

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" means the following:
- 9 (a) Members of a family, including only brothers and sisters of the whole or half
10 blood, spouse, ancestors, and lineal descendants of an individual;
- 11 (b) An individual, and a corporation more than fifty percent (50%) in value of the
12 outstanding stock of which is owned, directly or indirectly, by or for that
13 individual;
- 14 (c) An individual, and a limited liability company of which more than fifty
15 percent (50%) of the capital interest or profits are owned or controlled,
16 directly or indirectly, by or for that individual;
- 17 (d) Two (2) corporations which are members of the same controlled group, which
18 includes and is limited to:
- 19 1. One (1) or more chains of corporations connected through stock
20 ownership with a common parent corporation if:
- 21 a. Stock possessing more than fifty percent (50%) of the total
22 combined voting power of all classes of stock entitled to vote or
23 more than fifty percent (50%) of the total value of shares of all
24 classes of stock of each of the corporations, except the common
25 parent corporation, is owned by one (1) or more of the other
26 corporations; and
- 27 b. The common parent corporation owns stock possessing more than

- 1 fifty percent (50%) of the total combined voting power of all
2 classes of stock entitled to vote or more than fifty percent (50%) of
3 the total value of shares of all classes of stock of at least one (1) of
4 the other corporations, excluding, in computing the voting power
5 or value, stock owned directly by the other corporations; or
- 6 2. Two (2) or more corporations if five (5) or fewer persons who are
7 individuals, estates, or trusts own stock possessing more than fifty
8 percent (50%) of the total combined voting power of all classes of stock
9 entitled to vote or more than fifty percent (50%) of the total value of
10 shares of all classes of stock of each corporation, taking into account the
11 stock ownership of each person only to the extent the stock ownership is
12 identical with respect to each corporation;
- 13 (e) A grantor and a fiduciary of any trust;
- 14 (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a
15 grantor of both trusts;
- 16 (g) A fiduciary of a trust and a beneficiary of that trust;
- 17 (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a
18 grantor of both trusts;
- 19 (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value
20 of the outstanding stock of which is owned, directly or indirectly, by or for the
21 trust or by or for a person who is a grantor of the trust;
- 22 (j) A fiduciary of a trust and a limited liability company more than fifty percent
23 (50%) of the capital interest, or the interest in profits, of which is owned
24 directly or indirectly, by or for the trust or by or for a person who is a grantor
25 of the trust;
- 26 (k) A corporation, a partnership, or a limited partnership if the same persons own:
27 1. More than fifty percent (50%) in value of the outstanding stock of the

- 1 corporation; and
- 2 2. More than fifty percent (50%) of the capital interest, or the profits
- 3 interest, in the partnership or limited partnership;
- 4 (l) A corporation and a limited liability company if the same persons own:
- 5 1. More than fifty percent (50%) in value of the outstanding stock of the
- 6 corporation; and
- 7 2. More than fifty percent (50%) of the capital interest or the profits in the
- 8 limited liability company;
- 9 (m) A partnership or limited partnership and a limited liability company if the
- 10 same persons own:
- 11 1. More than fifty percent (50%) of the capital interest or profits in the
- 12 partnership or limited partnership; and
- 13 2. More than fifty percent (50%) of the capital interest or the profits in the
- 14 limited liability company;
- 15 (n) An S corporation and another S corporation if the same persons own more
- 16 than fifty percent (50%) in value of the outstanding stock of each corporation;
- 17 S corporation designation being the same as that designation under the
- 18 Internal Revenue Code of 1986, as amended;
- 19 (o) An S corporation and a C corporation, if the same persons own more than fifty
- 20 percent (50%) in value of the outstanding stock of each corporation; S and C
- 21 corporation designations being the same as those designations under the
- 22 Internal Revenue Code of 1986, as amended; or
- 23 (p) Two (2) or more limited liability companies, if the same persons own more
- 24 than fifty percent (50%) of the capital interest or are entitled to more than fifty
- 25 percent (50%) of the capital profits in the limited liability companies;
- 26 (4) "Agribusiness" means the processing of raw agricultural products, including but not
- 27 limited to timber and industrial hemp, or the performance of value-added functions

- 1 with regard to raw agricultural products;
- 2 (5) "Alternative fuel production" means a Kentucky operation that primarily produces
3 alternative transportation fuels for sale. The alternative fuel production may produce
4 electricity as a by-product if the primary function of the operations remains the
5 production and sale of alternative transportation fuels;
- 6 (6) "Alternative transportation fuels" has the same meaning as in KRS 152.715;
- 7 (7) "Approved company" means an eligible company that has received final approval to
8 receive incentives under this subchapter;
- 9 (8) "Approved costs" means the amount of eligible costs approved by the authority at
10 final approval;
- 11 (9) "Authority" means the Kentucky Economic Development Finance Authority
12 established by KRS 154.20-010;
- 13 (10) "Biomass resources" has the same meaning as in KRS 152.715;
- 14 (11) "Capital lease" means a lease classified as a capital lease by the Statement of
15 Financial Accounting Standards No. 13, Accounting for Leases, issued by the
16 Financial Accounting Standards Board, November 1976, as amended;
- 17 (12) "Carbon dioxide transmission pipeline" means the in-state portion of a pipeline,
18 including appurtenant facilities, property rights, and easements, that is used
19 exclusively for the purpose of transporting carbon dioxide to the point of sale,
20 storage, or other carbon management applications;
- 21 (13) "Commonwealth" means the Commonwealth of Kentucky;
- 22 (14) "Confirmed approved costs" means:
- 23 (a) For owned economic development projects, the documented eligible costs
24 incurred on or before the activation date; or
- 25 (b) For leased economic development projects:
- 26 1. The documented eligible costs incurred on or before the activation date;
27 and

1 2. Estimated rent to be incurred by the approved company throughout the
2 term of the tax incentive agreement.

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

5 (15) "Department" means the Department of Revenue;

6 (16) "Economic development project" means:

7 (a) The acquisition, leasing, or construction of a new facility;

8 (b) The acquisition, leasing, rehabilitation, or expansion of an existing facility; or

9 (c) The installation and equipping of a facility;

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

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

18 1. Manufacturing;

19 2. Agribusiness;

20 3. Nonretail service or technology;

21 4. Headquarters operations, regardless of the underlying business activity
22 of the company;

23 5. Alternative fuel, gasification, energy-efficient alternative fuel, or
24 renewable energy production; or

25 6. Carbon dioxide transmission pipeline.

26 (b) "Eligible company" does not include companies where the primary activity to
27 be conducted within the Commonwealth is forestry, fishing, mining, coal or

1 mineral processing, the provision of utilities, construction, wholesale trade,
2 retail trade, real estate, rental and leasing, educational services,
3 accommodation and food services, or public administration services;

4 (18) "Eligible costs" means:

5 (a) For owned economic development projects:

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

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

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

6 (b) For leased economic development projects:

7 1. Start-up costs;

8 2. Building/leasehold improvements; and

9 3. 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 (19) "Employee benefits" means payments by an approved company for its full-time
16 employees for health insurance, life insurance, dental insurance, vision insurance,
17 defined benefits, 401(k), or similar plans;

18 (20) "Energy-efficient alternative fuel production" means a Kentucky operation that
19 produces for sale energy-efficient alternative fuels;

20 (21) "Energy-efficient alternative fuels" means homogeneous fuels that:

21 (a) Are produced from processes designed to densify feedstock coal, waste coal,
22 or biomass resources; and

23 (b) Have an energy content that is greater than the feedstock coal, waste coal, or
24 biomass resource;

25 (22) "Enhanced incentive counties" means counties certified by the authority pursuant to
26 KRS 154.32-050;

27 (23) "Final approval" means the action taken by the authority authorizing the eligible

- 1 company to receive incentives under this subchapter;
- 2 (24) "Full-time job" means a job held by a person who:
- 3 (a) Is a Kentucky resident subject to the Kentucky individual income tax imposed
- 4 by KRS 141.020; and
- 5 (b) Is required to work a minimum of thirty-five (35) hours per week;
- 6 (25) "Gasification process" means a process that converts any carbon-containing material
- 7 into a synthesis gas composed primarily of carbon monoxide and hydrogen;
- 8 (26) "Gasification production" means a Kentucky operation that primarily produces for
- 9 sale:
- 10 (a) Alternative transportation fuels;
- 11 (b) Synthetic natural gas;
- 12 (c) Chemicals;
- 13 (d) Chemical feedstocks; or
- 14 (e) Liquid fuels;
- 15 from coal, waste coal, coal-processing waste, or biomass resources, through a
- 16 gasification process. The gasification production may produce electricity as a by-
- 17 product if the primary function of the operations remains the production and sale of
- 18 alternative transportation fuels, synthetic natural gas, chemicals, chemical
- 19 feedstocks, or liquid fuels;
- 20 (27) "Headquarters" means the principal office where the principal executives of the
- 21 entity are located and from which other personnel, branches, affiliates, offices, or
- 22 entities are controlled;
- 23 (28) "Incentives" means the incentives available under this subchapter, as listed in KRS
- 24 154.32-020(3);
- 25 (29) "Job target" means the annual average number of new full-time jobs that the
- 26 approved company commits to create and maintain at the economic development
- 27 project, which shall not be less than ten (10) new full-time jobs;

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

1 *in excess of forty (40) hours*[-

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

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

6 (37) (a) "Nonretail service or technology" means any activity where service or
7 technology is provided predominantly outside the Commonwealth and
8 designed to serve a multistate, national, or international market.

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

13 (38) "Owned project" means an economic development project owned in fee simple by
14 the approved company or an affiliate, or possessed by the approved company or an
15 affiliate pursuant to a capital lease;

16 (39) "Preliminary approval" means the action taken by the authority preliminarily
17 approving an eligible company for incentives under this subchapter;

18 (40) "Renewable energy production" means a Kentucky operation that utilizes wind
19 power, biomass resources, landfill methane gas, hydropower, solar power, or other
20 similar renewable resources to generate electricity for sale to unrelated entities;

21 (41) "Rent" means the actual annual rent or fee paid by an approved company under a
22 lease agreement;

23 (42) "Start-up costs" means nonrecurring costs incurred to furnish and equip a facility for
24 an economic development project, including costs incurred for:

25 (a) Computers, furnishings, office equipment, manufacturing equipment, and
26 fixtures;

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

- 1 (c) Cost of fixed telecommunications equipment;
2 as certified to the authority in accordance with KRS 154.32-030;
- 3 (43) "Synthetic natural gas" means the same thing as in KRS 152.715;
- 4 (44) "Tax incentive agreement" means the agreement entered into pursuant to KRS
5 154.32-040 between the authority and an approved company;
- 6 (45) "Term" means the period of time for which a tax incentive agreement may be in
7 effect, which shall not exceed fifteen (15) years for an economic development
8 project located in an enhanced incentive county, or ten (10) years for an economic
9 development project not located in any other county; and
- 10 (46) "Wage" means the per hour earnings of a full-time employee, including wages, tips,
11 overtime, bonuses, and commissions, as reflected on the employee's federal form
12 W-2 wage and tax statement, but excludes employee benefits.

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, headquarters operations, alternative fuel
18 production facilities, gasification production facilities, energy-efficient
19 alternative fuel production facilities, renewable energy production facilities,
20 and carbon dioxide transmission pipelines in the Commonwealth to advance
21 the public purposes of:
- 22 1. Creation of new jobs that, but for the incentives offered by the authority,
23 would not exist within the Commonwealth;
 - 24 2. Creation of new sources of tax revenues for the support of public
25 services provided by the Commonwealth; and
 - 26 3. Improvement in the quality of life for Kentucky citizens through the
27 creation of sustainable jobs with higher salaries; and

- 1 (b) To provide enhanced incentives for companies that locate in enhanced
2 incentive counties in recognition of the depressed economic conditions in
3 those counties and the increased need for the growth and development caused
4 by the depressed economic conditions.
- 5 (2) (a) To qualify for the incentives provided by subsection (3) of this section, an
6 approved company shall:
- 7 1. Incur eligible costs of at least one hundred thousand dollars (\$100,000);
 - 8 2. Create at least ten (10) new full-time jobs and maintain an annual
9 average number of at least ten (10) new full-time jobs; and
 - 10 3. a. Pay ~~at least ninety percent (90%) of~~ all new full-time employees
11 whose jobs were created as a result of the economic development
12 project **at least the minimum weekly wage** ~~[a minimum wage of at~~
13 ~~least one hundred twenty five percent (125%) of the federal~~
14 ~~minimum wage in enhanced incentive counties, and one hundred~~
15 ~~fifty percent (150%) of the federal minimum wage in other~~
16 ~~counties]~~ throughout the term of the economic development
17 project; and
 - 18 b. Provide employee benefits for all new full-time jobs equal to at
19 least fifteen percent (15%) of the minimum **weekly** wage
20 requirement established by **the tax incentive**
21 **agreement** ~~[subdivision a. of this subparagraph].~~ If the eligible
22 company does not provide employee benefits equal to at least
23 fifteen percent (15%) of the minimum **weekly** wage requirement
24 established by subdivision a. of this subparagraph, the eligible
25 company may still qualify for incentives if it provides the full-time
26 employees hired as a result of the economic development project
27 total **weekly** ~~[hourly]~~ compensation equal to or greater than one

1 hundred fifteen percent (115%) of the minimum wage requirement
2 established in the tax incentive agreement~~[subdivision a. of this~~
3 ~~subparagraph]~~ through increased weekly~~[hourly]~~ wages combined
4 with employee benefits.

5 (b) To qualify for the advance disbursement provided by KRS 154.32-080, an
6 approved company shall commit to meeting the job and weekly wage
7 requirements established by paragraph (a) of this subsection, and shall provide
8 documentation indicating that the proposed economic development project
9 will require investment of at least five hundred million dollars
10 (\$500,000,000).

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

12 (a) Tax credits of up to one hundred percent (100%) of the Kentucky income tax
13 imposed under KRS 141.020 or 141.040 and the limited liability entity tax
14 imposed under KRS 141.0401 on the income, Kentucky gross profits, or
15 Kentucky gross receipts of the approved company generated by or arising
16 from the economic development project, as set forth in KRS 141.415 and
17 154.32-070;

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

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

24 (4) The General Assembly hereby finds and declares that the authority granted in this
25 subchapter and the purposes accomplished hereby are proper governmental and
26 public purposes for which public moneys may be expended, and that the
27 inducement of the location of economic development projects within the

1 Commonwealth is of paramount importance to the economic well-being of the
2 Commonwealth.

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

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

6 (a) An eligible company with a proposed economic development project may
7 submit an application to the authority. The application shall include the
8 information required by subsection (3) of this section;

9 (b) 1. Upon review of the application and any additional information
10 submitted, the authority may, by resolution, give preliminary approval to
11 an eligible company and authorize the negotiation and execution of a
12 memorandum of agreement. The memorandum of agreement shall
13 establish a preliminary job target, minimum weekly wage~~target~~,
14 including employee benefits, and maximum total approved cost for the
15 economic development project, and shall only allow the recovery of
16 eligible costs incurred after preliminary approval. Upon preliminary
17 approval, the preliminarily approved company may undertake the project
18 in accordance with the memorandum of agreement, and may begin to
19 hire employees that may be counted toward the minimum full-time job
20 requirements established by the memorandum of agreement.

21 2. If the preliminary approval includes an advance disbursement, a separate
22 loan agreement shall also be negotiated establishing the terms for the
23 advance disbursement in accordance with KRS 154.32-080;

24 (c) After preliminary approval but before final approval, the authority shall post
25 the preliminarily approved company's name, the location of the economic
26 development project, and the incentives that have been preliminarily approved
27 on the Cabinet for Economic Development's Web site;

1 (d) The preliminarily approved company shall submit any documentation required
2 by the authority upon request of the authority;

3 (e) To obtain final approval, the preliminarily approved company shall submit:

4 1. Documentation required by the authority to confirm that the
5 requirements established by the memorandum of agreement have been
6 met; and

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

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

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

18 a. Documentation that it has met the minimum full-time job,
19 minimum investment, and minimum weekly wage and employee
20 benefits requirements established by KRS 154.32-020 as of the
21 date of activation; and

22 b. The confirmed approved costs incurred as of the date of activation,
23 which shall be the total eligible costs that may be recovered by the
24 approved company.

25 2. If the approved company fails to meet any of the minimum investment,
26 full-time job, or weekly wage requirements, including employee
27 benefits, established by KRS 154.32-020 on the activation date, the tax

1 incentive agreement shall be canceled and the approved company shall
2 not be eligible for incentives.

3 3. ~~If an approved company meets the minimum investment, full-time job,~~
4 ~~and wage requirements, including employee benefits, established by~~
5 ~~KRS 154.32-020, but fails to meet higher job targets and minimum wage~~
6 ~~targets, including employee benefits, established in the tax incentive~~
7 ~~agreement, then the provisions of subsection (4) of this section shall~~
8 ~~apply in determining the incentives for which the approved company~~
9 ~~qualifies.~~

10 4. ~~Upon activation of a tax incentive agreement, the authority shall notify~~
11 ~~the department, and shall provide the department with the information~~
12 ~~necessary to monitor and track the incentives taken by the approved~~
13 ~~company; and~~

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

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

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

27 4. ~~Upon final approval, the authority shall notify the department that an~~

1 approved company is eligible for incentives and shall provide the
2 department with the information necessary to monitor the use of
3 incentives by the approved company. If, at any time during the term of
4 the tax incentive agreement, an approved company becomes ineligible
5 for incentives, the authority shall notify the department, and the
6 department shall discontinue the availability of incentives for the
7 approved company.

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

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

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

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

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

25 (b) A description of the economic development project, including its location, the
26 total investment in the economic development project, and total proposed
27 eligible costs;

- 1 (c) The projected number of new full-time jobs to be created as a result of the
2 economic development project and identification of any affiliates who may
3 employ persons hired to fill those jobs;
- 4 (d) The number of existing full-time jobs at the site of the economic development
5 project on the date of the application and a description and breakdown of the
6 relevant affiliated employers;
- 7 (e) Proposed wage and employee benefit amounts for the new full-time jobs to be
8 created as a result of the proposed economic development project;
- 9 (f) For proposed economic development projects new to the Commonwealth,
10 certification by the eligible company that the economic development project
11 could reasonably and efficiently locate outside of the Commonwealth and,
12 without the incentives offered by the authority, the eligible company would
13 likely locate outside the Commonwealth;
- 14 (g) For eligible companies with an existing location in the Commonwealth
15 considering an expansion, certification that the tax incentives are necessary for
16 the expansion to occur;
- 17 (h) A letter of support from a local governmental entity in the city or county
18 where the economic development project will be located; and
- 19 (i) Any other information the authority may require.
- 20 (4) ~~{(a) An approved company that meets the minimum job and wage requirements,~~
21 ~~including employee benefits established by KRS 154.32-020, but fails to meet~~
22 ~~the job target and minimum wage target, including employee benefits~~
23 ~~established by the tax incentive agreement, shall be eligible to receive the~~
24 ~~incentives authorized by the tax incentive agreement as provided in this~~
25 ~~subsection.~~
- 26 ~~(b) If, upon activation or annual review, an approved company achieves at least~~
27 ~~ninety percent (90%) of both the job target and minimum wage target,~~

1 including employee benefits established by the tax incentive agreement, and
2 no other default has occurred, then the approved company shall be eligible to
3 receive full incentives as provided in the tax incentive agreement.

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

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

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

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

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

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

1 ~~(18)~~~~(19)~~ That, if an approved company fails to comply with its obligations under the
2 tax incentive agreement~~[other than the jobs target or minimum wage target]~~, the
3 authority may take any or all of the following actions:

- 4 (a) Suspend the incentives available to the approved company;
- 5 (b) Terminate the incentives available to the approved company; or
- 6 (c) Pursue any other remedy set forth in the tax incentive agreement or to which it
7 may be entitled by law; and

8 ~~(19)~~~~(20)~~ Any other provisions not inconsistent with this subchapter and determined to
9 be necessary or appropriate by the parties to the tax incentive agreement.

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