

65.6972 Development area and related project -- Application -- Approval -- Requirements for project -- Independent consultant -- Approval by authority - - Ordinance -- 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, which includes revenues from the Commonwealth, and the related project, 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 and related project described in the application constitutes a project of the type described in KRS Chapter 154 for which the economic development authority shall have the right to approve the development area and related project or KRS Chapter 148 for which the tourism development authority shall have the right to approve the development area and related project. 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 project otherwise satisfying the requirements of the project as defined in KRS 65.680, in order to qualify the project and related development area, in addition shall satisfy all of the following requirements for a project:
 - (a) Represent new economic activity in the Commonwealth;
 - (b) Result in a minimum capital investment of ten million dollars (\$10,000,000);
 - (c) Result in the creation of a minimum of twenty-five (25) new full-time jobs for Kentucky residents to be held by persons subject to the personal income tax of the Commonwealth within two (2) years of the date of the final resolution authorizing the development area and the project;
 - (d) Result in a net positive economic impact to the economy of the Commonwealth, taking into consideration any substantial adverse impact on existing Commonwealth businesses;
 - (e) Generate a minimum of twenty-five percent (25%) of the total revenues derived from the project attributable to sources outside of the Commonwealth during each year a grant contract is in effect;
 - (f) Result in a unique contribution to or preservation of the economic vitality and quality of life of a region of the Commonwealth; and
 - (g) Not be primarily devoted to the retail sale of goods.
- (3) After assignment of the application for the project and related development area by the Cabinet for Economic Development:
 - (a) The economic development authority or the tourism development authority, as appropriate, shall engage the services of a qualified independent consultant to analyze data related to the project and the development area, who shall

prepare a report for the economic development authority or the tourism development authority, as appropriate, with the following findings:

1. The percentage of revenues derived from the development area which are generated from business not located in the Commonwealth;
 2. The estimated amount of increment the development area is expected to generate over a twenty (20) year period from the projected activation date;
 3. The estimated amount of ad valorem taxes, other than the school or fire district portion of ad valorem taxes, from real property, Kentucky individual income tax, Kentucky sales and use taxes, local insurance premium taxes, occupational license fees, or other such state taxes which would be displaced within the Commonwealth, to reflect economic activity which is being shifted over the twenty (20) year period;
 4. The estimated increment the development area is expected to generate over the twenty (20) year period, equal to the estimated amount set forth in paragraph (a)2. of this subsection minus the estimated amount set forth in paragraph (a)3. of this subsection; and
 5. The project or development area will not occur if not for the designation of the development area and granting of increments by the Commonwealth to the development area.
- (b) The independent consultant shall consult with the economic development authority or the tourism development authority, as appropriate, the Office of State Budget Director and the Finance and Administration Cabinet in the development of the report. The Office of State Budget Director and the Finance and Administration Cabinet shall agree as to methodology to be used and assumptions to be made by the independent consultant in preparing its report. On the basis of the independent consultant's report and prior to any approval of a project by the economic development authority or the tourism development authority, as appropriate, the Office of State Budget Director and the Finance and Administration Cabinet shall certify whether there is a projected net positive economic impact to the Commonwealth and the expected amount of incremental state revenues from the project to the economic development authority or tourism development authority, as appropriate. Approval shall not be granted if it is determined that there is no projected net positive economic impact to the Commonwealth.
- (c) The primary project entity shall pay all costs associated with the independent consultant's report.
- (4) With respect to each city, county, or agency that applies for approval of a project and development area, the economic development authority or the tourism development authority, as appropriate, shall request materials and make all inquiries concerning the application the economic development authority or the tourism development authority, as appropriate, deems necessary. Upon review of the application and requested materials, and completion of inquiries, the economic

development authority or the tourism development authority, as appropriate, may by resolution grant approval for:

- (a) The development area and project for which an application has been submitted;
 - (b) The percentage of the Commonwealth's portion of the increment that the Commonwealth agrees to have distributed to the agency each year during the term of the grant contract;
 - (c) The maximum amount of costs for the project for which the increment may be distributed to the agency; and
 - (d) The grant contract.
- (5) Prior to any approval by the economic development authority or the tourism development authority, as appropriate, 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 approving the project and establishing the percentage of increment that the city and county are distributing each year to the agency to pay for the development area for which economic development authority or tourism development authority approval is sought. The economic development authority or the tourism development authority, as appropriate, shall not approve a percentage of the Commonwealth's portion of the increment to be distributed to the agency each year with respect to a development area and project greater than the percentage approved by the city or county creating the development area.
- (6) The amount of increment available for a development area shall be no more than eighty percent (80%) per year, but shall in no case exceed twenty-five percent (25%) of the project costs during the term of the grant agreement.
- (7) The terms and conditions of each grant contract are subject to negotiations between the economic development authority or the tourism development authority, as appropriate, 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 agreed taxes to be included in the calculation of the increment, the percentage increment to be contributed by the Commonwealth and other taxing districts, the maximum amount of project costs, a description of the development area and the project, the termination date, and the requirement that the agency annually certify to the economic development authority or tourism development authority, as appropriate, as to the use of the increment for payment of project costs in the development area.
- (8) The agency responsible for the development area that enters into the grant contract shall, after each year the grant contract is in effect, certify to the economic development authority or the tourism development authority, as appropriate:
- (a) The amount of the increment used during the previous calendar year for the project costs; and
 - (b) That more than twenty-five percent (25%) of the total revenues derived from the project during the previous calendar year were attributable to sources outside the Commonwealth.

- (9) (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. In consultation with each taxing district, the agency shall determine the respective portion of the total increment due from each taxing district, and the determination of the agency shall be reviewed by an independent certified public accountant. The agency shall submit to the Department of Revenue for certification its determination with respect to the total increment due together with the review of the certified public accountant and detailed information concerning ad valorem taxes, Kentucky individual income tax, Kentucky sales and use taxes, local insurance premium taxes, occupational license fees, and other such state taxes as may be determined by the Department of Revenue, including withholding taxes of employees of each taxpayer located in the development area.
1. Upon notification to the agency of the total increment by the Department of Revenue and 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 increments 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, as appropriate, 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, as appropriate, on a calendar year basis the amount of the total increment released to an agency.
- (10) The Department of Revenue shall have the authority to establish operating procedures for the administration and determination of the Commonwealth's increment.
- (11) 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 trust account established under subsection (9)(a)2. of this section and administered by the

Finance and Administration Cabinet 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. 10, effective June 25, 2009. -- Amended 2005 Ky. Acts ch. 85, sec. 91, effective June 20, 2005; and ch. 95, sec. 13, effective June 20, 2005. -- Created 2002 Ky. Acts ch. 338, sec. 15, effective July 15, 2002.