

**65.6971 Development area for infrastructure development -- Application -- Approval -- Ordinance creating area -- Increment amounts -- Grant contracts - - Portion of increment due from each taxing district -- Financing account -- Reports -- Operating procedures -- Obligation of Department of Revenue and agency.**

- (1) A city, county, or agency shall submit an application to the Cabinet for Economic Development for approval of a development area for infrastructure development which includes revenues from the Commonwealth, the standards for which the Cabinet for Economic Development and the Tourism, Arts and Heritage Cabinet shall establish through their operating procedures or by the promulgation of administrative regulations in accordance with KRS Chapter 13A. The Cabinet for Economic Development shall determine whether the development area described in the application constitutes a project of the type described in this section. The Cabinet for Economic Development, upon its determination, shall assign the application to the economic development authority or the tourism development authority, as appropriate, for further consideration and approval.
- (2) A development area for purposes of infrastructure development shall:
  - (a)
    1. Consist of at least fifty (50) acres of undeveloped land, unless approved otherwise by the economic development authority or the tourism development authority in consideration of the geography of the area; or
    2. Consist of at least one (1) acre constituting a brownfield site; and
  - (b)
    1. In the case of an economic development project, be under the control of, owned by, and operated by an agency at the commencement date; or
    2. In the case of a tourism attraction project, be under the control of, leased by, owned by, or operated by an agency at the commencement date.
- (3) With respect to each city, county, or agency that applies to the economic development authority or the tourism development authority for approval of a development area for infrastructure development, the economic development authority or the tourism development authority shall request materials and make all inquiries concerning the application the economic development authority or the tourism development authority deems necessary. Upon review of the application and requested materials, and completion of inquiries, the economic development authority or the tourism development authority may grant approval for:
  - (a) The development area for infrastructure development;
  - (b) Each project for which an application has been submitted to be located in the development area for infrastructure development, provided that each project approved for location in the development area for infrastructure development meets the criteria necessary in order to qualify for inducements under subchapters 22, 24, or 28 of KRS Chapter 154, or satisfies the requirements of a tourism development attraction defined under KRS 148.851;
  - (c) The percentage of the Commonwealth's portion of the increment that the Commonwealth agrees to distribute to the agency each year during the term of the grant contract;

- (d) The maximum amount of costs for infrastructure development for which the increment may be distributed to the agency; and
  - (e) The master agreement constituting a grant contract and any addendum for each project approved for location in the development area for infrastructure development.
- (4) Prior to any approval by the economic development authority or the tourism development authority, the economic development authority or the tourism development authority shall have received an ordinance adopted by the city or county creating the development area and establishing the percentage of increment that the city and county are distributing each year to the agency for use in the infrastructure development of the development area for which economic development authority or the tourism development authority approval is sought. The economic development authority or the tourism development authority shall not approve a percentage of the Commonwealth's portion of the increment to be distributed to the agency each calendar year with respect to a development area for infrastructure development greater than the percentage approved by the city or county creating the development area.
- (5) The maximum amount of increment available for development areas for infrastructure development is one hundred percent (100%).
- (6) The terms and conditions of each grant contract, including the master agreement constituting a grant contract and any addenda, are subject to negotiations between the economic development authority or the tourism development authority and the other parties to the grant contract. The grant contract shall include but not be limited to the following provisions: the activation date, the taxes to be included in the calculation of the increment, the percentage increment to be contributed by each taxing district, the maximum amount of infrastructure development costs, a description of the development area, the termination date, subject to extension through each addendum, and the requirement of the agency to annually certify to the economic development authority or the tourism development authority as to the use of the increment for payment of infrastructure development costs.
- (7) (a) Any agency that enters into a grant contract for the release of any increments that may arise during the period of a grant contract shall, after each calendar year a grant contract is in effect, notify each taxing district obligated under the grant contract that an increment is due, and, in consultation with each taxing district, determine the respective portion of the total increment due from each taxing district. The agency shall then present the total increment due from the Commonwealth under the grant contract to the Department of Revenue for certification.
- 1. Upon notice from the agency, each taxing district obligated under the grant contract, other than the Commonwealth, shall release to the agency the respective portion of the total increment due under the grant contract. The agency shall certify to the Department of Revenue on a calendar year basis the amount of the increment collected.

2. Upon certification of the total increment due from the Commonwealth by the Department of Revenue, the department is authorized and directed to transfer the increment to a tax increment financing account established and administered by the Finance and Administration Cabinet for payment of the Commonwealth's portion of the increment. Prior to disbursement by the Finance and Administration Cabinet of the funds from the tax increment financing account, the economic development authority or the tourism development authority shall notify the Finance and Administration Cabinet that the agency is in compliance with the terms of the grant contract. Upon notification, the Finance and Administration Cabinet is authorized and directed to release to the agency the Commonwealth's portion of the total increment due under the grant contract.
  - (b) The Department of Revenue shall report to the economic development authority or the tourism development authority on a calendar year basis the amount of the total increment released to an agency.
- (8) The Department of Revenue shall have the authority to establish operating procedures for the administration and determination of the Commonwealth's increment.
- (9) The Department of Revenue or agency shall have no obligation to refund or otherwise return any of the increment to the taxpayer from whom the increment arose or is attributable. Further, no additional increment resulting from audit, amended returns or other activity for any period shall be transferred to the tax increment financing account after the initial release to the agency of the Commonwealth's increment for that period.

**Effective:** June 25, 2009

**History:** Amended 2009 Ky. Acts ch. 16, sec. 9, effective June 25, 2009. -- Amended 2005 Ky. Acts ch. 85, sec. 90, effective June 20, 2005; and ch. 95, sec. 12, effective June 20, 2005. -- Created 2002 Ky. Acts ch. 338, sec. 14, effective July 15, 2002.