

# **TEAM** **KENTUCKY**

## **Coal and Mineral Severance 2021 Program Guidelines**

**Local Government Economic Development Fund  
Local Government Economic Assistance Fund**

**Commonwealth of Kentucky  
Office of the Governor  
Department for Local Government  
Office of State Grants**



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[http://kydlgweb.ky.gov/StateGrants/16\\_Coal.cfm](http://kydlgweb.ky.gov/StateGrants/16_Coal.cfm)

## LOCAL GOVERNMENT ECONOMIC DEVELOPMENT FUND

The State budget (HB 352) authorized certain funds to be set aside for specific projects in fiscal year 2021. Funds for these projects are made available from coal severance funds prior to the authorized allocation being placed into the Local Government Economic Development Fund (LGEDF). Those specific projects and the amount of funding are as follows:

	<b>Fiscal Year 2021</b>
<b>Off the Tops</b>	
Department for Local Government	\$ 669,700.00
Debt Service	\$26,210,600.00
General Fund	\$ 1,000,000.00
<b>Total "Off the Top" Deductions</b>	<b>\$ 27,880,300.00</b>
<i>per quarter</i>	<b>\$ 6,970,075.00</b>
<b>Local Government Economic Assistance Fund (LGEAF) Coal</b>	
Thirty percent (30%) of Coal Severance Tax Revenue for Distribution	
Coal-Producing Counties Only – No Impact Counties	
<b>Local Government Economic Development Fund (LGEDF) / Single County</b>	
Seventy percent (70%) of Coal Severance Tax Revenue for Distribution	

## **I. OVERVIEW OF THE LOCAL GOVERNMENT ECONOMIC DEVELOPMENT PROGRAM**

### **A. Purpose of the Program**

KRS 42.4588 establishes the Local Government Economic Development Program to provide grants of coal severance and processing tax revenues to coal-producing counties. Grants made from this program, commonly referred as the Local Government Economic Development Fund (LGEDF) or “single county,” are to assist eligible counties in diversifying their local economies beyond coal production and meet other community development needs.

Created in 1992, the program provides LGEDF grants to help make communities attractive to new manufacturing and service industries, as well as to help eligible existing businesses expand. The program is administered by the Department for Local Government (DLG). Traditionally, emphasis has been placed on identifying and implementing economic development and/or industrial development projects that will produce the most and best jobs for the least expenditure of funds.

Between the years of 1999 and 2006 and 2008 through 2014 special line-items were placed in the Commonwealth’s biennial budgets to be funded by the coal severance revenue. These expenditures were for a variety of activities.

The Commonwealth’s Budgets for the years of 2005 through 2014 included language that amended the program’s structure. This expanded set of eligible activities known as the “Parameters for County Flexibility” allows for coal severance funds accessed under the LGEDF Grant program to be spent on activities such as public health and safety, economic development, public infrastructure, information technology development and access, and public water and wastewater projects.

The current budget bill defines that the funds can be spent on projects that have the concurrence of the county judge-executive, state senator(s), and state representative(s).

### **B. Allocation of Coal Severance Tax Receipts Paid into the LGEDF**

The LGEDF serves as the repository for a portion of coal severance and processing tax receipts transferred from the general fund. These taxes are collected and added to the LGEDF on a quarterly basis. The state budget, enacted by the 2020 General Assembly for Fiscal Year 2021, provides for seventy percent (70%) of the coal severance tax revenue (less “off-the-top” deduction) be transferred to the LGEDF each quarter.

## **II. ALLOCATION OF FUNDS TO COAL-PRODUCING COUNTIES**

### **A. County Accounts**

Coal severance tax revenue allocations to the LGEDF are made quarterly among participating counties according to a formula specified by KRS 42.4592.

Fifty percent (50%) of the funds are allocated among the participating counties on the basis of severed tons sold in a county during the current and preceding four (4) years relative to the total severed tons sold by all participating counties. The other fifty percent (50%) of funds is allocated among participating counties based on three criteria, weighted equally, as described below:

- the respective county's employment in mining as a percentage of its total employment;
- the respective county's earnings from mining as a percentage of its total earnings; and
- the respective county's surplus labor rate (a concept similar to unemployment).

LGEDF funds allocated to counties reside in individual state-maintained accounts known as "single-county" accounts, one for each participating county. Funds may accumulate without penalty, and without lapsing, until projects are approved.

## **III. Types of LGEDF Awards**

HB 352 provides for two types of awards that can be made from the LGEDF:

- HB 352 awards with concurrence
- LGEDF Grant awards for industrial development, per KRS 42.4588

## **IV. HB 352 Awards**

### **A. HB 352 Projects**

HB 352 allocates LGEDF to projects with the concurrence of the respective county judge-executive, state representative(s), and state senator(s) of each county. In the event concurrence is not achieved, the fiscal court of each county may apply for industrial development grants through the Department for Local Government, as per KRS 42.4588. The Office of State Grants will administer all LGEDF projects. All project awards will be made in compliance with HB 352. Authorization for HB 352 coal severance projects will lapse at the end of the fiscal year unless the project is reauthorized in the next budget.

## **B. Funding Availability**

HB 352 provides that seventy percent (70%) of coal severance tax revenue available for distribution to be transferred from the coal severance tax receipts into the LGEDF, and allocated quarterly among participating counties according to a formula specified by KRS 42.4592, and outlined above in Section II.A.

## **C. Accessing and Administration of Appropriated Funds –**

### **1. Understanding the Budget Language**

HB 352 directs that LGEDF Single County Coal Severance Funds shall be allocated to projects that have the concurrence of the respective county judge-executive, state senator(s), and state representative(s).

### **2. Obtain Concurrence from ALL of the County's State Legislators**

To access coal severance funds under HB 352, the use of the funds must be agreed upon by the county judge-executive, state senator(s), and state representative(s). This agreement needs to be documented in the form of a letter of support from each legislator, specifically identifying the name of the project, the amount of funds requested, and the use of these funds in the letter. The letters can either be included with the county's application for funds described below in Section VI.D.4 or sent directly to DLG's Office of State Grants.

### **3. Pass the Authorizing Resolution**

The fiscal court needs to pass a resolution that both authorizes the submittal of the application and authorizes the judge to sign the Memorandum of Agreement (MOA), and provide all other necessary documentation to carry out the project. One authorizing resolution may be passed for multiple projects. All projects and amounts requested for each project must be clearly listed in the resolution.

### **4. Complete the Project Scope and Budget Form**

A separate Project Scope and Budget form must be completed for each project. On this form, please provide information about the Legal Recipient, the Sub-Recipient (if applicable), and Project Contact Person. In addition, provide a narrative detailing the project activities and a budget that outlines the project expenditures. PLEASE PROVIDE SPECIFIC DETAIL ON HOW FUNDS WILL BE SPENT. For example, if funds will be used to purchase equipment, the equipment that will be purchased must be listed individually. Incomplete Project Scope and Budget forms will not be processed. Only when these steps have been completed can the MOA process begin, leading to the funding disbursement process.

PLEASE NOTE: MOAs will only be executed for projects IF funds are available in the county's single county coal severance account. Please contact DLG for the amount of funding available.

## **5. Execution of the MOA**

Once DLG has received the Resolution, the complete Project Scope and Budget form and Letters of Concurrence from a county's legislative delegation, the project will be reviewed for approval. Upon approval, DLG will forward a MOA to the County Judge-Executive for signature. Please sign and return the MOA to DLG. Once the MOA is finalized in the state's account system (eMARS), the Request for Disbursement (RFD) process can begin.

## **6. Submit a Request for Disbursement**

To receive funds, the Request for Disbursement (RFD) form, accompanied by relevant financial documentation including, but not limited to, quotes, cost estimates, receipts, invoices, cancelled checks and/or bank statements, must be submitted to DLG. RFDs may be submitted before the recipient has expended funds. In cases in which funds are released on an operating budget, only one fourth of the total award will be released at a time. RFDs can also be submitted as costs are encumbered. RFDs must request at least \$250 to be processed. After the request form is received by DLG, staff will review it for accuracy and completeness. Please be aware that failure to comply with the Quarterly Reporting requirements, outlined below, will delay of the release of project funds.

## **7. Quarterly Report Submission**

Pursuant to the MOA, the recipient is required to submit quarterly progress reports beginning with the quarter in which the MOA was executed regardless of whether funds have been drawn. The recipient is required to submit a separate report for each individual project. The recipient is required to attach any pending financial documentation to this report. This financial documentation includes but is not limited to invoices, receipts, cancelled checks and/or bank statements not previously submitted with a Request for Disbursement. Failure to submit or fully complete the required report will place the recipient in noncompliance status at which time DLG will cease releasing additional funds until the appropriate documentation has been submitted. If reporting noncompliance issues continue, DLG reserves the right to withhold the release of funds for other LGEDF projects. Quarterly reports shall be postmarked no later than the 30<sup>th</sup> day following the end of a quarter. The following schedule applies throughout the period of the project:

First Quarter: July-September must be postmarked no later than October 30.

Second Quarter: October–December must be postmarked no later than January 30.

Third Quarter: January–March must be postmarked no later than April 30.

Fourth Quarter: April-June must be postmarked no later than July 30.

## **8. Project Close-Out**

Recipients of single-county coal severance funds shall be required to submit a completion report to DLG to indicate completion of the project. The completion report should be submitted when all funds have been expended and the project is complete. Once the report is received by DLG, staff will contact the recipient to schedule a time to conduct a Completion Inspection, which may include a site visit to assure project completion, appropriate expenditure of funds and legal compliance.

## **9. Audit Requirements**

All LGEDF projects are subject to an independent annual audit conducted in accordance with generally accepted auditing principles, Government Auditing Standards, issued by the Comptroller General of the United States, the provisions of Office of Management and Budget Circular A-133, "Audits of State and Local Governments," if applicable, and the Audit Guide for Fiscal Court Audits, issued by the Kentucky Auditor of Public Accounts. The audit report shall include a certification that the funds were expended for the purpose intended. A copy of the audit and certification of compliance shall be forwarded to DLG no later than 18 months after the end of each fiscal year in which funds were received.

## **10. Procurement**

All procurement must follow KRS 45A or KRS 424.260, as well as local procurement guidelines.

# **V. Grant Awards**

**PLEASE NOTE:** Per HB 352, projects with concurrence by all parties will take precedence over grants. LGEDF Grant applications will only be accepted after all projects with concurrence have been funded and if there are sufficient reserves in a county's single county account to cover the cost of the additional project(s).

## **A. Eligible Grantees**

KRS 42.4588(4) states that applications for grants from funds provided for in KRS 42.4592 (1)(a) and (b) shall be made by the fiscal court of one or more counties with accounts in the LGEDF program.

KRS 42.4588(5) provides for the award of LGEDF grants for projects located in non-coal-producing counties under certain circumstances, and if adequate funding is available. Applications must be submitted by the fiscal court(s) of one or more counties that have accounts in the LGEDF program. In addition, there must be a reasonable expectation of a benefit for the residents of those counties.



## **B. Eligible Grant Activities**

Pursuant to HB 352, the 2017-2018 biennial budget of the Commonwealth, LGEDF single-county grants shall be used for:

- Industrial development projects if an industrial firm has agreed with the local government to develop, in conjunction with the industrial development project, manufacturing, processing, assembling, or other facilities approved by the commissioner of DLG;
- Industrial development projects if the commissioner of DLG finds that the project is necessary for the creation of an environment for new industry in order to obtain an agreement from an industrial firm to develop manufacturing, processing, assembling, or other facilities approved by the commissioner of DLG; and
- Debt service for industrial development projects, as defined in KRS 42.4588(2)(a) and (b), or for facilities approved by the commissioner of DLG under the provisions of KRS 42.4588(3).

The commissioner of DLG may approve facilities, other than manufacturing, processing, or assembling facilities, for industrial development projects when the commissioner finds that the facility will add value to a product. Value-added facilities shall include data processing, telecommunication, and distribution facilities but shall not include retail facilities or coal mining, coal processing, or coal transportation facilities.

## **C. Criteria for Approval of Applications and Grant Awards**

The approval of applications and the award of grants to be considered, if applicable, shall include:

- The number of jobs to be created or preserved, directly or indirectly, by the industrial development project;
- Payrolls, and the taxes generated, both at the state and local levels, by the industrial development project and taxes generated by the employment created or preserved by the industrial development project;
- The size, nature, and cost of the industrial development project, including the prospect of the industrial development project providing long-term jobs in enterprises consistent with the changing economies of the affected local units of government;
- The needs, and degree of needs, of the local units of government which will be affected by the industrial development project;
- The needs of any industrial firm benefiting from the industrial development project;
- The amount and kind of assistance, if any, available to an industrial firm from other government agencies through tax exemption or abatement, financing assistance through industrial development bonds, and otherwise, with respect to the industrial development project;

- The amount of capital made available to the facility by lenders and by the industrial firm; and
- The economic feasibility of the facility.

#### **D. Funding Availability**

Grants may be awarded to a coal-producing county based upon the applicant having a project eligible for funding and having funds available in the county's single county coal severance account AFTER all of the projects with concurrence of the respective county judge-executive, state senator(s) and state representative(s) have been funded.

Funding for a project will not be released until unobligated funds in the appropriate LGEDF account are sufficient to pay for the project. These funding parameters are set forth in KRS 42.4588.

#### **E. Non-Assignment of Grant Funds**

Grant proceeds may only be used for eligible activities. Grantees (or their designated administering agencies) cannot assign, mortgage nor convey any portion of grant proceeds to any person or entity without the express written consent of the commissioner of DLG.

#### **F. Recapture of Grant Funds**

When grant proceeds or income are earned from a single-county LGEDF project, the county or authority is required to maintain an account for all these funds in a "project proceeds account," a separate, interest-bearing account established by the county or authority. Annually, with each 4th quarterly report (June 30), LGEDF grantees having recaptured funds must complete the Project Proceeds Report Form and return the report and total receipts which remain in their project proceeds account. No expenditure may be made from these accounts without the written approval of the Commissioner of DLG.

At any time if the balance of a county's project proceeds account exceeds \$100,000, the entire balance, including interest, must be returned to DLG within 10 days of reaching that amount. If a sale of property and/or facility occurs, the recaptured funds from that sale must be returned to DLG within 30 days after closing. In cases where property and/or facilities are leased, the agreement between the "grantee" and their respective "lessee" shall reflect language assuring the lease payments are paid directly to DLG unless otherwise approved by DLG. DLG will redeposit all recaptured funds into the respective single county account and those funds will become available for eligible activities within the LGEDF program.

The policy above will apply to all single county projects, including those covered by an existing MOA.

## **G. Industrial Development Projects set forth by KRS 42.4588**

Grants from the LGEDF may be used for industrial development purposes. In general, the term “industrial development projects” refers to the development of a specific site for manufacturing or service activities that meet the criteria set forth in this section. An industrial development project includes the acquisition of any real estate and the construction, acquisition and installation of improvements and facilities necessary and useful for the improvement of the real estate for conveyance or lease to industrial firms and approved nonindustrial firms. In some cases, LGED funding may be used because of an industrial development project for workforce training activities.

## **H. Public Health and Safety, “other” Economic Development, Public Infrastructure, Information Technology Development and Access, and Public Water and Wastewater**

Grants from the LGEDF may be used for public health and safety, “other” economic development, public infrastructure, information technology development and access and public water and wastewater development purposes. However, to afford counties the most flexibility in project development, these expanded categories will not be specifically defined. Instead, an effort will be made to allow counties to substantiate and justify the proposed nonrecurring expenditures as an eligible project under these categories. Any project that falls under or directly addresses health and public safety, economic development, public infrastructure, information technology development and access or public water and wastewater development are eligible to submit applications for review.

## **I. Accessing and Administration of LGEDF Grants**

### **1. Project Scope and Budget Form and Authorizing Resolution**

To initiate a project, a County Fiscal Court must submit the following documentation to DLG:

- a. Completed Project Scope and Budget Form
- b. Authorizing Resolution signed by the recipient

On the Project Scope and Budget Form, please provide information about the Legal Recipient, the Sub-Recipient and Project Contact Person. In addition, provide a narrative detailing the project activities and provide a budget that outlines the project expenditures. PLEASE PROVIDE SPECIFIC DETAIL ON HOW FUNDS WILL BE SPENT. For example, if funds will be used to purchase equipment, you must list the equipment that will be purchased. This detail is required for the contract to be put in eMARS, the state’s accounting system. Project Scope and Budget forms not complete will not be processed.

\*Water and Wastewater LGEDF Projects – Please include the WX/SX number on the Project Scope and Budget form. The applicant can apply for an SX or WX number through their local Area Development District via the WRIS system and the Area Water Management Council.

## **2. Application Review**

Only after the above documentation has been received by DLG and sufficient funds are available to cover the cost of the project, will an application be accepted for consideration.

The Commissioner of DLG is responsible for final approval of all LGEDF grants following the review and preliminary recommendation by the Office of State Grants, Coal Development Branch. In order for a project to be funded, a determination must be made regarding project eligibility, funding availability, project need, reasonability of costs and overall project effectiveness.

## **3. Memorandum of Agreement (MOA)**

Upon approval of an application, a Memorandum of Agreement (MOA) will be prepared outlining the specific terms of the award including the legal requirements for disbursement and accounting of funds. The MOA will be forwarded to the grant recipient for signature. Once signed by the recipient, the MOA needs to be returned to DLG for signature and further processing. No funds shall be released for a particular project until all participating parties have signed the agreement AND until the Secretary of the Finance and Administration Cabinet or his/her authorized designee has approved the contract and the contract has been submitted to the Government Contract Review Committee. Once this process is complete, a copy of the fully executed agreement will be sent to the recipient. At such time, the recipient may begin incurring project costs.

Failure to comply with the MOA may result in the withholding of funds and additional actions to enforce the terms and conditions of the agreement. In addition, funds already disbursed may be required to be returned to the respective LGEDF account. Each project will be governed by its own agreement outlining its own specific and unique terms.

## **4. Disbursement of Funds**

To receive funds, the recipient will complete a Request for Disbursement (RFD) form accompanied by relevant financial documentation including but not limited to quotes, cost estimates, receipts, invoices, cancelled checks and/or bank statements. RFDs may be submitted before the recipient has expended funds. RFDs can also be submitted as costs are encumbered. RFDs must request at least \$250 to be processed. After the request form is received, it will be reviewed by staff for accuracy and completeness. Please be aware that failure to comply with the Quarterly Reporting requirements outlined below will delay of the release of project funds.

## **5. Quarterly Report Submission**

Pursuant to the MOA, the recipient is required to submit quarterly progress reports beginning with the quarter in which the MOA was executed regardless of whether funds have been drawn. The recipient is required to submit a separate report for each individual project. The recipient is required to attach any pending financial documentation to this report. This financial documentation includes but is not limited to invoices, receipts, cancelled checks and/or bank statements not previously submitted with a Request for Disbursement. Failure to submit or fully complete the required report will place the recipient in noncompliance status at which time DLG will cease releasing additional funds until the appropriate documentation has been submitted. If reporting noncompliance issues continue, DLG reserves the right to withhold the release of funds for other LGEDF projects. Quarterly reports shall be postmarked no later than the 30th day following the end of a quarter. The following schedule applies throughout the life of the project:

First Quarter: July-September must be postmarked no later than October 30

Second Quarter: October-December must be postmarked no later than January 30

Third Quarter: January-March must be postmarked no later than April 30

Fourth Quarter: April-June must be postmarked no later than July 30

## **6. Project Monitoring**

DLG staff will monitor project activities to assure compliance with the MOA and related scope of work. DLG reserves the right to conduct site-monitoring visits on all projects during the course of the project. Monitoring questions, issues or program discrepancies identified by field staff during a monitoring will be directed to the Office of State Grants, Coal Development Branch Manager for additional review and action.

## **7. Project Close-out**

The grant recipient shall be required to submit a completion report to DLG. This report indicates completion of the project and desire to close the project. The completion report should be submitted when all funds have been expended and the project is complete. When the report is received by DLG, staff will contact the recipient to schedule a time to conduct a Completion Inspection, which may include a site visit to assure project completion, appropriate expenditure of funds and legal compliance.

## **8. Audit Requirements**

All LGEDF projects are subject to an independent annual audit conducted in accordance with generally accepted auditing principles, Government Auditing Standards, issued by the Comptroller General of the United States, the provisions of Office of Management and Budget Circular A-133, "Audits of State and Local Governments," if applicable, and the Audit Guide for Fiscal Court Audits, issued by the Kentucky Auditor of Public Accounts. The audit report shall include a

certification that the funds were expended for the purpose intended. A copy of the audit and certification of compliance shall be forwarded to DLG no later than 18 months after the end of each fiscal year in which LGED funds were received.

**9. Procurement**

All procurement must follow KRS 45A or KRS 424.260, as well as local procurement guidelines.

## LOCAL GOVERNMENT ECONOMIC ASSISTANCE FUND

The Local Government Economic Assistance Fund (LGEAF) is a program of revenue sharing for Kentucky counties and cities. The LGEAF returns a portion of state collected coal and non-coal mineral severance taxes to eligible local governments in accordance with KRS 42.450 – KRS 42.495. There are two, somewhat distinct aspects of the program, one for coal severance receipts and one for non-coal minerals receipts. The LGEAF program should not be confused with a similarly named, but entirely distinct program known as the LGEDF.

**No application is needed to access these funds. Funds are automatically distributed to eligible recipients on a quarterly basis.**

### I. LGEAF Coal Severance

In Fiscal Year 2021, eligibility in the LGEAF coal severance program occurs only if a county is a coal “producer.” The status of all counties is evaluated each quarter. (For Fiscal Year 2021, there will be no allocations of funds for “impact counties,” those that have significant transportation of coal through the county.)

Coal severance tax receipts, as defined by HB 352, are provided to the LGEAF program and allocated among eligible counties and incorporated cities according to a formula, outlined in KRS 42.470(1)(a)(b)(c), which considers criteria such as coal severed in each respective county, ton-miles of coal transported, population, and per-capita personal income. Ten percent (10%) of a county’s allocation is reserved for all of the incorporated cities of that county, collectively, and are distributed among the county’s cities according to population. Payment is made directly to the participating local governments four times annually following recognition of quarterly coal severance tax receipts.

KRS 42.475 includes a provision stating that when a city’s allocation is less than \$25 in any given quarter, the allotment reverts to the respective county’s quarterly allocation.

KRS 42.455 allows funds to be used for a variety of governmental activities, as listed below in Part III.

### II. LGEAF Non-Coal Minerals Severance

The LGEAF non-coal minerals severance program returns 50% of state collected non-coal minerals severance taxes to local governments. Eligible counties are producers of non-coal minerals such as limestone, clay, oil, or natural gas. Fifty percent (50%) of severance taxes paid in from a county’s minerals producers are returned to that county by check, four times

annually following recognition of quarterly non-coal minerals severance tax receipts. Ten percent (10%) of a county's allocation is reserved for all of the cities of that county, collectively, and are distributed among the county's cities according to population.

As with LGEAF Coal, KRS 42.475 provides that when a city is to receive an allocation of less than \$25 in any given quarter, those funds revert to the county's allocation for that quarter.

Funds from the LGEAF non-coal minerals severance program may be used for a variety of governmental activities. Please see Item III for a list of allowable uses.

### **III. Eligible Activities**

KRS 42.455(2)(3)(4) specifically prohibits the expenditure of LGEAF for the administration of government. As stated previously, per HB 352, eligible local governments must expend funds directly related to the following priority categories:

- Public safety, including law enforcement, fire protection, ambulance service and other related services;
- Environmental protection, including sewage disposal, sanitation, solid waste and other related programs;
- Public transportation, including mass transit systems, streets and roads;
- Health;
- Recreation;
- Libraries and educational facilities;
- Services for the poor, aged, and handicapped;
- Industrial and economic development;
- Vocational education; and
- Workforce training.

#### **Addendums:**

- How to Access LGEDF in HB 352
- Sample Authorizing Resolution
- Project Scope and Budget Form
- Request for Disbursement
- Quarterly Progress Report
- Completion Report
- Project Proceeds Report

The forms listed above can be found at [http://kydlgweb.ky.gov/StateGrants/16\\_Coal.cfm](http://kydlgweb.ky.gov/StateGrants/16_Coal.cfm).