

154.32-080 Advance disbursement of portion of incentives -- Eligibility -- Computation of maximum amount -- Loan agreement -- Repayment.

- (1) Subject to the availability of funds and approval by the General Assembly, a preliminarily approved company with an investment of five hundred million dollars (\$500,000,000) or more may be eligible for the advance disbursement of a portion of the incentives provided under this subchapter. The amount of the advance disbursement shall be based on the employment of Kentucky residents during the construction of the economic development project, shall be negotiated with the authority, and shall not exceed the limitations established by this section.
- (2) The authority shall compute the maximum amount of the advance disbursement employment incentive as follows:
 - (a) The base amount shall equal the total investment specified in the tax incentive agreement multiplied by the labor intensity factor as determined in paragraph (c) of this subsection;
 - (b) The base amount shall then be multiplied by the Kentucky resident factor as determined in paragraph (d) of this subsection. The resulting amount shall be the maximum advance disbursement employment incentive that the authority may approve;
 - (c) The labor intensity factor shall be:
 1. Twenty-five percent (25%) if the estimated labor component for the economic development project is greater than thirty percent (30%) of the total investment;
 2. Twenty percent (20%) if the estimated labor component for the economic development project is greater than twenty-five percent (25%) but less than or equal to thirty percent (30%) of the total investment; or
 3. Fifteen percent (15%) if the estimated labor component for the economic development project is equal to or less than twenty-five percent (25%) of the total capital investment; and
 - (d) The Kentucky resident factor shall be four percent (4%) multiplied by a fraction, the numerator of which shall be the estimated total gross wages that will be paid to Kentucky residents who are working on the construction, retrofit, or upgrade of the economic development project, and the denominator of which shall be the estimated total gross wages that will be paid to all workers working on the construction, retrofit, or upgrade of the economic development project.
- (3) In negotiating an advance disbursement, the authority shall consider the possible increased risk to the Commonwealth associated with the disbursement of funds prior to project completion, should the preliminarily approved company fail to comply with the terms of the loan agreement or tax incentive agreement.
- (4) The authority and the preliminarily approved company shall enter into a loan agreement as provided in KRS 154.32-030(1)(b)2. The loan agreement shall include but not be limited to:

- (a) A schedule for the disbursement of funds to the preliminarily approved company;
 - (b) Identification of the collateral or other forms of assurance required to mitigate the risk to the Commonwealth;
 - (c) A provision that requires a reduction or adjustment in the incentives the approved company is scheduled to receive after activation of the economic development project until the advanced disbursement has been repaid. The amount by which the incentives are reduced shall be applied as a credit against the amount owed by the approved company for the advanced disbursement;
 - (d) A repayment schedule, which shall require uniform incremental payments to the extent possible, and which shall include the amount of interest due, the time period over which the advance disbursement amount shall be repaid, and the amount due each year; and
 - (e) An alternative method for payment if incentives are not sufficient to cover the amount of any payment due as set forth in the repayment schedule.
- (5) The department shall monitor the total incentives for which an approved company is eligible. Any portion of the incentives identified in the tax incentive agreement as being devoted to the repayment of an advance disbursement shall be deducted from the balance of approved costs available for recovery by the approved company, and the department shall forward the amount deducted to the Cabinet for Economic Development, Department of Financial Incentives, for deposit in the authority's account. The timing of all reporting and fund transfers shall be established by agreement between the department and the authority.
- (6) During the period when an approved company's incentives are being applied to repay an advance disbursement, the approved company shall, at the direction of the authority or the department, file all required requests for incentives, submit all required remittances, make all required tax payments, and provide the department and the authority any information that would normally be required for the approved company to receive incentives.

Effective: June 26, 2009

History: Created 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 17, effective June 26, 2009.