

154.32-030 Application, approval, and review process -- Memorandum of agreement -- Loan agreement for advance disbursement -- Preliminary and final approval -- Tax incentive agreement -- Standards for approval -- Partial satisfaction of eligibility requirements.

- (1) The application, approval, and review process under this subchapter shall be as follows:
 - (a) An eligible company with a proposed economic development project may submit an application to the authority. The application shall include the information required by subsection (3) of this section;
 - (b)
 1. Upon review of the application and any additional information submitted, the authority may, by resolution, give preliminary approval to an eligible company and authorize the negotiation and execution of a memorandum of agreement. The memorandum of agreement shall establish a preliminary job target, minimum wage target, including employee benefits, and maximum total approved cost for the economic development project, and shall only allow the recovery of eligible costs incurred after preliminary approval. Upon preliminary approval, the preliminarily approved company may undertake the project in accordance with the memorandum of agreement, and may begin to hire employees that may be counted toward the minimum full-time job requirements established by the memorandum of agreement.
 2. If the preliminary approval includes an advance disbursement, a separate loan agreement shall also be negotiated establishing the terms for the advance disbursement in accordance with KRS 154.32-080;
 - (c) After preliminary approval but before final approval, the authority shall post the preliminarily approved company's name, the location of the economic development project, and the incentives that have been preliminarily approved on the Cabinet for Economic Development's Web site;
 - (d) The preliminarily approved company shall submit any documentation required by the authority upon request of the authority;
 - (e) To obtain final approval, the preliminarily approved company shall submit:
 1. Documentation required by the authority to confirm that the requirements established by the memorandum of agreement have been met; and
 2. Documentation of official action taken by a local governmental entity detailing the manner and level of local contribution, if applicable.Upon review and confirmation of the documentation, the authority may, by resolution, give final approval to the preliminarily approved company, and authorize the execution of a tax incentive agreement between the authority and the approved company pursuant to KRS 154.32-040. The tax incentive agreement shall establish an activation date, which shall be within two (2) years of final approval;
 - (f)
 1. On or before the activation date, the approved company shall notify

the authority of its intention to activate the tax incentive agreement. The approved company shall submit:

- a. Documentation that it has met the minimum full-time job, minimum investment, and minimum wage and employee benefits requirements established by KRS 154.32-020 as of the date of activation; and
 - b. The confirmed approved costs incurred as of the date of activation, which shall be the total eligible costs that may be recovered by the approved company.
2. If the approved company fails to meet any of the minimum investment, full-time job, or wage requirements, including employee benefits, established by KRS 154.32-020 on the activation date, the tax incentive agreement shall be canceled and the approved company shall not be eligible for incentives.
 3. If an approved company meets the minimum investment, full-time job, and wage requirements, including employee benefits, established by KRS 154.32-020, but fails to meet higher job targets and minimum wage targets, including employee benefits, established in the tax incentive agreement, then the provisions of subsection (4) of this section shall apply in determining the incentives for which the approved company qualifies.
 4. Upon activation of a tax incentive agreement, the authority shall notify the department, and shall provide the department with the information necessary to monitor and track the incentives taken by the approved company; and
- (g)
1. The authority shall monitor the tax incentive agreement at least annually, and the approved company shall submit all documentation necessary for the authority to monitor the agreement.
 2. The authority shall, based on the documentation provided, confirm that the approved company is in continued compliance with the provisions of the tax incentive agreement and, therefore, eligible for incentives.
 3. Upon annual review, if the approved company meets the minimum job and wage requirements, including employee benefits, established by KRS 154.32-020, but fails to meet the job target and minimum wage target, including employee benefits, established in the tax incentive agreement, then the provisions of subsection (4) of this section shall apply in determining the incentives for which the approved company qualifies in any year.
 4. Upon final approval, the authority shall notify the department that an approved company is eligible for incentives and shall provide the department with the information necessary to monitor the use of incentives by the approved company. If, at any time during the term of the tax incentive agreement, an approved company becomes ineligible for incentives, the authority shall notify the department, and the department shall discontinue the availability of incentives for the approved company.

- (2) (a) The authority may establish procedures and standards for the review and approval of eligible companies and their economic development projects through the promulgation of administrative regulations in accordance with KRS Chapter 13A.
- (b) Standards to be used by the authority in reviewing and approving an eligible company and its economic development project shall include but not be limited to:
 - 1. The creditworthiness of the eligible company;
 - 2. The proposed capital investment to be made;
 - 3. The number of new full-time jobs to be provided for the residents of the Commonwealth and the wages to be paid;
 - 4. Support of the local community; and
 - 5. The likelihood of the economic success of the economic development project.
- (3) The application shall include but not be limited to:
 - (a) The name of the applicant and identification of any affiliates of the applicant who will have some relation to the economic development project;
 - (b) A description of the economic development project, including its location, the total investment in the economic development project, and total proposed eligible costs;
 - (c) The projected number of new full-time jobs to be created as a result of the economic development project and identification of any affiliates who may employ persons hired to fill those jobs;
 - (d) The number of existing full-time jobs at the site of the economic development project on the date of the application and a description and breakdown of the relevant affiliated employers;
 - (e) Proposed wage and employee benefit amounts for the new full-time jobs to be created as a result of the proposed economic development project;
 - (f) For proposed economic development projects new to the Commonwealth, certification by the eligible company that the economic development project could reasonably and efficiently locate outside of the Commonwealth and, without the incentives offered by the authority, the eligible company would likely locate outside the Commonwealth;
 - (g) For eligible companies with an existing location in the Commonwealth considering an expansion, certification that the tax incentives are necessary for the expansion to occur;
 - (h) A letter of support from a local governmental entity in the city or county where the economic development project will be located; and
 - (i) Any other information the authority may require.
- (4) (a) An approved company that meets the minimum job and wage requirements, including employee benefits established by KRS 154.32-020, but fails to meet the job target and minimum wage target, including employee benefits established by the tax incentive agreement, shall be eligible to receive the incentives authorized by the tax incentive

agreement as provided in this subsection.

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

Effective: June 26, 2009

History: Created 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 11, effective June 26, 2009.