

**154.30-030 State tax increment financing participation programs -- Application requirements for a local government to request state participation -- Authority review requirements -- Pledge limitations -- Tax incentive agreements required -- Independent consultant's report.**

- (1) The Commonwealth shall offer three (3) tax increment financing participation programs. The first program, the criteria and details of which are set forth in KRS 154.30-040, relates to a pledge of state real property ad valorem taxes only. The second program, the criteria and details of which are set forth in KRS 154.30-050, is the Signature Projects Program. The third program, the criteria and details of which are set forth in KRS 154.30-060, relates to the pledge of state tax revenues to support mixed-use development in blighted urban areas.
- (2) (a) A city or county that has established a development area pursuant to KRS 65.7049, 65.7051, and 65.7053, or an agency designated as the entity managing a development area established pursuant to KRS 65.7049, 65.7051, and 65.7053, may submit an application to the authority requesting that the Commonwealth participate in a project.
  1. The application shall identify the specific program under which state participation is being requested and shall include the following attachments, in addition to any requirements developed by the authority pursuant to paragraph (b) of this subsection:
    - a. A copy of the ordinance adopted by the city or county establishing the development area;
    - b. A copy of the local participation agreement; and
    - c. Data and information supporting the determinations and findings required by KRS 65.7049.
  2. The staff of the authority shall review the application to determine if the applicant has met all of the statutory and regulatory requirements established by this subchapter and shall notify the applicant in writing of its determination. This review shall be preliminary in nature and shall not constitute approval of the request. All applications for participation by the Commonwealth shall be reviewed by the authority for approval.
  3.
    - a. Applications meeting all statutory and regulatory requirements requesting participation by the Commonwealth pursuant to KRS 154.30-040, along with any supporting materials, shall be referred by the staff of the authority to the authority for consideration.
    - b.
      - i. Applicants meeting all statutory and regulatory requirements requesting participation by the Commonwealth pursuant to KRS 154.30-050(2)(b) or 154.30-060 shall be required to submit a report prepared by an independent consultant or financial adviser as described in subsection (6) of this section for the application to be complete. The staff of the authority shall notify such applicants of the report requirements and shall provide information regarding the contents and

requirements for the report at the same time it notifies the applicant of the results of its preliminary review.

- ii. Upon receipt and review of the report, the staff of the authority shall refer the application and supporting information to the authority for consideration.
- (b) Additional standards and requirements for the application process shall be established by the authority through the promulgation of administrative regulations in accordance with KRS Chapter 13A.
- (3) (a) The authority may request any materials and make any inquiries concerning an application that the authority deems necessary.
- (b) The authority shall, through the promulgation of administrative regulations in accordance with KRS Chapter 13A, establish commercially reasonable limitations on the financing costs that may be recovered under the provisions of KRS 154.30-050.
- (4) Upon review of an application and other information available, the authority may pledge all or a portion of the state real property ad valorem tax incremental revenue of the Commonwealth or state tax revenues attributable to the footprint of the project, as limited by KRS 154.30-040, 154.30-050, or 154.30-060, whichever is applicable.
  - (a) If incremental revenues are pledged from less than one hundred percent (100%) of the footprint of the project, a description of the included portion of the development area shall be provided.
  - (b) State tax revenues from the development area that have not been pledged to projects within the development area may be used to support other economic development projects or tourism projects approved under KRS 139.536 and 148.851 to 148.860, provided that state tax revenues shall not be pledged more than once during the existence of the development area. Thus, state tax revenues pledged to support increment bonds issued for the development area, or a project in the development area shall not be pledged to support any other development area, project, program, development, or undertaking during the life of the development area. If less than one hundred percent (100%) of incremental revenues are pledged pursuant to the provisions of this subchapter, the remaining incremental revenues shall not be used to support other economic development projects or tourism projects approved under KRS 139.536 and 148.851 to 148.860.
- (5) The pledge of incremental state real property ad valorem tax revenues or state tax revenues of the Commonwealth by the authority shall be implemented through the execution of a tax incentive agreement between the Commonwealth and the agency, city, or county, as the case may be, in accordance with KRS 154.30-070.
- (6) (a) The authority shall engage the services of a qualified independent outside consultant or financial adviser to analyze the data related to the project and the development area and prepare the report required by subsection (2) of this section. The report shall include the following:

1. The estimated approved public infrastructure costs for the project and, if relevant, approved signature project costs, financing costs, and costs associated with land preparation, demolition, and clearance;
  2. The feasibility of the project, taking into account the scope and location of the project;
  3. The estimated amount of local tax revenues and state tax revenues, as applicable, that would be generated by the project over the period, which may be up to twenty (20) years or thirty (30) years, as applicable, from the activation date;
  4. The estimated amount of local tax revenues and state tax revenues, as applicable, that would be displaced within the Commonwealth, for the purpose of quantifying economic activity which is being shifted over the same period as that set forth in subparagraph 3. of this paragraph. The projections for displaced activity shall include economic activity that is lost to the Commonwealth as a result of the project, as well as economic activity that is diverted to the project that formerly took place at existing establishments within the Commonwealth prior to the commencement date of the project;
  5. The estimated amount of local and state old revenues that would have been generated in the footprint of the project in the absence of the project, computed over the same time period as set forth in subparagraph 3. of this paragraph;
  6. In the process of estimating the revenues and impacts prescribed in subparagraphs 3. and 4. of this paragraph, the independent outside consultant shall not consider any of the following:
    - a. Revenues or economic impacts associated with any projects within the development area where the new project will be located; and
    - b. Revenues or economic impacts associated with economic development projects and approved Kentucky Tourism Development Act projects under KRS Chapter 148;
  7. The relationship of the estimated incremental revenues to the financing needs, including any increment bonds, of the project;
  8. When estimating the fiscal impact of the project, the consultant shall evaluate the amount of revenue estimated in subparagraph 3. of this paragraph and shall deduct the amounts estimated in subparagraphs 4. and 5. of this paragraph. The resulting difference shall be compared to the estimated incremental revenues to determine the presence or absence of a positive fiscal impact; and
  9. A determination that the project will not occur if not for the designation of the development area, the granting of incremental revenues by the taxing district or districts, other than the Commonwealth, and the granting of the state tax incremental revenues.
- (b) 1. The independent consultant or financial advisor shall consult with the

Office of State Budget Director, and the Finance and Administration Cabinet in the development of the report.

2. The Office of State Budget Director and the staff of the authority, in collaboration with the independent consultant or financial advisor, shall agree on a methodology to be used and assumptions to be made by the independent consultant or financial consultant in preparing its report.
3. On the basis of the independent consultant's report and the other materials provided, prior to any approval of a project by the authority, the Office of State Budget Director and the Finance and Administration Cabinet shall certify to the authority whether there is a projected net positive economic impact to the Commonwealth and the expected amount of state tax incremental revenues from the project.
4. The city, county, or agency making the application shall pay all costs associated with the independent consultant's or financial advisor's report.

**Effective:** July 15, 2008

**History:** Repealed, reenacted, and amended 2008 Ky. Acts ch. 178, sec. 16, effective July 15, 2008. -- Created 2007 Ky. Acts ch. 95, sec. 16, effective March 23, 2007.

**Formerly codified as** KRS 65.7071.