

## CHAPTER 2

(HB 97)

AN ACT relating to reorganization.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 12.023 is amended to read as follows:

The following organizational units and administrative bodies shall be attached to the Office of the Governor:

- (1) Council on Postsecondary Education;
- (2) Department of Military Affairs;
- (3) Department for Local Government;
- (4) Kentucky Commission on Human Rights;
- (5) Kentucky Commission on Women;
- (6) Kentucky Commission on Military Affairs;
- (7) ***Kentucky Coal Council***~~Coal Marketing and Export Council~~;
- (8) Governor's Office of Child Abuse and Domestic Violence Services;
- (9) Office of the Chief Information Officer; and
- (10) Office of Coal Marketing and Export.

Section 2. KRS 132.020 is amended to read as follows:

- (1) An annual ad valorem tax for state purposes of thirty-one and one-half cents (\$0.315) upon each one hundred dollars (\$100) of value of all real property directed to be assessed for taxation, and one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all privately-owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 directed to be assessed for taxation, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing, and one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all tobacco directed to be assessed for taxation, and twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of all money in hand, shares of stock, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, except as otherwise provided in subsection (2) of this section, and one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of unmanufactured agricultural products, one-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations, one-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all livestock and domestic fowl, one-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all tangible personal property located in a foreign trade zone as designated under 19 U.S.C. sec. 81, fifteen cents (\$0.15) upon machinery actually engaged in manufacturing, fifteen cents (\$0.15) upon commercial radio, television and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna, fifteen cents (\$0.15) upon

property which has been certified as a pollution control facility as defined in KRS 224.01-300, one-tenth of one cent (\$0.001) upon property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390, twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043, and forty-five cents (\$0.45) upon each one hundred dollars (\$100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed, except as provided in subsection (2) of this section and KRS 132.030, 132.050, 132.200, 136.300, 136.320, and other sections providing a different tax rate for particular property.

- (2) (a) An annual ad valorem tax for state purposes of one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value shall be paid upon the following classes of intangible personal properties, when the intangible personal properties have not acquired a taxable situs without this state:
1. Accounts receivable, notes, bonds, credits, and any other intangible property rights arising out of or created in the course of regular and continuing business transactions substantially performed outside this state;
  2. Patents, trademarks, copyrights, and licensing or royalty agreements relating to these;
  3. Shares of capital stock of any affiliated company as defined in subsection (3) of this section and notes, bonds, accounts receivable, and all other intercompany intangible personal property due from the company; and
  4. Tobacco base allotments.
- (b) An annual ad valorem tax for state purposes of one-thousandth of one percent (0.001%) shall be paid upon money in hand, shares of stock, notes, bonds, accounts, credits, and other intangible assets, whether by mortgage, pledge, or otherwise, or unsecured, of financial institutions, as defined in KRS 136.500.
- (3) "Affiliated company" shall mean a parent corporation or subsidiary corporation, and any corporation principally engaged in business outside the United States in which the owner or the person assessed directly or indirectly owns or controls not less than ten percent (10%) of the outstanding voting stock.
- (4) With respect to the intangible properties taxed pursuant to subsection (2) of this section, no other ad valorem tax shall be levied by the state or any county, city, school, or other taxing district on the intangible properties, or directly or indirectly against the owner.
- (5) Thirty cents (\$0.30) of the thirty-one and one-half cents (\$0.315) state tax rate on real property and thirty cents (\$0.30) of the forty-five cents (\$0.45) state tax on tangible personalty subject to local taxation shall be considered as local school district tax levies for purposes of computing any direct payments of state or federal funds to said districts as replacement for ad valorem taxes lost on property acquired by a governmental agency. Should the equivalency ever be less than thirty cents (\$0.30), as certified by the Department of Education, the direct payments shall be reduced proportionately.
- (6) The provisions of subsection (1) of this section notwithstanding, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of

real property to the extent that the increase exceeds the preceding year's assessment by more than four percent (4%). In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.

- (7) By July 1 each year, the cabinet shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (5) of this section and certify the rate to the county clerks for their use in preparing the tax bills. If the assessments for all counties have not been certified by July 1, the cabinet shall, when either real property assessments of at least seventy-five percent (75%) of the total number of counties of the Commonwealth have been determined to be acceptable by the cabinet, or when the number of counties having at least seventy-five percent (75%) of the total real property assessment for the previous year have been determined to be acceptable by the cabinet, make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.
- (8) If the tax rate set by the cabinet as provided in subsection (6) of this section produces more than a four percent (4%) increase in real property tax revenues, the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.
- (9) The provisions of subsection (6) of this section notwithstanding, the assessed value of unmined coal certified by the cabinet after July 1, 1994, shall not be included with the assessed value of other real property in determining the state real property tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also be excluded from the provisions of subsection (6) of this section. The calculated rate shall, however, be applied to unmined coal property, and the state revenue shall be devoted to the program described in KRS 146.550 through 146.570, except that four hundred thousand dollars (\$400,000) of the state revenue shall be paid annually to the State Treasury and credited to the ***Kentucky Coal Council***~~Coal Marketing and Export Council~~ for the purpose of public education of coal-related issues.
- (10) Effective on or after January 1, 1990, an ad valorem tax for state purposes of five cents (\$0.05) upon each one hundred dollars (\$100) of value shall be paid upon goods held for sale in the regular course of business, which, on or after January 1, 1999, includes machinery and equipment held in a retailer's inventory for sale or lease originating under a floor plan financing arrangement; and raw materials, which includes distilled spirits and distilled spirits inventory, and in-process materials, which includes distilled spirits and distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business.
- (11) An ad valorem tax for state purposes of ten cents (\$0.10) per one hundred dollars (\$100) of assessed value shall be paid on the operating property of railroads or railway companies that operate solely within the Commonwealth.
- (12) An ad valorem tax for state purposes of one and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed value shall be paid on aircraft not used in the business of transporting persons or property for compensation or hire.
- (13) An ad valorem tax for state purposes of one and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed value shall be paid on federally documented vessels not used in the

business of transporting persons or property for compensation or hire, or for other commercial purposes.

Section 3. KRS 143.090 is amended to read as follows:

- (1) The Transportation Cabinet shall certify to the secretary of the Revenue Cabinet by October 1 of each fiscal year the amount required for lease rental payments to the Kentucky Turnpike Authority for resource recovery road projects.
- (2) The ***Kentucky Coal Council***~~{Coal Marketing and Export Council}~~ shall certify to the secretary of the Revenue Cabinet by October 1 of each year the amount of the annual lease rental payments required to be made for any energy research developmental or demonstration project undertaken by the ***Kentucky Coal Council***~~{Coal Marketing and Export Council}~~. The amount so certified shall in no case exceed three million dollars (\$3,000,000) in any one (1) year.
- (3) Upon receiving the certifications provided for in subsections (1) and (2) of this section, the secretary of the Revenue Cabinet shall cause the certified amounts to be deposited from the proceeds of the tax levied by KRS 143.020 to the credit of the transportation fund and the ***Kentucky Coal Council***~~{Coal Marketing and Export Council}~~, respectively, unless otherwise provided by the General Assembly in a budget bill, as follows:
  - (a) An amount equal to the amount certified by the Transportation Cabinet shall be deposited to the transportation fund (road fund); and
  - (b) An amount equal to the amount certified by the ***Kentucky Coal Council***~~{Coal Marketing and Export Council}~~ shall be transferred by appropriate interfund transfer procedures to the ***Kentucky Coal Council***~~{Coal Marketing and Export Council}~~.
- (4) All tax levied by KRS 143.020 collected in excess of the amount required to be deposited to the transportation fund (road fund) or transferred to the ***Kentucky Coal Council***~~{Coal Marketing and Export Council}~~ shall be deposited by the Revenue Cabinet to the credit of the general fund.
- (5) If the proceeds of the tax levied by KRS 143.020 are less than the amounts certified under subsections (1) and (2) of this section, the secretary of revenue shall prorate the proceeds to the transportation fund and the ***Kentucky Coal Council***~~{Coal Marketing and Export Council}~~ based upon the ratio of each certified amount to the total of the two (2) certified amounts.

Section 4. KRS 154.12-250 is amended to read as follows:

- (1) The ***Kentucky Coal Council***~~{Coal Marketing and Export Council}~~ is established within the Office of the Governor. The council shall provide direction to the Governor in marketing efforts targeted to increasing opportunities for Kentucky coal and other products and it shall carry out other duties and responsibilities as assigned by the Governor.
- (2) The Office of Coal Marketing and Export is established within the Office of the Governor. The office shall carry out the purposes of the council and provide other staff support as is deemed necessary.
- (3) All personnel, equipment, supplies, and records relating to the ***Kentucky Coal Council***~~{Coal Marketing and Export Council}~~ shall be transferred to the Office of Coal Marketing and Export in the Office of the Governor.

Section 5. KRS 154.12-252 is amended to read as follows:

- (1) The ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~ shall be composed of fourteen (14) members, as follows:
  - (a) The secretary to the Governor's Executive Cabinet, who shall serve as vice chair of the council;
  - (b) The secretary of the Transportation Cabinet;
  - (c) The deputy secretary of the Natural Resources and Environmental Protection Cabinet;
  - (d) The executive director of the ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~;
  - (e) A representative of the Alliance of Kentucky Coal appointed by the Governor; and
  - (f) Nine (9) citizen members appointed by the Governor for terms of four (4) years. These citizen members shall include representatives of interests concerned with the marketing of Kentucky coal and other products, such as the owners or operators of companies involved in coal production, transportation, and consumption; representatives of the academic and financial communities; and representatives of major coal and industry associations. As the terms expire, the Governor shall appoint successors for terms of four (4) years. Each citizen member shall serve until his successor is appointed.
- (2) Council members shall receive no compensation for their services, but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and functions as council members.
- (3) The council shall, at a minimum, meet once every quarter.
- (4) Eight (8) members of the council shall constitute a quorum for the purpose of conducting business.
- (5) The council shall elect a chair on a biennial basis from the council's citizen membership.

Section 6. KRS 154.12-255 is amended to read as follows:

The ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~ shall annually or more frequently, as deemed necessary, forward recommendations to the secretary of the Cabinet for Economic Development and the Governor on areas critical to marketing Kentucky coal and other products including, but not limited to:

- (1) Promotion of Kentucky coal through development of market information;
- (2) Coordination of ongoing research and marketing programs relating to coal production, transportation, and consumption;
- (3) Identification of national and international market developments relating to coal and other products; and
- (4) Provision of advice to coal operators and other industries seeking to enter or expand domestic or export markets.

Section 7. KRS 224.46-850 is amended to read as follows:

- (1) It is the intent of the General Assembly that a regional integrated waste treatment and disposal demonstration facility contain an industrial park component. The approved site for a regional integrated waste treatment and disposal demonstration facility shall be of sufficient size to

accommodate new industrial and commercial concerns that can utilize the energy by-products of the treatment technologies.

- (2) It shall be the responsibility of the ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~ to establish a plan for and develop the industrial park component of a regional integrated waste treatment and disposal demonstration facility. The industrial park component, located on property contiguous with the treatment and disposal technologies, shall be designed so as to utilize energy generated from the waste treatment technologies.

Section 8. KRS 224.46-870 is amended to read as follows:

The ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~ shall provide the cabinet with the information deemed necessary by the cabinet to project hazardous waste generation in the Commonwealth as required by KRS 224.10-100(24) and 224.46-830(2)(d).

Section 9. KRS 247.920 is amended to read as follows:

- (1) Application for an alcohol production exemption certificate shall be filed with the Revenue Cabinet in such manner and in such form as may be prescribed by regulations issued by the Revenue Cabinet and shall contain plans and specifications of the structure or structures including all materials incorporated and to be incorporated therein and a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of producing ethanol for fuel use and any additional information deemed necessary by the Revenue Cabinet for the proper administration of KRS 247.910 and this section. The ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~ shall provide technical assistance and factual information as requested in writing by the Revenue Cabinet. If the Revenue Cabinet finds that the facility qualifies as an alcohol production facility as defined by KRS 247.910, it shall enter a finding and issue a certificate to that effect. The effective date of the certificate shall be the date of issuance of the certificate.
- (2) Before issuing an alcohol production tax exemption certificate, the Revenue Cabinet shall give notice in writing by mail to the ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~, and shall afford to the applicant and to the ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~ an opportunity for a hearing. On like notice and opportunity for a hearing, the Revenue Cabinet shall on its own initiative revoke the certificate when any of the following appears:
  - (a) The certificate was obtained by fraud or misrepresentation;
  - (b) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of the alcohol production facilities; or
  - (c) The structure or equipment or both to which the certificate relates has ceased to be used for the primary purpose of alcohol production for fuel use and is being used for a different purpose.
- (3) If the circumstances so require, the Revenue Cabinet, in lieu of revoking the certificate, may modify it.
- (4) On mailing of notice of the action of the Revenue Cabinet revoking or modifying a certificate as provided in subsection (5) of this section, the certificate shall cease to be in force or shall remain in force only as modified as the case may require.

- (5) An alcohol production tax exemption certificate, when issued, shall be sent by certified mail to the applicant and the notice of issuance in the form of certified copies thereof shall be sent to the ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~. Notice of an order of the Revenue Cabinet denying, revoking, or modifying a certificate in the form of certified copies thereof shall be sent by certified mail to the applicant or the holder and shall be sent to the ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~. The applicant or holder and the ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~ shall be deemed parties for the purpose of the review afforded by subsection (6) of this section.
- (6) Any party aggrieved by the issuance, refusal to issue, revocation, or modification of an alcohol production tax exemption certificate may appeal from the final ruling of the Revenue Cabinet to the Kentucky Board of Tax Appeals as provided in KRS 131.340.
- (7) In the event of the sale, lease, or other transfer of an alcohol production facility, not involving a different location or use, the holder of an alcohol production tax exemption certificate for the facility may transfer the certificate by written instrument to the person who, except for the transfer of the certificate, would be obligated to pay taxes on the facility. The transferee shall become the holder of the certificate and shall have all rights pertaining thereto, effective as of the date of transfer of the certificate. The transferee shall give written notice of the effective date of the transfer, together with a copy of the instrument of transfer to the ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~ and the Revenue Cabinet.
- (8) In the event an alcohol production facility for which an exemption certificate is held ceases to be used for the primary purpose of alcohol production for fuel use or is used for a different purpose other than that for which the exemption certificate was granted, the holder of the certificate shall give written notice by certified mail of the change to the ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~ and to the Revenue Cabinet.
- (9) The alcohol production facility exemption certificate, upon approval, shall exempt said facilities from taxes outlined in the provisions of KRS 247.910 and this section and included in KRS Chapters 132, 136, 138, and 139. Each exemption certificate shall remain in force for a period of eight (8) years from the date of issuance and at the end of said period shall lapse. Any alcohol production facility previously exempted under the terms of KRS 247.910 and this section shall not be eligible for recertification upon completion of the eight (8) year certificate period.

Section 10. KRS 262.875 is amended to read as follows:

- (1) There shall be created a committee to advise the Governor on state activities that may contribute to the conversion of farmland to nonfarm uses. The committee shall be called the Interagency Farmland Advisory Committee and the members shall be appointed by the Governor and shall include one (1) representative for each of the following:
- (a) Governor's Cabinet;
  - (b) Finance and Administration Cabinet;
  - (c) Revenue Cabinet;
  - (d) Transportation Cabinet;
  - (e) Natural Resources and Environmental Protection Cabinet;
  - (f) ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~;

- (g) Department of Agriculture;
  - (h) Department for Local Government;
  - (i) Department of Fish and Wildlife Resources;
  - (j) Environmental Quality Commission;
  - (k) Soil and Water Conservation Commission;
  - (l) Dean, College of Agriculture, University of Kentucky;
  - (m) Two (2) farmer owners and operators of one hundred fifty (150) acres or less, one (1) selected from a list of three (3) persons recommended by the Kentucky Farm Bureau, and one (1) selected from a list of three (3) persons recommended by the National Farmers Organization;
  - (n) Two (2) farmer owners and operators of more than one hundred fifty (150) acres, one (1) selected from a list of three (3) persons recommended by the Kentucky Farm Bureau, and one (1) selected from a list of three (3) persons recommended by the National Farmers Organization; and
  - (o) The joint chairpersons of the Interim Joint Committee on Agriculture and Natural Resources.
- (2) The representative of the Natural Resources and Environmental Protection Cabinet shall be the chairperson of the committee, and the representative of the Soil and Water Conservation Commission shall be the vice chairperson of the committee. The staff for the committee shall be provided by the Natural Resources and Environmental Protection Cabinet.
  - (3) In order to advise the Governor, the committee shall review proposed state projects which will convert farmland to nonfarm use. The review shall consider alternatives to the project proposal in an effort to balance the public purpose to be served by the state project against the public purpose of conserving productive farmland.
  - (4) The Interagency Farmland Advisory Committee shall review proposed projects of all state agencies, including but not limited to, boards and commissions. The review shall be limited to proposed projects which will require the acquisition of more than fifty (50) acres of farmland.
  - (5) During the planning stage of the project and before any action is taken to acquire farmland, the state agency shall submit a report to the committee. The report shall explain the project, contain an agricultural impact assessment, highlight the location of land that must be acquired, present the reasons for needing the land, and explain the reasons for rejecting alternatives to the proposed project.
  - (6) All state projects shall be located to provide minimal interference with the productivity of agricultural lands of statewide importance as identified by KRS 246.065.
  - (7) The committee shall provide notice of the proposed project to the local community by publishing the notice in the newspaper of greatest local circulation within fifteen (15) days after receiving the report. The notice shall solicit comments on the proposal and state that a public hearing will be held upon a request received within fifteen (15) days of the last published notice. If requested, the public hearing shall be held within fifteen (15) days after receiving the request. No later than ten (10) days after the hearing, the committee shall file its



report and any recommendations to the Governor. The committee may recommend to the Governor that action be taken by the Governor to alter the proposed state project if necessary to balance the public interests.

- (8) A majority of the members of the committee constitutes a quorum for conducting business, and any action taken in the name of the committee requires an affirmative vote of a majority of the members present and voting.
- (9) Members shall receive no compensation but shall be reimbursed for expenses incurred.

Section 11. The General Assembly hereby confirms Executive Order 98-1049, dated August 6, 1998, which changes the name of the Coal Marketing and Export Council within the Office of the Governor to the Kentucky Coal Council.

**Approved February 7, 2000**