess of forty (40) hours[

5 ~~(a) One hundred twenty five percent (125%) of the federal minimum wage in~~
 6 ~~enhanced incentive counties; or~~

7 ~~(b) One hundred fifty percent (150%) of the federal minimum wage in all other~~
 8 ~~counties];~~

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

10 1. Service or technology is:

11 a. Provided predominantly outside the Commonwealth; and

12 b. Designed to serve a multistate, national, or international market; or

13 2. Service or technology is provided by a national or regional headquarters
 14 as a support to other business activities conducted by the eligible
 15 company.

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

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

23 (30) "Preliminary approval" means the action taken by the authority preliminarily
 24 approving an eligible company for incentives under this subchapter;

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

27 (32) "Start-up costs" means costs incurred to furnish and equip a facility for an economic

1 development project, including costs incurred for:

2 (a) Computers, furnishings, office equipment, manufacturing equipment, and
3 fixtures;

4 (b) The relocation of out-of-state equipment; and

5 (c) Nonrecurring costs of fixed telecommunications equipment;

6 as certified to the authority in accordance with KRS 154.32-030;

7 (33) "Tax incentive agreement" means the agreement entered into pursuant to KRS
8 154.32-040 between the authority and an approved company; and

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

13 ➔Section 2. KRS 154.32-020 is amended to read as follows:

14 (1) The purposes of this subchapter are:

15 (a) To provide incentives for eligible companies and to encourage the location or
16 expansion of manufacturing facilities, agribusiness operations, nonretail
17 service or technology facilities, and regional or national corporate
18 headquarters in the Commonwealth to advance the public purposes of:

19 1. Creation of new jobs that, but for the incentives offered by the authority,
20 would not exist within the Commonwealth;

21 2. Creation of new sources of tax revenues for the support of public
22 services provided by the Commonwealth; and

23 3. Improvement in the quality of life for Kentucky citizens through the
24 creation of sustainable jobs with higher salaries; and

25 (b) To provide enhanced incentives for companies that locate in enhanced
26 incentive counties in recognition of the depressed economic conditions in
27 those counties and the increased need for the growth and development caused

1 by the depressed economic conditions.

2 (2) (a) To qualify for the incentives provided by subsection (3) of this section, an
3 approved company shall:

4 1. Incur eligible costs of at least one hundred thousand dollars (\$100,000);
5 2. Create at least ten (10) new full-time jobs and maintain an annual
6 average number of at least ten (10) new full-time jobs; and

7 3. a. Pay ~~{at least ninety percent (90%) of }~~all new full-time employees
8 whose jobs were created as a result of the economic development
9 project **at least the minimum weekly wage**~~{a minimum wage of at
10 least one hundred twenty five percent (125%) of the federal
11 minimum wage in enhanced incentive counties, and one hundred
12 fifty percent (150%) of the federal minimum wage in other
13 counties}~~ throughout the term of the economic development
14 project; and

15 b. Provide employee benefits for all new full-time jobs equal to at
16 least fifteen percent (15%) of the minimum **weekly** wage ~~{target
17 }established by the tax incentive agreement. If the eligible
18 company does not provide employee benefits equal to at least
19 fifteen percent (15%) of the minimum **weekly** wage~~{target}~~
20 established by the tax incentive agreement, the eligible company
21 may still qualify for incentives if it provides the full-time
22 employees hired as a result of the economic development project
23 total **weekly**~~{hourly}~~ compensation equal to or greater than one
24 hundred fifteen percent (115%) of the minimum **weekly** wage~~{
25 target}~~ established in the tax incentive agreement through
26 increased **weekly**~~{hourly}~~ wages combined with employee benefits.~~

27 (b) To qualify for the advance disbursement provided by KRS 154.32-080, an

1 approved company shall commit to meeting the job and weekly wage
2 requirements established by paragraph (a) of this subsection, and shall provide
3 documentation indicating that the proposed economic development project
4 will require investment of at least five hundred million dollars
5 (\$500,000,000).

6 (3) The incentives available under this subchapter are as follows:

7 (a) Tax credits of up to one hundred percent (100%) of the Kentucky income tax
8 imposed under KRS 141.020 or 141.040 and the limited liability entity tax
9 imposed under KRS 141.0401 on the income, Kentucky gross profits, or
10 Kentucky gross receipts of the approved company generated by or arising
11 from the economic development project, as set forth in KRS 141.415 and
12 154.32-070;

13 (b) Authorization for the approved company to impose a wage assessment against
14 the gross wages of each new employee subject to the Kentucky income tax as
15 provided in KRS 154.32-090; and

16 (c) For economic development projects with an investment of more than five
17 hundred million dollars (\$500,000,000), an advance disbursement as provided
18 in KRS 154.32-080.

19 (4) The General Assembly hereby finds and declares that the authority granted in this
20 subchapter and the purposes accomplished hereby are proper governmental and
21 public purposes for which public moneys may be expended, and that the
22 inducement of the location of economic development projects within the
23 Commonwealth is of paramount importance to the economic well-being of the
24 Commonwealth.

25 ➔Section 3. KRS 154.32-030 is amended to read as follows:

26 (1) The application, approval, and review process under this subchapter shall be as
27 follows:

- 1 (a) An eligible company with a proposed economic development project may
2 submit an application to the authority. The application shall include the
3 information required by subsection (3) of this section;
- 4 (b) 1. Upon review of the application and any additional information
5 submitted, the authority may, by resolution, give preliminary approval to
6 an eligible company and authorize the negotiation and execution of a
7 memorandum of agreement. The memorandum of agreement shall
8 establish a preliminary job target, minimum weekly wage~~target~~,
9 including employee benefits, and maximum total approved cost for the
10 economic development project, and shall only allow the recovery of
11 eligible costs incurred after preliminary approval. Upon preliminary
12 approval, the preliminarily approved company may undertake the project
13 in accordance with the memorandum of agreement, and may begin to
14 hire employees that may be counted toward the minimum full-time job
15 requirements established by the memorandum of agreement.
- 16 2. If the preliminary approval includes an advance disbursement, a separate
17 loan agreement shall also be negotiated establishing the terms for the
18 advance disbursement in accordance with KRS 154.32-080;
- 19 (c) After preliminary approval but before final approval, the authority shall post
20 the preliminarily approved company's name, the location of the economic
21 development project, and the incentives that have been preliminarily approved
22 on the Cabinet for Economic Development's Web site;
- 23 (d) The preliminarily approved company shall submit any documentation required
24 by the authority upon request of the authority;
- 25 (e) To obtain final approval, the preliminarily approved company shall submit:
- 26 1. Documentation required by the authority to confirm that the
27 requirements established by the memorandum of agreement have been

1 met; and

2 2. Documentation of official action taken by a local governmental entity
3 detailing the manner and level of local contribution, if applicable.

4 Upon review and confirmation of the documentation, the authority may, by
5 resolution, give final approval to the preliminarily approved company, and
6 authorize the execution of a tax incentive agreement between the authority and
7 the approved company pursuant to KRS 154.32-040. The tax incentive
8 agreement shall establish an activation date, which shall be within two (2)
9 years of final approval;

10 (f) 1. On or before the activation date, the approved company shall notify the
11 authority of its intention to activate the tax incentive agreement. The
12 approved company shall submit:

13 a. Documentation that it has met the minimum full-time job,
14 minimum investment, and minimum weekly wage and employee
15 benefits requirements established by KRS 154.32-020 as of the
16 date of activation; and

17 b. The confirmed approved costs incurred as of the date of activation,
18 which shall be the total eligible costs that may be recovered by the
19 approved company.

20 2. If the approved company fails to meet any of the minimum investment,
21 full-time job, or weekly wage requirements, including employee
22 benefits, established by KRS 154.32-020 on the activation date, the tax
23 incentive agreement shall be canceled and the approved company shall
24 not be eligible for incentives.

25 3. ~~If an approved company meets the minimum investment, full-time job,~~
26 ~~and wage requirements, including employee benefits, established by~~
27 ~~KRS 154.32-020, but fails to meet higher job targets and minimum wage~~

1 ~~targets, including employee benefits, established in the tax incentive~~
2 ~~agreement, then the provisions of subsection (4) of this section shall~~
3 ~~apply in determining the incentives for which the approved company~~
4 ~~qualifies.~~

5 4.—} Upon activation of a tax incentive agreement, the authority shall notify
6 the department, and shall provide the department with the information
7 necessary to monitor and track the incentives taken by the approved
8 company; and

9 (g) 1. The authority shall monitor the tax incentive agreement at least annually,
10 and the approved company shall submit all documentation necessary for
11 the authority to monitor the agreement.

12 2. The authority shall, based on the documentation provided, confirm that
13 the approved company is in continued compliance with the provisions of
14 the tax incentive agreement and, therefore, eligible for incentives.

15 3. ~~{Upon annual review, if the approved company meets the minimum job~~
16 ~~and wage requirements, including employee benefits, established by~~
17 ~~KRS 154.32-020, but fails to meet the job target and minimum wage~~
18 ~~target, including employee benefits, established in the tax incentive~~
19 ~~agreement, then the provisions of subsection (4) of this section shall~~
20 ~~apply in determining the incentives for which the approved company~~
21 ~~qualifies in any year.~~

22 4.—} Upon final approval, the authority shall notify the department that an
23 approved company is eligible for incentives and shall provide the
24 department with the information necessary to monitor the use of
25 incentives by the approved company. If, at any time during the term of
26 the tax incentive agreement, an approved company becomes ineligible
27 for incentives, the authority shall notify the department, and the

1 department shall discontinue the availability of incentives for the
2 approved company.

3 (2) (a) The authority may establish procedures and standards for the review and
4 approval of eligible companies and their economic development projects
5 through the promulgation of administrative regulations in accordance with
6 KRS Chapter 13A.

7 (b) Standards to be used by the authority in reviewing and approving an eligible
8 company and its economic development project shall include but not be
9 limited to:

- 10 1. The creditworthiness of the eligible company;
- 11 2. The proposed capital investment to be made;
- 12 3. The number of new full-time jobs to be provided for the residents of the
13 Commonwealth and the minimum weekly wages to be paid;
- 14 4. Support of the local community; and
- 15 5. The likelihood of the economic success of the economic development
16 project.

17 (3) The application shall include but not be limited to:

18 (a) The name of the applicant and identification of any affiliates of the applicant
19 who will have some relation to the economic development project;

20 (b) A description of the economic development project, including its location, the
21 total investment in the economic development project, and total proposed
22 eligible costs;

23 (c) The projected number of new full-time jobs to be created as a result of the
24 economic development project and identification of any affiliates who may
25 employ persons hired to fill those jobs;

26 (d) The number of existing full-time jobs at the site of the economic development
27 project on the date of the application and a description and breakdown of the

- 1 relevant affiliated employers;
- 2 (e) Proposed wage and employee benefit amounts for the new full-time jobs to be
3 created as a result of the proposed economic development project;
- 4 (f) For proposed economic development projects new to the Commonwealth,
5 certification by the eligible company that the economic development project
6 could reasonably and efficiently locate outside of the Commonwealth and,
7 without the incentives offered by the authority, the eligible company would
8 likely locate outside the Commonwealth;
- 9 (g) For eligible companies with an existing location in the Commonwealth
10 considering an expansion, certification that the tax incentives are necessary for
11 the expansion to occur;
- 12 (h) A letter of support from a local governmental entity in the city or county
13 where the economic development project will be located; and
- 14 (i) Any other information the authority may require.
- 15 (4) ~~[(a) An approved company that meets the minimum job and wage requirements,
16 including employee benefits established by KRS 154.32-020, but fails to meet
17 the job target and minimum wage target, including employee benefits
18 established by the tax incentive agreement, shall be eligible to receive the
19 incentives authorized by the tax incentive agreement as provided in this
20 subsection.~~
- 21 ~~(b) If, upon activation or annual review, an approved company achieves at least
22 ninety percent (90%) of both the job target and minimum wage target,
23 including employee benefits established by the tax incentive agreement, and
24 no other default has occurred, then the approved company shall be eligible to
25 receive full incentives as provided in the tax incentive agreement.~~
- 26 ~~(c) If, upon activation or annual review, an approved company achieves less than
27 ninety percent (90%) of either the job target or minimum wage target,~~

1 including employee benefits established in the tax incentive agreement, and no
2 other default has occurred, then the incentives available to the approved
3 company for the following year shall be reduced by a percentage equal to the
4 percentage representing the difference between the job target or minimum
5 wage target, including employee benefits established in the tax incentive
6 agreement, and the actual average number of full-time jobs or average wage,
7 including employee benefits, paid. If both the number of actual average full-
8 time jobs and average wages paid, including employee benefits, are below
9 ninety percent (90%) of the targets on the same measurement date, then the
10 greater percentage reduction of the two (2) shall be applied rather than
11 reducing the incentives available by the sum of the two (2).

12 (d) If, upon annual review, either the actual number of new full-time jobs or the
13 weekly[average] wages paid for those jobs, plus[including] employee benefits,
14 is less than the minimum requirements established by KRS 154.32-020, then
15 the economic development project may be suspended automatically or, with
16 approval of the authority, terminated.

17 ➔Section 4. KRS 154.32-040 is amended to read as follows:

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

- 23 (1) The maximum approved costs that may be recovered over the term of the tax
24 incentive agreement and the annual maximum for approved costs;
- 25 (2) That the approved company shall provide the authority with all documentation
26 requested in a manner acceptable to the authority;
- 27 (3) Identification of the contribution of the local government to the economic

- 1 development project, if any;
- 2 (4) The activation date, which shall be within two (2) years of final approval;
- 3 (5) That the approved company shall implement the activation date by notifying the
4 authority;
- 5 (6) That the approved company shall provide documentation satisfactory to the
6 authority within the timeframes required by the authority that it has met the
7 minimum employment, minimum investment, and minimum weekly wage
8 requirements, including employee benefits, established by KRS 154.32-020;
- 9 (7) That failure of the approved company to meet any of the minimum job, minimum
10 investment, or minimum weekly wage requirements, including employee benefits,
11 established by KRS 154.32-020, on the activation date shall result in cancellation of
12 the tax incentive agreement;
- 13 (8) The term of the agreement, which shall not exceed fifteen (15) years for an
14 economic development project located in an enhanced incentive county, or ten (10)
15 years for an economic development project located in another county;
- 16 (9) That, if confirmed approved costs are less than the maximum approved costs
17 included in the tax incentive agreement, the confirmed approved costs shall become
18 the maximum amount that may be recovered by the approved company;
- 19 (10) If the economic development project is a leased project, that future rent payments
20 that are included in eligible costs shall be included as confirmed approved costs
21 upon submission of a valid lease agreement executed after preliminary approval;
- 22 (11) Establishment of a job target and minimum weekly wage target, including employee
23 benefits;
- 24 (12) A requirement that the job target and minimum weekly wage~~—target~~,
25 plus~~including~~ employee benefits, be measured:
- 26 (a) On the activation date, against the actual new full-time jobs created and the
27 weekly~~average~~ wages, including employee benefits, paid for those jobs; and

- 1 (b) Annually during each year of the agreement, against the annual average of the
2 new full-time jobs and weekly~~[the average]~~ wages paid for those jobs,
3 including employee benefits;
- 4 (13) A provision requiring the approved company to notify the authority immediately if
5 the approved company sells or otherwise transfers or disposes of the land on which
6 an economic development project is located, if a lease relating to the economic
7 development project is terminated or lapses, or if the approved company ceases or
8 fundamentally alters operations at the economic development project;
- 9 ~~(14) [A provision detailing the reductions in incentives that will occur pursuant to KRS~~
10 ~~154.32-030(4) if an approved company fails to meet its job target or minimum wage~~
11 ~~target, including employee benefits;~~
- 12 ~~(15)]If the tax incentive agreement includes an advance disbursement, incorporation of~~
13 ~~the provisions of the loan agreement or inclusion of the loan agreement as an~~
14 ~~attachment to the tax incentive agreement;~~
- 15 ~~(15)~~~~(16)~~ That the agreement may be assigned by the approved company upon the
16 adoption of a resolution by the authority to that effect;
- 17 ~~(16)~~~~(17)~~ That the approved company shall make available to the authority all of its
18 records pertaining to the economic development project, including but not limited
19 to payroll records, records relating to eligible costs, and any other records pertaining
20 to the economic development project that the authority may require;
- 21 ~~(17)~~~~(18)~~ That the authority may share information with the department for the purposes
22 of monitoring and enforcing the terms of the tax incentive agreement;
- 23 ~~(18)~~~~(19)~~ That, if an approved company fails to comply with its obligations under the
24 tax incentive agreement~~[other than the jobs target or minimum wage target]~~, the
25 authority may take any or all of the following actions:
- 26 (a) Suspend the incentives available to the approved company;
- 27 (b) Terminate the incentives available to the approved company; or

1 (c) Pursue any other remedy set forth in the tax incentive agreement or to which it
2 may be entitled by law; and

3 ~~(19)~~~~(20)~~ Any other provisions not inconsistent with this subchapter and determined to
4 be necessary or appropriate by the parties to the tax incentive agreement.

5 ➔Section 5. KRS 154.32-070 is amended to read as follows:

6 (1) For taxable years beginning after December 31, 2009, an approved company may be
7 eligible for a credit of up to one hundred percent (100%) of the Kentucky income
8 tax imposed under KRS 141.020 or 141.040, and the limited liability entity tax
9 imposed under KRS 141.0401, that would otherwise be owed by the approved
10 company to the Commonwealth for the approved company's taxable year, on the
11 income, Kentucky gross profits, or Kentucky gross receipts of the approved
12 company generated by or arising from the economic development project.

13 (2) The credit allowed the approved company shall be applied against both the income
14 tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax
15 imposed by KRS 141.0401, with credit ordering as provided in KRS 141.0205, for
16 the taxable year for which the tax return of the approved company is filed, subject to
17 the annual maximum set forth in the tax incentive agreement. Any credit not used in
18 the year in which it was first available may be carried forward to subsequent years,
19 provided that no credit may be carried forward beyond the term of the tax incentive
20 agreement.

21 (3) The approved company shall not be required to pay estimated tax payments as
22 prescribed in KRS 141.042 on the Kentucky taxable income, Kentucky gross
23 receipts, or Kentucky gross profits generated by or arising from the eligible project.

24 (4) The credit provided by this section shall be determined as provided in KRS
25 141.415.

26 (5) The amount of incentives allowed in any year shall not exceed the lesser of the tax
27 liability of the approved company related to the economic development project for

1 that year or the annual maximum approved costs set forth in the tax incentive
2 agreement. The incentives shall be allowed for each fiscal year of the approved
3 company during the term of the tax incentive agreement for which a tax return is
4 filed by the approved company.

5 ➔Section 6. Sections 1 to 4 of this Act shall apply to applications preliminarily
6 approved prior to the effective date of this Act.