AN ACT relating to economic development incentive projects.

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

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

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

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

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

(c) Road quality, as quantified by the access within a county to roads ranked in descending order from best quality to worst quality as follows: two (2) or more interstate highways, one (1) interstate highway, a state four (4) lane
parkway, four (4) lane principal arterial access to an interstate highway, state
two (2) lane parkway and none of the preceding road types, as certified by the
Kentucky Transportation Cabinet to the authority.

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

(2) The authority shall establish the procedures and standards for the determination and approval of eligible companies and their economic development projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A. The criteria for approval of eligible companies and economic development projects shall include but not be limited to the creditworthiness of eligible companies; the
number of new jobs to be provided by an economic development project to residents of the Commonwealth; and the likelihood of the economic success of the economic development project.

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

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

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

(b) If the base hourly wage calculated in paragraph (a)1. or 2. of this subsection is less than one hundred fifty percent (150%) of the federal minimum wage, then the base hourly wage shall be One hundred fifty percent (150%) of the federal minimum wage throughout the term of the economic development project; However, for projects receiving preliminary approval of the authority prior to July 1, 2008,
the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage existing on January 1, 2007].

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

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

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

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

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

   1. Which has not been in operation for a period of ninety (90) or more consecutive days;
2. For which the current occupant of the facility has published a notice of closure so long as the eligible company intending to acquire the facility is not an affiliate of the current occupant; or

3. The title to which is vested in other than the eligible company or an affiliate of the eligible company and that is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction;

(b) Replaces an agribusiness, manufacturing, or electric generation facility existing in the Commonwealth:

1. The title to which shall have been taken under the exercise of the power of eminent domain, or the title to which shall be the subject of a nonappealable judgment granting the authority to exercise the power of eminent domain, in either event to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

2. Which has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

(c) Replaces an existing agribusiness, manufacturing, or electric generation facility located in the same qualified county, and the existing agribusiness, manufacturing, or electric generation facility to be replaced cannot be expanded due to the unavailability of real estate at or adjacent to the agribusiness, manufacturing, or electric generation facility to be replaced. Any economic development project satisfying the requirements of this subsection shall only be eligible for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the agribusiness, manufacturing, or electric generation facility to be replaced. No economic development project otherwise satisfying the requirements of this subsection

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

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

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

(1) The purposes of this subchapter are:

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

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

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

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

4. Providing an economic stimulus to bolster in-state production of vital
medications and personal protective equipment; and

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

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

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

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

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

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

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

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

throughout the term of the economic development project; and

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

(e)(d) Produce vital medications, personal protective equipment, or equipment necessary to produce personal protective equipment.

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

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

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

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

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

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

(1) "Activation date" means the date established in the tax incentive agreement that is
within two (2) years of final approval;

(2) "Affiliate" means the following:

(a) Members of a family, including only brothers and sisters of the whole or half
blood, spouse, ancestors, and lineal descendants of an individual;

(b) An individual, and a corporation more than fifty percent (50%) in value of the
outstanding stock of which is owned, directly or indirectly, by or for that
individual;

(c) An individual, and a limited liability company of which more than fifty
percent (50%) of the capital interest or profits are owned or controlled,
directly or indirectly, by or for that individual;

(d) Two (2) corporations which are members of the same controlled group, which
includes and is limited to:

1. One (1) or more chains of corporations connected through stock

   ownership with a common parent corporation if:

   a. Stock possessing more than fifty percent (50%) of the total

      combined voting power of all classes of stock entitled to vote or

      more than fifty percent (50%) of the total value of shares of all

      classes of stock of each of the corporations, except the common

      parent corporation, is owned by one (1) or more of the other

      corporations; and
b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or

2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;

(e) A grantor and a fiduciary of any trust;

(f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(g) A fiduciary of a trust and a beneficiary of that trust;

(h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(j) A fiduciary of a trust and a limited liability company more than fifty percent (50%) of the capital interest, or the interest in profits, of which is owned directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(k) A corporation, a partnership, or a limited partnership if the same persons own:
1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership or limited partnership;

(l) A corporation and a limited liability company if the same persons own:
   1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
   2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;

(m) A partnership or limited partnership and a limited liability company if the same persons own:
   1. More than fifty percent (50%) of the capital interest or profits in the partnership or limited partnership; and
   2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;

(n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended;

(o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended; or

(p) Two (2) or more limited liability companies, if the same persons own more than fifty percent (50%) of the capital interest or are entitled to more than fifty percent (50%) of the capital profits in the limited liability companies;

(3) "Agribusiness" means the processing of raw agricultural products, including but not
limited to timber and industrial hemp, or the performance of value-added functions with regard to raw agricultural products;

(4) "Alternative fuel production" means a Kentucky operation that primarily produces alternative transportation fuels for sale. The alternative fuel production may produce electricity as a by-product if the primary function of the operations remains the production and sale of alternative transportation fuels;

(5) "Alternative transportation fuels" has the same meaning as in KRS 152.715;

(6) "Approved company" means an eligible company that has received final approval to receive incentives under this subchapter;

(7) "Approved costs" means the amount of eligible costs approved by the authority at final approval;

(8) "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;

(9) "Biomass resources" has the same meaning as in KRS 152.715;

(10) "Capital lease" means a lease classified as a capital lease by the Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976, as amended;

(11) "Carbon dioxide transmission pipeline" means the in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, that is used exclusively for the purpose of transporting carbon dioxide to the point of sale, storage, or other carbon management applications;

(12) "Coal severing and processing" means activities resulting in the eligible company being subject to the tax imposed by KRS Chapter 143;

(13) "Commonwealth" means the Commonwealth of Kentucky;

(14) "Confirmed approved costs" means:

(a) For owned economic development projects, the documented eligible costs incurred on or before the activation date; or
For leased economic development projects:

1. The documented eligible costs incurred on or before the activation date;

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

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

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

(16) "Economic development project" means:

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

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

(c) The installation and equipping of a facility;

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

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

1. Manufacturing;

2. Agribusiness;

3. Nonretail service or technology;

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

5. Alternative fuel, gasification, energy-efficient alternative fuel, or renewable energy production;
6. Carbon dioxide transmission pipeline;
7. Coal severing and processing; or
8. Hospital operations.

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

(18) "Eligible costs" means:

(a) For owned economic development projects:

1. Start-up costs;
2. Nonrecurring obligations incurred for labor and nonrecurring payments to contractors, subcontractors, builders, and materialmen in connection with the economic development project;
3. The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;
4. The cost of contract bonds and of insurance of all kinds that may be required or necessary for completion of an economic development project which is not paid by a contractor or otherwise provided for;
5. All costs of architectural and engineering services, including test borings, surveys, estimated plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required for construction of the economic development project;
6. All costs which are required to be paid under the terms of any contract for the economic development project;
7. All costs incurred for construction activities, including site tests and
inspections; subsurface site work; excavation; removal of structures, roads,
cemetery, and other surface obstructions; filling, grading, and
providing drainage and storm water retention; installation of utilities
such as water, sewer, sewage treatment, gas, electric, communications,
and similar facilities; off-site construction of utility extensions to the
boundaries of the real estate; construction and installation of railroad
spurs as needed to connect the economic development project to existing
railways; or similar activities as the authority may determine necessary
for construction of the economic development project; and

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

(b) For leased economic development projects:

1. Start-up costs;

2. Building/leasehold improvements; and

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

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

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

20. "Energy-efficient alternative fuel production" means a Kentucky operation that
produces for sale energy-efficient alternative fuels;

21. "Energy-efficient alternative fuels" means homogeneous fuels that:

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

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

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

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

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

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

2. a. Is subject to the Kentucky individual income tax imposed by KRS 141.020; or

b. Works remotely away from the economic development project if the job meets all of the following conditions:

i. Is held by a Kentucky resident;

ii. Was created as a result of the economic development project;

and

iii. The payroll of this job is expensed to the economic development project.

(b) "Full-time job" does not include a job held by a resident of any state with a reciprocal agreement between the Commonwealth and the other state as described in KRS 141.070;

(25) "Gasification process" means a process that converts any carbon-containing material into a synthesis gas composed primarily of carbon monoxide and hydrogen;

(26) "Gasification production" means a Kentucky operation that primarily produces for sale:

(a) Alternative transportation fuels;

(b) Synthetic natural gas;
(c) Chemicals;
(d) Chemical feedstocks; or
(e) Liquid fuels;
from coal, waste coal, coal-processing waste, or biomass resources, through a
gasification process. The gasification production may produce electricity as a by-
product if the primary function of the operations remains the production and sale of
alternative transportation fuels, synthetic natural gas, chemicals, chemical
feedstocks, or liquid fuels;

(27) "Headquarters" means the principal office where the principal executives of the
entity are located and from which other personnel, branches, affiliates, offices, or
entities are controlled;

(28) "Hospital" means a facility licensed by the Cabinet for Health and Family Services
under KRS Chapter 216B for the operation of a hospital and the basic services
provided by a hospital;

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

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

(31) "Kentucky gross receipts" has the same meaning as in KRS 141.0401;
(32) "Kentucky gross profits" has the same meaning as in KRS 141.0401;

(33) "Lease agreement" means an agreement between an approved company and an
unrelated entity conveying the right to use a facility, the terms of which reflect an
arms' length transaction. "Lease agreement" does not include a capital lease;

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

(35) "Manufacturing" means any activity involving:
1. Processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property and any activity related to the processing, assembling, or production of property, together with the storage, warehousing, distribution, and related office facilities; or

2. Production of vital medications, personal protective equipment, or equipment necessary to produce personal protective equipment;

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

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

37. "Owned project" means an economic development project owned in fee simple by the approved company or an affiliate, or possessed by the approved company or an affiliate pursuant to a capital lease;

38. "Personal protective equipment" means protective clothing, helmets, gloves, face shields, goggles, face masks, respirators, and other equipment designed to protect the user from injury or the spread of infection or illness;

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

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

41. "Rent" means the actual annual rent or fee paid by an approved company under a lease agreement;
(42) "Start-up costs" means nonrecurring costs incurred to furnish and equip a facility for an economic development project, including costs incurred for:
   (a) Computers, furnishings, office equipment, manufacturing equipment, and fixtures;
   (b) The relocation of out-of-state equipment; and
   (c) Cost of fixed telecommunications equipment;

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

(43) "Synthetic natural gas" means the same thing as in KRS 152.715;

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

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

(46) "Vital medications" means any drug or biologic used to prevent or treat a serious life-threatening disease or medical condition for which there is no other available source with sufficient supply of that drug or biologic or alternative drug or biologic;

(47) "Wage" means the per hour earnings of a full-time employee, including wages, tips, overtime, bonuses, and commissions, as reflected on the employee's federal form W-2 wage and tax statement, but excludes employee benefits; and

(48) "Wage target" means the average total hourly compensation amount, including the minimum wage and employee benefits, that the approved company commits to meet for all new full-time jobs created and maintained as a result of the economic development project, which shall be the greater of:

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

   (b) Eighty-five percent (85%) of the average hourly wage for the county in
which the project is to be undertaken;

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

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

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

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

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

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

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

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

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

(c) The approved company shall compensate a minimum of ninety percent (90%) of its full-time employees whose jobs were created as a result of the
economic development project, a minimum wage that is the greater of:

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

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

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

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

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

(4) The General Assembly finds and declares that:

(a) The general welfare and material well-being of the citizens of the Commonwealth depend in large measure upon the reinvestment and development of existing industry in the Commonwealth;

(b) It is in the best interest of the Commonwealth to induce reinvestment in existing facilities of eligible companies within the Commonwealth in order to advance the public purposes of relieving unemployment by preserving jobs that may be lost if not for the incentives to be offered by the authority to approved companies, and by preserving and creating sources of tax revenues for the support of public services provided by the Commonwealth; and

(c) The authority prescribed by this subchapter and the purposes to be
accomplished under this subchapter are proper governmental and public purposes for which public moneys may be expended.

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

(a) The number of applications receiving preliminary approval during the fiscal year;

(b) The number of final approvals issued during the fiscal year;

(c) The total amount of eligible equipment and other costs projected by the approved company at preliminary approval;

(d) The total amount of eligible equipment and other costs actually incurred by the approved company at final approval;

(e) The total number of full time jobs required to be preserved or retained as a result of the reinvestment project;

(f) The total actual number of full-time jobs reported by the reinvestment project as being preserved or retained on an annual basis;

(g) The maximum approved costs that may be recovered by the approved companies for the reinvestment projects; and

(h) The location of the reinvestment projects receiving preliminary and final approval during the fiscal year.

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

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

(1) "Agribusiness" has the same meaning as in KRS 154.32-010;

(2) "Alternative fuel production" has the same meaning as in KRS 154.32-010;

(3) "Applicant" means a business or industry that has made application for a grant-in-
aid or skills training investment credit as authorized by KRS 154.12-205 to 154.12-208;

(4) "Approved company" means any qualified company seeking to sponsor an occupational upgrade training program or skills upgrade training program for the benefit of one (1) or more of its employees, which is approved by the corporation to receive grant-in-aid or skills training investment credits as provided by KRS 154.12-205 to 154.12-208;

(5) "Approved costs" means costs confirmed as eligible by the corporation, including:

(a) Fees or salaries required to be paid to instructors who are employees of the approved company, instructors who are full-time, part-time, or adjunct instructors with an educational institution, and instructors who are consultants on contract with an approved company in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company;

(b) The cost of supplies and materials used exclusively in an occupational upgrade training program or skills upgrade training program sponsored by an approved company;

(c) Employee wages to be paid in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company; and

(d) All other costs of a nature comparable to those described in this subsection;

(6) "Board" means the board of directors of the Bluegrass State Skills Corporation;

(7) "Carbon dioxide transmission pipeline" has the same meaning as in KRS 154.32-010;

(8) "Coal severing and processing" has the same meaning as in KRS 154.32-010;

(9) "Corporation" means the Bluegrass State Skills Corporation, or BSSC;

(10) "Educational institution" means a public or nonpublic secondary or postsecondary
institution or an independent provider within the Commonwealth authorized by law
to provide a program of skills training or education beyond the secondary school
level or to adult persons without a high school diploma or its equivalent;

(11) "Employee" means any person:

(a) Who is currently a permanent full-time employee of the qualified company;
(b) Who is a resident of Kentucky, as that term is defined in KRS 141.010; and
(c) Who is [paid] compensated with the minimum base hourly wage plus

employee benefits equal to or greater than fifteen percent (15%) of the
minimum base hourly wage[. If the qualified company does not provide
employee benefits equal to at least fifteen percent (15%) of the minimum base
hourly wage, the qualified company may still qualify if it provides the full-
time employee total hourly compensation equal to or greater than one hundred
fifteen percent (115%) of the minimum base hourly wage through increased
hourly wages combined with at least one (1) company-paid employee benefit];

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

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

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

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

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

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

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

(a) Eighty-five percent (85%) of the average hourly wage for the

Commonwealth;

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

(c) (not be less than) One hundred fifty percent (150%) of the federal minimum wage;

throughout the term of the economic development project;

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

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

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

(a) Classroom instruction;

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

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

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

1. Manufacturing;

2. Agribusiness;

3. Nonretail service or technology;

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

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

6. Carbon dioxide transmission pipeline;

7. Coal severing and processing; or

8. Hospital operations.

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

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

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

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

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

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

(1) The authority shall develop a Small Business Development Credit Program in
consultation with the Office of Entrepreneurship and Small Business Innovation to assist new or existing small businesses operating in the Commonwealth. The nonrefundable credit shall be allowed against the taxes imposed by KRS 141.020 or 141.040, and 141.0401. The ordering of credits shall be as provided in KRS 141.0205.

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

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

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

1. Create and fill one (1) or more eligible positions over the base employment; and

2. Invest five thousand dollars ($5,000) or more in qualifying equipment or technology.

(c) Each eligible position that is created and filled shall be maintained for twelve (12) months. If a full-time employee filling a newly created eligible position ceases to be employed by the small business for any reason, that employee
shall be replaced within forty-five (45) days in order for the eligible position
to maintain its eligible status, in addition to meeting all other applicable
requirements.

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

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

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

3. **One hundred fifty percent (150%) of the federal minimum wage;**

   **throughout the term of the economic development project.**

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

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

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

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

⇒ **Section 7. KRS 154.28-080 is amended to read as follows:**

(1) **The authority shall promulgate standards for the determination and approval of**
eligible companies and their economic development projects in accordance with
KRS Chapter 13A.

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

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

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

1. Eighty-five percent (85%) of the average hourly wage for the Commonwealth; or
2. Eighty-five percent (85%) of the average hourly wage for the county in which the project is to be undertaken; or
3. One hundred fifty percent (150%) of the federal minimum wage; throughout the term of the economic development project.

(b) If the base hourly wage calculated in paragraph (a)1. or 2. of this subsection is less than one hundred fifty percent (150%) of the federal minimum wage,
then the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage. However, for projects receiving preliminary approval of the authority prior to July 1, 2008, the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage existing on January 1, 2007. In addition to the applicable base hourly wage calculated above, the eligible company shall provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage; however, if the eligible company does not provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage, the eligible company may qualify under this section if it provides the employees hired by the eligible company as a result of the economic development project total hourly compensation equal to or greater than one hundred fifteen percent (115%) of the applicable base hourly wage through increased hourly wages combined with employee benefits.

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

(a) Rehabilitates a manufacturing or agribusiness facility:

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

2. For which the current occupant of the facility has published a notice of closure so long as the eligible company intending to acquire the facility is not an affiliate of the current occupant; or

3. To which the title is vested in other than the eligible company or an affiliate of the eligible company and that is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order
(b) Replaces a manufacturing or agribusiness facility existing in the Commonwealth:

1. To which the title shall have been taken under the exercise of the power of eminent domain, or to which the title shall be the subject of a nonappealable judgment granting the authority to exercise the power of eminent domain, in either event to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

2. Which has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

(c) Replaces an existing manufacturing or agribusiness facility located in the same county that cannot be expanded due to the unavailability of real estate at or adjacent to the manufacturing or agribusiness facility to be replaced. Any economic development project satisfying the requirements of this subsection shall be eligible only for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the manufacturing or agribusiness facility to be replaced. No economic development project otherwise satisfying the requirements of this subsection shall be approved by the authority that results in a lease abandonment or lease termination by the eligible company without the consent of the lessor.

(6) With respect to each eligible company making an application to the authority for inducements, and with respect to these economic development projects described in the application which do not involve an expansion, the authority shall make inquiries and request materials of the applicant, including but not limited to written evidence that except for the receipt of inducements authorized by KRS 154.28-015 to 154.28-090 and KRS 141.400, the eligible company will not locate its economic
development project within the Commonwealth. Upon the review of the application and completion of initial inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and authorizing the undertaking of the economic development project.

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

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

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

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

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

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

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

(c) A statement that no significant number of existing jobs in the Commonwealth will be lost or adversely affected due to approval of the eligible company and its economic development project; and
(d) A statement that the economic development project could reasonably and efficiently locate outside the qualified zone and, without the inducements offered by the authority, the eligible company would likely locate outside the zone.

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

1. a. That rehabilitates a manufacturing or service or technology facility that has not been in operation;
   
   b. For which the current occupant of the facility has published a notice of closure so long as the eligible company intending to acquire the facility is not an affiliate of the current occupant; or
   
   c. To which the title is vested in one other than the eligible company and that is sold or transferred under a foreclosure ordered by a court of competent jurisdiction or by order of bankruptcy court;

2. Replaces a manufacturing or service or technology facility existing in the Commonwealth that been damaged or destroyed by fire, or the title to which shall have been taken under the exercise of the power of eminent domain or is the subject of a nonappealable judgment that grants the power of eminent domain to the authority, in any of these events to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

3. Replaces an existing manufacturing or service or technology facility located in the same qualified zone that cannot be expanded due to the lack of available real estate at or adjacent to the manufacturing or service or technology facility to be replaced. Any economic
development project satisfying the requirements of this paragraph shall only be eligible for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the manufacturing or service or technology facility to be replaced.

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

(4) (a) Within six (6) months after the activation date, the approved company shall compensate a minimum of ninety percent (90%) of its full-time employees whose jobs were created with base hourly wages that is the greater of:

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

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

3. **One hundred fifty percent (150%)** of the federal minimum wage;

throughout the term of the economic development project.

(b) If the base hourly wage calculated in paragraph (a)1. or 2. of this subsection is less than one hundred fifty percent (150%) of the federal minimum wage, then the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage. However, for projects receiving preliminary approval of the authority prior to July 1, 2008, the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage existing on January 1, 2007. In addition to the applicable base hourly wage calculated above, the eligible company shall provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage; however, if the
eligible company does not provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage, the eligible company may qualify under this section if it provides the employees hired by the eligible company as a result of the economic development project total hourly compensation equal to or greater than one hundred fifteen percent (115%) of the applicable base hourly wage through increased hourly wages combined with employee benefits.

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

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

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

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

3. (a) Within six (6) months after the activation date, the approved company shall
compensate a minimum of ninety percent (90%) of its full-time employees whose jobs were created with base hourly \{wages\} \textit{wage that is the greater of} equal to either:

1. \textit{Eighty-five percent (85%) of the average hourly wage for the Commonwealth; or}

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

3. \textit{One hundred fifty percent (150%) of the federal minimum wage; throughout the term of the economic development project.}

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

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

(4) If an eligible company receives approval from the authority before July 1, 2008, and locates an economic development project on property that adjoins one (1) of the five regional postsecondary education centers operated and occupied in cooperation
with the Kentucky Community and Technical College System, or operated and occupied under the combined efforts of the Kentucky Community and Technical College System and a public four (4) year comprehensive university, the eligible company may alternatively satisfy the requirements of subsection (3) of this section in the following manner:

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

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

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

Written evidence that:

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

(b) No significant number of existing jobs in the Commonwealth will be lost, or
adversely affected, due to the designation of an eligible company as an approved company, and to the approval of the eligible company's economic development project; and

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

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