

### **154.30-010 Definitions for subchapter.**

As used in this subchapter:

- (1) "Activation date" means:
  - (a) For all projects except those described in paragraph (b) of this subsection, the date established any time within a two (2) year period after the commencement date. The Commonwealth may extend the two (2) year period to no more than four (4) years upon written application by the agency requesting the extension; and
  - (b) For signature projects approved under KRS 154.30-050(2)(a), the date established any time within a ten (10) year period after the commencement date.

For all projects established after July 14, 2018, the activation date is the date on which the time period for the pledge of incremental revenues shall commence. To implement the activation date, the minimum capital investment must be met and the agency that is a party to the tax incentive agreement shall notify the office;

- (2) "Agency" means:
  - (a) An urban renewal and community development agency established under KRS Chapter 99;
  - (b) A development authority established under KRS Chapter 99;
  - (c) A nonprofit corporation;
  - (d) A housing authority established under KRS Chapter 80;
  - (e) An air board established under KRS 183.132 to 183.160;
  - (f) A local industrial development authority established under KRS 154.50-301 to 154.50-346;
  - (g) A riverport authority established under KRS 65.510 to 65.650; or
  - (h) A designated department, division, or office of a city or county;
- (3) "Approved public infrastructure costs" means costs associated with the acquisition, installation, construction, or reconstruction of public works, public improvements, and public buildings, including planning and design costs associated with the development of such public amenities. "Approved public infrastructure costs" includes but is not limited to costs incurred for the following:
  - (a) Land preparation, including demolition and clearance work;
  - (b) Buildings;
  - (c) Sewers and storm drainage;
  - (d) Curbs, sidewalks, promenades, and pedways;
  - (e) Roads;
  - (f) Street lighting;
  - (g) The provision of utilities;
  - (h) Environmental remediation;
  - (i) Floodwalls and floodgates;

- (j) Public spaces or parks;
  - (k) Parking;
  - (l) Easements and rights-of-way;
  - (m) Transportation facilities;
  - (n) Public landings;
  - (o) Amenities, such as fountains, benches, and sculptures; and
  - (p) Riverbank modifications and improvements;
- (4) "Approved signature project costs" means:
- (a) The acquisition of land for portions of the project that are for infrastructure; and
  - (b) Costs associated with the acquisition, installation, development, construction, improvement, or reconstruction of infrastructure, including planning and design costs associated with the development of infrastructure, including but not limited to parking structures, including portions of parking structures that serve as platforms to support development above;
- that have been determined by the commission to represent a unique challenge in the financing of a project such that the project could not be developed without incentives intended by this chapter to foster economic development;
- (5) "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;
- (6) "Capital investment" means:
- (a) Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of a project;
  - (b) The cost of acquiring land or rights in land within the development area on the footprint of the project, and any cost incident thereto, including recording fees;
  - (c) 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, and rehabilitation of a project which is not paid by the contractor or contractors or otherwise provided;
  - (d) 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, and rehabilitation of a project;
  - (e) All costs that are required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, and rehabilitation of a project; and
  - (f) All other costs of a nature comparable to those described in this subsection that occur after preliminary approval;

- (7) "City" means any city, consolidated local government, or urban-county government;
- (8) "Commencement date" means the final approval date or the date on which a tax incentive agreement is executed;
- (9) "Commonwealth" means the Commonwealth of Kentucky;
- (10) "County" means any county, consolidated local government, charter county, unified local government, or urban-county government;
- (11) "CPI" means the nonseasonally adjusted Consumer Price Index for all urban consumers, all items, base year computed for 1982 to 1984 equals one hundred (100), published by the United States Department of Labor, Bureau of Labor Statistics;
- (12) "Department" means the Department of Revenue;
- (13) "Development area" means an area established under KRS 65.7049, 65.7051, and 65.7053;
- (14) "Economic development projects" means projects which are approved for tax credits under Subchapter 20, 22, 23, 24, 25, 26, 27, 28, 34, or 48 of KRS Chapter 154;
- (15) "Financing costs" means principal, interest, costs of issuance, debt service reserve requirements, underwriting discount, costs of credit enhancement or liquidity instruments, and other costs directly related to the issuance of bonds or debt for approved public infrastructure costs or approved signature project costs for projects approved pursuant to KRS 154.30-050;
- (16) "Footprint" means the actual perimeter of a discrete, identified project within a development area. The footprint shall not include any portion of a development area outside the area for which actual capital investments are made and must be contiguous;
- (17) "Governing body" means the body possessing legislative authority in a city or county;
- (18) "Increment bonds" means bonds and notes issued for the purpose of paying the costs of one (1) or more projects;
- (19) "Incremental revenues" means:
  - (a) The amount of revenues received by a taxing district, as determined by subtracting old revenues from new revenues in a calendar year with respect to a development area, or a project within a development area; or
  - (b) The amount of revenues received by the Commonwealth as determined by subtracting old revenues from new revenues in a calendar year with respect to the footprint;
- (20) "Local participation agreement" means the agreement entered into under KRS 65.7063;
- (21) "Local tax revenues" has the same meaning as in KRS 65.7045;
- (22) "New revenues" means:
  - (a) The amount of local tax revenues received by a taxing district with respect to

a development area in any calendar year beginning with the year in which the activation date occurred;

- (b) The amount of state tax revenues received by the Commonwealth with respect to the footprint in any calendar year beginning with the year in which the activation date occurred;

(23) "Old revenues" means:

- (a) The amount of local tax revenues received by a taxing district with respect to a development area as of December 31 of the year of preliminary approval; or

- (b) 1. The amount of state tax revenues received by the Commonwealth within the footprint as of December 31 of the year of preliminary approval. If the authority determines that the amount of state tax revenues received as of December 31 of the last calendar year prior to the commencement of preliminary approval does not represent a true and accurate depiction of revenues, the authority may consider revenues for a period of no longer than three (3) calendar years prior to the year of preliminary approval, so as to determine a fair representation of state tax revenues. The amount determined by the authority shall be specified in the tax incentive agreement. If state tax revenues were derived from the footprint prior to the year of preliminary approval, old revenues shall increase each calendar year by:

- a. The percentage increase, if any, of the CPI or a comparable index;  
or
- b. An alternative percentage increase that is determined to be appropriate by the authority.

The method for increasing old revenues shall be set forth in the tax incentive agreement;

- 2. If state revenues were derived from the footprint prior to the year of preliminary approval, the calculation of incremental revenues shall be based on the value of old revenues as increased using the method prescribed in subparagraph 1. of this paragraph to reflect the same calendar year as is used in the determination of new revenues;

(24) "Outstanding" means increment bonds that have been issued, delivered, and paid for by the purchaser, except any of the following:

- (a) Increment bonds canceled upon surrender, exchange, or transfer, or upon payment or redemption;
- (b) Increment bonds in replacement of which or in exchange for which other increment bonds have been issued; or
- (c) Increment bonds for the payment, redemption, or purchase for cancellation prior to maturity, of which sufficient moneys or investments, in accordance with the ordinance or other proceedings or any applicable law, by mandatory sinking fund redemption requirements, or otherwise, have been deposited, and credited in a sinking fund or with a trustee or paying or escrow agent, whether at or prior to their maturity or redemption, and, in the case of increment bonds

to be redeemed prior to their stated maturity, notice of redemption has been given or satisfactory arrangements have been made for giving notice of that redemption, or waiver of that notice by or on behalf of the affected bond holders has been filed with the issuer or its agent;

- (25) "Preliminary approval" means the action taken by the authority preliminarily approving an eligible project for incentives under this subchapter;
- (26) "Project" means any property, asset, or improvement located in a development area and certified by the governing body as:
  - (a) Being for a public purpose; and
  - (b) Being for the development of facilities for residential, commercial, industrial, public, recreational, or other uses, or for open space, including the development, rehabilitation, renovation, installation, improvement, enlargement, or extension of real estate and buildings; and
  - (c) Contributing to economic development or tourism; and
  - (d) Meeting the additional requirements established by KRS 154.30-040, 154.30-050, or 154.30-060;
- (27) "Signature project" means a project approved under KRS 154.30-050;
- (28) "State real property ad valorem tax" means real property ad valorem taxes levied under KRS 132.020(1)(a);
- (29) "State tax revenues" means revenues received by the Commonwealth from one (1) or more of the following sources:
  - (a) State real property ad valorem taxes;
  - (b) Individual income taxes levied under KRS 141.020, other than individual income taxes that have already been pledged to support an economic development project within the development area;
  - (c) Corporation income taxes levied under KRS 141.040, other than corporation income taxes that have already been pledged to support an economic development project within the development area;
  - (d) Limited liability entity taxes levied under KRS 141.0401, other than limited liability entity taxes that have already been pledged to support an economic development project within the development area; and
  - (e) Sales taxes levied under KRS 139.200, excluding sales taxes already pledged for:
    - 1. Approved tourism attraction projects, as defined in KRS 148.851, within the development area; and
    - 2. Projects which are approved for sales tax refunds under Subchapter 20 of KRS Chapter 154 within the development area;
- (30) "Tax incentive agreement" means an agreement entered into in accordance with KRS 154.30-070; and
- (31) "Termination date" means:
  - (a) For a tax incentive agreement satisfying the requirements of KRS 154.30-040

or 154.30-060, a date established by the tax incentive agreement that is no more than twenty (20) years from the activation date. However, the termination date for a tax incentive agreement shall in no event be more than forty (40) years from the establishment date of the development area to which the tax incentive agreement relates; and

- (b) For a project grant agreement satisfying the requirements of KRS 154.30-050, a date established by the tax incentive agreement that is no more than thirty (30) years from the activation date. However, the termination date for a tax incentive agreement shall in no event be more than forty (40) years from the establishment date of the development area to which the tax incentive agreement relates.

**Effective:** July 14, 2018

**History:** Amended 2018 Ky. Acts ch. 199, sec. 26, effective July 14, 2018. -- Amended 2011 Ky. Acts ch. 62, sec. 7, effective June 8, 2011. -- Amended 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 102, effective June 26, 2009. -- Created 2008 Ky. Acts ch. 178, sec. 14, effective July 15, 2008.

**Legislative Research Commission Note (6/8/2011).** 2011 Ky. Acts. ch. 62, sec. 8, provides that "the provisions of Section 7 of this Act (KRS 154.30-010) shall apply retroactively and any agreements entered into prior to the effective date of this Act, for projects approved under KRS 154.30-050(2)(a) that have not been activated as of the effective date of this Act, shall be amended to reflect the revised activation date provided for in Section 7 of this Act."

**Legislative Research Commission Note (6/26/2009).** 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 103, provided that, notwithstanding KRS 65.7044(6), the amendments made to this statute in 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 102, "shall apply retroactively and any agreements entered into prior to the effective date of this Act for projects approved under KRS 154.30-050(2)(a) that have not been activated as of the effective date of this Act shall be amended to reflect the revised activation date provided for in Section 102 of this Act."

**Legislative Research Commission Note (7/15/2008).** 2008 Ky. Acts ch. 178, sec. 14 established a new Subchapter 30 of KRS Chapter 154 concerning tax increment financing projects and provided further that "KRS 65.7045 is repealed, reenacted, and amended as a new section thereof to read as follows." Since KRS 65.7045 was also amended in sec. 2 of that Act, inquiry was made of the drafter as to the intent of sec. 14. The drafter explained that statutes dealing with both area development projects and tax increment financing projects were blended together in KRS Chapter 65 with no easy distinguishing elements, and the intent of creating Subchapter 30 of KRS Chapter 154 was to separate them appropriately. The intent of sec. 14 was to create a definitions section for the new Subchapter 30 of KRS Chapter 154, using the text of KRS 65.7045 as a base starting point, removing definitions specific to KRS Chapter 65 area development projects, retaining definitions that were common to both area development projects and tax increment financing projects, and adding definitions specific to tax increment financing projects. As such, the Reviser of Statutes has treated sec. 14 in codification as creating a new section of Subchapter 30 of KRS Chapter 154 (this statute) to effectuate that intent.