

148.855 Evaluation standards -- Tourism attraction project applications -- Consulting services -- Optional interagency review -- Cabinet recommendations.

- (1) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish standards for the making of applications for incentives and the recommendation of eligible companies and their tourism development projects to the authority.
- (2) The cabinet shall consult with the authority when establishing standards to ensure that standards established pursuant to subsection (1) of this section and KRS 148.857(1) do not conflict.
- (3) (a) The application for incentives shall be filed with the cabinet and shall include:
 1. The name of the applicant;
 2. Marketing plans for the tourism development project that target individuals who are not residents of the Commonwealth;
 3. A description and location of the tourism development project;
 4. Capital and other anticipated expenditures for the tourism development project that indicate that the total cost of the project shall exceed the minimum required costs as provided in KRS 148.853, and the anticipated sources of funding therefor;
 5. The anticipated employment and wages to be paid at the tourism development project;
 6. Business plans which indicate the average number of days in a year in which the tourism development project will be in operation and open to the public;
 7. The anticipated revenues and expenses generated by the tourism development project;
 8. If the tourism development project is an entertainment destination center project, the application shall include the public infrastructure purpose; and
 9. Any other information as required by the cabinet.
- (b) Based upon a review of these materials, if the cabinet determines that the eligible company and the proposed tourism development project appears to meet the requirements established by KRS 148.853, and that the proposed tourism development project may reasonably satisfy the criteria for final approval in subsection (4) of this section, the secretary of the cabinet may submit a written request to the authority for a preliminary approval of the eligible company and the tourism development project.
- (4) The authority may review the request submitted by the secretary, including all relevant materials, and may, based upon that review, grant preliminary approval to an eligible company. Upon a preliminary approval by the authority, the cabinet shall engage the services of a competent consulting firm to analyze the data made available by the eligible company and to collect and analyze additional information necessary to determine that, in the independent judgment of the consultant, the proposed tourism development project:

- (a) Will attract, in all years following the third year of operation, at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth, except for a theme restaurant destination attraction project, which shall attract, in all years following the third year of operation, a minimum of fifty percent (50%) of its visitors from among persons who are not residents of the Commonwealth;
 - (b) Will have costs in excess of the minimum amount required by KRS 148.853;
 - (c)
 1. Will have a net positive fiscal impact on the Commonwealth considering, among other factors, the extent to which the proposed tourism development project will compete directly with existing tourism attractions or previously approved tourism development projects in the Commonwealth and the amount by which increased tax revenues from the tourism development project will exceed the incentives given to the approved company at the maximum level of recovery of approved costs as provided in KRS 148.853; or
 2. If the independent consultant determines that the proposed tourism development project cannot produce a net positive fiscal impact to the Commonwealth at the maximum level of recovery of approved costs as provided in KRS 148.853, the independent consultant shall determine the level of recovery, if any, at which the proposed tourism development project can meet those standards;
 - (d) Will produce sufficient revenues and public demand to be operating and open to the public for a minimum of one hundred (100) days per year, except for a theme restaurant destination attraction, which shall be operating and open to the public for a minimum of three hundred (300) days per year;
 - (e) Will not adversely affect existing employment in the Commonwealth; and
 - (f) Meets all other requirements of KRS 148.851 and 148.853.
- (5) The independent consultant, in determining the amount of net positive fiscal impact to the Commonwealth for a new proposed tourism development project that is an expansion of an existing tourism development project shall not consider positive fiscal impacts from the following sources:
- (a) Increased operations at the previously approved tourism development project that is being expanded by the proposed tourism development project;
 - (b) Increased operations at any other tourism development project approved for incentives provided under KRS 148.853; or
 - (c) Increased operations at any project approved for tax increment financing that includes state revenues approved pursuant to Subchapter 30 of KRS Chapter 154.
- (6) (a) The independent consultant shall consult with the authority, the Office of the State Budget Director and the Finance and Administration Cabinet in the development of a report on the proposed tourism development project.
- (b) The Office of the State Budget Director and the Finance and

Administration Cabinet shall agree as to the methodology to be used and assumptions to be made by the independent consultant in preparing its report.

- (c) On the basis of the independent consultant's report and prior to any final approval of a project by the authority, the Office of the State Budget Director and the Finance and Administration Cabinet shall certify to the authority whether there is a projected net positive fiscal impact to the Commonwealth and the expected amount of incremental state revenues from the tourism development project. A final approval shall not be granted if it is determined that there is no projected net positive fiscal impact to the Commonwealth.
- (7) The eligible company shall pay for the cost of the consultant's report and shall cooperate with the consultant and provide all of the data that the consultant deems necessary to make its determination under subsection (4) of this section.
- (8) In lieu of the independent consultant analysis required in subsection (4) of this section, if the eligible company is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code and the estimated approved costs are less than ten million dollars (\$10,000,000), the cabinet shall have the option of performing an interagency review to analyze the data made available by the eligible company and to collect and analyze additional information necessary to determine that the proposed tourism development project meets the requirements set forth in subsection (4)(a) of this section. The cabinet shall comply with the same consulting and reporting requirements as an independent consultant.
- (9) After a review of relevant materials, the consultant's report, and completion of other inquiries, the secretary shall, by written notification to the authority, provide a recommendation to the authority regarding final approval of the tourism development project.

Effective: June 26, 2009

History: Amended 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 38, effective June 26, 2009. -- Amended 2009 Ky. Acts ch. 16, sec. 28, effective June 25, 2009. -- Amended 2005 Ky. Acts ch. 85, sec. 564, effective June 20, 2005; and ch. 95, sec. 25, effective June 20, 2005. -- Amended 2003 Ky. Acts ch. 73, sec. 4, effective March 18, 2003. -- Repealed, reenacted, and amended 2001 Ky. Acts ch. 1, sec. 4, effective June 21, 2001. -- Amended 1998 Ky. Acts ch. 48, sec. 12, effective July 15, 1998; and ch. 238, sec. 2, effective April 1, 1998. -- Created 1996 Ky. Acts ch. 335, sec. 3, effective July 15, 1996.

Formerly codified as KRS 154.29-030.

Legislative Research Commission Note (1/25/2009). This is former KRS 154.29-030 as amended by 2001 Ky. Acts ch. 4, sec. 3, and renumbered by the Reviser of Statutes under KRS 7.136(1).