



States' Biofuels Statutes

STATE OF KENTUCKY

This project was undertaken in partnership with the USDA Office of the Chief Economist, The Office of Energy Policy and New Uses. For information on the full project, visit [States' Biofuels Statutory Citations](#). These statutes are placed in reverse chronological order using the date of the most recent amendment to the statute. Many biofuels laws were enacted as amendments to previously passed laws.

Current through the 2013 Legislative Session of the Kentucky General Assembly.

154.27-010 Definitions for subchapter

As used in this subchapter:

(1) “Activation date” means the date on which an approved company begins incurring recoverable costs or engaging in recoverable activity pursuant to the tax incentive agreement. The activation date shall be set forth in the tax incentive agreement and shall be a date within five (5) years of the date of final approval of the tax incentive agreement. The authority may extend the five (5) year period to no more than seven (7) years upon written application for an extension by the approved company. To implement the activation date, the approved company shall notify the authority of its intent to activate the tax incentives authorized in the tax incentive agreement. The activation date shall apply to all incentives included in the tax incentive agreement regardless of whether the approved company has met the requirements to receive all incentives at that time. If the approved company does not implement the activation date before the date established in the tax incentive agreement, the activation date shall be the date established in the tax incentive agreement;

(2) “Affiliate” has the same meaning as in KRS 154.22-010;

(3) (a) “Alternative fuel facility” means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2007, and that, after the new construction, retrofit, or upgrade, primarily produces for sale alternative transportation fuels. For a retrofit of an existing facility, the new modification or addition within the facility shall primarily produce alternative transportation fuel for sale.

(b) The alternative fuel facility may produce electricity as a by-product if the primary purpose for which the facility is constructed, retrofitted, or upgraded, and the primary function of the facility remains the production and sale of alternative transportation fuels;

(4) “Alternative transportation fuels” has the same meaning as in KRS 152.715;

(5) “Approved company” means a corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity approved for incentives for an eligible project;

(6) “Authority” means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;

(7) “Base amount” means the tons of coal, thousand (1000) cubic foot units (Mcf) of natural gas, or gallons of natural gas liquids purchased and used or severed and used by the approved company as feedstock for an eligible project during the twelve (12) months prior to the month in which the approved company first begins receiving incentives under KRS 143.024 or 143A.025, and 154.27-060, that were subject to the tax imposed by KRS 143.020 or 143A.020;

(8) “Biomass resources” has the same meaning as in KRS 152.715;

(9) (a) “Capital investment” means:

1. Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project;

2. The cost of acquiring land or rights in land and any cost incident thereto, including recording fees;

3. The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project which is not paid by the contractor or otherwise provided;

4. All costs of architectural and engineering services, including test borings, surveys, estimates, plans, specifications, preliminary investigations, supervision of construction, and the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project;

5. All costs required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project; and

6. All other costs of a nature comparable to those described in this subsection.

(b) “Capital investment” does not include costs described in paragraph (a) of this subsection that are paid for with funds received from the federal government or that are reimbursed by the federal government;

(10) “Carbon capture ready” means planning for or anticipating capture of carbon dioxide in a manner to facilitate continued operation of the facility in compliance with applicable federal requirements;

(11) “Carbon dioxide transmission pipeline” means the in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, that is used exclusively for the purpose of transporting carbon dioxide to a point of sale, storage, or other carbon management applications;

(12) “Center for Applied Energy Research” means the University of Kentucky Center for Applied Energy Research;

(13) “Commonwealth” means the Commonwealth of Kentucky;

(14) “Construction period” means the period beginning with the activation date of the eligible project and ending on a date set forth in the tax incentive agreement, which shall be no later than five (5) years from the activation date;

(15) “Department” means the Department of Revenue;

(16) “Eligible project” means:

(a) An alternative fuel facility or a gasification facility meeting the investment requirements of KRS 154.27-020;

(b) An energy-efficient alternative fuel facility meeting the investment requirements of KRS 154.27-020;

(c) A renewable energy facility meeting the investment requirements of KRS 154.27-020; or

(d) A carbon dioxide transmission pipeline meeting the investment requirements of KRS 154.27-020;

(17) “Energy-efficient alternative fuel facility” means a facility located in Kentucky that is newly constructed on or after August 30, 2010, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2010, and that, after the new construction, retrofit, or upgrade, will produce for sale energy-efficient alternative fuels. For a retrofit of an existing facility, the new modification or addition within the facility shall produce for sale energy-efficient alternative fuels;

(18) “Energy-efficient alternative fuels” means homogeneous fuels that:

(a) Are produced from processes designed to densify feedstock coal, waste coal, or biomass resources; and

(b) Have an energy content that is greater than the feedstock coal, waste coal, or biomass resource;

(19) “Estimated labor component” means the projected percentage of the total capital investment attributable to labor;

(20) (a) “Facility” means a single location within the Commonwealth at which machinery and equipment are used in a manufacturing process that transforms raw materials into a product with

commercial value.

1. The facility shall include the physical plant structure where the manufacturing process occurs and machinery and equipment within the physical plant structure.

2. The facility may include:

a. On-site machinery and equipment used exclusively for processing coal or other raw materials for use in the manufacturing process at the facility;

b. For an alternative fuel facility or gasification facility, on-site power station operations, if those operations are primarily used to produce electricity for the facility;

c. On-site refining operations, if those operations are used exclusively to refine and blend fuels produced by the facility; and

d. The in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, if the exclusive purpose of the pipeline is to transport carbon dioxide from the facility to a point of sale, storage, or other carbon management applications.

(b) "Facility" shall not include any mining operations, or drilling and production operations for natural gas;

(21) "Gasification process" means a process that converts any carbon-containing material into a synthesis gas composed primarily of carbon monoxide and hydrogen;

(22) (a) "Gasification facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2007, and that, after the new construction, retrofit, or upgrade, primarily produces for sale:

1. Alternative transportation fuels;

2. Synthetic natural gas;

3. Chemicals;

4. Chemical feedstocks; or

5. Liquid fuels;

from coal, waste coal, coal-processing waste, or biomass resources, through a gasification process. For a retrofit of an existing facility, the new modification or addition within the facility shall primarily produce one (1) or more of the products set forth in this paragraph.

(b) The gasification facility may produce electricity as a by-product if the primary purpose for

which the facility is constructed, retrofitted, or upgraded, and the primary function of the facility remains the production and sale of alternative transportation fuels, synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels;

(23) “Kentucky gross profits” has the same meaning as in KRS 141.0401;

(24) “Kentucky gross receipts” has the same meaning as in KRS 141.0401;

(25) “Post-construction incentives” means the incentives available under KRS 154.27-060 and 154.27-080;

(26) “Renewable energy facility” means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded after August 30, 2007, and that, after the new construction, retrofit, or upgrade, utilizes:

(a) Wind power, biomass resources, landfill methane gas, hydropower, or other similar renewable resources to generate electricity in excess of one (1) megawatt for sale to unrelated entities; or

(b) Solar power to generate electricity in excess of fifty (50) kilowatts for sale to unrelated entities.

For a retrofit of an existing facility, the modification or addition shall primarily result in the production of electricity as described in paragraph (a) or (b) of this subsection;

(27) “Resident” has the same meaning as in KRS 141.010;

(28) “Retrofit” means a modification or addition to an existing facility that results in the production of a new and different product or uses a new or different process to produce the same product at the facility. Modifications or additions to a facility that maintain, restore, mend, or repair a facility shall not be considered a retrofit of the facility, and shall not be considered part of the capital investment if undertaken at the same time as a retrofit;

(29) “Synthetic natural gas” has the same meaning as in KRS 152.715;

(30) “Tax incentive agreement” means an agreement entered into in accordance with KRS 154.27-040;

(31) “Termination date” means a date established by the tax incentive agreement that is no more than twenty-five (25) years from the activation date; and

(32) “Upgrade” means an investment in an existing facility that results in an increase in the productivity of the facility. Increased productivity shall be measured in relation to the type of products that are required to be produced by that facility to be an eligible project.

Credits: HISTORY: 2011 c 82, § 2, eff. 6-8-11; 2010 c 60, § 1, c 24, § 199, c 139, § 2, eff. 7-15-10; 2007 2nd ex s, c 1, § 1, eff. 8-30-07

154.27-020 Short title; legislative findings; purpose of subchapter; incentives

- (1) This subchapter shall be known as the “Incentives for Energy Independence Act.”
- (2) The General Assembly hereby finds and declares that it is in the best interest of the Commonwealth to induce the location of innovative energy-related businesses in the Commonwealth in order to advance the public purposes of achieving energy independence, creating new jobs and new investment, and creating new sources of tax revenues that but for the inducements to be offered by the authority to approved companies would not exist.
- (3) The purpose of this subchapter is to assist the Commonwealth in moving to the forefront of national efforts to achieve energy independence by reducing the Commonwealth’s reliance on imported energy resources. The provisions of this subchapter seek to accomplish this purpose by providing incentives for companies that, in a carbon capture ready manner, construct, retrofit, or upgrade facilities for the purpose of:
 - (a) Increasing the production and sale of alternative transportation fuels;
 - (b) Increasing the production and sale of synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels, from coal, biomass resources, or waste coal through a gasification process;
 - (c) Increasing the production and sale of energy-efficient alternative fuels; or
 - (d) Generating electricity for sale through alternative methods such as solar power, wind power, biomass resources, landfill methane gas, hydropower, or other similar renewable resources.
- (4) To qualify for the incentives provided in this subchapter, the following requirements shall be met:
 - (a) For an alternative fuel facility or gasification facility that uses oil shale, tar sands, or coal as the primary feedstock, the minimum capital investment shall be one hundred million dollars (\$100,000,000);
 - (b) For an alternative fuel facility or gasification facility that uses biomass resources as the primary feedstock, the minimum capital investment shall be twenty-five million dollars (\$25,000,000);
 - (c) For an energy-efficient alternative fuel facility, the minimum capital investment shall be twenty-five million dollars (\$25,000,000);
 - (d) For an alternative fuel facility located in Kentucky that is newly constructed on or after August 1, 2010, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 1, 2010, and that, after the new construction, retrofit, or upgrade, primarily produces for sale alternative transportation fuels using natural gas or natural gas liquids as the primary feedstock, the minimum capital investment shall be one million dollars (\$1,000,000); provided that the authority may approve a maximum of five (5) projects that meet the requirements of this paragraph;

(e) For a renewable energy facility, the minimum capital investment shall be one million dollars (\$1,000,000); and

(f) For a carbon dioxide transmission pipeline, the minimum capital investment shall be fifty million dollars (\$50,000,000).

(5) The incentives under the Incentives for Energy Independence Act are as follows:

(a) An advance disbursement of post-construction incentives for which an approved company has been approved, the maximum amount of which is based upon the estimated labor component of the total capital investment of the eligible project, and the utilization of Kentucky residents during the construction period as set forth in KRS 154.27-090;

(b) Sales and use tax incentives of up to one hundred percent (100%) of the taxes paid on purchases of tangible personal property made to construct, retrofit, or upgrade an eligible project, as set forth in KRS 139.517 and 154.27-070;

(c) Up to eighty percent (80%) of the severance taxes paid on the purchase or severance of:

1. Coal that is subject to the tax imposed under KRS 143.020 and that is specifically used by an alternative fuel facility, energy-efficient alternative fuel facility, or a gasification facility as feedstock for an eligible project, as set forth in KRS 143.024 and 154.27-060; or

2. Natural gas or natural gas liquids that are subject to the tax imposed under KRS 143A.020 and that are specifically used in an alternative fuel facility described in subsection (4)(d) of this section as feedstock for an eligible project, as set forth in KRS 143A.025 and 154.27-060;

(d) Up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.040 or 141.020, and the limited liability entity tax imposed under KRS 141.0401 on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the eligible project, as set forth in KRS 141.421 and 154.27-080; and

(e) Authorization for the approved company to impose a wage assessment of up to four percent (4%) of the gross wages of each employee subject to the Kentucky income tax:

1. Whose job was created as a result of the eligible project;

2. Who is employed by the approved company to work at the facility; and

3. Who is on the payroll of the approved company or an affiliate of the approved company;

as set forth in KRS 154.27-080.

(6) The maximum recovery from all incentives approved under this subchapter for an eligible project shall not exceed fifty percent (50%) of the capital investment in the eligible project.

(7) The incentives available to an approved company shall be negotiated with and approved by the authority.

(8) If a newly constructed facility that qualifies for incentives under this subchapter is later upgraded or retrofitted in a manner that would qualify for incentives under this subchapter, the retrofit or upgrade shall be a separate eligible project, and the minimum investment requirements and carbon capture readiness requirements, if required, shall be met for the retrofit or upgrade to qualify for incentives under this subchapter.

(9) The General Assembly finds that the authorities granted by this subchapter are proper governmental and public purposes for which public moneys may be expended.

Credits: HISTORY: 2011 c 82, § 3, eff. 6-8-11; 2010 c 60, § 2, c 139, § 3, eff. 7-15-10; 2009 1st ex s, c 1, § 101, eff. 6-26-09; 2007 2nd ex s, c 1, § 2, eff. 8-30-07

154.27-030 Application for incentives; review; approval; approval of projects involving new, retrofitted, or upgraded alternative fuel facilities

(1) A company with an eligible project may submit an application for incentives to the authority prior to making any capital investment it will seek to recover.

(2) The application shall include:

(a) The name of the applicant and identification of any affiliates of the applicant;

(b) The type of eligible project;

(c) A description of the location;

(d) A full description of the eligible project scope, including but not limited to:

1. A list and the status of permits, certificates, or approvals required by the federal government, the Commonwealth, or any jurisdiction within the Commonwealth;

2. A description of the carbon capture readiness of the facility, if the proposed eligible project is an alternative fuel facility or a gasification facility;

3. Any feasibility studies, including supporting documents;

4. Anticipated sources of eligible project funding;

5. The total anticipated capital investment and the time period over which the capital investment will occur;

6. The proposed feedstock and the estimated volume of feedstock use per year;

7. A description of the proposed products to be produced by the facility and the process that will be used to produce the products;

8. The planned capacity of the facility after construction, retrofit, or upgrade;

9. The estimated output of the facility upon completion; and

10. A plan for and description of how the company will employ Kentucky residents at the facility and how the company will ensure, to the extent possible, that workers employed during construction, retrofit, or upgrade of the facility are Kentucky residents. The plan shall include projected numbers;

(e) Identification of the specific incentives sought;

(f) Payment of any applicable application fees required by the authority to offset reasonable costs of reviewing and processing the application; and

(g) Other information as required by the authority.

(3) The authority shall forward the application to the Department of Revenue and the Department for Energy Development and Independence for review and comment with a date by which comments shall be provided back to the authority. The authority may forward the application to the Center for Applied Energy Research for review and comment as well.

(4) (a) The authority shall review the application and shall verify that:

1. The applicant has met all of the statutory and regulatory requirements established by this subchapter and regulations promulgated thereunder;

2. The applicant has secured or is in the process of securing all necessary permits, certificates, or approvals required by the federal government, the Commonwealth, or any jurisdiction within the Commonwealth;

3. The proposed facility is carbon capture ready, if the proposed facility is an alternative fuel facility or gasification facility;

4. The company has a plan that includes a projected number of Kentucky residents that will be employed during the construction, retrofit, or upgrade of the facility and at the facility upon completion; and

5. Any other requirements established by the authority.

(b) The Department of Revenue and the Department for Energy Development and Independence shall review the application and shall verify that the company seeking approval and all affiliate companies are in good standing with the department.

(c) The authority may engage the services of outside consultants to assist in the review of the application. Costs associated with the engagement of outside consultants shall be borne by the applicant.

(5) (a) Upon the earlier of:

1. The receipt of comments and recommendations from the Department for Energy Development and Independence, the Department of Revenue, and the Center for Applied Energy Research, if applicable; or
2. The expiration of the time period established by the authority for receiving comments pursuant to subsection (3) of this section;

the authority may, through the adoption of a resolution, preliminarily approve an applicant for incentives under this subchapter.

(b) Preliminary approval shall be based upon representations of the applicant in the application and attachments as well as other information submitted with the application. The authority shall make a finding that, based upon the applicant's representations, the project appears to be eligible for incentives pursuant to this subchapter.

(c) Prior to final approval:

1. The applicant shall:
 - a. Provide all supportive data requested by the authority;
 - b. Secure all required permits or take appropriate steps to do so; and
 - c. Cooperate with the authority to obtain opinions or recommendations from any outside consultants; and
2. The authority shall, in consultation with the Department for Energy Development and Independence or any other entity, verify the representations of the applicant.

(d) 1. A preliminarily approved company seeking an advance disbursement employment incentive under KRS 154.27-090 shall, prior to receiving final approval from the authority, provide to the authority a labor market analysis prepared by a public postsecondary education institution in the Commonwealth with knowledge of the labor market in the region in which the eligible project will be located.

2. The labor market analysis shall evaluate the construction market in the region where the proposed project is to be located and the estimated labor component of the proposed project. The public postsecondary education institution may consult with the Center for Applied Energy Research or the Department for Energy Development and Independence in determining the types

of laborers required for the construction, retrofit, or upgrade of the eligible facility.

3. The labor market analysis shall include an estimate of the percentage of the estimated labor component that constitutes wages to be paid to Kentucky residents.

(e) Based upon all of the information available, the authority may, through adoption of a resolution, give its final approval and authorize the execution of a tax incentive agreement to be negotiated pursuant to KRS 154.27-040.

(6) The authority may request any materials and make any inquiries concerning an application that the authority deems necessary.

(7) The actual capital investment that may be recovered and percentages of each incentive that an approved company may receive shall be negotiated between the approved company and the authority and shall not exceed the limitations established by KRS 154.27-020.

(8) The General Assembly recognizes that the incentives offered under this subchapter include the possibility of the release of incentives to approved companies prior to construction completion, and that the release of these incentives may present more risk for the Commonwealth. The authority is directed to consider the possible increased risk to the Commonwealth when negotiating tax incentive agreements that include incentives prior to construction completion, and to incorporate repayment or similar remedy provisions in the tax incentive agreement to the extent the authority determines such provisions are necessary to protect the investment made by the Commonwealth if the approved company fails to comply with the terms of the tax incentive agreement.

(9) The authority and the approved company shall enter into a tax incentive agreement in accordance with KRS 154.27-040.

(10) The authority, with input from the Department for Energy Development and Independence and the Department of Revenue, shall establish additional standards and requirements for the application process through the promulgation of administrative regulations in accordance with KRS Chapter 13A. The standards shall include but not be limited to the creditworthiness of eligible companies and the likelihood of economic success of the economic development project.

(11) Notwithstanding any other provision of this subchapter, the authority may approve a maximum of five (5) projects under this subchapter that involve an alternative fuel facility located in Kentucky that:

(a) Is newly constructed on or after August 1, 2010, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 1, 2010;

(b) After the new construction, retrofit, or upgrade, primarily produces for sale alternative transportation fuels using natural gas or natural gas liquids as the primary feedstock; and

(c) Has a minimum capital investment of one million dollars (\$1,000,000).

Credits: HISTORY: 2010 c 139, § 7, c 24, § 200, eff. 7-15-10; 2007 2nd ex s, c 1, § 3, eff. 8-30-07

154.27-040 Tax incentive agreement; required provisions

The terms and conditions of the tax incentive agreement shall be negotiated between the authority and the approved company. The tax incentive agreement may include one (1) or more of the incentives available under this subchapter or any combination of the incentives as negotiated between the authority and the approved company. The tax incentive agreement shall include but not be limited to the following provisions:

- (1) The duties and responsibilities of the parties;
- (2) The specific identification of incentives included in the tax incentive agreement, including the permissible percentage recovery under each included incentive;
- (3) A detailed description of the eligible project, including an estimate of the capital investment;
- (4) If the eligible project is an alternative fuel facility or a gasification facility, a requirement that the facility be carbon capture ready;
- (5) The minimum capital investment required and the maximum capital investment that may be recovered;
- (6) The time within which the minimum capital investment shall be made;
- (7) The activation date and the termination date. The agreement shall commence on the activation date and shall terminate upon the earlier of full receipt of the maximum amount of incentives by the approved company or twenty-five (25) years from the activation date;
- (8) A target percentage of the workforce that is Kentucky residents during the construction, retrofit, or upgrade of the facility, and at the facility upon completion of construction;
- (9) If the wage assessment permitted by KRS 154.27-080 is included, the percentage rate at which the assessment shall be imposed;
- (10) If the advance disbursement employment incentive permitted by KRS 154.27-090 is included:
 - (a) The estimated labor component and the estimated Kentucky resident factor as determined under KRS 154.27-090;
 - (b) A schedule for the disbursement of funds during the construction period;
 - (c) A provision that requires a reduction or adjustment in the receipt of post-construction incentives for which the approved company is eligible under the tax incentive agreement until the advance disbursement has been repaid by the approved company;

(d) A provision addressing an alternate payment method if the incentives are not sufficient to repay the advance disbursement; and

(e) A repayment schedule that includes the amount of reduction, the incentives the reduction shall apply to, the amount of interest due, the time period over which the advance disbursement amount shall be recouped, and the amount that shall be recouped in each year. To the extent possible, the repayment schedule shall include uniform incremental payments;

(11) That the approval of the company is not a guarantee of incentives and that actual receipt of the incentives shall be contingent on the approved company filing the required requests for incentives and meeting the requirements established by the tax incentive agreement and by KRS 139.517, 141.421, 143.024, 154.27-060, 154.27-070, 154.27-080, and 154.27-090 that apply to the incentives included;

(12) That the approved company shall provide the authority with documentation of capital expenditures in a manner acceptable to the authority;

(13) Negotiated terms relating to repayment or similar remedies for incentives received prior to the completion of construction if the approved company fails to comply with the terms of the tax incentive agreement;

(14) That, if the authority determines that the approved company has failed to comply with any of its obligations under the tax incentive agreement:

(a) The authority shall have the right to suspend the incentives available to the approved company;

(b) Both the authority and the department shall have the right to pursue any remedy provided under the tax incentive agreement;

(c) The authority may terminate the tax incentive agreement; and

(d) Both the authority and the department may pursue any other remedy at law to which it may be entitled;

(15) A requirement that the authority monitor the tax incentive agreement;

(16) A requirement that the approved company provide to the authority the information necessary to monitor the tax incentive agreement and authorization for the authority to share that information with the Department of Revenue, the Department for Energy Development and Independence, or any other entity the authority determines is necessary for the purposes of monitoring and enforcing the terms of the tax incentive agreement; and

(17) Any other provisions not inconsistent with this subchapter and determined to be necessary or appropriate by the parties to the tax incentive agreement.

Credits: HISTORY: 2010 c 24, § 201, eff. 7-15-10; 2007 2nd ex s, c 1, § 4, eff. 8-30-07

154.27-050 Release of sales tax incentives under tax incentive agreement; monitoring, tracking, and reporting requirements

- (1) The department may release to an approved company any sales tax incentives under KRS 139.517 and 154.27-070 after review of the request for incentives required by KRS 139.517 and determination of the amount due regardless of whether the minimum capital investment has been made as required by the tax incentive agreement.
- (2) The authority shall monitor all tax incentive agreements. The authority may seek assistance from the Department for Energy Development and Independence, the Department of Revenue, the Center for Applied Energy Research, or other entities or individuals in performing its monitoring functions.
- (3) The department shall track the amount of revenues released and incentives received for each eligible project under each tax incentive agreement and shall provide the authority the information upon request.
- (4) On or before December 1, 2008, and every December 1 thereafter, the authority and the department shall jointly prepare a report for the Legislative Research Commission. The report shall include a list of all companies with which tax incentive agreements have been entered into and a summary of the terms of each agreement, including the type of facility approved, product to be produced, estimated output upon completion, required minimum capital investment and maximum recovery, incentives approved by type of tax and amount, activation date, and termination date.

Credits: HISTORY: 2010 c 24, § 202, eff. 7-15-10; 2007 2nd ex s, c 1, § 5, eff. 8-30-07

154.27-060 Severance tax incentives

(1) (a) Notwithstanding any other provision of KRS 134.580 or KRS Chapter 143, an approved company that purchases or severs coal that:

1. Is subject to the tax imposed under KRS 143.020; and
2. Is used by the approved company exclusively as feedstock for an alternative fuel facility, energy-efficient alternative fuel facility, or a gasification facility;

may be eligible for an incentive in an amount up to eighty percent (80%) of the taxes paid pursuant to KRS 143.020 on coal purchased or severed by the approved company that is above the base amount.

(b) Notwithstanding any other provision of KRS 134.580 or KRS Chapter 143A, an approved company that purchases or severs natural gas or natural gas liquids on or after August 1, 2010, that:

1. Is subject to the tax imposed under KRS 143A.020; and

2. Is used by the approved company exclusively as feedstock for an alternative fuel facility described in KRS 154.27-020(4)(d);

may be eligible for an incentive in an amount up to eighty percent (80%) of the taxes paid pursuant to KRS 143A.020 on natural gas or natural gas liquids purchased or severed by the approved company that is above the base amount.

(2) An approved company that has purchased or severed coal subject to the tax imposed under KRS 143.020 or purchased or severed natural gas or natural gas liquids subject to the tax imposed under KRS 143A.020 prior to the execution of a tax incentive agreement shall not create an affiliate, subsidiary, corporation, or other related entity that would result in a base amount of zero (0).

(3) The incentive may be requested beginning in the first calendar year after the construction of a new facility or the upgrade or retrofit of an existing facility is completed.

(4) Upon completion of the construction of a new alternative fuel facility, energy-efficient alternative fuel facility, or gasification facility or the retrofit or upgrade of an existing facility, an approved company shall notify the authority and the department.

(5) The approved company may obtain the incentive on an annual basis by filing a request for the incentive with the department as provided in KRS 143.024.

(6) The department shall notify the authority of the incentives requested and the incentives distributed, upon request of the authority.

Credits: HISTORY: 2010 c 139, § 4, c 60, § 3, eff. 7-15-10; 2007 2nd ex s, c 1, § 6, eff. 8-30-07

154.27-070 Sales and use tax incentives

(1) Notwithstanding KRS 134.580(3) and 139.770, on or after January 1, 2008, an approved company is eligible for an incentive in an amount up to one hundred percent (100%) of the Kentucky sales and use tax paid, reduced by the vendor compensation provided under KRS 139.570, on the purchase of tangible personal property, including but not limited to materials, machinery, and equipment used to construct, retrofit, or upgrade an eligible project.

(2) The incentive shall not include tangible personal property purchased before the activation date or purchases of operating supplies, or repair, replacement, or spare parts as defined in KRS 139.010.

(3) Upon the activation date, an approved company may be eligible for the incentive offered under this section. The approved company shall file a request for the incentive payment with the department as provided in KRS 139.517.

(4) The incentive provided in this section shall expire upon the completion of the construction, retrofit, or upgrade of the eligible project, or five (5) years from the activation date, whichever is earlier.

154.27-080 Income and limited liability entity tax incentives; assessment on employees' wages

An approved company may be eligible for income tax-related incentives as follows:

(1) A credit of up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.040 or 141.020, and the limited liability entity tax imposed under KRS 141.0401 that would otherwise be owed by the approved company to the Commonwealth for the approved company's tax year, on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the eligible project, with the ordering of credits as provided in KRS 141.0205.

(a) The credit allowed the approved company shall be applied against both the income tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by KRS 141.0401, with credit ordering as provided in KRS 141.0205, for the tax year for which the tax return of the approved company is filed.

(b) The approved company shall not be required to pay estimated tax payments as prescribed in KRS 141.042 on the Kentucky taxable income, Kentucky gross receipts, or Kentucky gross profits generated by or arising from the eligible project.

(c) The credit provided by this subsection shall be determined as provided in KRS 141.421.

(2) The approved company or, with the authority's consent, an affiliate of the approved company may require that each employee subject to the state income tax imposed by KRS 141.020, as a condition of employment, agree to pay an assessment of up to four percent (4%) of his or her gross wages. The assessment shall be uniform against all employees against whom it is assessed and shall be imposed at a percentage rate that is negotiated as part of the tax incentive agreement.

(a) 1. The assessment may be imposed against each employee:

a. Whose job was created as a result of the eligible project;

b. Who is employed by the approved company to work at the facility; and

c. Who is on the payroll of the approved company or, with the authority's consent, is on the payroll of an affiliate of the approved company.

2. Construction workers, employees of the approved company directly employed in the construction, retrofit, or upgrade of the eligible facility, contract workers, and leased workers shall not be considered employees of the approved company for purposes of the assessment permitted by this subsection.

(b) Each employee so assessed shall be entitled to credits against Kentucky income tax equal to the

assessment withheld from wages during the calendar year as provided by KRS 141.310 and 141.421.

(c) An approved company that elects to impose the assessment as a condition of employment is authorized to deduct the assessment from each paycheck of each employee.

(d) The approved company shall provide to the authority the information necessary to monitor the tax incentive agreement and the authorization for the authority to share the information with the department as necessary for purposes of enforcing the terms of the tax incentive agreement.

(e) Any assessment imposed pursuant to this subsection shall permanently expire upon termination or expiration of the tax incentive agreement.

Credits: HISTORY: 2007 2nd ex s, c 1, § 8, eff. 8-30-07

154.27-090 Advance disbursement of incentives; computation of maximum disbursement amount; schedule for disbursement; repayment

(1) An approved company may be eligible for the advance disbursement of a portion of the post-construction period incentives for which it has been approved. The amount of the advance disbursement shall be based on the employment of Kentucky residents during the construction of the facility, shall be negotiated with the authority as part of the tax incentive agreement, 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 capital 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 eligible project is greater than thirty percent (30%) of the total capital investment;

2. Twenty percent (20%), if the estimated labor component for the eligible project is greater than twenty-five percent (25%) but less than or equal to thirty percent (30%) of the total capital investment; or

3. Fifteen percent (15%), if the estimated labor component for the eligible 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 eligible 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 eligible project.
- (3) The tax incentive agreement shall include a schedule for the disbursement of the advance disbursement employment incentive during the construction period. In negotiating the disbursement schedule, the authority shall consider the possible increased risk to the Commonwealth associated with the disbursement of funds prior to construction completion.
- (4) (a) The approved company shall repay the advance disbursement through a reduction in the post-construction period incentive amounts it would otherwise receive. The amount by which the post-construction period incentive amounts are reduced shall be applied as a credit against the amount owed by the approved company.
- (b) The amount of the annual reduction, the incentives the reduction shall apply to, interest due, the time period over which the advance disbursement amount shall be recouped, and alternate payment methods if incentives are not sufficient to repay the advance disbursement shall be negotiated between the authority and the approved company as part of the tax incentive agreement.
- (c) The repayment schedule included in the tax incentive agreement shall require uniform incremental payments, to the extent possible, and shall continue until the entire advance disbursement amount has been repaid by the approved company.
- (d) The tax incentive agreement shall include a provision addressing an alternate method for payment if incentives are not sufficient to repay the advance disbursement.
- (e) The total post-construction incentive payments for which an approved company is eligible shall be tracked by the department. That portion of the incentive amounts identified in the tax incentive agreement as being devoted to the repayment of the advance disbursement amount shall be credited against the balance due from the approved company and shall not be paid to or retained by the approved company.
- (f) The department shall forward the amounts credited to the repayment of the advance disbursement amount to the Cabinet for Economic Development, Department of Financial Incentives for deposit in the Energy Projects Economic Development Bond Pool.
- (g) During the period for which any portion of the post-construction incentive payments are being credited toward the advance disbursement amount, 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 to the department and the authority any information that would normally be required for the approved company to receive the incentives.
- (5) The authority may, for purposes of administering the provisions of this section, solicit information

or consultation from one (1) or more of the following sources:

- (a) The Department for Energy Development and Independence;
- (b) The Center for Applied Energy Research;
- (c) The Department for Workforce Investment; or
- (d) Any public postsecondary education institution within the Commonwealth.

Credits: HISTORY: 2010 c 24, § 203, eff. 7-15-10; 2007 2nd ex s, c 1, § 9, eff. 8-30-07

154.27-100 Construction of carbon dioxide transmission pipeline; proceedings for condemnation under Eminent Domain Act; legislative determination of essential public use

- (1) For the purposes of this section, “carbon dioxide transmission pipeline” has the same meaning as in KRS 154.27-010.
- (2) If a carbon dioxide transmission pipeline company has received a construction certificate from the Kentucky State Board on Electric Generation and Siting under KRS 278.714 and is unable to contract or agree with the owner after a good-faith effort to do so, the company may condemn the lands and material for the use and occupation of the lands that are necessary for:
 - (a) Constructing, maintaining, utilizing, operating, and gaining access to a carbon dioxide transmission pipeline and all necessary machinery, equipment, pumping stations, appliances, and fixtures for use in connection with a carbon dioxide transmission pipeline; and
 - (b) Obtaining all necessary rights of ingress and egress to construct, examine, alter, repair, maintain, operate, or remove a carbon dioxide transmission pipeline and all of its component parts.
- (3) The proceedings for condemnation shall be as provided in the Eminent Domain Act of Kentucky.
- (4) Carbon dioxide transmission pipelines, and the routing, construction, maintenance, and operation of them are, as a matter of legislative determination, declared to be a public use essential to the fulfillment of the purposes of this chapter.

Credits: HISTORY: 2011 c 82, § 1, eff. 6-8-11