

CHAPTER 123

(SB 41)

AN ACT relating to reorganization.

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

Section 1. KRS 11.065 is amended to read as follows:

- (1) The secretaries of the Justice Cabinet, the Education, Arts, and Humanities Cabinet, the ***Environmental and Public***~~Natural Resources and Environmental~~ Protection Cabinet, the Transportation Cabinet, the Cabinet for Economic Development,~~the Public Protection and Regulation Cabinet,~~ the Cabinet for Health Services, the Cabinet for Families and Children, the Finance and Administration Cabinet, the Revenue Cabinet, the Tourism Development Cabinet,~~the Labor Cabinet,~~ the Personnel Cabinet, the Governor's Executive Cabinet, the state budget director, the Governor's chief of staff, and the Lieutenant Governor shall constitute the Governor's Executive Cabinet. There shall be a vice chairman appointed by the Governor who shall serve in an advisory capacity to the Executive Cabinet. The Governor shall be the chairman, and the secretary of the Finance and Administration Cabinet shall be a second vice chairman of the Executive Cabinet. The Governor may designate others to serve as vice chairman.
- (2) The cabinet shall meet not less than once every two (2) months and at other times on call of the Governor. The Executive Cabinet shall be a part of the Office of the Governor and shall not constitute a separate department or agency of the state. Members of the cabinet shall be the major assistants to the Governor in the administration of the state government and shall assist the Governor in the proper operation of his office and perform other duties the Governor may require of them.
- (3) The cabinet shall consider matters involving policies and procedures the Governor or any member may place before it. The cabinet shall advise and consult with the Governor on all matters affecting the welfare of the state.

Section 2. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
 - (a) Secretary of State.

- (b) Board of Elections.
 - (c) Registry of Election Finance.
 - 4. Department of Law.
 - (a) Attorney General.
 - 5. Department of the Treasury.
 - (a) Treasurer.
 - 6. Department of Agriculture.
 - (a) Commissioner of Agriculture.
 - (b) Kentucky Council on Agriculture.
 - 7. Auditor of Public Accounts.
- II. Program cabinets headed by appointed officers:
- 1. Justice Cabinet:
 - (a) Department of State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Offices of the Deputy Secretaries.
 - (g) Office of General Counsel.
 - (h) Division of Kentucky State Medical Examiners Office.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Commission on Correction and Community Service.
 - 2. Education, Arts, and Humanities Cabinet:
 - (a) Department of Education.
 - (1) Kentucky Board of Education.
 - (b) Department for Libraries and Archives.
 - (c) Kentucky Arts Council.
 - (d) Kentucky Educational Television.
 - (e) Kentucky Historical Society.
 - (f) Kentucky Teachers' Retirement System Board of Trustees.
 - (g) Kentucky Center for the Arts.
 - (h) Kentucky Craft Marketing Program.
 - (i) Kentucky Commission on the Deaf and Hard of Hearing.

- (j) Governor's Scholars Program.
 - (k) Governor's School for the Arts.
 - (l) Operations and Development Office.
 - (m) Kentucky Heritage Council.
 - (n) Kentucky African-American Heritage Commission.
 - (o) Board of Directors for the Center for School Safety.
3. ***Environmental and Public***~~[Natural Resources and Environmental]~~ Protection Cabinet:
- (a) ***Office of the Secretary***~~[Environmental Quality Commission]~~.
 1. ***Office of Legislative and Intergovernmental Affairs.***
 2. ***Office of Communications and Public Outreach.***
 3. ***Office of Regulatory Affairs.***
 4. ***Office of Legal Services.***
 5. ***Office of Administrative and Information Services.***
 6. ***Office of Administrative Hearings.***
 7. ***Office of Inspector General.***
 8. ***Mine Safety Review Commission.***
 9. ***Workers' Compensation Board.***
 10. ***Kentucky State Nature Preserves Commission.***
 11. ***Kentucky Environmental Quality Commission.***
 12. ***Kentucky Occupational Safety and Health Review Commission.***
 - (b) ***Department for Environmental Protection***~~[Kentucky Nature Preserves Commission]~~.
 1. ***Office of the Commissioner.***
 2. ***Division of Air Quality.***
 3. ***Division of Water.***
 4. ***Division of Environmental Services.***
 5. ***Division of Waste Management.***
 6. ***Division of Enforcement.***
 7. ***Division of Compliance Assistance.***
 - (c) Department for ***Natural Resources***~~[Environmental Protection]~~.
 1. ***Office of the Commissioner.***
 2. ***Office of Technical and Administrative Support.***
 3. ***Division of Mine Permits.***
 4. ***Division of Mine Reclamation and Enforcement.***

5. *Division of Abandoned Mine Lands.*
 6. *Division of Oil and Gas Conservation.*
 7. *Office of Mine Safety and Licensing.*
 8. *Division of Forestry.*
 9. *Division of Conservation.*
- (d) Department of *Public Protection* [~~for Natural Resources~~].
1. *Office of the Commissioner.*
 2. *Division of Administrative Services.*
 3. *Crime Victims Compensation Board.*
 4. *Board of Claims.*
 5. *Board of Tax Appeals.*
 6. *Kentucky Athletic Commission.*
 7. *Kentucky Horse Racing Authority.*
 8. *Kentucky Public Service Commission.*
 9. *Office of Alcoholic Beverage Control.*
 10. *Office of Charitable Gaming.*
 11. *Office of Financial Institutions.*
 12. *Office of Housing, Buildings and Construction.*
 13. *Office of Insurance.*
- (e) Department of *Labor* [~~for Surface Mining Reclamation and Enforcement~~].
1. *Office of the Commissioner.*
 2. *Office of Occupational Safety and Health.*
 3. *Office of Labor Management Relations and Mediation.*
 4. *Office of Workplace Standards.*
 5. *Office of Workers' Claims.*
 6. *Workers' Compensation Funding Commission.*
 7. *Kentucky Labor Management Advisory Council.*
 8. *Occupational Safety and Health Standards Board.*
 9. *Prevailing Wage Review Board.*
 10. *Kentucky Employees Insurance Association.*
 11. *Apprenticeship and Training Council.*
 12. *State Labor Relations Board.*
 13. *Workers' Compensation Advisory Council.*
 14. *Workers' Compensation Nominating Commission.*

15. Employers' Mutual Insurance Authority.**16. Division of Administrative Services.**~~[(f) Office of Legal Services.~~~~(g) Office of Information Services.~~~~(h) Office of Inspector General.]~~

4. Transportation Cabinet:

(a) Department of Highways.

1. Office of Program Planning and Management.
2. Office of Project Development.
3. Office of Construction and Operations.
4. Office of Intermodal Programs.
5. Highway District Offices One through Twelve.

(b) Department of Vehicle Regulation.

(c) Department of Administrative Services.

(d) Department of Fiscal Management.

(e) Department of Rural and Municipal Aid.

(f) Department of Human Resources Management.

(g) Office of the Secretary.

(h) Office of General Counsel and Legislative Affairs.

(i) Office of Public Affairs.

(j) Office of Transportation Delivery.

(k) Office of Minority Affairs.

(l) Office of Policy and Budget.

(m) Office of Technology.

(n) Office of Quality.

(o) Office of the Transportation Operations Center.

5. Cabinet for Economic Development:

(a) Department of Administration and Support.

(b) Department for Business Development.

(c) Department of Financial Incentives.

(d) Department of Community Development.

(e) Department for Regional Development.

(f) Tobacco Research Board.

(g) Kentucky Economic Development Finance Authority.

~~6.] Environmental and Public Protection Cabinet:~~

- ~~(a) Public Service Commission.~~
- ~~(b) Department of Insurance.~~
- ~~(c) Department of Housing, Buildings and Construction.~~
- ~~(d) Department of Financial Institutions.~~
- ~~(e) Department of Mines and Minerals.~~
- ~~(f) Department of Public Advocacy.~~
- ~~(g) Department of Alcoholic Beverage Control.~~
- ~~(h) Kentucky Horse Racing Authority.~~
- ~~(i) Board of Claims.~~
- ~~(j) Crime Victims Compensation Board.~~
- ~~(k) Kentucky Board of Tax Appeals.~~
- ~~(l) Office of Petroleum Storage Tank Environmental Assurance Fund.~~
- ~~(m) Department of Charitable Gaming.~~
- ~~(n) Mine Safety Review Commission.~~

~~7.] Cabinet for Families and Children:~~

- (a) Department for Community Based Services.
- (b) Department for Disability Determination Services.
- (c) Public Assistance Appeals Board.
- (d) Office of the Secretary.
 - (1) Kentucky Commission on Community Volunteerism and Service.
- (e) Office of the General Counsel.
- (f) Office of Program Support.
- (g) Office of Family Resource and Youth Services Centers.
- (h) Office of Technology Services.
- (i) Office of the Ombudsman.
- (j) Office of Human Resource Management.

~~7.]{8.] Cabinet for Health Services.~~

- (a) Department for Public Health.
- (b) Department for Medicaid Services.
- (c) Department for Mental Health and Mental Retardation Services.
- (d) Kentucky Commission on Children with Special Health Care Needs.
- (e) Office of Certificate of Need.
- (f) Office of the Secretary.

- (g) Office of the General Counsel.
- (h) Office of the Inspector General.
- (i) Office of Aging Services.

~~8.[9.]~~ Finance and Administration Cabinet:

- (a) Office of Financial Management.
- (b) Office of the Controller.
- (c) Department for Administration.
- (d) Department of Facilities Management.
- (e) State Property and Buildings Commission.
- (f) Kentucky Pollution Abatement Authority.
- (g) Kentucky Savings Bond Authority.
- (h) Deferred Compensation Systems.
- (i) Office of Equal Employment Opportunity Contract Compliance.
- (j) Office of Capital Plaza Operations.
- (k) County Officials Compensation Board.
- (l) Kentucky Employees Retirement Systems.
- (m) Commonwealth Credit Union.
- (n) State Investment Commission.
- (o) Kentucky Housing Corporation.
- (p) Governmental Services Center.
- (q) Kentucky Local Correctional Facilities Construction Authority.
- (r) Kentucky Turnpike Authority.
- (s) Historic Properties Advisory Commission.
- (t) Kentucky Tobacco Settlement Trust Corporation.
- (u) Eastern Kentucky Exposition Center Corporation.
- (v) State Board for Proprietary Education.

~~9.[10.]~~ ~~Labor Cabinet:~~

- ~~(a) Department of Workplace Standards.~~
- ~~(b) Department of Workers' Claims.~~
- ~~(c) Kentucky Labor Management Advisory Council.~~
- ~~(d) Occupational Safety and Health Standards Board.~~
- ~~(e) Prevailing Wage Review Board.~~
- ~~(f) Workers' Compensation Board.~~
- ~~(g) Kentucky Employees Insurance Association.~~

- ~~(h) Apprenticeship and Training Council.~~
- ~~(i) State Labor Relations Board.~~
- ~~(j) Kentucky Occupational Safety and Health Review Commission.~~
- ~~(k) Office of Administrative Services.~~
- ~~(l) Office of Information Technology.~~
- ~~(m) Office of Labor Management Relations and Mediation.~~
- ~~(n) Office of General Counsel.~~
- ~~(o) Workers' Compensation Funding Commission.~~
- ~~(p) Employers Mutual Insurance Authority.~~

~~11.} Revenue Cabinet:~~

- (a) Department of Property Valuation.
- (b) Department of Tax Administration.
- (c) Office of Financial and Administrative Services.
- (d) Department of Law.
- (e) Department of Information Technology.
- (f) Office of Taxpayer Ombudsman.

~~10.}12.} Tourism Development Cabinet:~~

- (a) Department of Travel.
- (b) Department of Parks.
- (c) Department of Fish and Wildlife Resources.
- (d) Kentucky Horse Park Commission.
- (e) State Fair Board.
- (f) Office of Administrative Services.
- (g) Office of General Counsel.
- (h) Tourism Development Finance Authority.

~~11.}13.} Cabinet for Workforce Development:~~

- (a) Department for Adult Education and Literacy.
- (b) Department for Technical Education.
- (c) Department of Vocational Rehabilitation.
- (d) Department for the Blind.
- (e) Department for Employment Services.
- (f) Kentucky Technical Education Personnel Board.
- (g) The Foundation for Adult Education.
- (h) Department for Training and Reemployment.

- (i) Office of General Counsel.
 - (j) Office of Communication Services.
 - (k) Office of Workforce Partnerships.
 - (l) Office of Workforce Analysis and Research.
 - (m) Office of Budget and Administrative Services.
 - (n) Office of Technology Services.
 - (o) Office of Quality and Human Resources.
 - (p) Unemployment Insurance Commission.
- ~~12.14.~~ Personnel Cabinet:
- (a) Office of Administrative and Legal Services.
 - (b) Department for Personnel Administration.
 - (c) Department for Employee Relations.
 - (d) Kentucky Public Employees Deferred Compensation Authority.
 - (e) Kentucky Kare.
 - (f) Division of Performance Management.
 - (g) Division of Employee Records.
 - (h) Division of Staffing Services.
 - (i) Division of Classification and Compensation.
 - (j) Division of Employee Benefits.
 - (k) Division of Communications and Recognition.
 - (l) Office of Public Employee Health Insurance.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.
2. Council on Postsecondary Education.
3. Department for Local Government.
4. Kentucky Commission on Human Rights.
5. Kentucky Commission on Women.
6. Department of Veterans' Affairs.
7. Kentucky Commission on Military Affairs.
8. The Governor's Office for Technology.
9. Commission on Small Business Advocacy.
10. Education Professional Standards Board.

Section 3. KRS 12.250 is amended to read as follows:

There are established within state government the following program cabinets:

- (1) Justice Cabinet.
- (2) Education, Arts, and Humanities Cabinet.
- (3) ***Environmental and Public***~~[Natural Resources and Environmental]~~ Protection Cabinet.
- (4) Transportation Cabinet.
- (5) Cabinet for Economic Development.
- ~~(6) [Public Protection and Regulation Cabinet.]~~
- ~~(7) [Cabinet for Health Services.]~~
- ~~(7) [(8)]~~ Cabinet for Families and Children.
- ~~(8) [(9)]~~ Finance and Administration Cabinet.
- ~~(9) [(10)]~~ Tourism Development Cabinet.
- ~~(10) [(11)]~~ Revenue Cabinet.
- ~~[(12) Labor Cabinet.]~~
- ~~(11) [(13)]~~ Cabinet for Workforce Development.
- ~~(12) [(14)]~~ Personnel Cabinet.

SECTION 4. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

There is established in the Office of the Secretary, an Office of Communications and Public Outreach, an Office of Administrative Hearings, an Office of Regulatory Affairs, an Office of Legislative and Intergovernmental Affairs, an Office of Inspector General, an Office of Legal Services, and an Office of Administrative and Information Services. Each office shall be headed by an executive director appointed by the secretary with the approval of the Governor as required by KRS 12.050. The executive directors shall be directly responsible to the secretary and shall perform the functions, powers, and duties as provided by law and as prescribed by the secretary. The Workers' Compensation Board and the Kentucky Occupational Safety and Health Review Commission shall be attached to the Office of the Secretary. The Environmental Quality Commission, which shall be headed by an executive director appointed by the secretary with the approval of the Governor, shall be attached to the Office of the Secretary. The Kentucky State Nature Preserves Commission, which shall be headed by a director, and the Mine Safety Review Commission, whose members shall be appointed by the Governor with the consent of the General Assembly, shall be attached to the Office of the Secretary.

SECTION 5. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *In addition to the powers and duties set out in this and other chapters of the Kentucky Revised Statutes that are vested in the cabinet and the secretary to protect and enhance the state's natural resources and environment, the cabinet and the secretary are also vested with the powers and duties previously vested in the Public Protection and Regulation Cabinet and the Labor Cabinet, and the secretaries of those cabinets, so long as those powers and duties are not contrary to or in conflict with the organization of the cabinet established by statute or by executive order of the Governor, as ratified by the General Assembly.*

- (2) *The Division of Energy shall be transferred to the Tourism Development Cabinet, Office of the Secretary. All personnel, functions, powers, and duties of the Division of Energy shall be transferred to the Tourism Development Cabinet.*

Section 6. KRS 11.515 is amended to read as follows:

- (1) There is hereby established a Geographic Information Advisory Council to advise the chief information officer on issues relating to geographic information and geographic information systems.
- (2) The council shall establish and adopt policies and procedures that assist state and local jurisdictions in developing, deploying, and leveraging geographic information resources and geographic information systems technology for the purpose of improving public administration.
- (3) The council shall closely coordinate with users of geographic information systems to establish policies and procedures that insure the maximum use of geographic information by minimizing the redundancy of geographic information and geographic information resources.
- (4) The Geographic Information Advisory Council shall consist of *twenty-five (25)*~~twenty-six (26)~~ members and one (1) legislative liaison. The members shall be knowledgeable in the use and application of geographic information systems technology and shall have sufficient authority within their organizations to influence the implementation of council recommendations.
 - (a) The council shall consist of:
 1. The secretary of the Transportation Cabinet or his designee;
 2. The secretaries of the Cabinet for Health Services and of the Cabinet for Families and Children or their designees;
 3. The director of the Kentucky Geological Survey or his designee;
 4. The secretary of the Revenue Cabinet or his designee;
 5. The chief information officer or her or his designee;
 6. The secretary of the Economic Development Cabinet or his designee;
 7. The commissioner of the Department for Local Government or his designee;
 8. The secretary of the Justice Cabinet or his designee;
 9. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council on Postsecondary Education;
 10. The adjutant general of the Department of Military Affairs or his designee;
 11. The commissioner of the Department of Education or his designee;
 12. The secretary of the *Environmental and Public*~~Natural Resources and Environmental~~ Protection Cabinet or his designee;
 13. The Commissioner of the Department of Agriculture or his designee;
 - 14.~~The secretary of the Public Protection and Regulation Cabinet or his designee;~~
 - 15.~~The secretary of the Tourism Development Cabinet or his designee;~~

- ~~15.~~~~16.~~ Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky League of Cities;
- ~~16.~~~~17.~~ Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky Association of Counties;
- ~~17.~~~~18.~~ One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chapter of the American Planning Association;
- ~~18.~~~~19.~~ One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chamber of Commerce;
- ~~19.~~~~20.~~ One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Association of Land Surveyors;
- ~~20.~~~~21.~~ One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Society of Professional Engineers;
- ~~21.~~~~22.~~ One (1) member appointed by the Governor from a list of three (3) persons submitted by the chairman of the Kentucky Board of Registered Geologists; and
- ~~22.~~~~23.~~ One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council of Area Development Districts.
- (b) The council shall have one (1) nonvoting legislative liaison, to be appointed by the Legislative Research Commission.
- (5) The council shall select from its membership a chairman and any other officers it considers essential. The council may have committees and subcommittees as determined by the council or an executive committee, if an executive committee exists.
- (6) A member of the council shall not:
- (a) Be an officer, employee, or paid consultant of a business entity that has, or of a trade association for business entities that have, a substantial interest in the geographic information industry and is doing business in the Commonwealth;
 - (b) Own, control, or have, directly or indirectly, more than ten percent (10%) interest in a business entity that has a substantial interest in the geographic information industry;
 - (c) Be in any manner connected with any contract or bid for furnishing any governmental body of the Commonwealth with geographic information systems, the computers on which they are automated, or a service related to geographic information systems;
 - (d) Be a person required to register as a lobbyist because of activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have, substantial interest in the geographic information industry;
 - (e) Accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise; or
 - (f) Be liable to civil action or any action performed in good faith in the performance of duties as a council member.
- (7) Those council members specified in subsection (4)(a) of this section who serve by virtue of an office shall serve on the council while they hold that office.

- (8) Appointed members of the council shall serve for a term of four (4) years. Vacancies in the membership of the council shall be filled in the same manner as the original appointments. If a nominating organization changes its name, its successor organization having the same responsibilities and purposes shall be the nominating organization.
- (9) The council shall have no funds of its own, and council members shall not receive compensation of any kind from the council.
- (10) A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at council meetings.

Section 7. KRS 11A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Business" means any corporation, limited liability corporation, partnership, limited liability partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit;
- (2) "Commission" means the Executive Branch Ethics Commission;
- (3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;
- (4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister;
- (5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received; "gift" does not include gifts from family members, campaign contributions, or door prizes available to the public;
- (6) "Income" means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of compensation or any combination thereof;
- (7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, *executive directors*, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the Kentucky Board of Education, the Council on Postsecondary Education, and any person who holds a personal service contract to perform on a full-time basis for a period of time not less than six (6) months a function of any position listed in this subsection;

- (8) "Official duty" means any responsibility imposed on a public servant by virtue of his position in the state service;
- (9) "Public servant" means:
 - (a) The Governor;
 - (b) The Lieutenant Governor;
 - (c) The Secretary of State;
 - (d) The Attorney General;
 - (e) The Treasurer;
 - (f) The Commissioner of Agriculture;
 - (g) The Auditor of Public Accounts; and
 - (h) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;
- (10) "Agency" means every state office, cabinet, department, board, commission, public corporation, or authority in the executive branch of state government. A public servant is employed by the agency by which his appointing authority is employed, unless his agency is attached to the appointing authority's agency for administrative purposes only, or unless the agency's characteristics are of a separate independent nature distinct from the appointing authority and it is considered an agency on its own, such as an independent department;
- (11) "Lobbyist" means any person employed as a legislative agent as defined in KRS 6.611(22) or any person employed as an executive agency lobbyist as defined in KRS 11A.201(8);
- (12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes, opposes, or acts;
- (13) "Candidate" means those persons who have officially filed candidacy papers or who have been nominated by their political party pursuant to KRS 118.105, 118.115, 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to (g) of this section;
- (14) "Does business with" or "doing business with" means contracting, entering into an agreement, leasing, or otherwise exchanging services or goods with a state agency in return for payment by the state, including accepting a grant, but not including accepting a state entitlement fund disbursement;
- (15) "Public agency" means any governmental entity;
- (16) "Appointing authority" means the agency head or any person whom he has authorized by law to act on behalf of the agency with respect to employee appointments;
- (17) "Represent" means to attend an agency proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else;
- (18) "Directly involved" means to work on personally or to supervise someone who works on personally; and
- (19) "Sporting event" means any professional or amateur sport, athletic game, contest, event, or race involving machines, persons, or animals, for which admission tickets are offered for sale and that is viewed by the public.

Section 8. KRS 13B.020 is amended to read as follows:

- (1) The provisions of this chapter shall apply to all administrative hearings conducted by an agency, with the exception of those specifically exempted under this section. The provisions of this chapter shall supersede any other provisions of the Kentucky Revised Statutes and administrative regulations, unless exempted under this section, to the extent these other provisions are duplicative or in conflict. This chapter creates only procedural rights and shall not be construed to confer upon any person a right to hearing not expressly provided by law.
- (2) The provisions of this chapter shall not apply to:
 - (a) Investigations, hearings to determine probable cause, or any other type of information gathering or fact finding activities;
 - (b) Public hearings required in KRS Chapter 13A for the promulgation of administrative regulations;
 - (c) Any other public hearing conducted by an administrative agency which is nonadjudicatory in nature and the primary purpose of which is to seek public input on public policy making;
 - (d) Military adjudicatory proceedings conducted in accordance with KRS Chapter 35;
 - (e) Administrative hearings conducted by the legislative and judicial branches of state government;
 - (f) Administrative hearings conducted by any city, county, urban-county, charter county, or special district contained in KRS Chapters 65 to 109, or any other unit of local government operating strictly in a local jurisdictional capacity;
 - (g) Informal hearings which are part of a multilevel hearing process that affords an administrative hearing at some point in the hearing process if the procedures for informal hearings are approved and promulgated in accordance with subsections (4) and (5) of this section;
 - (h) Limited exemptions granted for specific hearing provisions and denoted by reference in the text of the applicable statutes or administrative regulations;
 - (i) Administrative hearings exempted pursuant to subsection (3) of this section;
 - (j) Administrative hearings exempted, in whole or in part, pursuant to subsections (4) and (5) of this section; and
 - (k) Any administrative hearing which was commenced but not completed prior to July 15, 1996.
- (3) The following administrative hearings are exempt from application of this chapter in compliance with 1994 Ky. Acts ch. 382, sec. 19:
 - (a) Finance and Administration Cabinet
 1. Higher Education Assistance Authority
 - a. Wage garnishment hearings conducted under authority of 20 U.S.C. sec. 1095a and 34 C.F.R. sec. 682.410

- b. Offset hearings conducted under authority of 31 U.S.C. sec. 3720A and sec. 3716, and 34 C.F.R. sec. 30.33
- (b) Cabinet for Health Services
- 1. Office of Certificate of Need
 - a. Certificate-of-need hearings and licensure conducted under authority of KRS Chapter 216B
 - b. Licensure revocation hearings conducted under authority of KRS Chapter 216B
- (c) Cabinet for Families and Children
- 1. Department for Community Based Services
 - a. Supervised placement revocation hearings conducted under authority of KRS Chapter 630
 - 2. Department for Disability Determination Services
 - a. Disability determination hearings conducted under authority of 20 C.F.R. sec. 404
- (d) Justice Cabinet
- 1. Department of State Police
 - a. State Police Trial Board disciplinary hearings conducted under authority of KRS Chapter 16
 - 2. Department of Corrections
 - a. Parole Board hearings conducted under authority of KRS Chapter 439
 - b. Prison adjustment committee hearings conducted under authority of KRS Chapter 197
 - c. Prison grievance committee hearings conducted under authority of KRS Chapters 196 and 197
 - 3. Department of Juvenile Justice
 - a. Supervised placement revocation hearings conducted under KRS Chapter 635
- ~~(e) Labor Cabinet~~
- ~~1. Department of Workers' Claims

 - ~~a. Workers' compensation hearings conducted under authority of KRS Chapter 342~~~~
- ~~(f) **Environmental and Public** [Natural Resources and Environmental] Protection Cabinet~~
- 1. Department for **Natural Resources** [Surface Mining Reclamation and Enforcement]
 - a. Surface mining hearings conducted under authority of KRS Chapter 350
 - 2. Department for Environmental Protection

- a. Wild River hearings conducted under authority of KRS Chapter 146
 - b. Water resources hearings conducted under authority of KRS Chapter 151
 - c. Water plant operator and water well driller hearings conducted under authority of KRS Chapter 223
 - d. Environmental protection hearings conducted under authority of KRS Chapter 224
 - e. *Petroleum Storage Tank Environmental Assurance Fund hearings under authority of KRS Chapter 224*
3. *Office of Workers' Claims*
- a. *Workers' compensation hearings conducted under authority of KRS Chapter 342*
4. ~~(g)~~ Kentucky Occupational Safety and Health Review Commission
- a. ~~1.~~ Occupational safety and health hearings conducted under authority of KRS Chapter 338
5. ~~(h)~~ *Department of Public Protection* ~~and Regulation Cabinet~~
- a. ~~1.~~ Board of Claims
 - aa ~~a.~~ Liability hearings conducted under authority of KRS Chapter 44
 - b. ~~2.~~ Public Service Commission
 - aa ~~a.~~ Utility hearings conducted under authority of KRS Chapters 74, 278, and 279
- ~~(f)~~ ~~(i)~~ Cabinet for Workforce Development
- 1. Department for Employment Services
 - a. Unemployment Insurance hearings conducted under authority of KRS Chapter 341
- ~~(g)~~ ~~(j)~~ Secretary of State
- 1. Registry of Election Finance
 - a. Campaign finance hearings conducted under authority of KRS Chapter 121
- ~~(h)~~ ~~(k)~~ State universities and colleges
- 1. Student suspension and expulsion hearings conducted under authority of KRS Chapter 164
 - 2. University presidents and faculty removal hearings conducted under authority of KRS Chapter 164
 - 3. Campus residency hearings conducted under authority of KRS Chapter 164
 - 4. Family Education Rights to Privacy Act hearings conducted under authority of 20 U.S.C. sec. 1232 and 34 C.F.R. sec. 99
 - 5. Federal Health Care Quality Improvement Act of 1986 hearings conducted under authority of 42 U.S.C. sec. 11101 to 11115 and KRS Chapter 311.

- (4) Any administrative hearing, or portion thereof, may be certified as exempt by the Attorney General based on the following criteria:
 - (a) The provisions of this chapter conflict with any provision of federal law or regulation with which the agency must comply, or with any federal law or regulation with which the agency must comply to permit the agency or persons within the Commonwealth to receive federal tax benefits or federal funds or other benefits;
 - (b) Conformity with the requirement of this chapter from which exemption is sought would be so unreasonable or so impractical as to deny due process because of undue delay in the conduct of administrative hearings; or
 - (c) The hearing procedures represent informal proceedings which are the preliminary stages or the review stages of a multilevel hearing process, if the provisions of this chapter or the provisions of a substantially equivalent hearing procedure exempted under subsection (3) of this section are applied at some level within the multilevel process.
- (5) The Attorney General shall not exempt an agency from any requirement of this chapter until the agency establishes alternative procedures by administrative regulation which, insofar as practical, shall be consistent with the intent and purpose of this chapter. When regulations for alternative procedures are submitted to the Administrative Regulation Review Subcommittee, they shall be accompanied by the request for exemption and the approval of exemption from the Attorney General. The decision of the Attorney General, whether affirmative or negative, shall be subject to judicial review in the Franklin Circuit Court within thirty (30) days of the date of issuance. The court shall not overturn a decision of the Attorney General unless the decision was arbitrary or capricious or contrary to law.
- (6) Except to the extent precluded by another provision of law, a person may waive any procedural right conferred upon that person by this chapter.

Section 9. KRS 15.255 is amended to read as follows:

- (1) The Department of Law shall have the following powers, duties and functions:
 - (a) To prevent or remedy damage to the environment caused by any person, group, partnership, association, body corporate or politic, or any agency, department, board, commission, division, or authority, whether state or federal, or by commencing or intervening in any suit or action in state or federal courts, whether civil or criminal, to enforce any statute, ordinance, bylaw, or regulation, or to secure any common-law right or remedy;
 - (b) To counsel state agencies and commissions given the responsibility over environmental concerns including but not limited to the *Environmental and Public*~~[Natural Resources and Environmental]~~ Protection Cabinet~~[- Department of Mines and Minerals,]~~ and the Public Service Commission;
 - (c) To exercise the common-law powers of the Attorney General in protecting the environment;
 - (d) To bring public nuisance and other actions in Circuit Courts in the name of the Commonwealth upon complaint by private citizens, when in the opinion of the Attorney General the activity or activities complained of may have a substantial impact upon the environment of the Commonwealth; and

- (e) To develop guidelines related to the proper investigation of sexual misconduct by professionals which may be adopted by professional licensure boards.
- (2) Nothing in this section shall be interpreted to derogate from any existing common-law or statutory right or remedy against damage to the environment.

Section 10. KRS 39F.010 is amended to read as follows:

The following definitions apply in this chapter unless the context otherwise requires:

- (1) "General rescue squad" means a rescue squad which performs one (1) or more of the following functions as a stated mission of the organization:
 - (a) Light duty rescue;
 - (b) Extrication of persons from vehicles;
 - (c) Water rescue and recovery operations not utilizing divers;
 - (d) Search for lost, trapped, or missing persons not utilizing dogs;
 - (e) Low angle rescue and recovery operations;
 - (f) High angle rescue and recovery operations.
- (2) "Reports and notification" means the reporting and notification of any search and rescue mission to the appropriate agency or person in the manner as specified by this chapter.
- (3) "Rescue" means gaining access, rendering appropriate care, and transporting of a person or persons by whatever means, to a safe environment for appropriate care.
- (4) "Rescue squad" means any organization which engages in the search for lost persons, rescue of persons, rescue of persons who are trapped or who are in need of rescue services, search for and recovery of drowned persons, or any other rescue related activity. "Rescue squad" shall not include the rescue of persons from a fire by a fire department, the extrication of persons from a vehicle or other activities which an emergency medical technician, emergency medical technician first responder, or paramedic is authorized to perform pursuant to applicable statutes and administrative regulations, if the activities are performed by a person for an ambulance service or in the role of a first responder. If these activities are performed other than as a first responder or in the role of an ambulance service and are involved in rescue operations, they come within the purview of activities of a rescue squad.
- (5) "Search" means the process of looking for a person or persons whose location is not precisely known, and who may be in distress.
- (6) "Search and rescue" ("SAR") means the process of looking for a lost, missing, or overdue person or persons who may be in distress, and rendering care with the use of appropriately trained and adequately equipped personnel.
- (7) "Search and rescue mission" includes, but is not limited to, searching for a missing or lost person or persons, cave rescue, high angle or rough terrain rescue, urban search and rescue, dive rescue and recovery of drowning victims, inland water search, rescue, and recovery. "Search and rescue" may also include any mission permitted pursuant to this chapter. A "search and rescue mission" does not include mine rescue missions under the jurisdiction of the Department *for Natural Resources* ~~[of Mines and Minerals]~~ pursuant to KRS Chapter 351.

- (8) "Specialized rescue squad" means a rescue squad which performs one (1) or more of the following functions as the primary or sole mission of the organization:
 - (a) Cave rescue;
 - (b) Search utilizing dogs for lost, trapped or missing persons;
 - (c) Search for lost, trapped or missing persons, aircraft, or vehicles, utilizing aircraft, but does not apply to licensed air ambulances, active or reserve military organizations, the National Guard, or the Civil Air Patrol; and
 - (d) Water rescue and recovery operations utilizing divers.
- (9) "Victim recovery" means the search for and the removal to the jurisdiction of the coroner of the remains of a person known or believed to be dead. If the person is found alive, it includes rescue of the person.

Section 11. KRS 45A.610 is amended to read as follows:

~~{(1)}~~By January 1, 1991, a minimum of fifteen (15) percent of the purchases of garbage can liners by state agencies shall be starch-based plastic garbage can liners. The percentage shall increase by five (5) percent annually until fifty (50) percent of the purchase of garbage can liners are purchases of starch-based plastic garbage can liners.

~~{(2)}~~ The Natural Resources and Environmental Protection Cabinet shall perform tests and experiments to determine whether or not it is advantageous for the Commonwealth to require use of starch-based biodegradable products or containers. The cabinet shall report its findings to the 1992 Regular Session of the General Assembly.

Section 12. KRS 62.160 is amended to read as follows:

- (1) The state officers elected by the voters of the state at large, except the Governor, Lieutenant Governor, and the Superintendent of Public Instruction, the heads of departments, *offices*, and cabinets of the state government, the adjutant general, the members of the Public Service Commission, the members of the State Fair Board and Fish and Wildlife Resources Commission, and the members of the Kentucky Board of Tax Appeals and the Alcoholic Beverage Control Board, shall each give bond. The amounts of the bonds shall be fixed by the Governor, which amounts as to those offices set forth in subsection (2) of this section shall be not less than the amounts set forth for the respective offices. At any time when it appears to be to the interest of the Commonwealth the Governor may increase the penal sum of any bond or require a renewal of the bond with other or additional surety.
- (2) The minimum sum of the bond for the following offices shall be as follows:

Secretary of State	\$10,000
Attorney General	10,000
State Treasurer	300,000
Secretary for economic development	10,000
Commissioner of Agriculture	10,000
Secretary for education, arts, and humanities	10,000
Auditor of Public Accounts	25,000
Adjutant general	10,000

Secretary of finance and administration	100,000
Secretary of revenue	50,000
Secretary of transportation	50,000
Commissioner of highways	50,000
Secretary of justice	50,000
Secretary of corrections	25,000
Commissioner for health services	10,000
Commissioner [Secretary] of labor	5,000
Commissioner <i>for natural resources</i> [of surface mining reclamation and enforcement] 50,000	
State librarian	5,000
[Commissioner of mines and minerals	5,000]
Executive director [Commissioner] of alcoholic beverage control	10,000
Executive director [Commissioner] of financial institutions	25,000
Secretary for <i>environmental and public protection</i> [natural resources and environmental protection]	10,000
Executive director [Commissioner] of insurance	50,000
Commissioner of vehicle regulation	10,000
Commissioner of fish and wildlife resources	5,000
Secretary for health services	20,000
Secretary for families and children	20,000
Commissioner <i>of</i> [for] environmental protection	10,000
Commissioner of [Secretary for] public protection and regulation	10,000
Secretary of tourism	25,000
Commissioner for community based services	20,000
Member of the Public Service Commission	10,000
Member of State Fair Board	10,000
Member of Fish and Wildlife Resources Commission	1,000
Member of Kentucky Board of Tax Appeals	10,000
Associate member of Alcoholic Beverage Control Board	5,000
Commissioner of local government	100,000

Section 13. KRS 68.178 is amended to read as follows:

- (1) The fiscal court of any county may license off-site waste management facilities located within the county with the imposition of a license fee at a percentage rate not to exceed two percent (2%) per annum of the gross receipts of such a waste management facility owned or

operated by self-employed individuals, partnerships, or corporations. The proceeds from the license fee shall be used to defray the general revenue requirements of the county where the facility is located. For purposes of assessing the licensing fee provided for in this section, off-site waste management shall consist of establishing and operating a facility whose principal purpose is treatment, storage, disposal, or a combination of these activities but shall not include those treatment, storage, or disposal activities which occur incidental to or which are not otherwise distinguishable from a broader manufacturing operation at the site of said operation.

- (2) (a) The fiscal court of a county or the urban-county council of an urban-county government may license a solid waste landfill located within the county or urban-county area. The license fee may be set at not less than one cent (\$0.01) but no more than fifty cents (\$0.50) per ton of waste received by the landfill or set at up to five percent (5%) of gross receipts of the landfill.
 - (b) The license fee as set may be increased by an amount up to one-quarter (1/4) of the base fee per ton or on gross receipts of waste received at the landfill which originates from outside of the planning area. For purposes of this section, planning area shall mean those areas within Kentucky as indicated in solid waste management plans filed with the cabinet by a county, multicounty area, or waste management district. However, before a fee differential may be imposed the county or urban-county government shall demonstrate that the differential is reasonably related to additional government services which must be undertaken because of the landfilling of nonplanning area waste. This demonstration may be made by showing an unplanned for reduction in waste disposal capacity and a need to provide for future disposal capacity or impacts on roads, litter control or emergency services.
 - (c) The proceeds from the license fee shall be used to defray the government services provided to the landfill, necessary clean-up operations or emergency responses related to operation of the landfill or transporting waste to the landfill, necessary maintenance, improvement or construction of roads, and for the general revenue requirements of the county or urban-county government where the landfill is located.
 - (d) ~~Five percent (5%) of the license fee shall be remitted annually to the Natural Resources and Environmental Protection Cabinet until July 30, 1990. The cabinet shall use the amount received for state solid waste management activities.~~ Ten percent (10%) *of the license fee* shall be remitted annually in equal shares to all counties and urban-county governments in the planning area served by the landfill from where the fees originated which shall be used for local solid waste planning and plan implementation. Counties or urban-county governments desiring to impose the fee provided for herein are authorized to accept payments in lieu of the fee under duly-executed contracts between the county and the permitted site or facility. The fee provided for in this subsection shall be in lieu of the provisions of subsection (1). Special waste, as defined in KRS 224.50-760, except for waste from sanitary wastewater treatment facilities, shall be exempt from this subsection.
- (3) In the case of hazardous waste facilities involving land disposal, including a regional integrated waste treatment and disposal demonstration facility as defined in KRS Chapter 224, the rate levied under this section shall be not more than five percent (5%) per annum of the gross receipts and shall be calculated so as to produce sufficient revenue to compensate the county for any additional costs incurred by it from having a hazardous waste facility

located in its jurisdiction, including, but not limited to, the loss of ad valorem property tax revenues from the property on which the facility is located, the loss of ad valorem property tax revenues from abutting properties or other affected properties, the cost of providing any additional emergency services, the cost of monitoring air, surface water, ground water to the extent that other monitoring data is not available, and other costs established as being associated with the facility and for which the county is not otherwise compensated.

Section 14. KRS 131.190 is amended to read as follows:

- (1) No present or former secretary or employee of the Revenue Cabinet, member of a county board of assessment appeals, property valuation administrator or employee, or any other person, shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the cabinet or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns of property for taxation, or any other infraction of the tax laws, nor does it extend to any matter properly entered upon any assessment record, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or his properly authorized agent with information respecting his own return. Further, this prohibition does not preclude the secretary or any employee of the Revenue Cabinet from testifying in any court, or from introducing as evidence returns or reports filed with the cabinet, in an action for violation of state or federal tax laws or in any action challenging state or federal tax laws. The secretary or the secretary's designee may provide an owner of unmined coal, oil or gas reserves, and other mineral or energy resources assessed under KRS 132.820(1), or owners of surface land under which the unmined minerals lie, factual information about the owner's property derived from third-party returns filed for that owner's property, under the provisions of KRS 132.820(2), that is used to determine the owner's assessment. This information shall be provided to the owner on a confidential basis, and the owner shall be subject to the penalties provided in KRS 131.990(2). The third-party filer shall be given prior notice of any disclosure of information to the owner that was provided by the third-party filer.
- (2) The secretary shall make available any information for official use only and on a confidential basis to the proper officer, agency, board or commission of this state, any Kentucky county, any Kentucky city, any other state, or the federal government, under reciprocal agreements whereby the cabinet shall receive similar or useful information in return.
- (3) Statistics of tax-paid gasoline gallonage reported monthly to the Revenue Cabinet under the gasoline excise tax law may be made public by the cabinet.
- (4) Notwithstanding the provisions of this section to the contrary, information received from the Internal Revenue Service shall not be made available to any other agency of state government, or any county, city, or other state, and shall not be inspected intentionally and without authorization by any present secretary or employee of the Revenue Cabinet, or any other person.
- (5) Statistics of crude oil as reported to the Revenue Cabinet under the crude oil excise tax requirements of KRS Chapter 137 and statistics of natural gas production as reported to the Revenue Cabinet under the natural resources severance tax requirements of KRS Chapter

143A may be made public by the cabinet by release to the *Environmental and Public Protection Cabinet, Department for Natural Resources*~~[of Mines and Minerals]~~.

- (6) Notwithstanding any provision of law to the contrary, beginning with mine-map submissions for the 1989 tax year, the cabinet may make public or divulge only those portions of mine maps submitted by taxpayers to the cabinet pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-out parcel areas. These electronic maps shall not be relied upon to determine actual boundaries of mined-out parcel areas. Property boundaries contained in mine maps required under KRS Chapters 350 and 352 shall not be construed to constitute land surveying or boundary surveys as defined by KRS 322.010 and any administrative regulations promulgated thereto.

Section 15. KRS 137.132 is amended to read as follows:

- (1) As used in this section, "recovered inactive well" means a well that has been inactive for a consecutive two (2) year period or a well that has been plugged and abandoned, as determined by the *Environmental and Public Protection Cabinet, Division of Oil and Gas Conservation*~~[Department of Mines and Minerals]~~, and that resumes producing crude petroleum oil.
- (2) Every taxpayer engaged in the production of crude petroleum oil within this Commonwealth shall be allowed a credit against the tax imposed under KRS 137.120 equal to four and one-half percent (4.5%) of the market value of crude petroleum oil that is produced from a recovered inactive well.

Section 16. KRS 143A.033 is amended to read as follows:

- (1) As used in this section, "recovered inactive well" means a well that has been inactive for a consecutive two (2) year period or a well that has been plugged and abandoned, as determined by the *Environmental and Public Protection Cabinet, Division of Oil and Gas Conservation*~~[Department of Mines and Minerals]~~, and that resumes producing natural gas.
- (2) Every taxpayer engaged in severing or processing natural gas within this Commonwealth shall be allowed a credit against the tax imposed under KRS 143A.020 equal to four and one-half percent (4.5%) of the gross value of natural gas that is produced from a recovered inactive well.

Section 17. KRS 148.876 is amended to read as follows:

- (1) The power of eminent domain may only be exercised to acquire land in fee within the boundaries of the trail, except that the power of eminent domain shall not be exercised to acquire any privately owned dwelling, areas designated for residential structures and their surrounding properties, or property owned or leased, including adjacent or contiguous tracts of land leased or owned or which may be acquired, for the purposes of operating an oil or gas well, surface or underground coal mine operation, or surface or underground mineral quarrying operation, if the person holds a state permit or license issued by the *Environmental and Public Protection Cabinet, Division of Mine Permits or Office of Mine Safety and Licensing*~~[Department of Surface Mining Reclamation and Enforcement or the Department of Mines and Minerals]~~.
- (2) Within the boundaries of the trail, the department may acquire, on behalf of the Commonwealth, fee title or lesser interests in land. Acquisition of land may be by gift, by purchase with donated funds, by funds appropriated by the General Assembly, by the use of proceeds from the sale of bonds, by exchange, by assumption of property tax payments, or

by other authorized means. Notwithstanding the provisions in KRS 350.085(3) and 353.610, in acquiring any interests the Commonwealth or its agencies shall waive the three hundred (300) foot restriction contained in KRS 350.085(3) and boundary restrictions for a well set forth in KRS 353.610.

Section 18. KRS 151.629 is amended to read as follows:

- (1) There is established an Interagency Technical Advisory Committee on Groundwater to assist the KGS in the development, coordination, and implementation of a groundwater monitoring network for the Commonwealth. The committee shall consist of one (1) representative from each of the following agencies, to be appointed by that agency:
 - (a) Division of Conservation of the Department for Natural Resources;
 - (b) Division of Environmental Health and Community Safety of the Cabinet for Health Services;
 - (c) Division of Forestry of the Department for Natural Resources;
 - (d) Division of Environmental Services of the Department of Agriculture;
 - (e) Division of Waste Management of the Department for Environmental Protection;
 - (f) Division of Water of the Department for Environmental Protection;
 - (g) Department for Environmental Protection;
 - ~~(h) Department of Mines and Minerals of the Public Protection and Regulation Cabinet;~~
 - ~~(i)~~ Department for Natural Resources;
 - ~~(j)~~ Department for Surface Mining Reclamation and Enforcement;
 - ~~(k)~~ Kentucky Geological Survey;
 - ~~(l)~~ University of Kentucky College of Agriculture; and
 - ~~(m)~~ University of Kentucky Water Resources Research Institute.
- (2) The committee shall have two (2) nonvoting legislative liaisons who shall be members of the General Assembly. One (1) liaison shall be a House member appointed by the Speaker of the House of Representatives and one (1) liaison shall be a Senate member appointed by the President of the Senate. The chair of the committee shall be the director of the University of Kentucky Water Resources Research Institute. The duties and responsibilities of the committee shall include:
 - (a) Developing a plan to coordinate agencies for the overall characterization of the state's groundwater, including occurrence, flow systems, water quantity, and water quality;
 - (b) Reviewing the data entry process to ensure that all data collected is placed into the Kentucky Groundwater Data Repository;
 - (c) Establishing a long-term groundwater monitoring plan for the Commonwealth;
 - (d) Making recommendations for prioritization of the state's groundwater research needs; and
 - (e) Annually reviewing and evaluating groundwater data collection and analysis.

- (3) In addition to the members identified in subsection (1) or (2) of this section, the committee may have, as one (1) of its members, one (1) nonvoting representative from the United States Geological Survey, appointed by that agency.

Section 19. KRS 154.47-025 is amended to read as follows:

The board shall have all the powers and authority, not explicitly prohibited by statute, necessary or convenient to carry out and effectuate the functions, duties, and responsibilities of the board, including, but not limited to, the following:

- (1) Developing, in conjunction with other agencies, workforce training plans for the secondary wood products industry as provided for in KRS 154.47-055;
- (2) Reviewing and recommending to the Cabinet for Economic Development the approval of proposals to establish business networks for businesses and industries engaged in any value-added processing of raw wood products or the manufacturing of wood products as set forth in KRS 154.47-040, and cooperating with the Cabinet for Economic Development to promote the development of business networks among secondary wood products businesses and industries;
- (3) Advising the *Environmental and Public*~~[Natural Resources and Environmental]~~ Protection Cabinet~~[and the Labor Cabinet]~~ on regulatory matters which impact the economic competitiveness and development of the state's secondary wood products industry;
- (4) Advising the *Department of* Labor~~[Cabinet]~~ regarding modifications to the state workers' compensation laws in an effort to make Kentucky's secondary wood products industry more competitive;
- (5) Advising the Finance and Administration Cabinet regarding procurement of Kentucky-made secondary wood products by state agencies, including the procurement of these products by the Department of Parks as part of any proposed state parks renovation projects;
- (6) Soliciting, borrowing, accepting, receiving, investing, and expending funds from any public or private source, including, but not limited to, general fund appropriations of the Commonwealth of Kentucky, grants or contributions of money, property, labor, or other things of value to be used to carry out the corporation's operations, functions, and responsibilities;
- (7) Entering into contracts or agreements necessary or incidental to the performance of its duties, functions, and responsibilities;
- (8) Establishing benchmarks for the purpose of evaluating workforce training and technology transfer programs applicable to the secondary wood products industry;
- (9) Employing consultants and other persons as may be required in the judgment of the board to be essential to the board's operations, functions, and responsibilities; and
- (10) Promulgating administrative regulations, in accordance with KRS Chapter 13A, governing its statutory powers, duties, and responsibilities.

Section 20. KRS 177.977 is amended to read as follows:

- (1) The Transportation Cabinet shall publish a directory, including supporting maps and other documents, designating the official coal road system in coal impact and coal producing counties which shall include all public highways, roads, bridges, and streets over which quantities of coal sufficient to significantly affect the condition and state of repair of such

highways, roads, bridges, and streets have been transported in the immediately preceding year. The cabinet shall further publish the total county mileage of the official coal road system and the total ton-miles within each coal impact and coal producing county for said preceding year.

- (2) Every person, producer or processor shipping or transporting coal over the public highways, roads, bridges, and streets, shall file with the Transportation Cabinet information at intervals as the cabinet shall designate by administrative regulation promulgated pursuant to KRS Chapter 13A, for the purpose of identifying those highways, roads, and streets comprising the coal road system and the quantities of coal transported thereon, in order that the cabinet can accurately calculate total ton-miles within each coal impact and coal producing county. A copy of the information furnished to the ***Environmental and Public*** ~~Natural Resources and Environmental~~ Protection Cabinet pursuant to the provisions of KRS 350.0285 and a copy of the information furnished to the Department ***for Natural Resources*** ~~of Mines and Minerals~~ pursuant to the provisions of KRS 351.070 and 352.420 shall be submitted to the Transportation Cabinet to satisfy the reporting requirements of this subsection and the transportation plan shall be annually updated to reflect in route changes.

Section 21. KRS 224.10-020 is amended to read as follows:

- (1) There is established within the cabinet a Department for Natural Resources, a Department for Environmental Protection, ~~and~~ a Department ***of Labor, and a Department of Public Protection*** ~~for Surface Mining Reclamation and Enforcement~~. Each department shall be headed by a commissioner appointed by the secretary with the approval of the Governor as required by KRS 12.050. The commissioners shall be directly responsible to the secretary and shall perform such functions, powers, and duties as provided by law and as the secretary may prescribe.
- (2) ***There is established within the Department for Natural Resources a Division of Forestry, a Division of Conservation, an Office of Technical and Administrative Support, a Division of Mine Reclamation and Enforcement, a Division of Mine Permits, a Division of Abandoned Mine Lands, a Division of Oil and Gas Conservation, and an Office of Mine Safety and Licensing. There shall be established within the Office of Mine Safety and Licensing a Division of Safety Inspection and Licensing, a Division of Explosives and Blasting, a Division of Investigation, and a Division of Safety Analysis, Training, and Certification. Each division shall be headed by a director and each office shall be headed by an executive director. Directors and executive directors shall be appointed by the secretary with the approval of the Governor as required by KRS 12.050 and, as appropriate, Section 64 of this Act except for the director of the Division of Conservation who shall be appointed in accordance with KRS 146.100. Both directors and executive directors shall be directly responsible to the commissioner and shall perform the functions, powers, and duties as provided by law and as prescribed by the secretary.***
- (3) (a) ***There is established within the Department of Labor, an Office of Occupational Safety and Health, an Office of Labor-Management Relations and Mediation, an Office of Workplace Standards, and a Division of Administrative Services. Each division shall be headed by a director and each office shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor as required by KRS 12.050. The directors and the executive directors shall be directly responsible to the commissioner and shall perform the functions, powers, and duties as provided by law and as prescribed by the secretary.***

(b) *The following agencies are attached to the Department of Labor for administrative purposes only:*

1. *Kentucky Labor Management Advisory Council;*
2. *Kentucky Employees' Insurance Association;*
3. *State Labor Relations Board;*
4. *Workers' Compensation Funding Commission;*
5. *Workers' Compensation Advisory Council;*
6. *Occupational Safety and Health Standards Board;*
7. *Prevailing Wage Review Board;*
8. *Apprenticeship and Training Council;*
9. *Employers' Mutual Insurance Authority;*
10. *Workers' Compensation Nominating Commission; and*
11. *Office of Workers' Claims.*

(4) (a) *There is established within the Department of Public Protection, a Division of Administrative Services, an Office of Financial Institutions, an Office of Insurance, an Office of Housing, Buildings, and Construction, an Office of Charitable Gaming, and an Office of Alcoholic Beverage Control. Each division shall be headed by a division director and each office shall be headed by an executive director. Division directors and executive directors shall be appointed by the secretary with the approval of the Governor as required by KRS 12.050. Division directors and executive directors shall be directly responsible to the commissioner and shall perform the functions, powers, and duties as provided by law and as prescribed by the secretary.*

(b) *The following agencies are attached to the Department of Public Protection for administrative purposes only:*

1. *Kentucky Public Service Commission;*
2. *Crime Victims Compensation Board;*
3. *Board of Claims;*
4. *Board of Tax Appeals;*
5. *Kentucky Athletic Commission; and*
6. *Kentucky Horse Racing Authority.*

Section 22. KRS 224.10-040 is amended to read as follows:

- (1) The secretary shall have any and all necessary power and authority, subject to appropriate provisions of the statutes, to create~~[such]~~ positions, *to retain positions in effect prior to his or her appointment as secretary*, and to employ the necessary personnel in such positions to enable the secretary to perform the functions of the cabinet. The secretary shall designate a person to act as deputy for him *or her* in the exercise of his duties in his absence.

- (2) All appointments to positions not in the classified service shall be made pursuant to KRS 12.050~~[and such appointees shall be major assistants to the secretary and shall assist in the development of policy].~~
- (3) ***The secretary may designate a deputy to sign any or all final orders of the cabinet whether the orders are the result of hearing or agreement.***

Section 23. KRS 224.10-050 is amended to read as follows:

The secretary shall establish the internal organization of the cabinet not established ***by statute or by executive order of the Governor, as ratified by the General Assembly,***~~[in KRS 224.10-040]~~ and shall divide the cabinet into such offices or divisions as the secretary may deem necessary to perform the functions, powers and duties of the cabinet, subject to the provisions of KRS Chapter 12. ***The secretary may retain or revise any offices or divisions in place prior to his or her appointment as secretary if retaining or revising the offices or divisions is not contrary to or in conflict with the organization of the cabinet established by statute or by executive order of the Governor, as ratified by the General Assembly.***

Section 24. KRS 224.60-115 is amended to read as follows:

As used in KRS 224.60-120 to 224.60-150, unless the context otherwise requires:

- (1) "Bodily injury and property damage" means only those actual economic losses to an individual or the individual's property resulting from bodily injuries and damages to property caused by a release into the environment from a petroleum storage tank. In this context, property damage includes damage to natural resources;
- (2) "Cabinet" means the ***Environmental and Public***~~[Natural Resources and Environmental]~~ Protection Cabinet;
- (3) "Claim" means any demand in writing for a certain sum;
- (4) "Corrective action" means those actions necessary to protect human health and the environment in the event of a release from a petroleum storage tank. Corrective action includes initial responses taken pursuant to KRS 224.60-135, remedial actions to clean up contaminated groundwater, surface waters, or soil, actions to address residual effects after initial corrective action is taken, and actions taken to restore or replace potable water supplies. Corrective action also includes actions necessary to monitor, assess, and evaluate a release, as well as actions necessary to monitor, assess, and evaluate the effectiveness of remedial action after a release has occurred;
- (5) "Dealer" means a person required to be licensed as a gasoline or special fuels dealer as defined in KRS 138.210(2);
- (6) ***"Division" means the Division of Waste Management;***
- (7) "Facility" means, with respect to any owner or operator, all petroleum storage tanks which are owned or operated by an owner or operator and are located on a single parcel of property or on any contiguous or adjacent property;
- ~~(8)(7)~~ "Federal regulations" means regulations for underground petroleum storage tanks promulgated by the United States Environmental Protection Agency pursuant to Subtitle I of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act;
- ~~(9)(8)~~ "Free product" means a regulated substance that is present as a non-aqueous phase liquid;

- (10)~~(9)~~ "Fund" means the petroleum storage tank environmental assurance fund and its subaccounts, the financial responsibility account and the petroleum storage tank account established pursuant to KRS 224.60-140;
- (11)~~(10)~~ "Gasoline" means gasoline as defined in KRS 138.210(4);
- (12)~~(11)~~ "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, that is typically used in the operation of a motor engine, jet fuel, and any petroleum or petroleum-based substance typically used in the operation of a motor vehicle, including used motor vehicle lubricants and oils;
- (13)~~(12)~~ "Occurrence" means a release, or releases, of an accidental nature, requiring corrective action, from a petroleum storage tank or tanks located at the same facility, due to continuous or repeated exposure to conditions. An additional release or releases at the same facility in which the area requiring remedial action is separate from a previous remediation area or areas shall be considered a separate occurrence;
- ~~(13) "Office" means the Office of Petroleum Storage Tank Environmental Assurance Fund;~~
- (14) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, the state, a municipality, commission, or political subdivision of the state. The term includes a consortium, a joint venture, the United States government, or a commercial entity;
- (15) "Petroleum" and "petroleum products" means crude oil, or any fraction thereof, which is liquid at standard conditions of temperature and pressure, which means at sixty (60) degrees Fahrenheit and 14.7 pounds per square inch absolute. The term includes motor gasoline, gasohol, other alcohol-blended fuels, diesel fuel, heating oil, special fuels, lubricants, and used oil;
- (16) "Petroleum storage tank" means an underground storage tank, as defined by KRS 224.60-100, which contains petroleum or petroleum products but, for the purpose of participation or eligibility for the fund, shall only include tanks containing motor fuels and shall not include petroleum storage tanks used exclusively for storage of fuel used in the operation of a commercial ship or vessel or tanks used exclusively for storage of fuel used for the purposes of powering locomotives or tanks owned by a federal agency or the United States government;
- (17) "Petroleum storage tank operator" means any person in control of, or having responsibility for, the daily operation of a petroleum storage tank;
- (18) "Petroleum storage tank owner" means the person who owns a petroleum storage tank, except that petroleum storage tank owner does not include any person who, without participation in the management of a petroleum storage tank, holds indicia of ownership primarily to protect a security interest in the tank;
- (19) "Received" means the same as defined in KRS 138.210(5);
- (20) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a petroleum storage tank into groundwater, surface water, or surface or subsurface soils. The term shall not include releases that are permitted or authorized by the state or federal law;
- (21) "Special fuels" means special fuels as defined in KRS 138.210(4); and

- (22) "Third party" means a person other than the owner or operator of a facility, or the agents or employees of the owner or operator, who sustains bodily injury or property damage as a result of a release from that facility.

Section 25. KRS 224.60-120 is amended to read as follows:

- (1) Each petroleum storage tank owner or operator shall establish and maintain evidence of financial responsibility, as provided for in this section, for taking corrective action and for compensating third parties for bodily injury and property damage.
- (a) For petroleum storage tank owners or operators of eleven (11) or more tanks, the level of financial responsibility to be established and maintained shall be twelve thousand five hundred dollars (\$12,500) per occurrence for taking corrective action and twelve thousand five hundred dollars (\$12,500) per occurrence for compensating third parties for bodily injury and property damage.
- (b) For petroleum storage tank owners or operators of six (6) to ten (10) tanks who have not been issued a closure letter from the cabinet, the level of financial responsibility to be established and maintained shall be two thousand five hundred dollars (\$2,500) per occurrence for taking corrective action and two thousand five hundred dollars (\$2,500) per occurrence for compensating third parties for bodily injury and property damage.
- (c) For petroleum storage tank owners or operators of five (5) or less tanks who have not been issued a closure letter from the cabinet, the level of financial responsibility to be established and maintained shall be five hundred dollars (\$500) per occurrence for taking corrective action and for compensating third parties for bodily injury and property damage.
- (2) Evidence of financial responsibility may be established by any combination of the following:
- (a) Commercial or private insurance, including risk retention groups;
- (b) Qualification as a self-insurer;
- (c) A guarantee, surety bond, or letter of credit; or
- (d) Any other reasonable and economically practicable means in a form acceptable to the *division*~~{office}~~.
- (3) To qualify as a self-insurer, the petroleum storage tank owner or operator shall demonstrate a net worth in excess of the amounts specified in subsection (1) of this section. "Net worth" shall mean the monetary value of assets that remain after deducting liabilities. "Assets" shall mean all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.
- (4) The total liability of any guarantor under KRS 224.60-105 to 224.60-160 is limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the petroleum storage tank owner or operator pursuant to this section. This subsection does not limit any other state or federal statutory, contractual, or common law liability of a guarantor to a petroleum storage tank owner or operator, including, but not limited to, the liability of the guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. "Guarantor" shall mean any person, other than the petroleum storage tank owner or operator, who provides evidence of financial responsibility for a petroleum storage tank owner or operator pursuant to this section.

- (5) It is the intent of the General Assembly that the fund established pursuant to KRS 224.60-140, combined with the financial responsibility required by this section, may be used by petroleum storage tank owners or operators to demonstrate their compliance with any financial responsibility requirements promulgated under federal regulations.
- (6) The *Department for Environmental Protection, Division of Waste Management*,~~{office}~~ shall promulgate administrative regulations to implement this section. In promulgating administrative regulations, the *division*~~{office}~~ shall not restrain or limit the use of any of the means of establishing financial responsibility specified in this section. The administrative regulations may allow a twenty-five percent (25%) reduction in the level of financial responsibility set in subsection (1) of this section for the timely completion of corrective action.

Section 26. KRS 224.60-130 is amended to read as follows:

- (1)~~{ There is created within the Public Protection and Regulation Cabinet, Office of the Secretary, the Office of Petroleum Storage Tank Environmental Assurance Fund. }~~
- (2)~~{ }~~ The *Environmental and Public Protection Cabinet, Department for Environmental Protection, Division of Waste Management*,~~{Office of Petroleum Storage Tank Environmental Assurance Fund}~~ shall:
- (a) Establish by administrative regulation the policy, guidelines, and procedures to administer the financial responsibility and petroleum storage tank accounts of the petroleum storage tank environmental assurance fund. In adopting administrative regulations to carry out this section, the *division*~~{office}~~ may distinguish between types, classes, and ages of petroleum storage tanks. The *division*~~{office}~~ may establish a range of amounts to be paid from the fund, or may base payments on methods such as pay for performance, task order, or firm fixed pricing, which are designed to provide incentives for contractors to more tightly control corrective action costs, and shall establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. The criteria may include the certification of individuals, partnerships, and companies. Criteria shall be established to certify laboratories that contract to perform analytical testing related to the underground storage tank program. Owners and operators shall have all required analytical testing performed by a certified laboratory to be eligible for fund participation. Persons who contract with petroleum storage tank owners or operators shall not be paid more than the amount authorized by the *division*~~{office}~~ for reimbursement from the fund for the performance of corrective action. At a minimum, the *division*~~{office}~~ shall promulgate administrative regulations that will insure an unobligated balance in the fund adequate to meet financial assurance requirements and corrective action requirements of KRS 224.60-135(2) and (4). If the unobligated balance in the fund is not adequate to meet the requirements of this paragraph, the *division*~~{office}~~ shall obligate funds necessary to meet these requirements;
- (b) Establish by administrative regulation the criteria to be met to be eligible to participate in the financial responsibility and petroleum storage tank accounts and to receive reimbursement from these accounts. The *division*~~{office}~~ may establish eligibility criteria for the petroleum storage tank account based upon the financial ability of the petroleum storage tank owner or operator. Owners or operators seeking coverage under the petroleum storage tank account shall file for eligibility and for financial

assistance with the *division*{office} on or before January 15, 2008. To insure cost effectiveness, the *division*{office} shall promulgate administrative regulations specifying the circumstances under which prior approval of corrective action costs shall be required for those costs to be eligible for reimbursement from the fund. In promulgating administrative regulations to carry out this section, the *division*{office} may distinguish between types, classes, and ages of petroleum storage tanks and the degree of compliance of the facility with any administrative regulations of the cabinet promulgated pursuant to KRS 224.60-105 or applicable federal regulations;

- (c) Establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by administrative regulations of the cabinet or the federal regulations applicable to petroleum storage tanks, consistent with the intent of the General Assembly as set forth in KRS 224.60-120(5). The account shall receive four-tenths of one cent (\$0.004) from the one and four-tenths cent (\$0.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145. To be eligible to use this account to demonstrate compliance with financial responsibility requirements of the cabinet or federal regulations, or to receive reimbursement from this account for taking corrective action and for compensating third parties for bodily injury and property damage, the petroleum storage tank owner or operator shall meet the eligibility requirements established by administrative regulation promulgated by the *division*{office};
- (d) Establish a small operator assistance account within the fund which may be used by the *division*{office} to make or participate in the making of loans, to purchase or participate in the purchase of the loans, which purchase may be from eligible lenders, or to insure loans made by eligible lenders;
- (e) Establish a petroleum storage tank account within the fund to be used to pay the costs of corrective action due to a release from a petroleum storage tank not eligible for reimbursement from the financial responsibility account. Reimbursements of corrective action projects performed under the petroleum storage tank account shall be carried out on or before July 15, 2013. Any corrective action costs incurred after this date shall not be eligible for reimbursement under the petroleum storage tank account. The account shall receive one cent (\$0.01) from the one and four-tenths cent (\$0.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145. This account shall not be used to compensate third parties for bodily injury and property damage. Within three (3) months after July 15, 2004, the *division*{office} shall develop a plan to address the payment of claims and completion of corrective action at facilities eligible for reimbursement from this account. The *division*{office} shall establish a ranking system to be used for the distribution of amounts from this account for the purpose of corrective action. In promulgating administrative regulations to carry out this section, the *division*{office} shall consider the financial ability of the petroleum storage tank owner or operator to perform corrective action and the extent of damage caused by a release into the environment from a petroleum storage tank;
- (f) Hear complaints brought before the *division*{office} regarding the payment of claims from the fund in accordance with KRS 224.10-410 to 224.10-470~~[Chapter 13B]~~;

- (g) Establish and maintain necessary offices within this state, appoint employees and agents as necessary, and prescribe their duties and compensation;
- (h) Employ, in accordance with the procedures found in KRS 45A.690 to 45A.725 for awarding personal service contracts, a qualified actuary to perform actuarial studies, as directed by the *division*~~[office]~~, for determining an appropriate reserve in the financial responsibility account and the petroleum storage tank account sufficient to satisfy the obligations in each account for all eligible facilities and to satisfy future liabilities and expenses necessary to operate each account. The *division*~~[office]~~ shall, by administrative regulation, set the entry level for participation in the fund;
- (i) Authorize expenditures from the fund to carry out the purpose of KRS 224.60-105 to 224.60-160, including reasonable costs of administering the fund, the procurement of legal services, and the procurement of analytical testing services when necessary to confirm the accuracy of analytical testing results obtained by a petroleum storage tank owner or operator. The expenditures shall be paid from the appropriate account;
- (j) Establish a small operators' tank removal account within the fund to reimburse the reasonable cost of tank system removal for small owners and operators. The account shall not be used when an owner or operator is removing the tank with the intention of replacing or upgrading the tank. In promulgating administrative regulations to carry out this paragraph, the *division*~~[office]~~ may distinguish among owners and operators based on income, number of tanks, number of facilities, and types and classes of tanks;
- (k) Establish by administrative regulation the policy, guidelines, and procedures to perform financial audits of any petroleum storage tank owner or operator receiving reimbursement from the fund or any entity contracting or subcontracting to provide corrective action services for facilities eligible for fund reimbursement. Financial audits shall be limited to those files, records, computer records, receipts, and other documents related to corrective action performed at a facility where the costs of corrective action have been reimbursed by the fund. Files, records, computer records, receipts, and other documents related to corrective action reimbursed by the fund shall be subject to a financial audit for a period of three (3) years after the date of final reimbursement from the fund. Results of the audits shall be protected from disclosure as allowed by KRS 61.878(1)(c). Financial auditing services may be contracted for or personnel may be employed as needed to implement the requirements of this paragraph;
- (l) Be authorized to enter and inspect any facility intending to seek reimbursement for the cost of corrective action to determine the reasonableness and necessity of the cost of corrective action. The *division*~~[office]~~ may collect soil or water samples or require storage tank owners or operators to split samples with the *division*~~[office]~~ for analytical testing. Refusal to allow entry and inspection of a facility or refusal to allow the *division*~~[office]~~ to collect or split samples shall make the facility ineligible for fund participation;
- (m) Have *inspectors*~~[assurance fund auditors]~~ on site at all tank system removals. Failure to comply with this provision shall make the facility ineligible for fund participation. A petroleum storage tank owner or operator may request through certified mail that the *division*~~[office]~~ schedule an *inspector*~~[assurance fund auditor]~~ to be present at an upcoming tank removal. If the request is made at least two (2) weeks before the time

for the removal and an *inspector*~~{auditor}~~ fails to be present at the time scheduled, the tank removal may proceed without making the facility ineligible for fund participation unless the owner is notified by the *division*~~{assurance fund}~~ no later than ten (10) days prior to the proposed date that an *inspector*~~{auditor}~~ is not available on the proposed date, in which event a representative of the *division*~~{assurance fund}~~ shall contact the operator and schedule a new date. If no *inspector*~~{auditor}~~ is present at the rescheduled date, the removal may then proceed without penalty; and

- (n) Establish that the deadline for submission of final reimbursement requests under the petroleum storage tank account is two (2) years after receipt of a no further action letter.

The funding and operations of the small operator assistance account and the small operator's tank removal account shall end on July 15, 2008.

~~(2)~~~~(3)~~ The *division*~~{office}~~ may advise the cabinet on the promulgation of administrative regulations concerning petroleum storage tanks.

~~(3)~~~~(4)~~ The *division*~~{office}~~ may sue and be sued in its own name.

~~(4)~~~~(5)~~ The *division*~~{office}~~ may transfer funds from the petroleum storage tank account to the small operator tank removal account as needed to satisfy the obligations, future liabilities, and expenses necessary to operate that account. The *division*~~{office}~~ may transfer funds to the financial responsibility account as needed to maintain within that account sufficient funds to demonstrate financial responsibility and to ensure payment of claims as provided in subsection ~~(1)~~~~(2)~~(c) of this section.

Section 27. KRS 224.60-140 is amended to read as follows:

- (1) There is hereby created the petroleum storage tank environmental assurance fund. The fund shall consist of a financial responsibility account and a petroleum storage tank account. Each account shall be maintained as a separate and distinct interest-bearing account. Interest credited to an account shall be retained in that account. All of the following amounts shall be deposited in the fund:
 - (a) Four-tenths of one cent (\$0.004) from the one and four-tenths cent (\$0.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145 to the financial responsibility account;
 - (b) One cent (\$0.01) from the one and four-tenths cent (\$0.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145 to the petroleum storage tank account;
 - (c) Money appropriated by the General Assembly for deposit in each account;
 - (d) Any money recovered by the fund pursuant to this section shall be deposited in the appropriate account; and
 - (e) Any money collected in the form of penalties levied pursuant to KRS 224.60-155 shall be deposited to the appropriate account.
- (2) Money in the fund, financial responsibility account and the petroleum storage tank account shall be used by the *division*~~{office}~~ for the following purposes:
 - (a) To reimburse petroleum storage tank owners or operators for the costs, expenses, and other obligations incurred for corrective action required by the cabinet to be

undertaken as the result of a release into the environment from a petroleum storage tank. Reimbursement shall be limited to only those costs, expenses, and other obligations incurred to comply with corrective action requirements established in law or administrative regulation by the cabinet. Additional costs related to compliance with a local program operating under KRS 224.60-105(4) shall be neither reimbursable by the fund nor imposed on the owner or operator. Reimbursement shall not include the costs related to the removal, or actions incidental to the removal, of a tank system except as authorized under KRS 224.60-130(1)(2)(j);

- (b) For payment of or reimbursement for third-party claims for bodily injury and property damage, related to a facility eligible for participation in the financial responsibility account, which are asserted against a petroleum storage tank owner or operator as a result of a release into the environment from a petroleum storage tank;
 - (c) To pay the reasonable, prorated costs incurred by the *division*~~office~~ in administering each account; and
 - (d) The cost to operate the small operators' assistance account pursuant to KRS 224.60-130(1)(2)(d), the small operators' tank removal account pursuant to KRS 224.60-130(1)(2)(j), to perform or contract for the performance of financial audits conducted under KRS 224.60-130(1)(2)(k), and to employ sufficient *inspectors*~~assurance fund auditors~~ to carry out the provisions of KRS 224.60-130 and to set forth their duties. These costs shall be prorated to each account.
- (3) The use of the fund shall not exceed one million dollars (\$1,000,000) per occurrence for corrective action and one million dollars (\$1,000,000) per occurrence for compensating third parties for bodily injury and property damage.
 - (4) Money in the fund may be used by the cabinet for costs incurred by the cabinet for corrective action taken pursuant to KRS 224.60-135(2) and (4).
 - (5) The fund shall be used to guarantee payment of reasonable costs and expenses to a contractor performing corrective action under contract with a petroleum storage tank owner or operator subject to entry level amounts payable by the petroleum storage tank owner or operator. Money in the fund shall be obligated to secure the guarantee.
 - (6) A petroleum storage tank owner or operator may apply to the *division*~~office~~ for reimbursement from the fund of costs to perform corrective action, except that the petroleum storage tank owner or operator shall be responsible for and shall not be reimbursed for an amount equal to the entry level into the fund as set pursuant to administrative regulation of the *division*~~office~~.
 - (7) The *division*~~office~~ or its designated agent shall issue all decisions made on claims filed pursuant to this section in writing, with notification to all appropriate parties, within ninety (90) days after submission of the claim, unless all parties to the claim agree in writing to an extension of time. The *division*~~office~~ shall by phone or facsimile transmission immediately notify the claim applicant and its consultant, if applicable, when the claim is determined to be deficient. The notification shall provide sufficient information to allow the applicant and its consultant, if applicable, to begin to correct the deficiency. The *division*~~office~~ shall then notify the applicant and its consultant, if applicable, by certified mail of the deficiency. The notice shall indicate how many days remain in the ninety (90) day review period from the time of mailing. The review period shall be tolled pending submittal of information responding to the deficiency, but not to exceed thirty (30) days. When the *division*~~office~~

receives information that corrects the deficiency, or at the end of the thirty (30) day period, the *division*~~{office}~~ shall complete the review of the claim within the time remaining in the ninety (90) day review period. Nothing in this section shall be construed as preventing the fund from making partial reimbursement as appropriate.

- (8) Except as provided in subsection (9), any costs incurred and payable from the fund for corrective action taken pursuant to KRS 224.60-135(2) shall be recovered by the *division*~~{office}~~ from the petroleum storage tank owner or operator which released the petroleum or petroleum products into the environment.
- (9) The liability of a petroleum storage tank owner or operator subject to a cost recovery under this section shall not exceed an amount equal to the entry level into the fund, the *division's*~~{office's}~~ cost incurred in the cost recovery, and any penalties applied in accordance with KRS 224.60-155. This amount shall include any expenditures made by the petroleum storage tank owner or operator for the release into the environment from the petroleum storage tank that is the subject of the cost of recovery.
- (10) The amount of costs determined pursuant to subsections (8) and (19) of this section shall be recoverable in a civil action. This subsection does not deprive a party of any defense the party may have.
- (11) Money recovered by the *division*~~{office}~~ pursuant to this section shall be deposited in the appropriate account.
- (12) Upon motion and sufficient showing by any party, the court shall join to the action any person who may be liable for costs or expenditures recoverable pursuant to this section.
- (13)
 - (a) Any party found liable for any costs or expenditures recoverable under this section who establishes that only a portion of those costs or expenditures are attributable to their actions, shall pay only for that portion.
 - (b) If the trier of fact finds the evidence insufficient to establish each party's portion of costs or expenditures pursuant to subsection (12) of this section, the court shall apportion those costs or expenditures, to the extent practicable according to equitable principles among the defendants.
 - (c) The appropriate account shall pay any portion of the judgment in excess of the aggregate amount of costs or expenditures apportioned under paragraphs (a) and (b) of this subsection.
- (14)
 - (a) No indemnification, hold harmless, conveyance, or similar agreement shall be effective to transfer any liability for costs recoverable under this section. This subsection shall not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs under KRS 224.60-105 to 224.60-160.
 - (b) The entry of judgment against any party to the action shall not bar any future action by the fund against any other person who is later discovered to be potentially liable for costs paid from the fund.
 - (c) Payment of any claim by the fund pursuant to KRS 224.60-105 to 224.60-160 shall be subject to the state acquiring by subrogation the rights of the claimant to recover those costs of corrective action for which it has compensated the claimant from the person responsible or liable for the release.

- (15) This section shall not be construed as authorizing recovery for costs of corrective action resulting from any release authorized or permitted pursuant to state or federal law.
- (16) The cabinet shall attempt, to the maximum extent practicable, to secure or obtain funds that may be available for corrective actions under federal laws. However, nothing in this subsection shall prevent the cabinet from expending any funds available under KRS 224.60-105 to 224.60-160 if such federal funds are determined to be unavailable.
- (17) The fund shall not be used for corrective action, reimbursement, or third-party liability resulting from releases from petroleum storage tanks used exclusively for storage of fuel used in the operation of a commercial ship or vessel oil tanks used exclusively for storage of fuel used for the purposes of powering locomotives.
- (18) (a) Any person filing a claim for reimbursement from the *division*~~{office}~~ shall, prior to filing the claim for reimbursement, ensure full payment of the claims of all vendors and subcontractors who have performed work or supplied materials related to corrective action at an underground storage tank facility, where labor or materials supplied by a vendor or subcontractor form a basis for at least part of the claim for reimbursement.
- (b) A vendor or subcontractor may waive, in writing, his right to receive full payment before the person files the claim for reimbursement. Any vendor or subcontractor who waives, in writing, his right to full payment shall also waive, in writing, his right to take legal recourse against the *division*~~{office}~~ and the underground storage tank facility owner or operator for nonpayment from a prime contractor for work performed or materials supplied to the prime contractor during corrective action at an underground storage tank facility. Any vendor or subcontractor who waives, in writing, his right to full payment prior to the filing of the claim for reimbursement shall acknowledge in the written waiver that his, his heirs', successors', and assigns' sole recourse for the nonpayment of work performed or materials supplied to a prime contractor during corrective action at an underground storage tank facility is to proceed against the prime contractor for whom he performed the work or supplied materials. Any vendor or subcontractor who waives, in writing, his right to full payment prior to the filing of the claim for reimbursement shall release and discharge any liens filed as a result of work performed or materials provided at the underground storage tank facility. Subcontractor and vendor waivers must be made on standard forms furnished by the *division*~~{office}~~. Their signatures must be notarized.
- (c) Unless the provisions of paragraph (b) of this subsection apply, any person filing a claim for reimbursement from the *division*~~{office}~~ shall certify, by affidavit, on standard forms furnished by the *division*~~{office}~~, that all vendors and subcontractors who have performed work or supplied materials related to corrective action at an underground storage tank facility, where labor and materials supplied by a vendor or subcontractor form a basis for at least part of the claim for reimbursement, have been paid in full as of the date of submission of the claim for reimbursement. A single affidavit may be made for each claim for reimbursement, provided, however, that the representations made in the affidavit shall be applied to each vendor or subcontractor individually, and, where false, shall be treated, as to each vendor or subcontractor, as a separate violation for the purpose of applying any criminal statute.

- (d) Any person with responsibility for administering the *division*~~{office}~~ who believes, or has information, that an affidavit submitted pursuant to this subsection contains false or misleading information, or any person with responsibility for administering the *division*~~{office}~~ who believes or has information that an application for financial assistance or a claim for reimbursement contains false or misleading information, shall provide that information to the Commonwealth's attorney whose jurisdiction includes the county where the majority of the subject underground storage tank facility is located. That person may additionally provide the information to any other interested prosecutor with jurisdiction to prosecute crimes pertaining to an application for financial assistance or the claim for reimbursement.
- (19) Any person who knowingly makes a false statement, representation, or certification in an application for reimbursement from the fund, or in any supporting documentation attached thereto, shall be responsible for and shall not be reimbursed for any amounts incurred based upon the false statement, representation, or certification. Any costs incurred and paid from the fund which are based on a false statement, representation, or certification in an application for reimbursement from the fund, or in any supporting documentation attached thereto, shall be recovered by the fund administrators from the person who asserted the false statement, representation, or certification.

Section 28. KRS 303.100 is amended to read as follows:

A burial association desiring to do business in this state shall file with the *executive director of the Office of Insurance*~~{commissioner}~~ a power of attorney as is required of insurance companies, designating the *executive director*~~{commissioner}~~ as the proper person upon whom process may be served.

Section 29. KRS 304.2-010 is amended to read as follows:

There is continued *within the Environmental and Public Protection Cabinet, Department of Public Protection, an office*~~{a department of state government}~~ known as the *Office*~~{Department}~~ of Insurance.

Section 30. KRS 304.2-020 is amended to read as follows:

- (1) The *executive director*~~{insurance commissioner}~~ is the head of the *Office*~~{Department}~~ of Insurance.
- (2) The *executive director*~~{commissioner}~~ shall be appointed by the Governor with the consent of the Senate, for a term not to exceed four (4) years on the basis of his merit and fitness to perform the duties of the office as provided in KRS 12.040. If the Senate is not in session when a term expires or a vacancy occurs, the Governor shall make the appointment to take effect at once, subject to the approval of the Senate when convened. ***Nothing contained in this subsection shall prohibit the executive director of the Office of Insurance from being reappointed.***
- (3) ***The following divisions are established within the Office of Insurance and shall be headed by directors appointed by the secretary of the Environmental and Public Protection Cabinet with the approval of the Governor in accordance with KRS 12.050:***
 - (a) *Property and Casualty Division;*
 - (b) *Division of Life Insurance;*
 - (c) *Division of Financial Standards and Examination;*

- (d) *Division of State Risk and Insurance Services;*
- (e) *Division of Agent Licensing;*
- (f) *Division of Insurance Fraud Investigation;*
- (g) *Division of Consumer Protection and Education;*
- (h) *Division of Health Insurance Policy and Managed Care; and*
- (i) *Division of Kentucky Access.*

Section 31. KRS 304.2-100 is amended to read as follows:

- (1) The *executive director*~~[commissioner]~~ shall personally supervise the operations of the *office*~~[department]~~.
- (2) The *executive director*~~[commissioner]~~ shall examine and inquire into violations of this code, shall enforce the provisions of this code with impartiality and shall execute the duties imposed upon him by this code.
- (3) The *executive director*~~[commissioner]~~ shall have the powers and authority expressly conferred upon him by or reasonably implied from the provisions of this code.
- (4) The *executive director*~~[commissioner]~~ may conduct such examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as he may deem proper upon reasonable and probable cause to determine whether any person has violated any provisions of this code or to secure information useful in the lawful administration of any such provision. The cost of such additional examinations and investigations shall be borne by the state.
- (5) The *executive director*~~[commissioner]~~ may establish and maintain such branch offices in this state as may be reasonably required for the efficient administration of this code.
- (6) The *executive director*~~[commissioner]~~ shall have such additional powers and duties as may be provided by other laws of this state.

Section 32. KRS 336.010 is amended to read as follows:

As used in *this chapter*~~[KRS 336.010 to 336.160]~~, unless the context requires otherwise:

- (1) "Commissioner" means commissioner of the Department of *Labor*~~[Workplace Standards]~~ under the direction and supervision of the secretary of the *Environmental and Public Protection*~~[Labor]~~ Cabinet;~~[and]~~
- (2) "Department" means Department of *Labor; and*
- (3) "*Secretary*" means *the secretary of the Environmental and Public Protection Cabinet*~~[Workplace Standards]~~.

Section 33. KRS 336.015 is amended to read as follows:

- (1) The *commissioner*~~[secretary]~~ of *the Department of Labor* shall have the duties, responsibilities, power, and authority relating to labor, wages and hours, occupational safety and health of employees, child labor, apprenticeship, workers' compensation, and all other matters previously under the jurisdiction of the~~[commissioner and Department of]~~ *Labor Cabinet*.
- (2) The *Department of Labor*~~[Cabinet]~~ shall consist of the *Office of Occupational Safety and Health, the Office of Labor Management Relations and Mediation, the Office of*

Workplace Standards, and the Division of Administrative Services. Each of the offices shall be headed by an executive director and each division shall be headed by a division director. Executive directors and division directors shall be appointed by the secretary with the approval of the Governor as required by KRS 12.050~~[Offices of the Secretary, General Counsel, Administrative Services, Information Technology, Labor Management Relations and Mediation; the Kentucky Workers' Compensation Funding Commission; the Workers' Compensation Board; the Occupational Safety and Health Review Commission; and the Departments of Workplace Standards, and Workers' Claims. The commissioner of the Department of Workplace Standards and the Department of Workers' Claims within the Labor Cabinet shall be under the direction and control of the secretary of the Labor Cabinet].~~

- (3) *The following agencies are attached to the department for administrative purposes only:*
- (a) *Kentucky Labor Management Advisory Council;*
 - (b) *Kentucky Employees' Insurance Association;*
 - (c) *State Labor Relations Board;*
 - (d) *Workers' Compensation Funding Commission;*
 - (e) *Workers' Compensation Advisory Council;*
 - (f) *Occupational Safety and Health Standards Board;*
 - (g) *Prevailing Wage Review Board;*
 - (h) *Apprenticeship and Training Council;*
 - (i) *Employers' Mutual Insurance Authority;*
 - (j) *Workers' Compensation Nominating Commission; and*
 - (k) *Office of Workers' Claims.*

Section 34. KRS 336.020 is amended to read as follows:

- (1) The *Office*~~[Department]~~ of Workplace Standards shall be headed by *an executive director*~~[a commissioner]~~ and shall be divided for administrative purposes into the *Division*~~[Divisions]~~ of Employment Standards, Apprenticeship and Training; *and the Division of* Workers' Compensation Funds~~;~~ *Occupational Safety and Health Compliance;* and *Education and Training for Occupational Safety and Health*~~].~~
- (2) The *Office*~~[Department]~~ of Workers' Claims shall be administered by *an executive director*~~[a commissioner]~~ and shall be divided for administrative purposes into the Divisions of Claims Processing and Appeals, Information and Research, Security and Compliance, *and Ombudsman and Special Services*~~[Administrative Law Judges, and Insurance]~~.
- (3) *The Office of Occupational Safety and Health shall be administered by an executive director and shall be divided for administrative purposes into the Division of Compliance and the Division of Education and Training.*

Section 35. KRS 336.030 is amended to read as follows:

The commissioner, with the approval of the *secretary of the Environmental and Public Protection Cabinet and the Governor*, shall appoint necessary deputies, attorneys, statisticians, inspectors and other employees and fix their salaries according to law. These employees shall receive their actual necessary expenses.

Section 36. KRS 336.164 is amended to read as follows:

- (1) The council shall function as an advisory agent of state government and provide leadership and assistance for labor and management in this state, and shall serve to effect improved labor-management relations within the state, and to thereby attract and encourage new and existing industry in this state.
- (2) The council shall not infringe upon or assume the responsibilities, duties or functions of the *Department of Labor* ~~Cabinet~~ or Cabinet for Economic Development. The council may make recommendations to the Governor and the Legislature on matters relating to labor-management problems in this state and any other matter it deems necessary.
- (3) Meetings of the council may be held at any location in this state; however the principal office of the council will be located in Frankfort, Kentucky.
- (4) The *commissioner of the Department* ~~secretary~~ of labor shall supply necessary staff and supplies to the council as well as funds for reimbursing each member for reasonable and necessary expenses incurred as a result of attending council meetings, and he *or she* shall act as the executive secretary of the council. The executive director of the Office of Labor-Management Relations and Mediation shall be responsible for the coordination of such staff and supplies.

Section 37. KRS 338.015 is amended to read as follows:

As used in this chapter:

- (1) "Employer" shall mean any entity for whom a person is employed except those employers excluded in KRS 338.021.
- (2) "Employee" shall mean any person employed except those employees excluded in KRS 338.021.
- (3) The term "occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment. "Standard" has the same meaning as and includes the words "regulation" and "rule."
- (4) "Occupational safety and health hazard" means any practice or condition in a place of employment which may be deemed detrimental to the safety and health of employees.
- (5) "Occupational injury or illness" means any abnormal condition or disorder of an employee caused by exposure to factors associated with his employment.
- (6) "Board" means the Kentucky Occupational Safety and Health Standards Board established under this chapter.
- (7) "*Executive director* ~~Commissioner~~" means the *executive director* ~~commissioner~~ of the *Office of Occupational Safety and Health* ~~Kentucky Department of Workplace Standards~~ under the direction and supervision of the *commissioner of the Department of Labor* ~~secretary of the Labor Cabinet~~.
- (8) "Review commission" means the Kentucky Occupational Safety and Health Review Commission established under this chapter.

- (9) The term "national consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.
- (10) The term "established federal standard" means any operative occupational safety and health standard established by any agency of the United States government.
- (11) ***"Office" means the Office of Occupational Safety and Health.***
- (12) ***"Commissioner" means the commissioner of the Department of Labor.***

Section 38. KRS 338.071 is amended to read as follows:

- (1) There is hereby established the Kentucky Occupational Safety and Health Review Commission consisting of three (3) members appointed by the Governor on the basis of their experience and competence in the fields of occupational safety and health. The members selected shall be qualified to represent the interest of employers, employees, and the occupational safety and health profession with a minimum of five (5) years experience in their respective fields.
- (2) Members of the review commission shall serve terms of four (4) years and until their successors are appointed.
- (3) The review commission shall hold monthly meetings and additional meetings as deemed necessary. A majority of the review commission constitutes a quorum for the transaction of business. Special meetings of the review commission may be called upon reasonable notice by the commissioner or by any two (2) members of the commission.
- (4) The review commission shall hear and rule on appeals from citations, notifications, and variances issued under the provisions of this chapter and adopt and promulgate rules and regulations with respect to the procedural aspect of its hearings.
- (5) The review commission shall have the authority to employ a secretary, hearing officers, and other employees as may become necessary.
- (6) The chairman of the commission and each of the other two (2) members shall be paid a salary fixed under KRS 64.640.
- (7) The secretary of the commission shall be paid a salary to be fixed by the commission, with the approval of the Governor. The commission shall fix the compensation of all its other employees.
- (8) The commissioners and the secretary and employees of the commission are entitled to all necessary expenses incurred in traveling on business of the commission.
- (9) ***The commission shall be attached to the Environmental and Public Protection Cabinet, Office of the Secretary for administrative purposes only.***

Section 39. KRS 338.161 is amended to read as follows:

- (1) The ***Office of Occupational Safety and Health***~~Department of Workplace Standards~~ shall develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. Each employer shall make, keep and preserve, and make available to the ***executive director***~~commissioner~~ and the Secretary of the United States Department of Labor or the Secretary of the United States Department of Health and Human Resources, such records regarding his activities relating to this chapter as may be prescribed by regulation.

- (2) The *Office of Occupational Safety and Health*~~[Department of Workplace Standards]~~ shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protection and obligations under this chapter.

Section 40. KRS 338.181 is amended to read as follows:

The *Office of Occupational Safety and Health*~~[Kentucky Department of Workplace Standards]~~ is empowered to administer the provisions of this chapter to employers, employees, and places of employment under the jurisdiction of the United States government pursuant to any agreement between the Commonwealth and the United States government. Pursuant to such agreement, the *Office of Occupational Safety and Health*~~[Department of Workplace Standards]~~ is empowered to make employer reports and data available to the United States government.

Section 41. KRS 339.210 is amended to read as follows:

As used in KRS 339.220 to 339.450 "gainful occupation" does not include employment in farm work or in domestic service in a private home, nor occasional employment by a householder in connection with the household and not in connection with the householder's business or occupation, such as grass cutting or carrying ashes or similar casual domestic tasks, nor the delivery of newspapers on regularly scheduled routes, nor to employment as an actor or performer in motion pictures or theatrical productions, or in radio or television productions, nor to employment of minors by their own parents or persons standing in the place of a parent in occupations other than manufacturing, mining, or those found by the *executive director of the Office of Workplace Standards*~~[commissioner of labor]~~ to be particularly hazardous.

Section 42. KRS 342.0011 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease and damage to a prosthetic appliance, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury.
- (2) "Occupational disease" means a disease arising out of and in the course of the employment.
- (3) An occupational disease as defined in this chapter shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence.

- (4) "Injurious exposure" shall mean that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made.
- (5) "Death" means death resulting from an injury or occupational disease.
- (6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the liability of employers under this chapter and includes a self-insurer.
- (7) "Self-insurer" is an employer who has been authorized under the provisions of this chapter to carry his own liability on his employees covered by this chapter.
- (8) "*Office*~~[Department]~~" means the *Office*~~[Department]~~ of Workers' Claims in the *Department of Labor*~~[Cabinet]~~.
- (9) "*Executive director*~~[Commissioner]~~" means the *executive director*~~[commissioner]~~ of the *Office*~~[Department]~~ of Workers' Claims.
- (10) "Board" means the Workers' Compensation Board.
- (11) (a) "Temporary total disability" means the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment;
- (b) "Permanent partial disability" means the condition of an employee who, due to an injury, has a permanent disability rating but retains the ability to work; and
- (c) "Permanent total disability" means the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury, except that total disability shall be irrebuttably presumed to exist for an injury that results in:
1. Total and permanent loss of sight in both eyes;
 2. Loss of both feet at or above the ankle;
 3. Loss of both hands at or above the wrist;
 4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at or above the wrist;
 5. Permanent and complete paralysis of both arms, both legs, or one (1) arm and one (1) leg;
 6. Incurable insanity or imbecility; or
 7. Total loss of hearing.
- (12) "Income benefits" means payments made under the provisions of this chapter to the disabled worker or his dependents in case of death, excluding medical and related benefits.
- (13) "Medical and related benefits" means payments made for medical, hospital, burial, and other services as provided in this chapter, other than income benefits.
- (14) "Compensation" means all payments made under the provisions of this chapter representing the sum of income benefits and medical and related benefits.
- (15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical rehabilitation services, medicines, and fittings for artificial or prosthetic devices.

- (16) "Person" means any individual, partnership, including a registered limited liability partnership, limited partnership, limited liability company, firm, association, trust, joint venture, corporation, limited liability company, or legal representative thereof.
- (17) "Wages" means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, fuel, or similar advantages received from the employer, and gratuities received in the course of employment from persons other than the employer as evidenced by the employee's federal and state tax returns.
- (18) "Agriculture" means the operation of farm premises, including the planting, cultivation, producing, growing, harvesting, and preparation for market of agricultural or horticultural commodities thereon, the raising of livestock for food products and for racing purposes, and poultry thereon, and any work performed as an incident to or in conjunction with the farm operations. It shall not include the commercial processing, packing, drying, storing, or canning of such commodities for market, or making cheese or butter or other dairy products for market.
- (19) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this chapter.
- (20) "United States," when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the territories of the United States.
- (21) "Alien" means a person who is not a citizen, a national, or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien.
- (22) "Insurance carrier" means every insurance carrier or insurance company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the Kentucky Employers Mutual Insurance Authority and every group of self-insurers operating under the provisions of this chapter.
- (23) (a) "Severance or processing of coal" means all activities performed in the Commonwealth at underground, auger, and surface mining sites; all activities performed at tipple or processing plants that clean, break, size, or treat coal; and all activities performed at coal loading facilities for trucks, railroads, and barges. Severance or processing of coal shall not include acts performed by a final consumer if the acts are performed at the site of final consumption.
- (b) "Engaged in severance or processing of coal" shall include all individuals, partnerships, including registered limited liability partnerships, limited partnerships, limited liability companies, corporations, joint ventures, associations, or any other business entity in the Commonwealth which has employees on its payroll who perform any of the acts stated in paragraph (a) of this subsection, regardless of whether the acts are performed as owner of the coal or on a contract or fee basis for the actual owner of the coal. A business entity engaged in the severance or processing of coal, including, but not limited to, administrative or selling functions, shall be considered wholly engaged in the severance or processing of coal for the purpose of this chapter. However, a business entity which is engaged in a separate business activity not related to coal, for which a separate premium charge is not made, shall be deemed to be engaged in the severance or processing of coal only to the extent that the number of employees engaged in the severance or processing of coal bears to the total number of

employees. Any employee who is involved in the business of severing or processing of coal and business activities not related to coal shall be prorated based on the time involved in severance or processing of coal bears to his total time.

- (24) "Premium" for every group of self-insurers means any and all assessments levied on its members by such group or contributed to it by the members thereof. For special fund assessment purposes, "premium" also includes any and all membership dues, fees, or other payments by members of the group to associations or other entities used for underwriting, claims handling, loss control, premium audit, actuarial, or other services associated with the maintenance or operation of the self-insurance group.
- (25) (a) "Premiums received" for policies effective on or after January 1, 1994, for insurance companies means direct written premiums as reported in the annual statement to the ~~Office~~~~[Kentucky Department]~~ of Insurance by insurance companies, except that "premiums received" includes premiums charged off or deferred, and, on insurance policies or other evidence of coverage with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modification, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premiums received" includes the initial premium plus any reimbursements invoiced for losses, expenses, and fees charged under the deductibles. The special fund assessment rates in effect for reimbursements invoiced for losses, expenses, or fees charged under the deductibles shall be those percentages in effect on the effective date of the insurance policy. For policies covering leased employees as defined in KRS 342.615, "premiums received" means premiums calculated using the experience modification factor of each lessee as defined in KRS 342.615 for each leased employee for that portion of the payroll pertaining to the leased employee.
- (b) "Direct written premium" for insurance companies means the gross premium written less return premiums and premiums on policies not taken but including policy and membership fees.
- (c) "Premium," for policies effective on or after January 1, 1994, for insurance companies means all consideration, whether designated as premium or otherwise, for workers' compensation insurance paid to an insurance company or its representative, including, on insurance policies with provisions for deductibles, the calculated cost for coverage,

including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modifications, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premium" includes the initial consideration plus any reimbursements invoiced for losses, expenses, or fees charged under the deductibles.

- (d) "Return premiums" for insurance companies means amounts returned to insureds due to endorsements, retrospective adjustments, cancellations, dividends, or errors.
- (26) "Insurance policy" for an insurance company or group self-insurer means the term of insurance coverage commencing from the date coverage is extended, whether a new policy or a renewal, through its expiration, not to exceed the anniversary date of the renewal for the following year.
- (27) "Self-insurance year" for a group self-insurer means the annual period of certification of the group created pursuant to KRS 342.350(4).
- (28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1) shall be the projected value of the employer's workers' compensation claims for the next calendar year as calculated by the *executive director*~~commissioner~~ using generally-accepted actuarial methods as follows:
- (a) The base period shall be the earliest three (3) calendar years of the five (5) calendar years immediately preceding the calendar year for which the calculation is made. The *executive director*~~commissioner~~ shall identify each claim of the employer which has an injury date or date of last injurious exposure to the cause of an occupational disease during each one (1) of the three (3) calendar years to be used as the base, and shall assign a value to each claim. The value shall be the total of the indemnity benefits paid to date and projected to be paid, adjusted to current benefit levels, plus the medical benefits paid to date and projected to be paid for the life of the claim, plus the cost of medical and vocational rehabilitation paid to date and projected to be paid. Adjustment to current benefit levels shall be done by multiplying the weekly indemnity benefit for each claim by the number obtained by dividing the statewide average weekly wage which will be in effect for the year for which the premium is being calculated by the statewide average weekly wage in effect during the year in which the injury or date of the last exposure occurred. The total value of the claims using the adjusted weekly benefit shall then be calculated by the *executive director*~~commissioner~~. Values for claims in which awards have been made or settlements reached because of findings of

permanent partial or permanent total disability shall be calculated using the mortality and interest discount assumptions used in the latest available statistical plan of the advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The sum of all calculated values shall be computed for all claims in the base period.

- (b) The *executive director*~~[commissioner]~~ shall obtain the annual payroll for each of the three (3) years in the base period for each employer carrying his own risk from records of the *office*~~[department]~~ and from the records of the Department for Employment Services, Cabinet for Workforce Development. The *executive director*~~[commissioner]~~ shall multiply each of the three (3) years of payroll by the number obtained by dividing the statewide average weekly wage which will be in effect for the year in which the premium is being calculated by the statewide average weekly wage in effect in each of the years of the base period.
- (c) The *executive director*~~[commissioner]~~ shall divide the total of the adjusted claim values for the three (3) year base period by the total adjusted payroll for the same three (3) year period. The value so calculated shall be multiplied by 1.25 and shall then be multiplied by the employer's most recent annualized payroll, calculated using records of the *office*~~[department]~~ and the Department for Employment Services data which shall be made available for this purpose on a quarterly basis as reported, to obtain the premium for the next calendar year for assessment purposes under KRS 342.122.
- (d) For November 1, 1987, through December 31, 1988, premium for each employer carrying his own risk shall be an amount calculated by the board pursuant to the provisions contained in this subsection and such premium shall be provided to each employer carrying his own risk and to the funding commission on or before January 1, 1988. Thereafter, the calculations set forth in this subsection shall be performed annually, at the time each employer applies or renews his application for certification to carry his own risk for the next twelve (12) month period and submits payroll and other data in support of the application. The employer and the funding commission shall be notified at the time of the certification or recertification of the premium calculated by the *executive director*~~[commissioner]~~, which shall form the employer's basis for assessments pursuant to KRS 342.122 for the calendar year beginning on January 1 following the date of certification or recertification.
- (e) If an employer having fewer than five (5) years of doing business in this state applies to carry his own risk and is so certified, his premium for the purposes of KRS 342.122 shall be based on the lesser number of years of experience as may be available including the two (2) most recent years if necessary to create a three (3) year base period. If the employer has less than two (2) years of operation in this state available for the premium calculation, then his premium shall be the greater of the value obtained by the calculation called for in this subsection or the amount of security required by the *executive director*~~[commissioner]~~ pursuant to KRS 342.340(1).
- (f) If an employer is certified to carry his own risk after having previously insured the risk, his premium shall be calculated using values obtained from claims incurred while insured for as many of the years of the base period as may be necessary to create a full three (3) year base. After the employer is certified to carry his own risk and has paid all amounts due for assessments upon premiums paid while insured, he shall be assessed only upon the premium calculated under this subsection.

- (g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated as set forth in this subsection.
- (h) Notwithstanding any other provision of this subsection, the premium of any employer authorized to carry its own risk for purposes of assessments due under this chapter shall be no less than thirty cents (\$0.30) per one hundred dollars (\$100) of the employer's most recent annualized payroll for employees covered by this chapter.
- (29) "SIC code" as used in this chapter means the Standard Industrial Classification Code contained in the latest edition of the Standard Industrial Classification Manual published by the Federal Office of Management and Budget.
- (30) "Investment interest" means any pecuniary or beneficial interest in a provider of medical services or treatment under this chapter, other than a provider in which that pecuniary or investment interest is obtained on terms equally available to the public through trading on a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or on the National Association of Securities Dealers Automated Quotation System.
- (31) "Managed health care system" means a health care system that employs gatekeeper providers, performs utilization review, and does medical bill audits.
- (32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license issued by the Commonwealth.
- (33) "Objective medical findings" means information gained through direct observation and testing of the patient applying objective or standardized methods.
- (34) "Work" means providing services to another in return for remuneration on a regular and sustained basis in a competitive economy.
- (35) "Permanent impairment rating" means percentage of whole body impairment caused by the injury or occupational disease as determined by "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest available edition.
- (36) "Permanent disability rating" means the permanent impairment rating selected by an administrative law judge times the factor set forth in the table that appears at KRS 342.730(1)(b).

Section 43. KRS 342.012 is amended to read as follows:

- (1) For the purposes of this chapter, an owner or owners of a business, including qualified partners of a partnership owning a business, or qualified members of a limited liability company, whether or not employing any other person to perform a service for hire, shall be included within the meaning of the term employee if the owner, owners, qualified partners, or qualified members of a limited liability company elect to come under the provisions of this chapter and provide the insurance required thereunder. Nothing in this section shall be construed to limit the responsibilities of the owners, partners, or members of a limited liability company to provide coverage for their employees, nonqualified partners, or nonqualified members, if any, required under this chapter.
- (2) When an owner, owners, qualified partners, or qualified members of a limited liability company have elected to be included as employees, this inclusion shall be accomplished by the issuance of an appropriate endorsement to a workers' compensation insurance policy.

- (3) For the purpose of this section, "qualified partner" or "qualified member or members" means, respectively, a partner who has entered into a meaningful partnership agreement or a member who has entered into meaningful articles of organization or a meaningful operating agreement of a limited liability company, which document shows on its face that the partner will substantially participate in the profit or loss of the business engaged in by the partnership or limited liability company and that the partner or member has made some contribution to the partnership or limited liability company which entitles him to participate in the profits of the business as well as to participate in the decision-making process of the partnership or limited liability company.
- (4) For the purposes of this section, "nonqualified partner" or "nonqualified member" means, respectively, a person who has entered into a partnership agreement, or articles of organization or operating agreement of a limited liability company, which document shows on its face that this person will receive regular payments in exchange for work for the business engaged in by the partnership or limited liability company; that the person will not participate in the decision-making of the partnership or limited liability company and will not participate in the profits and losses of the business engaged in by the partnership or limited liability company.
- (5) Every partnership filing a partnership agreement and every limited liability company filing articles of organization or an operating agreement for the purpose of exemption pursuant to the provisions of KRS 342.340 shall, on or before April 15 of each year, file with the *executive director*~~{commissioner}~~ the employer identification number assigned to the partnership or limited liability company by the Internal Revenue Service. On or before April 15 of each year, each partnership and each limited liability company having a partnership agreement, operating agreement, or articles of organization on file with the *executive director*~~{commissioner}~~ shall file a copy of the tax return of the partnership or limited liability company with the *executive director*~~{commissioner}~~. Failure to comply with the provisions of this subsection shall be prima facie evidence that the partnership agreement or limited liability company articles of organization filed with the *executive director*~~{commissioner}~~ is composed, respectively, of "nonqualified partners" or "nonqualified members", respectively, as defined in this section, and the *executive director*~~{commissioner}~~ shall promptly notify interested government agencies of the failure of the filed partnership agreement or limited liability company articles of organization or operating agreement to indicate compliance with KRS 342.340. With particular reference to employers engaged in coal mining, the *executive director*~~{commissioner}~~ shall promptly report the failure to comply with the provisions of this subsection to the *Environmental and Public Protection Cabinet, Department of Natural Resources, Office of Mine Safety and Licensing*,~~{Department of Mines and Minerals}~~ so that appropriate action may be undertaken pursuant to KRS 351.175.
- (6) For purposes of this section, a "limited liability company" means an entity defined in KRS 275.015 and organized under the provisions of KRS Chapter 275.

Section 44. KRS 349.010 is amended to read as follows:

As used in this chapter:

- (1) "Abandoned" when used in connection with a well or hole means a well or hole which has never been used, or which, in the opinion of the department, will no longer be used for the production of coalbed methane or the injection or disposal of fluid therein;

- (2) "Coal interest holder" means every record coal owner, record coal lessee, mine licensee as defined in KRS 352.010(1)(r) and mine permittee as defined in KRS 350.010(21) whose coalbed is penetrated, or proposed to be penetrated, by a coalbed methane well;
- (3) "Coalbed" or "coal seam" means a seam of coal, whether workable or unworkable;
- (4) "Coalbed methane" means gas produced from a reservoir found in a coalbed, a mined-out area, or gob;
- (5) "Coalbed methane well" means any well drilled, deepened, converted, or reopened for the purpose of capturing coalbed methane for sale or use. Any well initially used for a coal mining-related purpose, such as a vent well, but which is subsequently used for the purpose of recovering coalbed methane for sale or use, shall then be deemed to be a coalbed methane well and shall comply with the provisions of this chapter at the time that the well is converted or used for the purpose of recovering coalbed methane for sale or use;
- (6) "Commissioner" means the commissioner of the Department ~~for~~ of Natural Resources;
- (7) "Correlative rights" means the reasonable opportunity of each person entitled to recover, without waste, the coalbed methane in and under his or her tract or tracts, or the equivalent thereof;
- (8) "Department" means the Department ~~for~~ of Natural Resources;
- (9) "Director" means the director of *the Division of* Oil and Gas Conservation as established in KRS 353.530;
- (10) "Drilling unit" means the maximum area in a pool which may be drained efficiently by one (1) well so as to produce the reasonable maximum recoverable coalbed methane in the area. Where the department has provided rules for the establishment of a drilling unit and an operator, proceeding within the framework of the rules so prescribed, has taken the action necessary to have a specified area established for production from a well, the area shall be a drilling unit;
- (11) *"Division" means the Division of Mine Permits in the Department for Natural Resources* [~~"DSMRE" means the Department for Surface Mining Reclamation and Enforcement as established in KRS 350.035~~];
- (12) "Field rules" means rules established by orders of the review board relating to the drilling, completion, production of, and specifications for coalbed methane wells in a particular geographic area as defined by an order;
- (13) "Gob" means the de-stressed zone associated with any full-seam extraction of coal that extends above and below the mined-out coalbed;
- (14) "Gob well" means a well drilled or a vent hole converted to a well pursuant to this chapter which produces or is capable of producing coalbed methane for sale or use, from a de-stressed zone associated with any full seam extraction of coal that extends above or below a mined-out coalbed;
- (15) "Horizontally drill" or "horizontal drilling" means the intentional act of drilling a borehole, shaft, or hole, which deviates from vertical for the purpose of penetrating a coal seam to produce coalbed methane;
- (16) "Mine licensee" means the mine licensee as defined in KRS 352.010(1)(r);
- (17) "Mine permittee" means the permittee as defined in KRS 350.010(21);

- (18) "Nonparticipating working interest owner" means a coalbed methane owner or lessee of a tract included in a drilling unit who elects to share in the operation of the coalbed methane well on a carried basis by agreeing to have his or her proportionate share of the costs allocable to his or her interest charged against his or her share of production from the coalbed methane well;
- (19) "Nonparticipating operator" means a nonparticipating working interest owner who is also the operator of the coalbed methane well;
- (20) "Operator" means any owner of the right to drill, develop, operate, and produce coalbed methane from a pool and to appropriate the coalbed methane produced therefrom, either for himself or herself, or for himself, herself, and others; in the event there is no coalbed methane lease in existence with respect to the tract in question, the owner of the coalbed methane rights therein shall be considered as an "operator" to the extent of seven-eighths (7/8) of the coalbed methane in that portion of the pool underlying the tract owned by that owner, and as a "royalty owner" as to one-eighth (1/8) interest in that coalbed methane;
- (21) "Other interested coalbed methane parties" means all working interest owners other than the operator, all royalty and overriding royalty interest owners or holders, and any other party who owns or holds a right or interest in a drilling unit, coalbed methane well site for which a drilling permit has been issued or is pending, and all associated equipment, facilities, infrastructure, and improvements;
- (22) "Participating working interest owner" means a coalbed methane owner or lessee who elects to bear a share of the risks and costs of drilling, completing, equipping, operating, plugging, and abandoning a coalbed methane well equal to the proportion which the acreage in the drilling unit he or she owns or holds under lease bears to the total acreage of the drilling unit;
- (23) "Participating operator" means a participating working interest owner who is also the operator of the coalbed methane well;
- (24) "Person" means any person, corporation, association, partnership, limited liability company, receiver, governmental agency subject to this chapter, trustee, so-called common law or statutory trust, guardian, executor, administrator, or fiduciary of any kind, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body;
- (25) "Plat" means a map, drawing, or print showing the location of a well;
- (26) "Review board" means the Coalbed Methane Well Review Board;
- (27) "Royalty owner" means any owner of coalbed methane in place, or coalbed methane rights, to the extent that the owner is not an operator as defined in subsection (20) of this section;
- (28) "Stimulate" means any action taken to increase the flow of coalbed methane, or the inherent productivity of a coalbed methane well, including but not limited to fracturing, shooting, acidizing, or waterflooding, but excluding cleaning out, bailing, or workover operations;
- (29) "Surface owner" means the person in whose name the surface of the land is assessed for purposes of taxes imposed according to the property valuation administrator;
- (30) "Unit" means any tract or tracts which the department has determined are underlaid by a pool or pools of coalbed methane and are not drilling units as defined in subsection (10) of this section;

- (31) "Unitization" means the act of combining separately owned tracts or separate interests therein into a unit constituting all or some portion of a coalbed that produces or is capable of producing coalbed methane and the joint operation of that unit;
- (32) "Unit operator" means the party designated in a pooling order to develop a unit by the drilling of one (1) or more coalbed methane wells;
- (33) "Vent hole" means a borehole, shaft driven, or hole dug, drilled, deepened, converted or reopened, which is used for the purpose of releasing or venting coalbed methane to the atmosphere and not for the purpose of capturing or producing coalbed methane for sale or use;
- (34) "Venting" means the act of releasing coalbed methane to the atmosphere;
- (35) "Well" means any borehole, shaft driven, or hole dug, drilled, deepened, converted or reopened for the purpose of capturing or producing coalbed methane for sale or use; and
- (36) "Workable coalbed" means:
 - (a) Any coalbed twenty-four (24) inches or more in thickness;
 - (b) Any coalbed actually being operated commercially;
 - (c) Any coalbed that the department decides can be operated commercially, and the operation of which can reasonably be expected to commence within not more than ten (10) years; or
 - (d) Any coalbed that, from outcrop indication or other definite evidence, proves to the satisfaction of the department to be workable and, when operated, will require protection if wells are drilled through or into it.

Section 45. KRS 349.015 is amended to read as follows:

- (1) Before a permit may be issued by the department to drill a coalbed methane well on any tract known to be underlaid with coal-bearing strata, the well operator shall provide to the department a plat prepared by a licensed, professional land surveyor and a licensed, professional engineer showing:
 - (a) The county in which the coalbed methane well drill site is located;
 - (b) The name of the surface owner of the drill site tract, the acreage of the drill site tract, the names of the surface owners of adjacent tracts, the names of all coal interest holders from the surface to fifty (50) feet below the deepest penetration of the coalbed methane well on the tract on which the well is proposed to be located, and the names of all oil and gas owners from the surface to one hundred (100) feet below the deepest penetration of the coalbed methane well on the tract on which the well is proposed to be located;
 - (c) The proposed or actual location of the coalbed methane well determined by bearing and distance, relative to two (2) permanent points or monuments that appear on the applicable United States Geological Survey seven and one-half (7-1/2) minute topographic quadrangle map;
 - (d) The location of any other existing or permitted coalbed methane well or any oil or gas well located within one thousand five hundred (1,500) feet of the well;

- (e) The outside boundary of the mineral tract from which the coalbed methane is to be produced if within seven hundred fifty (750) feet of the well; and
 - (f) The number to be given the coalbed methane well, the earliest date for commencement of drilling, the earliest date for commencement of any stimulation of the coalbed methane well, and if horizontal drilling of a coalbed methane well is proposed, the vertical and horizontal alignment and extent of the coalbed methane well.
- (2) If the location of any coalbed methane well proposed to be drilled, deepened, or reopened is known to be underlaid by a coal bearing stratum which is not within the area of an existing mining permit or the proposed permitted area of a pending application or permit modification for a mine before the *division*~~[DSMRE]~~, simultaneously with the filing of an application for a permit, the applicant shall send, by registered or certified mail, a copy of the required plat to the record coal owner or owners and record coal lessee or lessees from the surface to fifty (50) feet below the deepest penetration of the coalbed methane well on the tract on which the well is proposed to be located.
 - (3) If the coal bearing stratum is within the area of an existing mining permit or the proposed permitted area of a pending application or permit modification for a mine before the *division*~~[DSMRE]~~, a copy of the required plat shall also be sent by the applicant, by registered or certified mail, to each mine licensee and mine permittee operating any stratum as designated on the current license issued by the department and at the address stated thereon.
 - (4) A copy of the required plat shall also be sent, by registered or certified mail, simultaneously with the filing of an application for a permit, to the surface owner of the drill site tract and surface owners of adjoining tracts.
 - (5) If the address of any record owner is unknown to the applicant and cannot upon diligent inquiry within the county be ascertained, or if there are more than five (5) record owners, then the applicant shall file with the department an affidavit that either condition exists, and the department may prescribe some different method of notifying the record owner in lieu of sending a copy of the plat and notice of application as required by this section.
 - (6) The plat shall be filed and become a permanent record, subject to inspection at any time by any interested person. Any executive officer, process agent, or chief engineer of the mine licensee or mine permittee may be considered a mine licensee or mine permittee for the purposes of mailing the required copy of the plat.
 - (7) If a coalbed methane well is proposed to be drilled, deepened, converted, or reopened by an applicant who is not the owner or lessee of all of the oil and gas interests, the applicant shall, simultaneously with the filing of the application for a permit, send by registered or certified mail a copy of the required plat to the record oil and gas lessees of, to the record oil and gas lessors of, and to the operator of all oil and gas wells producing from, all formations from the surface to one hundred (100) feet below the deepest penetration of the coalbed methane well on the tract upon which the well is proposed to be located.
 - (8) The operator shall promptly upon completion of either a vertically drilled coalbed methane well located ten (10) feet or more from the location reflected on the plat required with the permit application or a horizontally drilled coalbed methane well file with the department an as-drilled plat prepared by a licensed professional land surveyor and a licensed professional engineer reflecting the actual coalbed methane well location. If the operator has completed a horizontally drilled coalbed methane well, the as-drilled plat shall show its alignment and

extent. The plat shall become a permanent record subject to inspection at any time by any interested persons.

- (9) Each plat, or exhibit attached thereto, shall have the following information on a form supplied by the department:
 - (a) Notice of the application for a coalbed methane well and the address where a copy of the application may be obtained;
 - (b) A statement that the recipient has twenty (20) days within which to file an objection to the proposed coalbed methane well, its location, the proposed stimulation in the workable coalbed, or the proposed completion in the workable coalbed; and
 - (c) A statement that the applicant has met and conferred with, or offered to meet and confer with, each coal interest holder concerning the proposed coalbed methane well, its location, the proposed stimulation in the workable coalbed, or the proposed completion in the workable coalbed.

Section 46. KRS 349.020 is amended to read as follows:

- (1) If the drilling of a coalbed methane well could adversely affect the present or future use or operation of a workable coalbed, any coal interest holder may object to a proposed coalbed methane well, the well's location, the proposed stimulation in the workable coalbed, or the proposed completion in the workable coalbed. Any coal interest holder, within twenty (20) days of receipt of the plat by him or her and by the department, may file specific objections in writing with the department. The filed objections shall provide sufficient detail for the applicant to identify the nature and substance of the objection. The department shall notify the applicant of the objections and fix a time and place for a hearing before the review board to be conducted in accordance with KRS Chapter 13B and this chapter.
- (2) If any coal interest holder, notified pursuant to KRS 349.015, or any other person, claims to have a valid real property interest in, or the current legal right to produce, coalbed methane, the person claiming the real property interest or right shall notify the applicant and the department, in writing, within twenty (20) days from the receipt of the plat by him or her and by the department. The person also shall request that a pooling order be entered pursuant to KRS 349.080(1).
- (3) If the record oil and gas lessor, lessee, or well operator notified pursuant to KRS 349.015, or any other person, claims to have a valid real property interest in, or the current legal right to produce, coalbed methane, the person claiming the real property interest or right shall notify the applicant and the department, in writing, within twenty (20) days from the receipt of the plat by him. The person shall request that a pooling order be entered pursuant to KRS 349.080(1).
- (4) If no objections are filed within the twenty (20) day period, the department shall immediately issue a drilling permit to the well operator approving the location of the well and authorizing the well operator to proceed to drill at that location, provided all other preconditions to issuance of a permit, as contained in this chapter, have been met.
- (5) Upon receipt of an application to drill a coalbed methane well, the department shall provide a copy of the required plat and permit application to *the division*~~[DSMRE]~~. Within fifteen (15) days of receipt by *the division*,~~[DSMRE]~~ notification shall be sent to the department by *the division*~~[DSMRE]~~ as to whether the proposed coalbed methane well will be located within the boundaries of any coal mine for which a permit has been issued or has been

applied for pursuant to KRS Chapter 350. If the proposed coalbed methane well is to penetrate a workable coalbed that is within the area of an existing permit for an underground mine issued by *the division*~~[DSMRE]~~, or the proposed permitted area of a pending application or permit modification for an underground mine before *the division*~~[DSMRE]~~, the written authorization of the mine permittee shall be required prior to issuance by the department of a permit to stimulate, complete, or horizontally drill the coalbed methane well in the workable coalbed that is within the area of an existing permit for an underground mine issued by *the division*~~[DSMRE]~~ or within the proposed permitted area of a pending application or permit modification for an underground mine before *the division*~~[DSMRE]~~. If the proposed coalbed methane well is to be located within a surface area permitted, or proposed in a pending application or permit modification to be issued by *the division*~~[DSMRE]~~, the written authorization of the mine permittee shall be required prior to issuance by the department of a permit to drill the coalbed methane well. In the absence of the written authorization of the mine permittee, the applicant may file an appeal with the review board requesting approval to drill the proposed coalbed methane well if:

- (a) Authorization has been denied by the mine permittee; and
- (b) The proposed location and area to be disturbed by the proposed coalbed methane well has achieved either a partial bond release status or the bond for the area has been forfeited.

Section 47. KRS 349.040 is amended to read as follows:

- (1) It is unlawful for any person to drill, commence, operate, deepen, convert, or stimulate any coalbed methane well, to conduct any horizontal drilling of a coalbed methane well or to convert any existing oil or natural gas well to a coalbed methane well, without first securing from the department a permit pursuant to this chapter. Before any well, borehole, or facility initially used for a coal mining related purpose, such as a vent hole, is converted for the purpose of recovering coalbed methane for sale or use, the operator shall obtain a permit and comply with the provisions of this chapter prior to the time that the well, borehole, or facility is converted or used for the purpose of recovering coalbed methane for sale or use. It is unlawful for any person to drill, deepen, convert, or reopen a coalbed methane well for the production of oil or natural gas or for the injection of water, gas, or other fluids into any oil or natural gas producing formation until the person has obtained a permit from the department for a petroleum or natural gas well pursuant to KRS 353.570. However, no additional permit fee shall be required if the original permit for the coalbed methane well has not expired.
- (2) Every permit application filed under this section shall be verified and shall contain the following:
 - (a) A statement that the applicant claims to have a valid real property interest in, or the current legal right to produce coalbed methane from a person claiming a valid real property interest in, the coalbed methane. The statement shall identify with specificity the nature of the real property interest and the document or instrument evidencing that interest or right, including recording information of any recorded document or instrument;
 - (b) The names and addresses of the coalbed methane well operator and every person or entity whom the applicant must notify under any section of this chapter;

- (c) The name and address of each coal interest holder of any workable coalbed which is to be penetrated by a proposed coalbed methane well or within seven hundred fifty (750) horizontal feet or fifty (50) vertical feet of any portion of the proposed coalbed methane well;
 - (d) The name and addresses of each record oil and gas lessee of, the record oil and gas lessor of, and the operator of all oil and gas formations from the surface to one hundred (100) feet below the deepest penetration of the coalbed methane well on the tract upon which the coalbed methane well is proposed to be located;
 - (e) The coalbed methane well name or such other identification as the department may require;
 - (f) The approximate depth to which the coalbed methane well is to be drilled, deepened, or converted, the coal seams including the depth and thickness of each seam that will be completed for production, and any other coal seams which will be penetrated by the coalbed methane well;
 - (g) A description of any means to be used to stimulate any of the workable coalbeds penetrated by the coalbed methane well;
 - (h) If the proposed coalbed methane well will require casing or tubing, the entire casing program for the coalbed methane well, including the size of each string of pipe, the starting point and depth to which each string is to be set, and the extent to which each string is to be cemented;
 - (i) If the proposed operation is to convert an existing petroleum or natural gas well, as defined in KRS 353.010(13), or to convert a vertical borehole or facility initially used for a coal mining related purpose, such as a vent hole, to a coalbed methane well, all information required by this section, all formations from which production is anticipated, and any plans to plug any portion of the well;
 - (j) Except for a vent hole proposed to be converted to a coalbed methane well, if the proposed coalbed methane well will be completed in some but not all coal seams for production, a plan and design for the coalbed methane well which will protect all workable coalbeds which will be penetrated by the coalbed methane well;
 - (k) If the proposed operations will include horizontal drilling of a coalbed methane well, a description of the operations, including both the vertical and horizontal alignment and extent of the coalbed methane well from the surface to total depth; and
 - (l) Other information as the department may require consistent with this chapter.
- (3) Each application for a coalbed methane well permit shall be accompanied by the following:
- (a) A permit application fee of three hundred dollars (\$300);
 - (b) A bond in an amount prescribed in KRS 349.120;
 - (c) A certificate that the applicant's notice requirements of KRS 349.015 have been satisfied. Certification may be by affidavit of personal service, or the return receipt card, or other postal receipt, for certified mailing;
 - (d) If the proposed coalbed methane well will be located within one-half (1/2) of a mile, measuring horizontally, of a water supply well being used for residential or domestic purposes, the applicant will submit the groundwater protection plan required under

KRS 224.70-110 and applicable administrative regulations promulgated pursuant thereto for review by the department, or demonstrate to the department that a plan is not required; and

- (e) Proof that the applicant has public liability insurance coverage in an amount not less than five hundred thousand dollars (\$500,000) in aggregate and three hundred thousand dollars (\$300,000) per occurrence for damages to persons and property caused by the applicant's operations or proof that the applicant has satisfied self-insurance requirements as provided by administrative regulations which shall be promulgated by the department.
- (4) Prior to the department's issuance of a permit to drill a coalbed methane well, a copy of the written authorization from the mine licensee shall be filed with the application under the following circumstances:
- (a) If the proposed coalbed methane well is to penetrate a workable coalbed that is within the permitted area of an existing permit or the proposed permitted area of a permit pending before the *division*~~[DSMRE]~~ and if the applicant plans to stimulate, complete, or horizontally drill the coalbed methane well in a workable coalbed that is within the permitted area of an existing permit or the proposed permitted area of a permit pending before *the division*~~[DSMRE]~~;
 - (b) If the proposed coalbed methane well is to be located within a surface area permitted under an existing permit, or the proposed permitted area of a permit pending before *the division*~~[DSMRE]~~ for which no bond release has been obtained; or
 - (c) If the proposed coalbed methane well is to be located within a surface area permitted under an existing permit by *the division*~~[DSMRE]~~ for which a partial bond release has been obtained.

If a coalbed methane well permit is issued for a well site located within the boundaries of any coal mine for which a permit has been issued or is pending pursuant to KRS Chapter 350, the permit shall include a provision specifically stating that the permitted coalbed methane well location is in an area for which a coal mine permit has been issued or is pending pursuant to KRS Chapter 350 and is subject to the mine-through rights set forth in KRS 349.030(1).

- (5) If a partial bond release for the surface area on which the proposed coalbed methane well is located has been obtained from *the division*~~[DSMRE]~~ and the applicant is denied written authorization from the mine licensee, the applicant may file an appeal with the review board requesting approval to drill the proposed coalbed methane well. When requesting an appeal, the applicant shall submit a verified statement including the following:
- (a) The applicant has met and conferred with or offered to meet and confer with the mine licensee concerning the authorization;
 - (b) The mine licensee has refused to provide written authorization to disturb the permitted area;
 - (c) The physical area to be disturbed by the proposed well location and the use of area, including ingress and egress thereto, qualifies as a commercial or industrial postmining land use entitling the mine licensee to a complete bond release for the area to be disturbed by the coalbed methane well operator in accordance with KRS Chapter 350; and

- (d) The applicant has agreed to pay the reasonable and actual costs of the permit revision required by *the division* ~~[DSMRE]~~ to affect the incremental bond release for the proposed area to be disturbed by the coalbed methane well operator, not to exceed five thousand dollars (\$5,000).
- (6) Prior to the issuance of a permit to drill a coalbed methane well, the applicant shall grant assignable subsidence waivers to any mine licensee if requested in an objection filed pursuant to KRS 349.060 and, if required, to allow present or future mining with planned subsidence under KRS Chapter 350. However, this subsection and any subsidence waivers shall in no way waive, affect, or impair the ability of the applicant or the applicant's successors or assigns to pursue any remedies for damages to persons, or to improved or tangible property, suffered or incurred as a result of any subsidence caused by the mine licensee or the mine licensee's successors or assigns. The mine licensee, its successors or assigns, shall be liable for any and all damages to persons or to improved or tangible property proximately caused by the mine licensee.
- (7) If the mine licensee is mining in a coal seam that is not being produced by the coalbed methane well operator and has not exercised his or her mine-through rights, as set forth in KRS 349.030(1) or (2), in any coal mine before removing any coal or other material or driving any entry or passageway within five hundred (500) horizontal feet of the vertical segment of a coalbed methane well or within fifty (50) vertical feet of the horizontal segment of a coalbed methane well, the mine licensee shall forward simultaneously to the well operator and to the department, by certified mail, return receipt requested, or by registered mail, a copy of the maps and plans required by law to be filed and kept up to date. Maps or plans shall show the mine workings and projected mine workings within five hundred (500) horizontal feet of the coalbed methane well. However, the issuance of any coalbed methane well permit shall not preclude or prevent coal mining outside two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of a coalbed methane well or outside of the workable coalbed in which the horizontal segment of a coalbed methane well is located, unless specified by the department for reasons of mine or well safety. The mine licensee shall not mine within fifty (50) feet of the vertical segment of a coalbed methane well without the written authorization of the coalbed methane well operator. A mine licensee may file a request with the department to mine closer than two hundred (200) feet of the vertical segment of the coalbed methane well. The mine licensee shall forward simultaneously to the well operator and the department, by certified mail, return receipt requested, or by registered mail, a request to mine closer than two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well, which shall be accompanied by the following:
- (a) A copy of the maps and plans required by law to be filed and kept up to date, showing on the copy of the map or plan its mine plan workings and projected mine workings beneath the tract of land and within two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well; and
- (b) A statement that the applicant has met and conferred with, or offered to meet and confer with, the well operator concerning the mine licensee's plan to mine closer than two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well.

The well operator may, within twenty (20) days of receipt of the documents listed in paragraphs (a) and (b) of this subsection, file specific objections in writing with the

department. When objections are filed, the department shall provide a copy of the objections to the mine licensee and fix a time and place for an informal hearing. The hearing shall be held not more than ten (10) days from the end of the twenty (20) day period. At the hearing, the mine licensee and the well operator, in person or by representative, shall consider the objections and seek agreement on the character and the extent of operations to be conducted within less than two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well. If no agreement can be reached, the department, after administrative hearing conducted in accordance with KRS Chapter 13B, shall make a decision defining what coal, if any, is necessary to be left for the safe protection, use, and operation of the well. The department's decision shall be subject to appeal by either party as provided in this chapter. The department shall keep a complete record of all hearings. The mine licensee shall, every six (6) months, while mining within two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well, file up-to-date maps and plans required by this section, or file new maps and plans complete to date.

- (8) The department may deny the issuance of a permit if it determines that the applicant has a documented pattern or practice of substantial violations of the provisions of this chapter and has failed to abate or seek review of the violations. If the department finds that a substantial violation has occurred with respect to existing operations and that the operator has failed to abate or seek review of the violation in the time prescribed, the department may suspend the permit. After a suspension, the operator shall forthwith cease all work being conducted under the permit until the department reinstates the permit. The department shall make a written finding of its determination and may enforce the determination in Circuit Court pursuant to KRS 349.145.

Section 48. KRS 349.055 is amended to read as follows:

- (1) The Coalbed Methane Well Review Board is hereby established. The review board shall be composed of five (5) members and shall have the powers and duties specified under this chapter.
- (2) The review board shall consist of the commissioner of the Department ~~for~~ Natural Resources or his or her designee within the department, the **director of the Division of Mine Reclamation and Enforcement** ~~commissioner of the Department of Mines and Minerals~~, and the director of the Division of Oil and Gas **Conservation** within the Department ~~for~~ **Natural Resources** ~~of Mines and Minerals~~, a representative of the oil and gas industry, and a representative of the coal industry. The representatives from the oil and gas industry and the coal industry shall be appointed by the Governor for terms of four (4) years subject to confirmation by the Senate.
- (3) The review board shall be, for administrative purposes only, attached to the **Environmental and Public Protection Cabinet, Department for Natural Resources** ~~Division of Oil and Gas within the Department of Mines and Minerals~~.

Section 49. KRS 350.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine and surface impacts incident to an underground coal mine. The activities shall include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, extended depth secondary recovery systems,

mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching, or other chemical or physical processing, and cleaning, concentrating, or other processing or preparation, and the loading of coal at or near the mine site. Excavation for the purpose of obtaining coal includes extraction of coal from refuse piles. The activities shall not include the extraction of coal by a landowner of fifty (50) tons or less within twelve (12) successive calendar months for his own noncommercial use from land owned or leased by him; the extraction of twenty-five (25) to two hundred fifty (250) tons of coal as an incidental part of privately financed construction where the coal is donated to a charitable or educational organization for noncommercial use or noncommercial distribution; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under administrative regulations established by the cabinet; the extraction of, or intent to extract, twenty-five (25) tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16-2/3%) of the tonnage of minerals removed for purposes of commercial use or sale; or coal exploration subject to KRS 350.057. Surface coal mining operations shall also include the areas upon which the activities occur or where the activities disturb the natural land surface. The areas shall also include any adjacent land, the use of which is incidental to the activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface resulting from or incident to the activities. This definition shall include the terms "strip mining" of coal and the "surface effects of underground mining" of coal as used in this chapter;

- (2) "Strip mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location; and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include the extraction of coal by a landowner for his own noncommercial use of fifty (50) tons or less within twelve (12) successive calendar months from land owned or leased by him; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under administrative regulations established by the cabinet; the extraction of, or intent to extract, twenty-five (25) tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16-2/3%) of the tonnage of minerals removed for purposes of commercial use or sale; coal exploration subject to KRS 350.057; nor shall it include the surface effects or surface impacts of underground coal mining;
- (3) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of the operations as required by this chapter;

- (4) "Overburden" means material of any nature, consolidated or unconsolidated, excluding topsoil, which lies above a natural deposit of coal and also means the material after removal from its natural state in the process of surface coal mining;
- (5) "Area of land affected" means any area of land or water upon which surface coal mining and reclamation operations are conducted or located or are to be conducted or located;
- (6) "Operations" means surface coal mining operations, all of the premises, facilities, roads, and equipment used in the process of producing coal from a designated area or removing overburden for the purpose of determining the location, quality, or quantity of a natural coal deposit or the activity to facilitate or accomplish the extraction or the removal of coal;
- (7) "Method of operation" means the method or manner by which the cut or open pit is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the coal;
- (8) "Operator" means any person, partnership, or corporation engaged in surface coal mining operations who removes or intends to remove more than twenty-five (25) tons of coal from the earth by coal mining within twelve (12) consecutive calendar months in any one (1) location;
- (9) "Person" means any individual, partnership, corporation, association, society, joint stock company, firm, company, or other business organization and shall also include any agency, unit, or instrumentality of federal, state, or local government including any publicly-owned utility or publicly-owned corporation of federal, state, or local government;
- (10) "Cabinet" means the *Environmental and Public*~~[Natural Resources and Environmental]~~ Protection Cabinet;
- (11) "Secretary" means the secretary of the *Environmental and Public*~~[Natural Resources and Environmental]~~ Protection Cabinet;
- (12) "Reclamation" means the reconditioning of the area affected by surface coal mining operations under a plan approved by the cabinet;
- (13) "Degree" when used in this chapter shall mean from the horizontal, and in each case shall be subject to a tolerance of five percent (5%) of error;
- (14) "Bench" means the ledge, shelf, or terrace formed in the contour method of strip mining;
- (15) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the cabinet determines that they are in compliance with KRS 350.455;
- (16) "Certification" by a qualified registered professional engineer, as required by this chapter and administrative regulations promulgated hereunder, means a good faith representation to the best of his or her knowledge and belief, based on adequate knowledge of the requirements of this chapter and administrative regulations promulgated hereunder, related experience, best professional judgment, accepted engineering practices and recognized professional standards, and standard practice as it relates to direct participation by the registered professional engineer or supervision of the registered professional engineer's

employees or subordinates. Certification shall not be construed to constitute a warranty or guarantee.

- (17) "Reclamation development fund" means only that reconditioning of land affected by surface mining, which will directly promote and benefit the fund administered by the Kentucky Economic Development Finance Authority to foster economic development on surface mining land.
- (18) "Reclamation development project" means only that reconditioning of land affected by surface mining, which will directly promote and benefit an economic undertaking which constitutes a project under KRS 154.01-010(20).
- (19) "Reclamation development plan" means a plan submitted to the cabinet to show compliance with reclamation standards, and submitted to the Kentucky Economic Development Finance Authority to seek moneys from the reclamation development fund for a reclamation development project.
- (20) "Permit applicant" or "applicant" means a person applying for a permit.
- (21) "Permittee" means a person holding a permit to conduct surface coal mining and reclamation operations.
- (22) "Unanticipated event or condition" as used in KRS 350.085(7) means an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit.
- (23) "Lands eligible for remining" means those lands that would otherwise be eligible for expenditures under KRS 350.560(1) or (2).
- (24) "Coal combustion by-products" means fly ash, bottom ash, scrubber sludge, and waste from fluidized bed combustion, produced by the combustion of coal. Coal combustion by-products do not include boiler slag, or residues of refuse derived fuels, such as municipal solid waste, tires, and solvents.

Section 50. KRS 350.028 is amended to read as follows:

The ***Environmental and Public***~~Natural Resources and Environmental~~ Protection Cabinet shall have and exercise the following authority and powers:

- (1) To adopt administrative regulations after a hearing pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of this chapter;
- (2) To conduct investigations and hearings under provisions of this chapter or regulations adopted pursuant thereto;
- (3) To issue, after an opportunity for a hearing, suspension orders or show cause orders requiring an operator, permittee, or person to adopt remedial measures that are necessary to comply with this chapter and administrative regulations adopted pursuant thereto. Failure to attend a hearing shall be excused for good cause shown;
- (4) To issue, after an opportunity for a hearing, a final order imposing civil penalties for violations of this chapter or directing the ***Department for Natural Resources***~~Kentucky Bureau of Surface Mining Reclamation and Enforcement~~ to revoke a permit, when the requirements set forth by the notice of noncompliance, order of cessation, or an order of the cabinet requiring remedial measures have not been complied with according to the terms

therein. When the secretary or his authorized representatives determines that a pattern of violations of any requirements of this chapter or any permit conditions required by this chapter exists or has existed, and if the secretary or his authorized representatives also find that the violations are caused by the unwarranted failure of the permittee to comply with any requirements of this chapter or any permit conditions or that the violations are willfully caused by the permittee, the secretary or his authorized representative shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide an opportunity for a hearing. Failure to attend a hearing shall be excused for good cause shown; and

- (5) To adopt administrative regulations to allow the state to administer and enforce the initial and permanent regulatory programs of Public Law 95-87, "Surface Mining Control and Reclamation Act of 1977." Administrative regulations shall be no more stringent than required by that law. Nothing in this chapter shall be construed as superseding, amending, modifying, or repealing any of the acts listed in Section 702(a) of Public Law 95-87, or any administrative regulation promulgated thereunder.

Section 51. KRS 350.0301 is amended to read as follows:

- (1) Any person who considers himself aggrieved by any determination made by the cabinet under this chapter may file, in accordance with administrative regulations promulgated by the cabinet under the provisions of this chapter, a petition alleging that the determination is contrary to law or fact and is injurious to him, the grounds and reasons therefor, and demand a hearing. Unless the cabinet considers that the petition is frivolous, it shall serve written notice of the petition on each person named therein and shall schedule a hearing before the cabinet not less than twenty-one (21) days after the date of the notice unless the person complained against waives in writing the twenty-one (21) day period. The right to demand a hearing pursuant to this section shall be limited to a period of thirty (30) days after the petitioner has had actual notice of the determination complained of, or could reasonably have had notice. However, the petitioner shall have the opportunity to contest the validity of an underlying notice of noncompliance in a timely-filed demand for hearing to contest the validity of a cessation order issued for a failure to abate the violation contained in the notice of noncompliance.
- (2) All hearings, other than conferences, under this chapter shall be held before a hearing officer, duly qualified to practice law in the Commonwealth of Kentucky, who may be a full-time employee of the cabinet, serve by contract, or be paid on a per diem basis in the discretion of the cabinet. After the conclusion of the hearing, the hearing officer shall within thirty (30) days make to the secretary a report and recommended order which shall contain a finding of fact and a conclusion of law. If the secretary finds upon written request of the hearing officer that additional time is needed, the secretary may grant an extension. The hearing officer shall serve a copy of his report and recommended order upon all parties of record and their attorney of record to the proceeding, and they shall be granted the right to file exceptions thereto within fourteen (14) days of service. Any party may submit a written response to exceptions within twenty-one (21) days of service of the report and recommended order. Exceptions and responses not timely filed shall be noted and made a part of the record but shall not be considered by the secretary in making a final order. The secretary shall consider the report, exceptions, and recommended order and decide the case. The decision shall be served by mail upon all parties and their attorney of record and shall be a final order of the cabinet.

- (3) Any party to a hearing under this subsection may be represented by counsel, may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. The record of the hearing shall be open to public inspection, and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original.
- (4) All hearings conducted pursuant to this chapter shall be open to the public.
- (5) The cabinet shall promulgate administrative regulations, pursuant to the provisions set forth in this chapter, establishing formal and informal hearing procedures by which any hearing shall, upon the written request of the operator, permittee, or person, be held in the county or regional office where the surface coal mining operation is located, before an impartial hearing officer who is independent of any prosecutorial functions of the cabinet. The administrative regulations shall provide for the conduct of hearings and investigation of any matter relating to the regulation of surface coal mining and reclamation operations; provide for the assessment and payment of civil penalties, including the placement of proposed civil penalty assessments into an escrow account prior to a formal hearing on the amount of the assessment; and provide for a waiver of the placement of the proposed civil penalties into escrow for those individuals who demonstrate with substantial evidence an inability to pay the proposed civil penalties into escrow. The procedures developed pursuant to this subsection shall provide that the hearings be held in the most expeditious manner possible within the time constraints established under this chapter. No person who presided at a prior hearing shall either preside at a subsequent hearing or participate in any further decision or subsequent administrative appeal in the same matter.
- (6) The cabinet may promulgate administrative regulations pursuant to the provisions set forth in this chapter establishing procedures for the holding of administrative conferences needed to implement the provisions of this chapter.
- (7) *The secretary may designate a deputy to sign any or all final orders of the cabinet, whether the orders are the result of hearing or agreement.*

Section 52. KRS 350.035 is amended to read as follows:

- (1) There is established within the cabinet a Department for ***Natural Resources***~~{Surface Mining Reclamation and Enforcement}~~ which shall be headed by a commissioner appointed by the secretary with the approval of the Governor as required by KRS 12.050. The secretary may divide the department into a ***Division of Mine Reclamation and Enforcement***, ***Division of Mine Permits***, ***Division of Abandoned Mine Lands***,~~{Division of Standards and Specifications, Division of Operations and Enforcement, an Office of Special Investigation,}~~ and any other offices or divisions as the secretary may deem necessary to perform the functions, powers, and duties of the department, subject to the provisions of KRS Chapter 12.
- (2) The secretary shall have the power to appoint not more than fifteen (15) special investigations officers who shall be peace officers except for purposes of KRS 527.020. Such peace officers shall be responsible for enforcement of the provisions of this chapter relating to criminal offenses.

Section 53. KRS 350.260 is amended to read as follows:

There is hereby created a Small Coal Operators Advisory Council which shall report directly to the secretary of the Governor's Executive Cabinet. The council shall advise on matters affecting

coal production and utilization including coal market development, transportation, and storage problems. The council shall have the function of coordinating and improving the working relationships between those state agencies administering programs which regulate, serve, or aid small coal mine operators. The council shall consist of fifteen (15) members. Ten (10) of those members shall be appointed by the Governor. Seven (7) of the ten (10) members shall be full-time operators producing three hundred thousand (300,000) or fewer tons of coal per year. Three (3) of the ten (10) appointees shall be with backgrounds in one (1) or more of the following areas: transportation, marketing, mining education, and mining engineering. The secretary of the *Environmental and Public*~~[Natural Resources and Environmental]~~ Protection Cabinet, the commissioners of the *Department of* Agriculture and *the Department for Natural Resources*~~[Mines and Minerals Departments]~~, and the special assistant to the Governor for coal and energy policy shall be ex officio members. Each individual appointment shall be for a four (4) year term which shall begin on July 15, 1984. Members may serve successive terms if reappointed. Vacancies shall be filled in a manner consistent with the provisions for initial appointments. At the first meeting held on or after July 1 of each year, a chairman shall be elected by and from the membership. The council shall meet at least quarterly during each year and may meet more often at the call of the chairman. The council shall be attached to the *Environmental and Public*~~[Natural Resources and Environmental]~~ Protection Cabinet for administrative purposes. Council members shall be eligible for reimbursement by the cabinet for actual expenses directly related to serving on the council.

Section 54. KRS 350.425 is amended to read as follows:

The permittee, operator, or other person shall design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to subsection (f) of Section 515 of Public Law 95-87, "Surface Mining Control and Reclamation Act of 1977," all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments. The *Environmental and Public Protection Cabinet*~~[Kentucky Department of Surface Mining]~~ through this chapter shall have exclusive jurisdiction over KRS Chapter 151 concerning the regulation of dams, levees, embankments, dikes, bridges, fills, or other obstructions across or along any stream or in the floodway of any stream, which structures or obstructions are permitted under this chapter.

Section 55. KRS 350.430 is amended to read as follows:

The permittee or operator shall:

- (1) Provide adequate advance written notice to local governments and residents who might be affected by the use of such explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half (1/2) mile of the proposed blasting site and by providing daily notice to resident/occupiers in the areas prior to any blasting;
- (2) Maintain for a period of at least three (3) years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts;
- (3) Limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent injury to persons, damage to public and private property outside the permit area, adverse impacts on any

underground mine, and change in the course, channel, or availability of ground or surface water outside the permit area;

- (4) Require that all blasting operations be conducted by trained and competent persons as certified by the Department *for Natural Resources*~~[of Mines and Minerals]~~; and
- (5) Provide that upon the request of a resident or owner of a man-made dwelling or structure within one-half (1/2) mile of any portion of the permitted area the applicant or permittee shall conduct a preblasting survey of the structures and submit the survey to the cabinet and a copy to the resident or owner making the request. The area of the survey shall be decided by the cabinet and shall include such provisions as the cabinet shall promulgate.~~[The cabinet and the Department of Mines and Minerals are authorized to enter into agreements whereby the cabinet or the Department of Mines and Minerals administers part or all of this section.]~~
- (6) Penalties for violations of this section are those set forth in KRS 350.990.

Section 56. KRS 351.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:
 - (a) "Approved" means that a device, apparatus, equipment, or machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department *for Natural Resources*~~[of Mines and Minerals]~~;
 - (b) "Assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein;
 - (c) "Board" means the Mining Board created in KRS 351.105;
 - (d) "Commercial mine" means any coal mine from which coal is mined for sale, commercial use, or exchange. This term shall in no instance be construed to include a mine where coal is produced for own use;
 - (e) "Commission" means the Mine Safety Review Commission created by KRS 351.1041;
 - (f) "Commissioner" means commissioner of the Department *for Natural Resources*~~[of Mines and Minerals]~~;
 - (g) "Department" means the Department *for Natural Resources*~~[of Mines and Minerals]~~;
 - (h) "Drift" means an opening through strata or coal seams with opening grades sufficient to permit coal to be hauled therefrom or which is used for the purpose of ventilation, drainage, ingress, egress, and other purposes in connection with the mining of coal;
 - (i) "Excavations and workings" means the excavated portions of a mine;
 - (j) "Fire boss" (often referred to as mine examiner) means a person certified as a mine foreman or assistant mine foreman who is designated by management to examine a mine or part of a mine for explosive gas or other dangers before a shift crew enters;
 - (k) "Gassy mine." All mines shall be classified as gassy or gaseous;
 - (l) "Intake air" means air that has not passed through the last working place of the split or by the unsealed entrances to abandoned workings and by analysis contains not less than nineteen and one-half percent (19.5%) oxygen, no dangerous quantities of flammable gas, and no harmful amounts of poisonous gas or dust;

- (m) "Licensee" means any owner, operator, lessee, corporation, partnership, or other person who procures a license from the department to operate a coal mine;
 - (n) "Mine" means any open pit or any underground workings from which coal is produced for sale, exchange, or commercial use, and all shafts, slopes, drifts, or inclines leading thereto, and includes all buildings and equipment, above or below the surface of the ground, used in connection with the workings. Workings that are adjacent to each other and under the same management, but which are administered as distinct units, shall be considered a separate mine;
 - (o) "Mine foreman" means a certified person whom the licensee or superintendent places in charge of the workings of the mine and of the persons employed therein;
 - (p) "Open-pit mine" shall include open excavations and open-cut workings, including but not limited to auger operations and highwall mining systems for the extraction of coal;
 - (q) "Operator" means the licensee, owner, lessee, or other person who operates or controls a coal mine;
 - (r) "Permissible" refers to any equipment, device, or explosive that has been approved by the United States Bureau of Mines, the Mining Enforcement and Safety Administration, or the Mine Safety and Health Administration and that meets all requirements, restrictions, exceptions, limitations, and conditions attached to the classification by the approving agency;
 - (s) "Preshift examination" means the examination of a mine or any portion thereof where miners are scheduled to work or travel, which shall be conducted not more than three (3) hours before any on-coming shift;
 - (t) "Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned, inaccessible, or pillared workings;
 - (u) "Shaft" means a vertical opening through the strata that is used in connection with the mining of coal, for the purpose of ventilation or drainage, or for hoisting men, coal, or materials;
 - (v) "Slope" means an inclined opening used for the same purpose as a shaft;
 - (w) "Superintendent" means the person who, on behalf of the licensee, has immediate supervision of one (1) or more mines;~~[-and]~~
 - (x) "Supervisory personnel" means a person certified under the provisions of this chapter to assist in the supervision of a portion or the whole of the mine or of the persons employed therein;
 - (y) ***"Office" means the Office of Mine Safety and Licensing; and***
 - (z) ***"Executive director" means the executive director of the Office of Mine Safety and Licensing.***
- (2) Except as the context otherwise requires, this chapter applies only to commercial coal mines.
- (3) The definitions in KRS 352.010 apply also to this chapter, unless the context requires otherwise.

Section 57. KRS 351.020 is amended to read as follows:

- (1) The Department *for Natural Resources*~~[of Mines and Minerals]~~ shall be headed by the commissioner of the Department *for Natural Resources*~~[of Mines and Minerals]~~.
- (2) The department shall administer all laws of the Commonwealth relating to mines.

Section 58. KRS 351.060 is amended to read as follows:

- (1) The *executive director*~~[commissioner]~~ of the *Office of Mine Safety and Licensing*~~[Department of Mines and Minerals]~~ shall be a citizen of Kentucky and shall be thoroughly familiar with all methods of safety pertaining to the operation of mines.
- (2) The *executive director*~~[commissioner]~~ shall have a practical knowledge of:
 - (a) The different systems of working and ventilating coal mines;
 - (b) The nature, chemistry, and properties of noxious, poisonous, and explosive gases, the dangers due to these gases, and the prevention of these dangers;
 - (c) The dangers incident to blasting and the prevention of these dangers;
 - (d) The methods for the management and extinguishment of mine fires;
 - (e) The methods for rescue and relief work in mine disasters;
 - (f) The application of electricity in mining operations;
 - (g) The application of mechanical loading in mining operations;
 - (h) The equipment and explosives manufactured for use in coal mines;
 - (i) The methods used in locating oil and gas wells when drilled through any coal seam;
 - (j) The proper manner of drilling and plugging oil and gas wells;
 - (k) Mining engineering; and
 - (l) The methods for the prevention of explosions in mines due to gas or dust.
- (3) The *executive director*~~[commissioner]~~ shall be capable of efficiently reporting on any proposed development in mining operations or the possibility of operating any coal or clay seam.
- (4) The *executive director*~~[commissioner]~~ shall hold a mine inspector's certificate.

Section 59. KRS 351.070 is amended to read as follows:

- (1) The commissioner shall have full authority over the department and shall superintend and direct the activities of the mine inspectors and other personnel of the department. *There is created within the Department for Natural Resources an Office of Mine Safety and Licensing.*
- (2) *The secretary*~~[He]~~ shall appoint *an executive director to the Office of Mine Safety and Licensing in accordance with subsection (2) of Section 21 of this Act*~~[a deputy commissioner of the Department of Mines and Minerals]~~ and prescribe his powers and duties.
- (3) *The commissioner*~~[He]~~ may, whenever necessary, divide the coal fields of the state into as many inspection districts as necessary, so as to equalize as nearly as practicable the work of each inspector, and may assign to the inspectors their respective districts.

- (4) ***The commissioner***~~[He]~~ may, whenever he *or she* deems it necessary in the interest of efficient supervision of the mines, temporarily employ the services of additional mine inspectors or change inspectors from one (1) district to another.
- (5) ***The commissioner***~~[He]~~ shall superintend and direct the inspection of mines and cause to be investigated the character and quality of air in mines whenever conditions indicate the necessity of doing so.
- (6) ***The commissioner***~~[He]~~ shall collect statistics relating to coal mining in the state and make an annual report of the statistics.
- (7) ***The commissioner***~~[He]~~ shall see that maps, plans, projections, and proposed developments of all underground coal mines are made and filed in his office.
- (8) ***The commissioner***~~[He]~~ shall keep a properly indexed, permanent record of all inspections made by himself and the personnel of the department.
- (9) ***The commissioner***~~[He]~~ shall exercise general supervision over the training of officials and workmen in safety and first aid and mine rescue methods, and may conduct demonstrations in safety whenever he deems it advisable.
- (10) ***The commissioner***~~[He]~~ shall exercise general supervision over the dissemination of information among officials and employees concerning mine ventilation, mining methods, and mine accidents and their prevention, and shall assume full charge in the event of mine fire or explosion or other serious accident at any mine in the state.
- (11) ***The commissioner***~~[He]~~ may assist in the resumption of operations of any mine or gather data for the development of any coal seams that would be of any benefit to the state or create new employment.
- (12) The commissioner may prescribe reasonable safety standards governing the use of explosives, and electrical and mechanical equipment in the operation of open-pit or surface mines.
- (13) The ***secretary of the Environmental and Public Protection Cabinet***~~[commissioner]~~ shall have the power and authority to promulgate, amend, or rescind any administrative regulations he *or she* deems necessary and suitable for the proper administration of this chapter. Administrative regulations may be promulgated, amended, or rescinded by the commissioner only after public hearing or an opportunity to be heard thereon of which proper notice by publication pursuant to KRS Chapter 424, has been given. Administrative regulations so promulgated shall carry the full force and effect of law.
- (14) The commissioner shall ascertain the cause or causes of any coal mining fatality and, within sixty (60) days of completion of the investigation, shall report his findings and recommendations to the Governor, the Mine Safety Review Commission, the Mining Board, and the Legislative Research Commission. The recommendations may include, without being limited to, the need to promulgate or amend administrative regulations to prevent the recurrence of the conditions causing the fatality.

Section 60. KRS 351.242 is amended to read as follows:

- (1) There is hereby created in the department ***a mine safety analysis program***~~[the Division of Mine Safety Analysis]~~.

- (2) Persons employed in the *department*~~[division]~~ as underground or surface mine safety analysts shall satisfy the applicable requirements established in KRS 351.090.
- (3) The primary responsibility of the safety analyst is to prevent mine accidents and fatalities by observing and evaluating the work habits of persons involved in the direct production of coal and to contact, advise, and assist these persons in correcting their unsafe or potentially hazardous actions.
- (4) The safety analyst shall have the same powers as a mine inspector of the department, but these powers shall be considered secondary to the primary responsibilities provided in subsection (3) of this section. Each time a safety analyst enters a mine to perform his primary responsibility, he shall confer with the foreman as to the conditions of the mine and the work practices of the employees.
- (5) The safety analyst shall keep mine management, representatives of the employees, and the commissioner informed about all hazardous conditions and all matters which may improve the safety of mines.
- (6) The *office*~~[division]~~ shall assist the *department*~~[Division of Miner Training, Education, and Certification]~~ in assessing the effectiveness of miner training programs.
- (7) The commissioner shall at his *or her* discretion assign safety analysts to all mines in the state taking into consideration such factors as the history of accidents at the mine, experience of the work force, physical condition of the mine, and size of the mine.
- (8) The commissioner may coordinate the assignment of safety analysts with the appropriate federal authorities to minimize duplication of accident prevention efforts.
- (9) The commissioner shall report annually to the General Assembly and to the Governor on the effectiveness of the safety analysts in improving mine safety.

Section 61. KRS 351.310 is amended to read as follows:

As used in KRS 351.315 to 351.375 unless the context clearly indicates otherwise:

- (1) "Explosives" means any chemical compound or other substance or mechanical system intended for the purpose of producing an explosion, or that contains oxidizing and combustible units or other ingredients in such proportions or quantities that ignition by detonation may produce an explosion, capable of causing injury to persons or damage to property;
- (2) "Blasting operation" means the use of explosives in the surface blasting of stone, rock, ore or any other natural formation, or in any construction or demolition work, but shall not include its use in agricultural operations;
- (3) "Blaster" means a person licensed to fire or detonate explosives in blasting operations;
- (4) "Charge" means a quantity of explosive or equivalent that is to be detonated within a period of five (5) seconds;
- (5) "Subcharge" means a quantity of explosive or equivalent that is to be detonated within a period of less than eight (8) milliseconds;
- (6) "Detonation time" means the time at which the detonation is initiated;
- (7) "Department" means the Department *for Natural Resources*~~[of Mines and Minerals]~~;

- (8) "Commissioner" means the commissioner of *the Department for Natural Resources*~~[mines and minerals]~~.

Section 62. KRS 352.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:
- (a) "Abandoned workings" means excavations, either caved or sealed, that are deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly;
 - (b) "Active workings" means all places in a mine that are ventilated and inspected regularly;
 - (c) "Approved" means that a device, apparatus, equipment, machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department *for Natural Resources*~~[of Mines and Minerals]~~;
 - (d) "Assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein;
 - (e) "Board" means the Mining Board created in KRS 351.105;
 - (f) "Commercial mine" means any coal mine from which coal is mined for sale, commercial use, or exchange. This term shall in no instance be construed to include a mine where coal is produced for own use;
 - (g) "Commissioner" means commissioner of the Department *for Natural Resources*~~[of Mines and Minerals]~~;
 - (h) "Department" means the Department *for Natural Resources*~~[of Mines and Minerals]~~;
 - (i) "Drift" means an opening through strata or coal seams with opening grades sufficient to permit coal to be hauled therefrom, or which is used for the purpose of ventilation, drainage, ingress, egress, and other purposes in connection with the mining of coal;
 - (j) "Excavations and workings" means the excavated portions of a mine;
 - (k) "Face equipment" means mobile or portable mining machinery having electric motors or accessory equipment normally installed or operated in by the last open crosscut in any entry or room;
 - (l) "Fire boss" (often referred to as mine examiner) means a person certified as a mine foreman or assistant mine foreman who is designated by management to examine a mine or part of a mine for explosive gas or other dangers before a shift crew enters;
 - (m) "Gassy mine." All underground mines shall be classified as gassy or gaseous;
 - (n) "High voltage" means any voltage of one thousand (1,000) volts or more;
 - (o) "Imminent danger" means the existence of any condition or practice which could reasonably be expected to cause death or serious physical harm before the condition or practice can be abated;
 - (p) "Inactive workings" shall include all portions of a mine in which operations have been suspended for an indefinite period, but have not been abandoned;

- (q) "Intake air" means air that has not passed through the last working place of the split or by the unsealed entrances to abandoned workings and by analysis contains not less than nineteen and one-half percent (19.5%) of oxygen, no dangerous quantities of flammable gas, and no harmful amounts of poisonous gas or dust;
- (r) "Licensee" means any owner, operator, lessee, corporation, partnership, or other person who procures a license from the department to operate a coal mine;
- (s) "Low voltage" means up to and including six hundred sixty (660) volts;
- (t) "Medium voltage" means voltages greater than six hundred sixty (660) and up to nine hundred ninety-nine (999) volts;
- (u) "Mine" means any open pit or any underground workings from which coal is produced for sale, exchange, or commercial use, and all shafts, slopes, drifts, or inclines leading thereto, and includes all buildings and equipment, above or below the surface of the ground, used in connection with the workings. Workings that are adjacent to each other and under the same management and which are administered as distinct units shall be considered separate mines;
- (v) "Mine foreman" means a certified person whom the licensee or superintendent places in charge of the workings of the mine and of persons employed therein;
- (w) "Open-pit mine" shall include open excavations and open-cut workings including auger operations and highwall mining systems for the extraction of coal;
- (x) "Operator" means the licensee, owner, lessee, or other person who operates or controls a coal mine;
- (y) "Permissible" means that any equipment, device, or explosive that has been approved by the United States Bureau of Mines, the Mining Enforcement and Safety Administration, or the Mine Safety and Health Administration meets all requirements, restrictions, exceptions, limitations, and conditions attached to the classification;
- (z) "Preshift examination" refers to the examination of an underground mine or part of a mine where miners are scheduled to work or travel, and shall be conducted not more than three (3) hours before any on-coming shift;
- (aa) "Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned, inaccessible, or pillared workings;
- (ab) "Shaft" means a vertical opening through the strata that is or may be used, in connection with the mining of coal, for the purpose of ventilation or drainage, or for hoisting men, coal, or materials;
- (ac) "Slope" means an inclined opening used for the same purpose as a shaft;
- (ad) "Superintendent" means the person who, on behalf of the licensee, has immediate supervision of one (1) or more mines;
- (ae) "Supervisory personnel" shall mean a person or persons certified under the provisions of KRS Chapter 351 to assist in the supervision of a portion or the whole of the mine or of the persons employed therein;
- (af) "Tipple or dumping point" means the structure where coal is dumped or unloaded from the mine car into railroad cars, trucks, wagons, or other means of conveyance;

- (ag) "Working face" means any place in a coal mine at which the extraction of coal from its natural deposit in the earth is performed during the mining cycle;
 - (ah) "Working place" means the area of a coal mine in by the last open crosscut;
 - (ai) "Working section" means all areas of a coal mine from the loading point to and including the working faces; and
 - (aj) "Workmanlike manner" means consistent with established practices and methods utilized in the coal industry.
- (2) The definitions in KRS 351.010 apply also to this chapter, unless the context requires otherwise.
- (3) Except as the context otherwise requires, this chapter applies only to commercial mines as defined in KRS 351.010 and shall not apply to electrical facilities owned, operated, or otherwise controlled by a retail electric supplier or generation and transmission cooperative as defined in KRS 278.010 or organized under KRS Chapter 279 for the purpose of communication, metering, or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, or outdoors by established easement rights on private property and that are covered by the National Electric Safety Code (NESC) or other applicable safety codes, or other authorities having jurisdiction and shall not apply to installations under the exclusive control of utilities for the purpose of communication, metering, or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, or outdoors by established rights on private property.

Section 63. KRS 353.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Barrel" or "barrel of oil" means forty-two (42) standard United States liquid measure gallons of two hundred thirty-one (231) cubic inches per gallon, computed at a temperature of sixty (60) degrees Fahrenheit.
- (2) "Casing" means a string or strings of pipe commonly placed in wells drilled for natural gas and petroleum.
- (3) "Cement" means hydraulic cement properly mixed with water only.
- (4) "Coal operator" means any person who proposes to or does operate a coal mine.
- (5) "Cubic feet of gas" means the volume of gas contained in one (1) cubic foot of space at a standard pressure base of fourteen and seventy-three hundredths (14.73) pounds per square inch and a temperature base of sixty (60) degrees Fahrenheit.
- (6) "Department" means the Department *for Natural Resources* ~~[of Mines and Minerals]~~.
- (7) "Gas" means natural gas.
- (8) "Gas well" means any well which:
 - (a) Produces natural gas not associated or blended with crude petroleum oil any time during production; or

- (b) Produces more than ten thousand (10,000) cubic feet of natural gas to each barrel of crude petroleum oil from the same producing horizon.
- (9) "Oil" means petroleum.
- (10) "Oil well" means any well which produces one (1) barrel or more of oil to each ten thousand (10,000) cubic feet of natural gas.
- (11) "Plat" means a map, drawing, or print showing the location of a well.
- (12) "Unit" means any tract or tracts which the department has determined is underlaid by a pool or pools of oil and associated gas, and is not a "drilling unit" as defined in KRS 353.510(19).
- (13) "Well" means a borehole drilled or proposed to be drilled for the purpose of producing natural gas or petroleum, or one through which natural gas or petroleum is being produced.
- (14) "Well operator" means any person who proposes to or does locate, drill, operate, or abandon any well.
- (15) "Workable bed" means:
- (a) A coal bed actually being operated commercially,
 - (b) A coal bed that the department decides can be operated commercially and the operation of which can reasonably be expected to commence within not more than ten (10) years, or
 - (c) Any coal bed that, from outcrop indication or other definite evidence, proves to the satisfaction of the department to be workable and, when operated, will require protection if wells are drilled through it.

Section 64. KRS 353.510 is amended to read as follows:

As used in KRS 353.500 to 353.720, unless the context otherwise requires:

- (1) "Department" means the Department *for Natural Resources*~~[of Mines and Minerals]~~ as defined in KRS 351.010;
- (2) "Commissioner" means the commissioner of the Department *for Natural Resources*~~[of Mines and Minerals]~~ as defined in KRS 351.010;
- (3) "Director" means the director of *the Division of* Oil and Gas Conservation as provided in KRS 353.530;
- (4) "Commission" means the Kentucky Oil and Gas Conservation Commission as provided in KRS 353.565;
- (5) "Person" means any natural person, corporation, association, partnership, receiver, governmental agency subject to KRS 353.500 to 353.720, trustee, so-called common-law or statutory trust, guardian, executor, administrator, or fiduciary of any kind, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body;
- (6) "Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive without waste the oil and gas in and under his tract or tracts, or the equivalent thereof;

- (7) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;
- (8) "Gas" means all natural gas, including casinghead gas, and all other hydrocarbons not defined in subsection (7) of this section as oil;
- (9) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both. Each productive zone of a general structure which is completely separated from any other zone in the structure, or which for the purpose of KRS 353.500 to 353.720 may be so declared by the department, is covered by the word "pool" as used herein;
- (10) "Field" means the general area which is underlaid or appears to be underlaid by at least one (1) pool; and "field" includes the underground reservoir containing oil or gas or both. The words "field" and "pool" mean the same thing when only one (1) underground reservoir is involved; however, "field," unlike "pool," may relate to two (2) or more pools;
- (11) "Just and equitable share of production" means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool underlying his tract or tracts;
- (12) "Abandoned," when used in connection with a well or hole, means a well or hole which has never been used, or which, in the opinion of the department, will no longer be used for the production of oil or gas or for the injection or disposal of fluid therein;
- (13) "Workable bed" means:
 - (a) A coal bed actually being operated commercially;
 - (b) A coal bed that the department decides can be operated commercially and the operation of which can reasonably be expected to commence within not more than ten (10) years; or
 - (c) A coal bed which, from outcrop indications or other definite evidence, proves to the satisfaction of the commissioner to be workable, and which, when operated, will require protection if wells are drilled through it;
- (14) "Well" means a borehole drilled, shaft driven, or hole dug or such proposed or otherwise used for the purpose of producing natural gas or petroleum, or one through which natural gas or petroleum is being produced, or for the purpose of injecting any water, gas, or other fluid therein or one into which any water, gas, or other fluid is being injected;
- (15) "Shallow well" means any well drilled and completed at a depth less than four thousand (4,000) feet except, in the case of any well drilled and completed east of longitude line 84 degrees 30'; shallow well means any well drilled and completed at a depth less than four thousand (4,000) feet or above the base of the lowest member of the Devonian Brown Shale, whichever is the deeper in depth;
- (16) "Deep well" means any well drilled and completed below the depth herein provided for a shallow well;
- (17) "Operator" means any owner of the right to develop, operate, and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for himself or for himself and others; in the event that there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein shall be considered as "operator" to

the extent of seven-eighths (7/8) of the oil and gas in that portion of the pool underlying the tract owned by such owner, and as "royalty owner" as to one-eighth (1/8) interest in such oil and gas; and in the event the oil is owned separately from the gas, the owner of the right to develop, operate, and produce the substance being produced or sought to be produced from the pool shall be considered as "operator" as to such pool;

- (18) "Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to the extent that such owner is not an operator as defined in subsection (17) of this section;
- (19) "Drilling unit" generally means the maximum area in a pool which may be drained efficiently by one (1) well so as to produce the reasonable maximum recoverable oil or gas in such area. Where the regulatory authority has provided rules for the establishment of a drilling unit and an operator, proceeding within the framework of the rules so prescribed, has taken the action necessary to have a specified area established for production from a well, such area shall be a drilling unit;
- (20) "Underground source of drinking water" means those subsurface waters identified as such in regulations promulgated by the department which shall be consistent with the definition of underground source of drinking water in regulations promulgated by the Environmental Protection Agency pursuant to the Safe Drinking Water Act, 42 U.S.C. secs. 300(f) et seq.;
- (21) "Underground injection" means the subsurface emplacement of fluids by well injection but does not include the underground injection of natural gas for purposes of storage;
- (22) "Endangerment of underground sources of drinking water" means underground injection which may result in the presence in underground water, which supplies or can reasonably be expected to supply any public water system, of any contaminant and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons;
- (23) "Class II well" means wells which inject fluids:
 - (a) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;
 - (b) For enhanced recovery of oil or natural gas; and
 - (c) For storage of hydrocarbons which are liquid at standard temperature and pressure;
- (24) "Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

Section 65. KRS 353.530 is amended to read as follows:

- (1) The Governor shall appoint, as director of *the Division of* Oil and Gas Conservation in the Department *for Natural Resources*~~[of Mines and Minerals]~~, a person who has, at the time of his appointment, at least five (5) years' experience in the exploration for or the production of oil or gas.
- (2) It shall be his duty to administer the provisions of KRS 353.500 to 353.720 subject to the direction and supervision of the commissioner.

- (3) Before taking office, the director shall take oath, which shall be certified by the officer administering it. The oath, in writing, and the certificate shall be filed in the office of the Secretary of State.
- (4) No director shall, while holding office, acquire any financial interest, directly or indirectly, in any venture or activity for the exploration for or production of oil or gas in this Commonwealth.

Section 66. The following KRS sections are repealed:

224.10-030 Bodies attached for administrative purposes.

224.10-055 Powers and duties of Governor.

224.10-060 Prior energy regulations and actions in effect until modified.

351.051 Commissioner -- Appointment.

Section 67. In order to reflect the reorganization effectuated by this Act, the reviser of statutes shall replace references in the Kentucky Revised Statutes to the agencies, subagencies, and officers affected by this Act with references to the appropriate successor agencies, subagencies, and officers established by this Act. The reviser of statutes shall base these actions on the functions assigned to the new entities by this Act and may consult with officers of the affected agencies, or their designees, to receive suggestions.

Section 68. Any portion of law to the contrary notwithstanding, the General Assembly hereby confirms the Governor's Executive Order 2004-731 dated July 9, 2004, relating to the Environmental and Public Protection Cabinet, to the extent not otherwise confirmed or superseded by this Act.

Approved March 18, 2005.