

**154.22-040 Certification of qualified counties -- Loss of certification -- Coal-producing counties qualified for electric generation -- Selection of eligible companies under Rural Economic Development Assistance Program -- Limitation of applicability for nonprofit corporations with handicapped and sheltered workers.**

- (1) Each year, the authority shall under its Rural Economic Development Assistance Program, on the basis of the final unemployment figures calculated by the Office of Employment and Training within 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 Office of Employment and Training within 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 65.245, 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 wages equal to either:
    1. Seventy-five percent (75%) of the average hourly wage for the Commonwealth; or
    2. Seventy-five percent (75%) 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. 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.

- (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.

**Effective:** June 25, 2009

**History:** Amended 2009 Ky. Acts ch. 11, sec. 38, effective June 25, 2009. -- Amended 2007 Ky. Acts ch. 69, sec. 2, effective June 26, 2007. -- Amended 2006 Ky. Acts ch. 211, sec. 70, effective July 12, 2006. -- Amended 2004 Ky. Acts ch. 84, sec. 1, effective April 6, 2004. -- Amended 2002 Ky. Acts ch. 338, sec. 20, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 321, sec. 3, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 349, sec. 1, effective July 15, 1998; and ch. 584, sec. 1, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 194, sec. 30, effective July 15, 1996; and ch. 271, sec. 8, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 450, sec. 5, effective July 15, 1994. -- Repealed, reenacted, and amended as KRS 154.22-040, 1992 Ky. Acts ch. 105, sec. 25, effective July 14, 1992; ch. 360, sec. 5, effective July 14, 1992; and ch. 363, sec. 13, effective July 14, 1992. -- Created 1988 Ky. Acts ch. 392, sec. 9, effective April 8, 1988.

**Formerly codified as KRS 152.276**