

1 AN ACT relating to economic development incentive projects.

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

3 ➔Section 1. KRS 154.22-040 is amended to read as follows:

4 (1) Each year, the authority shall, under its Rural Economic Development Assistance  
5 Program, on the basis of the final unemployment figures calculated by the  
6 Department of Workforce Investment in the Education and Workforce Development  
7 Cabinet, determine which counties have had a countywide rate of unemployment  
8 exceeding the statewide unemployment rate of the Commonwealth in the most  
9 recent five (5) consecutive calendar years, or which have had an average  
10 countywide rate of unemployment exceeding the statewide unemployment rate of  
11 the Commonwealth by two hundred percent (200%) in the most recent calendar  
12 year, and shall certify those counties as qualified counties. A county not certified on  
13 the basis of final unemployment figures may also be certified as a qualified county  
14 if the authority determines the county is one (1) of the sixty (60) most distressed  
15 counties in the Commonwealth based on the following criteria with equal weight  
16 given to each criterion:

17 (a) The average countywide rate of unemployment in the most recent three (3)  
18 consecutive calendar years, on the basis of final unemployment figures  
19 calculated by the Department of Workforce Investment in the Education and  
20 Workforce Development Cabinet;

21 (b) In each county the percentage of adults twenty-five (25) years of age and older  
22 who have attained at least a high school education or equivalent, on the basis  
23 of the most recent data available from the United States Department of  
24 Commerce, Bureau of the Census; and

25 (c) Road quality, as quantified by the access within a county to roads ranked in  
26 descending order from best quality to worst quality as follows: two (2) or  
27 more interstate highways, one (1) interstate highway, a state four (4) lane

1 parkway, four (4) lane principal arterial access to an interstate highway, state  
2 two (2) lane parkway and none of the preceding road types, as certified by the  
3 Kentucky Transportation Cabinet to the authority.

4 If the authority determines that a county which has previously been certified as a  
5 qualified county no longer meets the criteria of this subsection, the authority shall  
6 decertify that county. The authority shall not provide inducements for any facilities  
7 in that county and an approved company shall not be eligible for the inducements  
8 offered by KRS 154.22-010 to 154.22-070 unless the tax incentive agreements  
9 required herein are entered into by all parties prior to July 1 of the year following  
10 the calendar year in which the authority decertified that county. In addition, the  
11 authority shall certify coal-producing counties, not otherwise certified as qualified  
12 counties in this subsection, for economic development projects involving the new  
13 construction of electric generation facilities. A coal-producing county shall mean a  
14 county in the Commonwealth of Kentucky that has produced coal upon which the  
15 tax imposed under KRS 143.020 was paid at any time. For economic development  
16 projects undertaken in a regional industrial park, as defined in KRS 42.4588, or in  
17 an industrial park created pursuant to an interlocal agreement in which revenues are  
18 shared as provided in KRS 65.210 to 65.300, where the physical boundaries of the  
19 industrial park lie within two (2) or more counties of which at least one (1) of the  
20 counties is a qualified county under this section, an eligible company undertaking  
21 an economic development project within the physical boundaries of the industrial  
22 park may be approved for the inducements under KRS 154.22-010 to 154.22-080.

23 (2) The authority shall establish the procedures and standards for the determination and  
24 approval of eligible companies and their economic development projects by the  
25 promulgation of administrative regulations in accordance with KRS Chapter 13A.  
26 The criteria for approval of eligible companies and economic development projects  
27 shall include but not be limited to the creditworthiness of eligible companies; the

1 number of new jobs to be provided by an economic development project to  
 2 residents of the Commonwealth; and the likelihood of the economic success of the  
 3 economic development project.

4 (3) The economic development project shall involve a minimum investment of one  
 5 hundred thousand dollars (\$100,000) by the eligible company and shall result in the  
 6 creation by the eligible company, within two (2) years from the date of the final  
 7 approval authorizing the economic development project, of a minimum of fifteen  
 8 (15) new full-time jobs at the site of the economic development project for  
 9 Kentucky residents to be employed by the eligible company and to be held by  
 10 persons subject to the personal income tax of the Commonwealth. The authority  
 11 may extend this two (2) year period upon the written application of an eligible  
 12 company requesting an extension.

13 (4) (a) Within six (6) months after the activation date, the approved company shall  
 14 compensate a minimum of ninety percent (90%) of its full-time employees  
 15 whose jobs were created with base hourly ~~[wages]~~ **wage that is the greater of**  
 16 ~~[equal to either]:~~

17 1. **Eighty-five percent (85%)**~~[Seventy-five percent (75%)]~~ of the average  
 18 hourly wage for the Commonwealth;~~[or]~~

19 2. **Eighty-five percent (85%)**~~[Seventy-five percent (75%)]~~ of the average  
 20 hourly wage for the county in which the project is to be undertaken;  
 21 **or**~~[.]~~

22 **3.** ~~[(b) If the base hourly wage calculated in paragraph (a)1. or 2. of this~~  
 23 ~~subsection is less than one hundred fifty percent (150%) of the federal~~  
 24 ~~minimum wage, then the base hourly wage shall be ]One hundred fifty~~  
 25 ~~percent (150%) of the federal minimum wage;[.]~~

26 **throughout the term of the economic development project**~~[However, for~~  
 27 ~~projects receiving preliminary approval of the authority prior to July 1, 2008,~~

1           ~~the base hourly wage shall be one hundred fifty percent (150%) of the federal~~  
2           ~~minimum wage existing on January 1, 2007].~~

3           **(b)** In addition to the applicable base hourly wage calculated~~[ above],~~ the eligible  
4           company shall provide employee benefits equal to at least fifteen percent  
5           (15%) of the applicable base hourly wage~~[-; however, if the eligible company~~  
6           ~~does not provide employee benefits equal to at least fifteen percent (15%) of~~  
7           ~~the applicable base hourly wage, the eligible company may qualify under this~~  
8           ~~section if it provides the employees hired by the eligible company as a result~~  
9           ~~of the economic development project total hourly compensation equal to or~~  
10           ~~greater than one hundred fifteen percent (115%) of the applicable base hourly~~  
11           ~~wage through increased hourly wages combined with employee benefits].~~

12           (c) The requirements of this subsection shall not apply to eligible companies  
13           which are nonprofit corporations established under KRS 273.163 to 273.387  
14           and whose employees are handicapped and sheltered workshop workers  
15           employed at less than the established minimum wage as authorized by KRS  
16           337.295.

17           For an eligible company, within a regional industrial park which lies within two (2)  
18           or more counties, the calculation of the wage and benefit requirement shall be  
19           determined by averaging the average county hourly wage for all counties within the  
20           regional industrial park.

21           (5) No economic development project which will result in the replacement of  
22           agribusiness, manufacturing, or electric generation facilities existing in the state  
23           shall be approved by the authority; however, the authority may approve an  
24           economic development project that:

25           (a) Rehabilitates an agribusiness, manufacturing, or electric generation facility:

26                   1. Which has not been in operation for a period of ninety (90) or more  
27                   consecutive days;

- 1           2. For which the current occupant of the facility has published a notice of  
2           closure so long as the eligible company intending to acquire the facility  
3           is not an affiliate of the current occupant; or
- 4           3. The title to which is vested in other than the eligible company or an  
5           affiliate of the eligible company and that is sold or transferred pursuant  
6           to a foreclosure ordered by a court of competent jurisdiction or an order  
7           of a bankruptcy court of competent jurisdiction;
- 8           (b) Replaces an agribusiness, manufacturing, or electric generation facility  
9           existing in the Commonwealth:
- 10          1. The title to which shall have been taken under the exercise of the power  
11          of eminent domain, or the title to which shall be the subject of a  
12          nonappealable judgment granting the authority to exercise the power of  
13          eminent domain, in either event to the extent that normal operations  
14          cannot be resumed at the facility within twelve (12) months; or
- 15          2. Which has been damaged or destroyed by fire or other casualty to the  
16          extent that normal operations cannot be resumed at the facility within  
17          twelve (12) months; or
- 18          (c) Replaces an existing agribusiness, manufacturing, or electric generation  
19          facility located in the same qualified county, and the existing agribusiness,  
20          manufacturing, or electric generation facility to be replaced cannot be  
21          expanded due to the unavailability of real estate at or adjacent to the  
22          agribusiness, manufacturing, or electric generation facility to be replaced. Any  
23          economic development project satisfying the requirements of this subsection  
24          shall only be eligible for inducements to the extent of the expansion, and no  
25          inducements shall be available for the equivalent of the agribusiness,  
26          manufacturing, or electric generation facility to be replaced. No economic  
27          development project otherwise satisfying the requirements of this subsection

1           shall be approved by the authority which results in a lease abandonment or  
2           lease termination by the approved company without the consent of the lessor.

3 (6) With respect to each eligible company making an application to the authority for  
4 inducements, and with respect to the economic development project described in the  
5 application, the authority shall request materials and make inquiries of the applicant  
6 as necessary or appropriate. Upon review of the application and completion of  
7 initial inquiries, the authority may, by resolution, give its preliminary approval by  
8 designating an eligible company as a preliminarily approved company and  
9 authorizing the undertaking of the economic development project. After preliminary  
10 approval, the authority may by final approval designate an eligible company to be  
11 an approved company.

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

13 (1) The purposes of this subchapter are:

14 (a) To provide incentives for eligible companies and to encourage the location or  
15 expansion of manufacturing facilities, agribusiness operations, nonretail  
16 service or technology facilities, headquarters operations, alternative fuel  
17 production facilities, gasification production facilities, energy-efficient  
18 alternative fuel production facilities, renewable energy production facilities,  
19 carbon dioxide transmission pipelines, coal severing and processing, and  
20 hospital operations in the Commonwealth to advance the public purposes of:

- 21 1. Creation of new jobs that, but for the incentives offered by the authority,  
22 would not exist within the Commonwealth;
- 23 2. Creation of new sources of tax revenues for the support of public  
24 services provided by the Commonwealth;
- 25 3. Improvement in the quality of life for Kentucky citizens through the  
26 creation of sustainable jobs with higher salaries; and
- 27 4. Providing an economic stimulus to bolster in-state production of vital

1 medications and personal protective equipment; and

2 (b) To provide enhanced incentives for companies that locate in enhanced  
3 incentive counties in recognition of the depressed economic conditions in  
4 those counties and the increased need for the growth and development caused  
5 by the depressed economic conditions.

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

8 (a) Incur eligible costs of at least one hundred thousand dollars (\$100,000);

9 (b) Create at least ten (10) new full-time jobs and maintain an annual average  
10 number of at least ten (10) new full-time jobs;~~and~~

11 (c)~~1.~~ **Within six (6) months after the activation date, compensate at least**  
12 **ninety (90%) of all of its full-time employees whose jobs were created as a**  
13 **result of the economic development project, a minimum wage that is the**  
14 **greater of:**

15 **1. Eighty-five percent (85%) of the average hourly wage for the**  
16 **Commonwealth;**

17 **2. Eighty-five percent (85%) of the average hourly wage for the county in**  
18 **which the project is to be undertaken; or**

19 **3.** ~~Pay at least ninety percent (90%) of all new full-time employees whose~~  
20 ~~jobs were created as a result of the economic development project a~~  
21 ~~minimum wage of at least ]One hundred twenty-five percent (125%) of~~  
22 ~~the federal minimum wage in enhanced incentive counties, and one~~  
23 ~~hundred fifty percent (150%) of the federal minimum wage in other~~  
24 ~~counties;~~

25 throughout the term of the economic development project; and

26 **(d)**~~2.~~ Provide employee benefits for all new full-time jobs equal to at least  
27 fifteen percent (15%) of the minimum wage requirement established by

1            ~~*paragraph (c) of this subsection*~~[subparagraph 1. of this paragraph. If the  
 2            eligible company does not provide employee benefits equal to at least fifteen  
 3            percent (15%) of the minimum wage requirement established by subparagraph  
 4            1. of this paragraph, the eligible company may still qualify for incentives if it  
 5            provides the full-time employees hired as a result of the economic  
 6            development project total hourly compensation equal to or greater than one  
 7            hundred fifteen percent (115%) of the minimum wage requirement established  
 8            in subparagraph 1. of this paragraph through increased hourly wages  
 9            combined with employee benefits]; or

10            ~~(e)~~[(d)]    Produce vital medications, personal protective equipment, or equipment  
 11            necessary to produce personal protective equipment.

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

13            (a)    Tax credits of up to one hundred percent (100%) of the Kentucky income tax  
 14            imposed under KRS 141.020 or 141.040 and the limited liability entity tax  
 15            imposed under KRS 141.0401 on the income, Kentucky gross profits, or  
 16            Kentucky gross receipts of the approved company generated by or arising  
 17            from the economic development project, as set forth in KRS 141.415 and  
 18            154.32-070;

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

22            (c)    Notwithstanding any provision of law to the contrary, for any economic  
 23            development project with an eligible investment of more than two hundred  
 24            million dollars (\$200,000,000), the authority may authorize approval to the  
 25            economic development project based upon terms and incentives applicable to  
 26            economic development project locating in an enhanced incentive county.

27            (4)    The General Assembly hereby finds and declares that the authority granted in this



1 subchapter and the purposes accomplished hereby are proper governmental and  
2 public purposes for which public moneys may be expended, and that the  
3 inducement of the location of economic development projects within the  
4 Commonwealth is of paramount importance to the economic well-being of the  
5 Commonwealth.

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

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

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

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

- 1 limited to timber and industrial hemp, or the performance of value-added functions  
2 with regard to raw agricultural products;
- 3 (4) "Alternative fuel production" means a Kentucky operation that primarily produces  
4 alternative transportation fuels for sale. The alternative fuel production may produce  
5 electricity as a by-product if the primary function of the operations remains the  
6 production and sale of alternative transportation fuels;
- 7 (5) "Alternative transportation fuels" has the same meaning as in KRS 152.715;
- 8 (6) "Approved company" means an eligible company that has received final approval to  
9 receive incentives under this subchapter;
- 10 (7) "Approved costs" means the amount of eligible costs approved by the authority at  
11 final approval;
- 12 (8) "Authority" means the Kentucky Economic Development Finance Authority  
13 established by KRS 154.20-010;
- 14 (9) "Biomass resources" has the same meaning as in KRS 152.715;
- 15 (10) "Capital lease" means a lease classified as a capital lease by the Statement of  
16 Financial Accounting Standards No. 13, Accounting for Leases, issued by the  
17 Financial Accounting Standards Board, November 1976, as amended;
- 18 (11) "Carbon dioxide transmission pipeline" means the in-state portion of a pipeline,  
19 including appurtenant facilities, property rights, and easements, that is used  
20 exclusively for the purpose of transporting carbon dioxide to the point of sale,  
21 storage, or other carbon management applications;
- 22 (12) "Coal severing and processing" means activities resulting in the eligible company  
23 being subject to the tax imposed by KRS Chapter 143;
- 24 (13) "Commonwealth" means the Commonwealth of Kentucky;
- 25 (14) "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 (15) "Department" means the Department of Revenue;

9 (16) "Economic development project" means:

- 10 (a) The acquisition, leasing, or construction of a new facility;
- 11 (b) The acquisition, leasing, rehabilitation, or expansion of an existing facility; or
- 12 (c) The installation and equipping of a facility;
- 13 by an eligible company. "Economic development project" does not include any
- 14 economic development project that will result in the replacement of facilities
- 15 existing in the Commonwealth, except as provided in KRS 154.32-060;

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

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

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

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

20 within the Commonwealth:

- 21 1. Manufacturing;
- 22 2. Agribusiness;
- 23 3. Nonretail service or technology;
- 24 4. Headquarters operations, regardless of the underlying business activity
- 25 of the company;
- 26 5. Alternative fuel, gasification, energy-efficient alternative fuel, or
- 27 renewable energy production;

- 1           6.    Carbon dioxide transmission pipeline;
- 2           7.    Coal severing and processing; or
- 3           8.    Hospital operations.

4           (b) "Eligible company" does not include companies where the primary activity to  
5           be conducted within the Commonwealth is forestry, fishing, the provision of  
6           utilities, construction, wholesale trade, retail trade, real estate, rental and  
7           leasing, educational services, accommodation and food services, or public  
8           administration services;

9           (18) "Eligible costs" means:

10          (a) For owned economic development projects:

- 11           1.    Start-up costs;
- 12           2.    Nonrecurring obligations incurred for labor and nonrecurring payments  
13           to contractors, subcontractors, builders, and materialmen in connection  
14           with the economic development project;
- 15           3.    The cost of acquiring land or rights in land and any cost incidental  
16           thereto, including recording fees;
- 17           4.    The cost of contract bonds and of insurance of all kinds that may be  
18           required or necessary for completion of an economic development  
19           project which is not paid by a contractor or otherwise provided for;
- 20           5.    All costs of architectural and engineering services, including test  
21           borings, surveys, estimated plans and specifications, preliminary  
22           investigations, and supervision of construction, as well as for the  
23           performance of all the duties required for construction of the economic  
24           development project;
- 25           6.    All costs which are required to be paid under the terms of any contract  
26           for the economic development project;
- 27           7.    All costs incurred for construction activities, including site tests and

1 inspections; subsurface site work; excavation; removal of structures,  
2 roadways, cemeteries, and other surface obstructions; filling, grading,  
3 and providing drainage and storm water retention; installation of utilities  
4 such as water, sewer, sewage treatment, gas, electric, communications,  
5 and similar facilities; off-site construction of utility extensions to the  
6 boundaries of the real estate; construction and installation of railroad  
7 spurs as needed to connect the economic development project to existing  
8 railways; or similar activities as the authority may determine necessary  
9 for construction of the economic development project; and

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

11 (b) For leased economic development projects:

12 1. Start-up costs;

13 2. Building/leasehold improvements; and

14 3. Fifty percent (50%) of the estimated annual rent for each year of the tax  
15 incentive agreement.

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

20 (19) "Employee benefits" means payments by an approved company for its full-time  
21 employees for health insurance, life insurance, dental insurance, vision insurance,  
22 defined benefits, 401(k), or similar plans, **which shall be equal to at least fifteen**  
23 **percent (15%) of the applicable wage target;**

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

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

27 (a) Are produced from processes designed to densify feedstock coal, waste coal,

- 1 or biomass resources; and
- 2 (b) Have an energy content that is greater than the feedstock coal, waste coal, or
- 3 biomass resource;
- 4 (22) "Enhanced incentive counties" means counties certified by the authority pursuant to
- 5 KRS 154.32-050;
- 6 (23) "Final approval" means the action taken by the authority authorizing the eligible
- 7 company to receive incentives under this subchapter;
- 8 (24) (a) "Full-time job" means a job held by a person who:
- 9 1. Is required to work a minimum of thirty-five (35) hours per week; and
- 10 2. a. Is subject to the Kentucky individual income tax imposed by KRS
- 11 141.020; or
- 12 b. Works remotely away from the economic development project if
- 13 the job meets all of the following conditions:
- 14 i. Is held by a Kentucky resident;
- 15 ii. Was created as a result of the economic development project;
- 16 and
- 17 iii. The payroll of this job is expensed to the economic
- 18 development project.
- 19 (b) "Full-time job" does not include a job held by a resident of any state with a
- 20 reciprocal agreement between the Commonwealth and the other state as
- 21 described in KRS 141.070;
- 22 (25) "Gasification process" means a process that converts any carbon-containing material
- 23 into a synthesis gas composed primarily of carbon monoxide and hydrogen;
- 24 (26) "Gasification production" means a Kentucky operation that primarily produces for
- 25 sale:
- 26 (a) Alternative transportation fuels;
- 27 (b) Synthetic natural gas;



- 1 (c) Chemicals;
- 2 (d) Chemical feedstocks; or
- 3 (e) Liquid fuels;
- 4 from coal, waste coal, coal-processing waste, or biomass resources, through a
- 5 gasification process. The gasification production may produce electricity as a by-
- 6 product if the primary function of the operations remains the production and sale of
- 7 alternative transportation fuels, synthetic natural gas, chemicals, chemical
- 8 feedstocks, or liquid fuels;
- 9 (27) "Headquarters" means the principal office where the principal executives of the
- 10 entity are located and from which other personnel, branches, affiliates, offices, or
- 11 entities are controlled;
- 12 (28) "Hospital" means a facility licensed by the Cabinet for Health and Family Services
- 13 under KRS Chapter 216B for the operation of a hospital and the basic services
- 14 provided by a hospital;
- 15 (29) "Incentives" means the incentives available under this subchapter, as listed in KRS
- 16 154.32-020(3);
- 17 (30) "Job target" means the annual average number of new full-time jobs that the
- 18 approved company commits to create and maintain at the economic development
- 19 project, which shall not be less than ten (10) new full-time jobs;
- 20 (31) "Kentucky gross receipts" has the same meaning as in KRS 141.0401;
- 21 (32) "Kentucky gross profits" has the same meaning as in KRS 141.0401;
- 22 (33) "Lease agreement" means an agreement between an approved company and an
- 23 unrelated entity conveying the right to use a facility, the terms of which reflect an
- 24 arms' length transaction. "Lease agreement" does not include a capital lease;
- 25 (34) "Leased project" means an economic development project site occupied by an
- 26 approved company pursuant to a lease agreement;
- 27 (35) "Manufacturing" means any activity involving:

- 1 (a) Processing, assembling, or production of any property, including the  
2 processing resulting in a change in the conditions of the property and any  
3 activity related to the processing, assembling, or production of property,  
4 together with the storage, warehousing, distribution, and related office  
5 facilities; or
- 6 (b) Production of vital medications, personal protective equipment, or equipment  
7 necessary to produce personal protective equipment;
- 8 (36) (a) "Nonretail service or technology" means any activity where service or  
9 technology is provided predominantly outside the Commonwealth and  
10 designed to serve a multistate, national, or international market.
- 11 (b) "Nonretail service or technology" includes but is not limited to call centers,  
12 centralized administrative or processing centers, telephone or Internet sales  
13 order or processing centers, distribution or fulfillment centers, data processing  
14 centers, research and development facilities, and other similar activities;
- 15 (37) "Owned project" means an economic development project owned in fee simple by  
16 the approved company or an affiliate, or possessed by the approved company or an  
17 affiliate pursuant to a capital lease;
- 18 (38) "Personal protective equipment" means protective clothing, helmets, gloves, face  
19 shields, goggles, face masks, respirators, and other equipment designed to protect  
20 the user from injury or the spread of infection or illness;
- 21 (39) "Preliminary approval" means the action taken by the authority preliminarily  
22 approving an eligible company for incentives under this subchapter;
- 23 (40) "Renewable energy production" means a Kentucky operation that utilizes wind  
24 power, biomass resources, landfill methane gas, hydropower, solar power, or other  
25 similar renewable resources to generate electricity for sale to unrelated entities;
- 26 (41) "Rent" means the actual annual rent or fee paid by an approved company under a  
27 lease agreement;

- 1 (42) "Start-up costs" means nonrecurring costs incurred to furnish and equip a facility for  
2 an economic development project, including costs incurred for:
- 3 (a) Computers, furnishings, office equipment, manufacturing equipment, and  
4 fixtures;
- 5 (b) The relocation of out-of-state equipment; and
- 6 (c) Cost of fixed telecommunications equipment;  
7 as certified to the authority in accordance with KRS 154.32-030;
- 8 (43) "Synthetic natural gas" means the same thing as in KRS 152.715;
- 9 (44) "Tax incentive agreement" means the agreement entered into pursuant to KRS  
10 154.32-040 between the authority and an approved company;
- 11 (45) "Term" means the period of time for which a tax incentive agreement may be in  
12 effect, which shall not exceed fifteen (15) years for an economic development  
13 project located in an enhanced incentive county, or ten (10) years for an economic  
14 development project not located in any other county;
- 15 (46) "Vital medications" means any drug or biologic used to prevent or treat a serious  
16 life-threatening disease or medical condition for which there is no other available  
17 source with sufficient supply of that drug or biologic or alternative drug or biologic;
- 18 (47) "Wage" means the per hour earnings of a full-time employee, including wages, tips,  
19 overtime, bonuses, and commissions, as reflected on the employee's federal form  
20 W-2 wage and tax statement, but excludes employee benefits; and
- 21 (48) "Wage target" means the average total hourly compensation amount, including the  
22 minimum wage and employee benefits, that the approved company commits to meet  
23 for all new full-time jobs created and maintained as a result of the economic  
24 development project, which shall ***be the greater of***~~[not be less than]~~:
- 25 (a) ***Eighty-five percent (85%) of the average hourly wage for the***  
26 ***Commonwealth;***
- 27 (b) ***Eighty-five percent (85%) of the average hourly wage for the county in***

1           *which the project is to be undertaken;*

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

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

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

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

10          (2) (a) To qualify for the incentives provided in this subchapter, an approved  
11          company shall:

12                  1. Incur eligible equipment and related costs of at least one million dollars  
13                  (\$1,000,000) for leased projects and at least two million five hundred  
14                  thousand dollars (\$2,500,000) for all other reinvestment projects;

15                  2. Agree to maintain a full-time employment base of at least eighty-five  
16                  percent (85%) at the facility on the date of preliminary approval; and

17                  3. Not have been awarded incentives under Subchapter 26 of this chapter  
18                  for a period of at least five (5) years prior to applying for incentives  
19                  under this subchapter.

20          (b) An approved company meeting the expenditure and employment retention  
21          requirements established by this subsection shall be eligible to recover up to  
22          fifty percent (50%) of the amount expended for eligible equipment and related  
23          costs. The actual amount that an approved company may recover shall be  
24          negotiated with the authority, and may be less than the maximum amount for  
25          which the approved company is eligible.

26          *(c) The approved company shall compensate a minimum of ninety percent*  
27          *(90%) of its full-time employees whose jobs were created as a result of the*

- 1                    *economic development project, a minimum wage that is the greater of:*
- 2                    *1. Eighty-five percent (85%) of the average hourly wage for the*
- 3                    *Commonwealth;*
- 4                    *2. Eighty-five percent (85%) of the average hourly wage for the county in*
- 5                    *which the project is to be undertaken; or*
- 6                    *3. One hundred fifty percent (150%) of the federal minimum wage;*
- 7                    *throughout the term of the economic development project.*
- 8                    *(d) In addition to the applicable base hourly wage calculated, the eligible*
- 9                    *company shall provide employee benefits equal to at least fifteen percent*
- 10                   *(15%) of the applicable base hourly wage.*

11 (3) An approved company shall be eligible for incentives under this subchapter as  
 12 follows: tax incentives of up to one hundred percent (100%) of the Kentucky  
 13 income tax imposed under KRS 141.020 or 141.040 and the limited liability entity  
 14 tax imposed under KRS 141.0401 on the income, Kentucky gross profits, or  
 15 Kentucky gross receipts of the approved company generated by or arising from the  
 16 eligible project, as set forth in KRS 154.34-120.

- 17 (4) The General Assembly finds and declares that:
- 18 (a) The general welfare and material well-being of the citizens of the
  - 19 Commonwealth depend in large measure upon the reinvestment and
  - 20 development of existing industry in the Commonwealth;
  - 21 (b) It is in the best interest of the Commonwealth to induce reinvestment in
  - 22 existing facilities of eligible companies within the Commonwealth in order to
  - 23 advance the public purposes of relieving unemployment by preserving jobs
  - 24 that may be lost if not for the incentives to be offered by the authority to
  - 25 approved companies, and by preserving and creating sources of tax revenues
  - 26 for the support of public services provided by the Commonwealth; and
  - 27 (c) The authority prescribed by this subchapter and the purposes to be

1           accomplished under this subchapter are proper governmental and public  
2           purposes for which public moneys may be expended.

3 (5) On or before November 1, 2021, and each November 1 thereafter, the authority  
4 shall submit an overview report to the Interim Joint Committee on Appropriations  
5 and Revenue and the Governor on the success or failure of each completed project  
6 in order to determine the effectiveness of the program. The report shall include but  
7 not be limited to the following information:

- 8           (a) The number of applications receiving preliminary approval during the fiscal  
9           year;
- 10           (b) The number of final approvals issued during the fiscal year;
- 11           (c) The total amount of eligible equipment and other costs projected by the  
12           approved company at preliminary approval;
- 13           (d) The total amount of eligible equipment and other costs actually incurred by  
14           the approved company at final approval;
- 15           (e) The total number of full time jobs required to be preserved or retained as a  
16           result of the reinvestment project;
- 17           (f) The total actual number of full-time jobs reported by the reinvestment project  
18           as being preserved or retained on an annual basis;
- 19           (g) The maximum approved costs that may be recovered by the approved  
20           companies for the reinvestment projects; and
- 21           (h) The location of the reinvestment projects receiving preliminary and final  
22           approval during the fiscal year.

23           ➔Section 5. KRS 154.12-204 is amended to read as follows:

24           As used in KRS 154.12-205 to 154.12-208, unless the context requires otherwise:

- 25           (1) "Agribusiness" has the same meaning as in KRS 154.32-010;
- 26           (2) "Alternative fuel production" has the same meaning as in KRS 154.32-010;
- 27           (3) "Applicant" means a business or industry that has made application for a grant-in-

- 1 aid or skills training investment credit as authorized by KRS 154.12-205 to 154.12-  
2 208;
- 3 (4) "Approved company" means any qualified company seeking to sponsor an  
4 occupational upgrade training program or skills upgrade training program for the  
5 benefit of one (1) or more of its employees, which is approved by the corporation to  
6 receive grant-in-aid or skills training investment credits as provided by KRS  
7 154.12-205 to 154.12-208;
- 8 (5) "Approved costs" means costs confirmed as eligible by the corporation, including:
- 9 (a) Fees or salaries required to be paid to instructors who are employees of the  
10 approved company, instructors who are full-time, part-time, or adjunct  
11 instructors with an educational institution, and instructors who are consultants  
12 on contract with an approved company in connection with an occupational  
13 upgrade training program or skills upgrade training program sponsored by an  
14 approved company;
- 15 (b) The cost of supplies and materials used exclusively in an occupational  
16 upgrade training program or skills upgrade training program sponsored by an  
17 approved company;
- 18 (c) Employee wages to be paid in connection with an occupational upgrade  
19 training program or skills upgrade training program sponsored by an approved  
20 company; and
- 21 (d) All other costs of a nature comparable to those described in this subsection;
- 22 (6) "Board" means the board of directors of the Bluegrass State Skills Corporation;
- 23 (7) "Carbon dioxide transmission pipeline" has the same meaning as in KRS 154.32-  
24 010;
- 25 (8) "Coal severing and processing" has the same meaning as in KRS 154.32-010;
- 26 (9) "Corporation" means the Bluegrass State Skills Corporation, or BSSC;
- 27 (10) "Educational institution" means a public or nonpublic secondary or postsecondary

1 institution or an independent provider within the Commonwealth authorized by law  
2 to provide a program of skills training or education beyond the secondary school  
3 level or to adult persons without a high school diploma or its equivalent;

4 (11) "Employee" means any person:

5 (a) Who is currently a permanent full-time employee of the qualified company;

6 (b) Who is a resident of Kentucky, as that term is defined in KRS 141.010; and

7 (c) Who is ~~paid~~ **compensated with** the minimum base hourly wage plus  
8 employee benefits equal to or greater than fifteen percent (15%) of the  
9 minimum base hourly wage~~. If the qualified company does not provide  
10 employee benefits equal to at least fifteen percent (15%) of the minimum base  
11 hourly wage, the qualified company may still qualify if it provides the full-  
12 time employee total hourly compensation equal to or greater than one hundred  
13 fifteen percent (115%) of the minimum base hourly wage through increased  
14 hourly wages combined with at least one (1) company paid employee benefit];~~

15 (12) "Energy-efficient alternative fuel production" has the same meaning as in KRS  
16 154.32-010;

17 (13) "Gasification production" has the same meaning as in KRS 154.32-010;

18 (14) "Grant-in-aid" means funding that is provided to qualified companies by the BSSC  
19 for the development or expansion of a program as provided in this chapter;

20 (15) "Headquarters" has the same meaning as in KRS 154.32-010;

21 (16) "Hospital" has the same meaning as in KRS 154.32-010;

22 (17) "Manufacturing" has the same meaning as in KRS 154.32-010;

23 (18) "Minimum base hourly wage" means the minimum wage amount paid to an  
24 employee by a qualified company, which shall **be the greater of:**

25 **(a) Eighty-five percent (85%) of the average hourly wage for the**  
26 **Commonwealth;**

27 **(b) Eighty-five percent (85%) of the average hourly wage for the county in**



1                   *which the project is to be undertaken; or*

2           (c) ~~[not be less than]~~ One hundred fifty percent (150%) of the federal minimum  
3           wage;

4                   *throughout the term of the economic development project;*

5           (19) "Nonretail service or technology" means the same as in KRS 154.32-010;

6           (20) "Occupational upgrade training" means employee training sponsored by a qualified  
7           company that is designed to qualify the employee for a promotional opportunity  
8           with the qualified company;

9           (21) "Program" or "program of skills training or education consistent with employment  
10           needs" means a coordinated course of instruction which is designed to prepare  
11           individuals for employment in a specific trade, occupation, or profession. Such  
12           instruction may include:

13           (a) Classroom instruction;

14           (b) Classroom-related field, shop, factory, office, or laboratory work; and

15           (c) Basic skills, entry level training, job upgrading, retraining, and advance  
16           training;

17           (22) (a) "Qualified company" means any corporation, limited liability company,  
18           partnership, limited partnership, sole proprietorship, business trust, or any  
19           other legal entity through which business is conducted that is engaged in or is  
20           planning to be engaged in one (1) or more of the following activities within  
21           the Commonwealth:

22                   1. Manufacturing;

23                   2. Agribusiness;

24                   3. Nonretail service or technology;

25                   4. Headquarter operations, regardless of the underlying business activity of  
26                   the company;

27                   5. Alternative fuel, gasification, energy-efficient alternative fuel, or

1 renewable energy production;

2 6. Carbon dioxide transmission pipeline;

3 7. Coal severing and processing; or

4 8. Hospital operations.

5 (b) "Qualified company" does not include companies where the primary activity  
6 to be conducted within the Commonwealth is forestry, fishing, the provision  
7 of utilities, construction, wholesale trade, retail trade, real estate, rental and  
8 leasing, accommodation and food services, or public administration services;

9 (23) "Renewable energy production" means the same as in KRS 154.32-010;

10 (24) "Skills upgrade training" means employee training sponsored by a qualified  
11 company that is designed to provide the employee with new skills necessary to  
12 enhance productivity, improve performance, or retain employment, including but  
13 not limited to technical and interpersonal skills, and training that is designed to  
14 enhance computer skills, communication skills, problem solving, reading, writing,  
15 or math skills of employees who are unable to function effectively on the job due to  
16 deficiencies in these areas, are unable to advance on the job, or who risk  
17 displacement because their skill deficiencies inhibit their training potential for new  
18 technology;

19 (25) "Skills training investment credit" means the credit against Kentucky income tax  
20 imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by  
21 KRS 141.0401, as provided in this subchapter; and

22 (26) "Technical assistance" means professional and any other assistance provided by  
23 qualified companies to an educational institution, which is reasonably calculated to  
24 support directly the development and expansion of a particular program as defined  
25 herein.

26 ➔Section 6. KRS 154.60-020 is amended to read as follows:

27 (1) The authority shall develop a Small Business Development Credit Program in

1 consultation with the Office of Entrepreneurship and Small Business Innovation to  
2 assist new or existing small businesses operating in the Commonwealth. The  
3 nonrefundable credit shall be allowed against the taxes imposed by KRS 141.020 or  
4 141.040, and 141.0401. The ordering of credits shall be as provided in KRS  
5 141.0205.

6 (2) The authority shall determine the terms, conditions, and requirements for  
7 application for the credit, in consultation with the Office of Entrepreneurship and  
8 Small Business Innovation, subject to the provisions of subsection (3) of this  
9 section. The application shall contain identification information about the number  
10 of eligible positions created and filled, a calculation of the base employment of the  
11 small business, verification of investment of five thousand dollars (\$5,000) or more  
12 in qualifying equipment or technology, and other information the authority may  
13 specify to determine eligibility for the credit.

14 (3) (a) The maximum amount of credits that may be committed in each fiscal year by  
15 the authority and shared between the small business tax credit program and  
16 the Selling Farmer Tax Credit Program shall be capped at three million dollars  
17 (\$3,000,000).

18 (b) In order to be eligible to receive final approval for a credit, a small business  
19 shall, within the twenty-four (24) month period immediately preceding the  
20 application submission date:

- 21 1. Create and fill one (1) or more eligible positions over the base  
22 employment; and
- 23 2. Invest five thousand dollars (\$5,000) or more in qualifying equipment or  
24 technology.

25 (c) Each eligible position that is created and filled shall be maintained for twelve  
26 (12) months. If a full-time employee filling a newly created eligible position  
27 ceases to be employed by the small business for any reason, that employee

1 shall be replaced within forty-five (45) days in order for the eligible position  
 2 to maintain its eligible status, in addition to meeting all other applicable  
 3 requirements.

4 (d) Within six (6) months after the activation date, the approved company shall  
 5 pay at least ninety percent (90%) of all new full-time employees whose jobs  
 6 were created as a result of the economic development project a minimum  
 7 wage that is the greater of:

8 1. Eighty-five percent (85%) of the average hourly wage for the  
 9 Commonwealth;

10 2. Eighty-five percent (85%) of the average hourly wage for the county in  
 11 which the project is to be undertaken; or

12 3. One hundred fifty percent (150%) of the federal minimum wage;  
 13 throughout the term of the economic development project.

14 (e) In addition to the applicable base hourly wage calculated, the eligible  
 15 company shall provide employee benefits equal to at least fifteen percent  
 16 (15%) of the applicable base hourly wage.

17 (f) The small business shall submit all information necessary for the authority to  
 18 determine credit eligibility for each year, and the amount of credit for which  
 19 the small business is eligible.

20 (g)~~(e)~~ The maximum amount of credit for each small business for each year  
 21 shall not exceed twenty-five thousand dollars (\$25,000).

22 (h)~~(f)~~ The credit shall be claimed on the tax return for the year during which  
 23 the credit was approved. Unused credits may be carried forward for up to five  
 24 (5) years.

25 ➔Section 7. KRS 154.28-080 is amended to read as follows:

26 (1) The authority shall promulgate standards for the determination and approval of  
 27 eligible companies and their economic development projects in accordance with

1 KRS Chapter 13A.

2 (2) The standards for approval of eligible companies and economic development  
3 projects shall include but not be limited to: the creditworthiness of eligible  
4 companies; the number of new jobs to be provided by an economic development  
5 project to the residents of the Commonwealth; and the likelihood of the economic  
6 success of the economic development project.

7 (3) The economic development project shall involve a minimum investment of one  
8 hundred thousand dollars (\$100,000) by the eligible company and shall result in the  
9 creation by the eligible company, within two (2) years from the date of the final  
10 resolution authorizing the economic development project, of a minimum of fifteen  
11 (15) new full-time jobs at the site of the economic development projects for  
12 Kentucky residents to be employed by the eligible company and to be held by  
13 persons subject to the personal income tax of the Commonwealth. The authority  
14 may extend this two (2) year period upon the written application of an eligible  
15 company requesting an extension.

16 (4) (a) Within six (6) months after the activation date, the approved company shall  
17 compensate a minimum of ninety percent (90%) of its full-time employees  
18 whose jobs were created as a result of the economic development project a  
19 minimum wage that is the greater of~~[with base hourly wages equal to either]:~~

20 1. Eighty-five percent (85%)~~[Seventy-five percent (75%)]~~ of the average  
21 hourly wage for the Commonwealth;~~[or]~~

22 2. Eighty-five percent (85%)~~[Seventy-five percent (75%)]~~ of the average  
23 hourly wage for the county in which the project is to be undertaken; or

24 3. One hundred fifty percent (150%) of the federal minimum wage;  
25 throughout the term of the economic development project.

26 (b) ~~[If the base hourly wage calculated in paragraph (a) 1. or 2. of this subsection~~  
27 ~~is less than one hundred fifty percent (150%) of the federal minimum wage,~~

1           ~~then the base hourly wage shall be one hundred fifty percent (150%) of the~~  
2           ~~federal minimum wage. However, for projects receiving preliminary approval~~  
3           ~~of the authority prior to July 1, 2008, the base hourly wage shall be one~~  
4           ~~hundred fifty percent (150%) of the federal minimum wage existing on~~  
5           ~~January 1, 2007. ]In addition to the applicable base hourly wage calculated~~  
6           ~~above, the eligible company shall provide employee benefits equal to at least~~  
7           ~~fifteen percent (15%) of the applicable base hourly wage[; however, if the~~  
8           ~~eligible company does not provide employee benefits equal to at least fifteen~~  
9           ~~percent (15%) of the applicable base hourly wage, the eligible company may~~  
10           ~~qualify under this section if it provides the employees hired by the eligible~~  
11           ~~company as a result of the economic development project total hourly~~  
12           ~~compensation equal to or greater than one hundred fifteen percent (115%) of~~  
13           ~~the applicable base hourly wage through increased hourly wages combined~~  
14           ~~with employee benefits].~~

15 (5) No economic development project which will result in the replacement of a  
16 manufacturing or agribusiness facility existing within the Commonwealth shall be  
17 approved by the authority; however, the authority may approve an economic  
18 development project that:

19 (a) Rehabilitates a manufacturing or agribusiness facility:

- 20 1. Which has not been in operation for a period of ninety (90) or more  
21 consecutive days;
- 22 2. For which the current occupant of the facility has published a notice of  
23 closure so long as the eligible company intending to acquire the facility  
24 is not an affiliate of the current occupant; or
- 25 3. To which the title is vested in other than the eligible company or an  
26 affiliate of the eligible company and that is sold or transferred pursuant  
27 to a foreclosure ordered by a court of competent jurisdiction or an order

- 1                   of a bankruptcy court of competent jurisdiction;
- 2       (b) Replaces a manufacturing or agribusiness facility existing in the  
3       Commonwealth:
- 4           1. To which the title shall have been taken under the exercise of the power  
5           of eminent domain, or to which the title shall be the subject of a  
6           nonappealable judgment granting the authority to exercise the power of  
7           eminent domain, in either event to the extent that normal operations  
8           cannot be resumed at the facility within twelve (12) months; or
- 9           2. Which has been damaged or destroyed by fire or other casualty to the  
10          extent that normal operations cannot be resumed at the facility within  
11          twelve (12) months; or
- 12       (c) Replaces an existing manufacturing or agribusiness facility located in the  
13       same county that cannot be expanded due to the unavailability of real estate at  
14       or adjacent to the manufacturing or agribusiness facility to be replaced. Any  
15       economic development project satisfying the requirements of this subsection  
16       shall be eligible only for inducements to the extent of the expansion, and no  
17       inducements shall be available for the equivalent of the manufacturing or  
18       agribusiness facility to be replaced. No economic development project  
19       otherwise satisfying the requirements of this subsection shall be approved by  
20       the authority that results in a lease abandonment or lease termination by the  
21       eligible company without the consent of the lessor.
- 22       (6) With respect to each eligible company making an application to the authority for  
23       inducements, and with respect to these economic development projects described in  
24       the application which do not involve an expansion, the authority shall make  
25       inquiries and request materials of the applicant, including but not limited to written  
26       evidence that except for the receipt of inducements authorized by KRS 154.28-015  
27       to 154.28-090 and KRS 141.400, the eligible company will not locate its economic

1 development project within the Commonwealth. Upon the review of the application  
2 and completion of initial inquiries, the authority may, by resolution, give its  
3 preliminary approval by designating an eligible company as a preliminarily  
4 approved company and authorizing the undertaking of the economic development  
5 project.

6 (7) After a diligent review of the relevant materials and completion of its inquiries, the  
7 authority, by resolution of its board of directors, may designate an eligible company  
8 to be an approved company.

9 (8) All meetings of the board of directors of the authority shall be held in accordance  
10 with KRS 61.805 to 61.850. The board of directors of the authority may, pursuant to  
11 KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from  
12 the open meetings law and pertaining to an eligible company.

13 ➔Section 8. KRS 154.23-025 is amended to read as follows:

14 (1) Relevant standards for approval of eligible companies and economic development  
15 projects shall include but are not limited to creditworthiness of the eligible  
16 company, the number of new jobs to be provided by a project to Kentucky residents,  
17 and the likelihood that the project will be an economic success.

18 (2) An eligible company shall certify to the authority by written application that it  
19 makes the following commitments in an economic development project:

20 (a) A minimum investment of one hundred thousand dollars (\$100,000) in the  
21 project;

22 (b) Creation of a minimum of ten (10) new full-time jobs at the project site for  
23 qualified employees by the activation date, as set forth in KRS 154.23-035 or  
24 154.23-040;

25 (c) A statement that no significant number of existing jobs in the Commonwealth  
26 will be lost or adversely affected due to approval of the eligible company and  
27 its economic development project; and



1 (d) A statement that the economic development project could reasonably and  
2 efficiently locate outside the qualified zone and, without the inducements  
3 offered by the authority, the eligible company would likely locate outside the  
4 zone.

5 (3) (a) No project that will result in the replacement of an existing manufacturing or  
6 service or technology facility existing in the Commonwealth shall be  
7 approved by the authority; however, the authority may approve a project if the  
8 project is one:

- 9 1. a. That rehabilitates a manufacturing or service or technology facility  
10 that has not been in operation;
- 11 b. For which the current occupant of the facility has published a  
12 notice of closure so long as the eligible company intending to  
13 acquire the facility is not an affiliate of the current occupant; or
- 14 c. To which the title is vested in one other than the eligible company  
15 and that is sold or transferred under a foreclosure ordered by a  
16 court of competent jurisdiction or by order of bankruptcy court;
- 17 2. Replaces a manufacturing or service or technology facility existing in  
18 the Commonwealth that been damaged or destroyed by fire, or the title  
19 to which shall have been taken under the exercise of the power of  
20 eminent domain or is the subject of a nonappealable judgment that  
21 grants the power of eminent domain to the authority, in any of these  
22 events to the extent that normal operations cannot be resumed at the  
23 facility within twelve (12) months; or
- 24 3. Replaces an existing manufacturing or service or technology facility  
25 located in the same qualified zone that cannot be expanded due to the  
26 lack of available real estate at or adjacent to the manufacturing or  
27 service or technology facility to be replaced. Any economic

1 development project satisfying the requirements of this paragraph shall  
 2 only be eligible for inducements to the extent of the expansion, and no  
 3 inducements shall be available for the equivalent of the manufacturing  
 4 or service or technology facility to be replaced.

5 (b) No economic development project otherwise satisfying the requirements of  
 6 paragraph (a) of this subsection shall be approved by the authority that results  
 7 in a lease abandonment or lease termination by the approved company without  
 8 the consent of the lessor.

9 (4) (a) Within six (6) months after the activation date, the approved company shall  
 10 compensate a minimum of ninety percent (90%) of its full-time employees  
 11 whose jobs were created with base hourly ~~[wages]~~ **wage that is the greater of**  
 12 ~~[equal to either]:~~

- 13 1. **Eighty-five percent (85%)**~~[Seventy five percent (75%)]~~ of the average  
 14 hourly wage for the Commonwealth;~~[or]~~
- 15 2. **Eighty-five percent (85%)**~~[Seventy five percent (75%)]~~ of the average  
 16 hourly wage for the county in which the project is to be undertaken; **or**
- 17 3. **One hundred fifty percent (150%) of the federal minimum wage;**  
 18 **throughout the term of the economic development project.**

19 (b) ~~[If the base hourly wage calculated in paragraph (a)1. or 2. of this subsection~~  
 20 ~~is less than one hundred fifty percent (150%) of the federal minimum wage,~~  
 21 ~~then the base hourly wage shall be one hundred fifty percent (150%) of the~~  
 22 ~~federal minimum wage. However, for projects receiving preliminary approval~~  
 23 ~~of the authority prior to July 1, 2008, the base hourly wage shall be one~~  
 24 ~~hundred fifty percent (150%) of the federal minimum wage existing on~~  
 25 ~~January 1, 2007. ]~~In addition to the applicable base hourly wage calculated  
 26 above, the eligible company shall provide employee benefits equal to at least  
 27 fifteen percent (15%) of the applicable base hourly wage~~[-; however, if the~~

1           ~~eligible company does not provide employee benefits equal to at least fifteen~~  
2           ~~percent (15%) of the applicable base hourly wage, the eligible company may~~  
3           ~~qualify under this section if it provides the employees hired by the eligible~~  
4           ~~company as a result of the economic development project total hourly~~  
5           ~~compensation equal to or greater than one hundred fifteen percent (115%) of~~  
6           ~~the applicable base hourly wage through increased hourly wages combined~~  
7           ~~with employee benefits].~~

8           ➔Section 9. KRS 154.24-090 is amended to read as follows:

9           The authority shall promulgate administrative regulations in accordance with KRS  
10          Chapter 13A, regarding the approval of eligible companies and economic development  
11          projects conducted by those companies. The criteria for approval of eligible companies  
12          and economic development projects shall include but not be limited to the following  
13          criteria:

14          (1) A determination by the authority that more than seventy-five percent (75%) of  
15          services provided by the eligible company from the proposed project shall be  
16          provided for persons located outside the Commonwealth during each year of the  
17          period during which it receives inducements as authorized in KRS 154.24-110;

18          (2) The economic development project shall result in the creation by the eligible  
19          company of a minimum of fifteen (15) new full-time jobs for Kentucky residents to  
20          be employed by the eligible company and to be held by persons subject to the  
21          personal income tax of the Commonwealth at the activation date set forth in the  
22          company's service and technology agreement as described in KRS 154.24-120. The  
23          activation date shall occur within two (2) years after the date of the final resolution  
24          authorizing the economic development project. The authority may extend the period  
25          for compliance with this subsection up to one (1) year from the activation date upon  
26          the written application of an eligible company requesting an extension;

27          (3) (a) Within six (6) months after the activation date, the approved company shall

1 compensate a minimum of ninety percent (90%) of its full-time employees  
 2 whose jobs were created with base hourly ~~{wages }~~wage that is the greater  
 3 of~~{equal to either}~~:

- 4 1. Eighty-five percent (85%)~~{Seventy five percent (75%)}~~ of the average  
 5 hourly wage for the Commonwealth;~~{or}~~
- 6 2. Eighty-five percent (85%)~~{Seventy five percent (75%)}~~ of the average  
 7 hourly wage for the county in which the project is to be undertaken; or
- 8 3. One hundred fifty percent (150%) of the federal minimum wage;  
 9 throughout the term of the economic development project.

10 ~~{(b) If the base hourly wage calculated in paragraph (a)1. or 2. of this subsection is~~  
 11 ~~less than one hundred fifty percent (150%) of the federal minimum wage, then~~  
 12 ~~the base hourly wage shall be one hundred fifty percent (150%) of the federal~~  
 13 ~~minimum wage. However, for projects receiving preliminary approval of the~~  
 14 ~~authority prior to July 1, 2008, the base hourly wage shall be one hundred fifty~~  
 15 ~~percent (150%) of the federal minimum wage existing on January 1, 2007.}~~

16 ~~(b){(e)}~~ In addition to the base hourly wages, the eligible company shall provide  
 17 employee benefits equal to at least fifteen percent (15%) of the applicable base  
 18 hourly wages;~~{ however, if the eligible company does not provide employee~~  
 19 ~~benefits equal to at least fifteen percent (15%) of the applicable base hourly~~  
 20 ~~wages, the eligible company may qualify under this section if it provides the~~  
 21 ~~employees hired by the eligible company as a result of the economic~~  
 22 ~~development project total hourly compensation equal to or greater than one~~  
 23 ~~hundred fifteen percent (115%) of the applicable base hourly wages through~~  
 24 ~~increased hourly wages combined with employee benefits;}~~

- 25 (4) If an eligible company receives approval from the authority before July 1, 2008, and  
 26 locates an economic development project on property that adjoins one (1) of the five  
 27 (5) regional postsecondary education centers operated and occupied in cooperation

1 with the Kentucky Community and Technical College System, or operated and  
2 occupied under the combined efforts of the Kentucky Community and Technical  
3 College System and a public four (4) year comprehensive university, the eligible  
4 company may alternatively satisfy the requirements of subsection (3) of this section  
5 in the following manner:

6 ~~[(a) Within six (6) months after the activation date, the approved company shall  
7 compensate a minimum of ninety percent (90%) of its full time employees  
8 whose jobs were created as a result of the project with total of base hourly  
9 wages plus employee benefits equal to or greater than two hundred percent  
10 (200%) of the federal minimum wage, providing that base hourly wages shall  
11 be greater than or equal to one hundred fifty percent (150%) of the federal  
12 minimum wage;]~~

13 (a)~~[(b)]~~ The eligible company shall provide to the authority a statement  
14 certifying that the eligible company will seek to provide full-time or part-time  
15 employment opportunities for nontraditional students who are enrolled or seek  
16 to be enrolled at a regional postsecondary education center; and

17 (b)~~[(c)]~~ The director of the regional postsecondary education center shall provide  
18 to the authority a statement asserting that the eligible company is likely to  
19 provide appropriate employment opportunities for students and that the  
20 economic development project may be reasonably expected to provide  
21 meaningful opportunities for technological and infrastructural enhancements;

22 (5) Written evidence that:

23 (a) Approval of the economic development project and the resulting inducements  
24 to be offered are essential to the creation of new jobs in the Commonwealth  
25 by an eligible company in connection with its economic development project;  
26 and

27 (b) No significant number of existing jobs in the Commonwealth will be lost, or

1           adversely affected, due to the designation of an eligible company as an  
2           approved company, and to the approval of the eligible company's economic  
3           development project; and

4 (6) That the economic development project could reasonably and efficiently locate  
5       outside of the Commonwealth and, without the inducements offered by the  
6       authority, the eligible company would likely locate outside the state.

7       ➔Section 10. Sections 1 through 9 of this Act shall apply to any economic  
8       development incentives that have not received final approval prior to the effective date of  
9       this Act.