

CHAPTER 82**(SB 50)**

AN ACT relating to the capture and transportation of carbon dioxide.

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

➔SECTION 1. A NEW SECTION OF SUBCHAPTER 27 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *For the purposes of this section, "carbon dioxide transmission pipeline" has the same meaning as in Section 2 of this Act.*
- (2) *If a carbon dioxide transmission pipeline company has received a construction certificate from the Kentucky State Board on Electric Generation and Siting under Section 6 of this Act and is unable to contract or agree with the owner after a good-faith effort to do so, the company may condemn the lands and material for the use and occupation of the lands that are necessary for:*
 - (a) *Constructing, maintaining, utilizing, operating, and gaining access to a carbon dioxide transmission pipeline and all necessary machinery, equipment, pumping stations, appliances, and fixtures for use in connection with a carbon dioxide transmission pipeline; and*
 - (b) *Obtaining all necessary rights of ingress and egress to construct, examine, alter, repair, maintain, operate, or remove a carbon dioxide transmission pipeline and all of its component parts.*
- (3) *The proceedings for condemnation shall be as provided in the Eminent Domain Act of Kentucky.*
- (4) *Carbon dioxide transmission pipelines, and the routing, construction, maintenance, and operation of them are, as a matter of legislative determination, declared to be a public use essential to the fulfillment of the purposes of this chapter.*

➔Section 2. KRS 154.27-010 is amended to read as follows:

As used in this subchapter:

- (1) "Activation date" means the date on which an approved company begins incurring recoverable costs or engaging in recoverable activity pursuant to the tax incentive agreement. The activation date shall be set forth in the tax incentive agreement and shall be a date within five (5) years of the date of final approval of the tax incentive agreement. The authority may extend the five (5) year period to no more than seven (7) years upon written application for an extension by the approved company. To implement the activation date, the approved company shall notify the authority of its intent to activate the tax incentives authorized in the tax incentive agreement. The activation date shall apply to all incentives included in the tax incentive agreement regardless of whether the approved company has met the requirements to receive all incentives at that time. If the approved company does not implement the activation date before the date established in the tax incentive agreement, the activation date shall be the date established in the tax incentive agreement;
- (2) "Affiliate" has the same meaning as in KRS 154.22-010;
- (3)
 - (a) "Alternative fuel facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2007, and that, after the new construction, retrofit, or upgrade, primarily produces for sale alternative transportation fuels. For a retrofit of an existing facility, the new modification or addition within the facility shall primarily produce alternative transportation fuel for sale.
 - (b) The alternative fuel facility may produce electricity as a by-product if the primary purpose for which the facility is constructed, retrofitted, or upgraded, and the primary function of the facility remains the production and sale of alternative transportation fuels;
- (4) "Alternative transportation fuels" has the same meaning as in KRS 152.715;
- (5) "Approved company" means a corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity approved for incentives for an eligible project;
- (6) "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;

- (7) "Base amount" means the tons of coal, thousand (1000) cubic foot units (Mcf) of natural gas, or gallons of natural gas liquids purchased and used or severed and used by the approved company as feedstock for an eligible project during the twelve (12) months prior to the month in which the approved company first begins receiving incentives under KRS 143.024 or 143A.025, and 154.27-060, that were subject to the tax imposed by KRS 143.020 or 143A.020;
- (8) "Biomass resources" has the same meaning as in KRS 152.715;
- (9) (a) "Capital investment" means:
1. Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project;
 2. The cost of acquiring land or rights in land and any cost incident thereto, including recording fees;
 3. The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project which is not paid by the contractor or otherwise provided;
 4. All costs of architectural and engineering services, including test borings, surveys, estimates, plans, specifications, preliminary investigations, supervision of construction, and the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project;
 5. All costs required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project; and
 6. All other costs of a nature comparable to those described in this subsection.
- (b) "Capital investment" does not include costs described in paragraph (a) of this subsection that are paid for with funds received from the federal government or that are reimbursed by the federal government;
- (10) "Carbon capture ready" means planning for or anticipating capture of carbon dioxide in a manner to facilitate continued operation of the facility in compliance with applicable federal requirements;
- (11) ***"Carbon dioxide transmission pipeline" means the in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, that is used exclusively for the purpose of transporting carbon dioxide to a point of sale, storage, or other carbon management applications;***
- (12) "Center for Applied Energy Research" means the University of Kentucky Center for Applied Energy Research;
- ~~(13)(12)~~ "Commonwealth" means the Commonwealth of Kentucky;
- ~~(14)(13)~~ "Construction period" means the period beginning with the activation date of the eligible project and ending on a date set forth in the tax incentive agreement, which shall be no later than five (5) years from the activation date;
- ~~(15)(14)~~ "Department" means the Department of Revenue;
- ~~(16)(15)~~ "Eligible project" means:
- (a) An alternative fuel facility or a gasification facility meeting the investment requirements of KRS 154.27-020;
 - (b) An energy-efficient alternative fuel facility meeting the investment requirements of KRS 154.27-020;~~{~~
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 - (c) A renewable energy facility meeting the investment requirements of KRS 154.27-020; ***or***
 - (d) A carbon dioxide transmission pipeline meeting the investment requirements of Section 3 of this Act;***
- ~~(17)(16)~~ "Energy-efficient alternative fuel facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2010, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2010, and that, after the new construction, retrofit, or upgrade, will produce for sale energy-efficient alternative fuels. For a retrofit of an existing facility, the new modification or addition within the facility shall produce for sale energy-efficient alternative fuels;

- ~~(18)~~~~(17)~~ "Energy-efficient alternative fuels" means homogeneous fuels that:
- (a) Are produced from processes designed to densify feedstock coal, waste coal, or biomass resources; and
 - (b) Have an energy content that is greater than the feedstock coal, waste coal, or biomass resource;
- ~~(19)~~~~(18)~~ "Estimated labor component" means the projected percentage of the total capital investment attributable to labor;
- ~~(20)~~~~(19)~~ (a) "Facility" means a single location within the Commonwealth at which machinery and equipment are used in a manufacturing process that transforms raw materials into a product with commercial value.
1. The facility shall include the physical plant structure where the manufacturing process occurs and machinery and equipment within the physical plant structure.
 2. The facility may include:
 - a. On-site machinery and equipment used exclusively for processing coal or other raw materials for use in the manufacturing process at the facility;
 - b. For an alternative fuel facility or gasification facility, on-site power station operations, if those operations are primarily used to produce electricity for the facility;
 - c. On-site refining operations, if those operations are used exclusively to refine and blend fuels produced by the facility; and
 - d. The in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, if the exclusive purpose of the pipeline is to transport carbon dioxide from the facility to a point of sale, storage, or other carbon management applications.
 - (b) "Facility" shall not include any mining operations, or drilling and production operations for natural gas;
- ~~(21)~~~~(20)~~ "Gasification process" means a process that converts any carbon-containing material into a synthesis gas composed primarily of carbon monoxide and hydrogen;
- ~~(22)~~~~(21)~~ (a) "Gasification facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2007, and that, after the new construction, retrofit, or upgrade, primarily produces for sale:
1. Alternative transportation fuels;
 2. Synthetic natural gas;
 3. Chemicals;
 4. Chemical feedstocks; or
 5. Liquid fuels;
- from coal, waste coal, coal-processing waste, or biomass resources, through a gasification process. For a retrofit of an existing facility, the new modification or addition within the facility shall primarily produce one (1) or more of the products set forth in this paragraph.
- (b) The gasification facility may produce electricity as a by-product if the primary purpose for which the facility is constructed, retrofitted, or upgraded, and the primary function of the facility remains the production and sale of alternative transportation fuels, synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels;
- ~~(23)~~~~(22)~~ "Kentucky gross profits" has the same meaning as in KRS 141.0401;
- ~~(24)~~~~(23)~~ "Kentucky gross receipts" has the same meaning as in KRS 141.0401;
- ~~(25)~~~~(24)~~ "Post-construction incentives" means the incentives available under KRS 154.27-060 and 154.27-080;
- ~~(26)~~~~(25)~~ "Renewable energy facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded after August 30, 2007, and that, after the new construction, retrofit, or upgrade, utilizes:
- (a) Wind power, biomass resources, landfill methane gas, hydropower, or other similar renewable resources to generate electricity in excess of one (1) megawatt for sale to unrelated entities; or

(b) Solar power to generate electricity in excess of fifty (50) kilowatts for sale to unrelated entities.

For a retrofit of an existing facility, the modification or addition shall primarily result in the production of electricity as described in paragraph (a) or (b) of this subsection;

~~(27)(26)~~ "Resident" has the same meaning as in KRS 141.010;

~~(28)(27)~~ "Retrofit" means a modification or addition to an existing facility that results in the production of a new and different product or uses a new or different process to produce the same product at the facility. Modifications or additions to a facility that maintain, restore, mend, or repair a facility shall not be considered a retrofit of the facility, and shall not be considered part of the capital investment if undertaken at the same time as a retrofit;

~~(29)(28)~~ "Synthetic natural gas" has the same meaning as in KRS 152.715;

~~(30)(29)~~ "Tax incentive agreement" means an agreement entered into in accordance with KRS 154.27-040;

~~(31)(30)~~ "Termination date" means a date established by the tax incentive agreement that is no more than twenty-five (25) years from the activation date; and

~~(32)(31)~~ "Upgrade" means an investment in an existing facility that results in an increase in the productivity of the facility. Increased productivity shall be measured in relation to the type of products that are required to be produced by that facility to be an eligible project.

➔Section 3. KRS 154.27-020 is amended to read as follows:

- (1) This subchapter shall be known as the "Incentives for Energy Independence Act."
- (2) The General Assembly hereby finds and declares that it is in the best interest of the Commonwealth to induce the location of innovative energy-related businesses in the Commonwealth in order to advance the public purposes of achieving energy independence, creating new jobs and new investment, and creating new sources of tax revenues that but for the inducements to be offered by the authority to approved companies would not exist.
- (3) The purpose of this subchapter is to assist the Commonwealth in moving to the forefront of national efforts to achieve energy independence by reducing the Commonwealth's reliance on imported energy resources. The provisions of this subchapter seek to accomplish this purpose by providing incentives for companies that, in a carbon capture ready manner, construct, retrofit, or upgrade facilities for the purpose of:
 - (a) Increasing the production and sale of alternative transportation fuels;
 - (b) Increasing the production and sale of synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels, from coal, biomass resources, or waste coal through a gasification process;
 - (c) Increasing the production and sale of energy-efficient alternative fuels; or
 - (d) Generating electricity for sale through alternative methods such as solar power, wind power, biomass resources, landfill methane gas, hydropower, or other similar renewable resources.
- (4) To qualify for the incentives provided in this subchapter, the following requirements shall be met:
 - (a) For an alternative fuel facility or gasification facility that uses oil shale, tar sands, or coal as the primary feedstock, the minimum capital investment shall be one hundred million dollars (\$100,000,000);
 - (b) For an alternative fuel facility or gasification facility that uses biomass resources as the primary feedstock, the minimum capital investment shall be twenty-five million dollars (\$25,000,000);
 - (c) For an energy-efficient alternative fuel facility, the minimum capital investment shall be twenty-five million dollars (\$25,000,000);
 - (d) For an alternative fuel facility located in Kentucky that is newly constructed on or after August 1, 2010, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 1, 2010, and that, after the new construction, retrofit, or upgrade, primarily produces for sale alternative transportation fuels using natural gas or natural gas liquids as the primary feedstock, the minimum capital investment shall be one million dollars (\$1,000,000); provided that the authority may approve a maximum of five (5) projects that meet the requirements of this paragraph;~~and~~
 - (e) For a renewable energy facility, the minimum capital investment shall be one million dollars (\$1,000,000); **and**

- (f) *For a carbon dioxide transmission pipeline, the minimum capital investment shall be fifty million dollars (\$50,000,000).*
- (5) The incentives under the Incentives for Energy Independence Act are as follows:
- (a) An advance disbursement of post-construction incentives for which an approved company has been approved, the maximum amount of which is based upon the estimated labor component of the total capital investment of the eligible project, and the utilization of Kentucky residents during the construction period as set forth in KRS 154.27-090;
 - (b) Sales and use tax incentives of up to one hundred percent (100%) of the taxes paid on purchases of tangible personal property made to construct, retrofit, or upgrade an eligible project, as set forth in KRS 139.517 and 154.27-070;
 - (c) Up to eighty percent (80%) of the severance taxes paid on the purchase or severance of:
 1. Coal that is subject to the tax imposed under KRS 143.020 and that is specifically used by an alternative fuel facility, energy-efficient alternative fuel facility, or a gasification facility as feedstock for an eligible project, as set forth in KRS 143.024 and 154.27-060; or
 2. Natural gas or natural gas liquids that are subject to the tax imposed under KRS 143A.020 and that are specifically used in an alternative fuel facility described in subsection (4)(d) of this section as feedstock for an eligible project, as set forth in KRS 143A.025 and 154.27-060;
 - (d) Up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.040 or 141.020, and the limited liability entity tax imposed under KRS 141.0401 on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the eligible project, as set forth in KRS 141.421 and 154.27-080; and
 - (e) Authorization for the approved company to impose a wage assessment of up to four percent (4%) of the gross wages of each employee subject to the Kentucky income tax:
 1. Whose job was created as a result of the eligible project;
 2. Who is employed by the approved company to work at the facility; and
 3. Who is on the payroll of the approved company or an affiliate of the approved company;
 as set forth in KRS 154.27-080.
- (6) The maximum recovery from all incentives approved under this subchapter for an eligible project shall not exceed fifty percent (50%) of the capital investment in the eligible project.
- (7) The incentives available to an approved company shall be negotiated with and approved by the authority.
- (8) If a newly constructed facility that qualifies for incentives under this subchapter is later upgraded or retrofitted in a manner that would qualify for incentives under this subchapter, the retrofit or upgrade shall be a separate eligible project, and the minimum investment requirements and carbon capture readiness requirements, if required, shall be met for the retrofit or upgrade to qualify for incentives under this subchapter.
- (9) The General Assembly finds that the authorities granted by this subchapter are proper governmental and public purposes for which public moneys may be expended.
- ➔Section 4. KRS 278.495 is amended to read as follows:
- (1) As used in this section:~~[]~~
- (a) *"Carbon dioxide transmission pipeline" means the in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, that is used exclusively for the purpose of transporting carbon dioxide to a point of sale, storage, or other carbon management applications; and*
 - (b) "Master meter system" means a pipeline system for distributing gas within a definable area, such as, but not limited to, a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer, who either purchases the gas directly through a meter or by other means, such as through rents.

- (2) Notwithstanding any other provision of law, the commission shall have the authority to regulate the safety of natural gas facilities which are:
- (a) Owned or operated by any public utility, county, or city, and used to distribute natural gas at retail; or
 - (b) Comprising a master meter system.

The commission may exercise this authority in conjunction with, and pursuant to, its authority to enforce any minimum safety standard adopted by the United States Department of Transportation pursuant to 49 U.S.C. sec. 60101 et seq., or any amendments thereto, and may promulgate administrative regulations consistent with federal pipeline safety laws in accordance with provisions of KRS Chapter 13A as are necessary to promote pipeline safety in the Commonwealth. In exercising this authority, however, the commission shall consider the impact of any action it takes on small businesses engaged in the installation and servicing of gas lines, master meter systems, or related equipment and shall act so as to ~~ensure~~~~assure~~ that no unfair competitive advantage is given to utilities over such small businesses.

➔Section 5. KRS 278.700 is amended to read as follows:

As used in KRS 278.700 to 278.716, unless the context requires otherwise:

- (1) "Board" means the Kentucky State Board on Electric Generation and Transmission Siting created in KRS 278.702;
- (2) "Merchant electric generating facility" means, except for a qualifying facility as defined in subsection (7) of this section, an electricity generating plant, together with associated facilities, that:
 - (a) Is capable of operating at a capacity of ten megawatts (10MW) or more; and
 - (b) Sells the electricity it produces in the wholesale market, at rates and charges not regulated by the Public Service Commission;
- (3) "Person" means any individual, corporation, public corporation, political subdivision, governmental agency, municipality, partnership, cooperative association, trust, estate, two (2) or more persons having a joint or common interest, or any other entity, and no portion of KRS 224.10-280, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 shall apply to a utility owned by a municipality unless the utility is a merchant plant as defined in this section;
- (4) "Commence to construct" means physical on-site placement, assembly, or installation of materials or equipment which will make up part of the ultimate structure of the facility. In order to qualify, these activities must take place at the site of the proposed facility or must be site-specific. Activities such as site clearing and excavation work will not satisfy the commence to construct requirements;
- (5) "Nonregulated electric transmission line" means an electric transmission line and related appurtenances for which no certificate of public convenience and necessity is required; which is not operated as an activity regulated by the Public Service Commission; and which is capable of operating at or above sixty-nine thousand (69,000) volts;
- (6) "Residential neighborhood" means a populated area of five (5) or more acres containing at least one (1) residential structure per acre;~~and~~
- (7) "Qualifying facility" means a cogeneration facility as defined in 16 U.S.C. sec. 796(18)(b) which does not exceed a capacity of one hundred fifty megawatts (150MW) that is located on site at a manufacturer's plant and that uses steam from the cogeneration facility in its manufacturing process, or an industrial energy facility as defined in KRS 224.01-010 that does not generate more than one hundred fifty megawatts (150MW) for sale and has received all local planning and zoning approvals; **and**
- (8) ***"Carbon dioxide transmission pipeline" means the in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, that is used exclusively for the purpose of transporting carbon dioxide to a point of sale, storage, or other carbon management applications.***

➔Section 6. KRS 278.714 is amended to read as follows:

- (1) No person shall commence to construct a nonregulated electric transmission line ***or a carbon dioxide transmission pipeline*** without a construction certificate issued by the board. An application for a construction certificate shall be filed at the offices of the Public Service Commission along with an application fee as set forth in subsection (5) of this section. ***The board may hire a consultant to review the transmission line or carbon dioxide pipeline and provide recommendations concerning the adequacy of the application and***

proposed mitigation measures. The board may direct the consultant to prepare a report recommending changes in the route of the carbon dioxide pipeline or the route of the electric transmission line. Any consultant expenses or fees shall be borne by the applicant.

- (2) A completed application shall include the following:
- (a) The name, address, and telephone number of the person proposing construction of the nonregulated *electric* transmission line *or the carbon dioxide transmission pipeline*;
 - (b) A full description of the proposed route of the *electric* transmission line *or the carbon dioxide transmission pipeline* and its appurtenances. The description shall include a map or maps showing:
 1. The location of the proposed line *or pipeline* and all proposed structures that will support it;
 2. The proposed right-of-way limits;
 3. Existing property lines and the names of persons who own the property over which the line *or pipeline* will cross; and
 4.
 - a. The distance of the proposed *electric transmission* line from residential neighborhoods, schools, and public and private parks within one (1) mile of the proposed facilities; *or*
 - b. *The distance of the proposed carbon dioxide transmission pipeline from residential neighborhoods, schools, and parks, either private or public within one thousand (1,000) feet of the proposed facilities;*
 - (c) *With respect to electric transmission lines*, a full description of the proposed line and appurtenances, including the following:
 1. Initial and design voltages and capacities;
 2. Length of line;
 3. Terminal points; and
 4. Substation connections;
 - (d) A statement that the proposed *electric* transmission line and appurtenances will be constructed and maintained in accordance with accepted engineering practices and the National Electric Safety Code;
 - (e) *With respect to both electric transmission lines and carbon dioxide transmission pipelines*, evidence that public notice has been given by publication in a newspaper of general circulation in the general area concerned. Public notice shall include the location of the proposed *electric transmission* line *or carbon dioxide pipeline*, shall state that the proposed line *or pipeline* is subject to approval by the board, and shall provide the telephone number and address of the Public Service Commission; and
 - (f) Proof of service of a copy of the application upon the chief executive officer of each county and municipal corporation in which the proposed *electric transmission* line *or carbon dioxide transmission pipeline* is to be located, and upon the chief officer of each public agency charged with the duty of planning land use in the general area in which the line *or pipeline* is proposed to be located.
- (3) *With respect to electric transmission lines*, within ninety (90) days of receipt of the application, or one hundred twenty (120) days if a local public hearing is held, the board shall, by majority vote, grant or deny the construction certificate either in whole or in part. Action to grant the certificate shall be based on the board's determination that the proposed route of the line will minimize significant adverse impact on the scenic assets of Kentucky and that the applicant will construct and maintain the line according to all applicable legal requirements. In addition, the board may consider the interstate benefits expected to be achieved by the proposed construction or modification of electric transmission facilities in the Commonwealth. If the board determines that locating the transmission line will result in significant degradation of scenic factors or if the board determines that the construction and maintenance of the line will be in violation of applicable legal requirements, the board may deny the application or condition the application's approval upon relocation of the route of the line, or changes in design or configuration of the line.
- (4) A public hearing on an application to construct a nonregulated electric transmission line may be held in accordance with the provisions of KRS 278.712.
- (5) *The board shall convene a local public information meeting upon receipt of a request by not less than three (3) interested persons that reside in the county or counties in which the carbon dioxide pipeline is proposed*

to be constructed. If the board convenes the local public information meeting, the meeting will be in the county seat of one (1) of the counties, as determined by the board, in which the proposed carbon dioxide pipeline will be located. The meeting shall provide an opportunity for members of the public to be briefed and ask the party proposing the carbon dioxide pipeline questions about the pipeline.

- (6) *Pursuant to KRS 278.706(3) and (5), the board shall promulgate administrative regulations to establish an application fee for a construction certificate for:*
- (a) *A nonregulated transmission line~~[in accordance with KRS 278.706(3)]; and~~*
 - (b) *A carbon dioxide transmission pipeline.*
- (7) *With respect to carbon dioxide transmission lines, within ninety (90) days of receipt of the application or one hundred twenty (120) days if a local public information meeting is held, the board shall, by majority vote, grant or deny the construction certificate either in whole or in part. Action to grant the certificate shall be based on the board's determination that the proposed route of the pipeline will minimize significant adverse impact on the scenic assets of Kentucky and that the applicant will construct and maintain the line according to all applicable legal requirements. In addition, the board may consider the interstate benefits expected to be achieved by the proposed carbon dioxide transmission pipeline in the Commonwealth. If the board determines that locating the transmission line will result in significant degradation of scenic factors or if the board determines that locating the carbon dioxide transmission line will be in violation of applicable legal requirements, the board may deny the application or condition the application's approval upon relocation of the route of the pipeline.*

Signed by Governor March 17, 2011.