

CHAPTER 78

(HB 66)

AN ACT relating to coal mine reclamation, making an appropriation therefor, and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 8 of this Act, unless the context otherwise requires:

- (1) *"Actuarial soundness" means the fund has achieved financial positioning such that the collected revenues, including bond forfeiture amounts, and earned investment income in aggregate are sufficient to build reserves that can be reasonably anticipated to provide for the long-term future expected reclamation losses, including shock or catastrophic losses, loss adjustment expenses, and administrative expenses associated with the fund's operation;*
- (2) *"Date of establishment of the fund" means July 1, 2013;*
- (3) *"Kentucky reclamation guaranty fund" or "the fund" means the fund established in Section 2 of this Act;*
- (4) *"Reclamation Guaranty Fund Commission" or "commission" means the commission established in Section 3 of this Act; and*
- (5) *"Voluntary bond pool fund" means that bond pool fund established in KRS 350.700 to 350.755, which are repealed by Section 12 of this Act.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby established a revolving fund to be known as the "Kentucky reclamation guaranty fund" which shall be administratively assigned to the cabinet and which shall be administered in accordance with the terms of Sections 1 to 8 of this Act.*
- (2) *The fund shall consist of all moneys collected pursuant to Sections 6 and 7 of this Act.*
- (3) *Moneys collected pursuant to subsection (2) of this section shall not be utilized for the reclamation of permits forfeited prior to January 1, 2014, except for obligations as may arise from the forfeiture of bonds prior to that date secured by the voluntary bond pool.*
- (4) *Moneys in the fund shall be held in an interest-bearing account and shall be used as follows and for no other purposes:*
 - (a) *To reclaim, in the event of forfeiture, permit areas or increments thereof, covered by the fund;*
 - (b) *To compensate the cabinet for costs of administering the fund;*
 - (c) *To fund audits and actuarial studies required under the provisions of Section 4 of this Act; and*
 - (d) *To cover all operating expenses and any necessary legal expenses of the Reclamation Guaranty Fund Commission.*
- (5) *Moneys in the fund shall not be utilized for long-term treatment of substandard water discharges and subsidence.*
- (6) *Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of a fiscal year shall not lapse, but shall be carried forward into the succeeding fiscal year for use as provided in this section.*
- (7) *The fund shall be exempt from the requirements applicable to insurers under KRS Chapter 304.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby created the Reclamation Guaranty Fund Commission which shall be administratively attached to the cabinet. The commission shall consist of seven (7) members. One (1) member shall be the secretary of the Energy and Environment Cabinet, or his or her designee, who shall serve as chair of the commission. The other six (6) members of the commission shall be appointed by the Governor on July 1, 2013, as follows:*
 - (a) *Three (3) members of the commission shall be representatives of the coal mining industry, with the following qualifications:*

1. *A representative of a permittee which participates in the fund and has mined and sold less than one million (1,000,000) tons of coal during the twelve (12) months preceding appointment;*
 2. *A representative of a permittee which participates in the fund and has mined and sold over one million (1,000,000) tons but less than five million (5,000,000) tons of coal during the twelve (12) months preceding appointment;*
 3. *A representative of a permittee which participates in the fund and has mined and sold more than five million (5,000,000) tons of coal during the twelve (12) months preceding appointment; or*
 4. *If no permittee which participates in the fund has mined and sold more than five million (5,000,000) tons of coal in the twelve (12) months preceding appointment, the member shall be selected from permittees which meet the criteria for appointment set out in subparagraph 2. of this paragraph; and*
- (b) *Two (2) members of the commission shall be representatives with a background in the insurance and banking industries with knowledge of the coal industry and chosen from a list of six (6) nominees submitted by the chairman of the fund and the remaining members of the commission; and*
 - (c) *One (1) member shall be a certified public accountant, who is not associated with, or has a financial interest in, coal mining operations in the Commonwealth of Kentucky.*
- (2) (a) *The Governor shall initially appoint the other six (6) members as follows and whose terms shall commence with the beginning date of the establishment of the fund:*
 1. *Two (2) members for a term of two (2) years;*
 2. *Two (2) members for a term of three (3) years; and*
 3. *Two (2) members for a term of four (4) years.*
 - (b) *Subsequent appointments shall be made by the Governor for terms of four (4) years. Members may serve successive terms if reappointed, not to exceed two (2) full consecutive terms. Any vacancy in an unexpired term shall be filled for the unexpired portion of the term by the Governor.*
 - (c) *A member of the commission shall be elected at the first meeting of each fiscal year by majority vote of the other members to serve as vice chair of the commission whose term shall be for one (1) year.*
- (3) *The commission shall adopt bylaws by which it shall establish procedures for conduct of meetings.*
 - (4) *The official domicile of the commission shall be Franklin County. All actions of the commission shall be considered to occur in Franklin County.*
 - (5) *The commission shall meet no less than once a month with the first meeting to be held on or before July 1, 2013, during the first year. Commencing with the second year, the commission shall meet no less than once every three (3) months. Four (4) members of the commission shall constitute a quorum at any meeting.*
 - (6) *Each commission member, except the cabinet representative, shall receive one hundred fifty dollars (\$150) per diem for each meeting attended. Members of the commission also shall be reimbursed for actual and necessary expenses directly related to meetings of the commission.*
 - (7) *If a member of the commission fails to attend four (4) consecutive meetings, the position shall be considered to be vacated, and the Governor, after receiving notice of the vacancy from the commission, shall immediately appoint a qualified person to serve the remainder of the term.*
 - (8) *Any member of the commission having any direct or indirect financial interest or any other conflict of interest with respect to an assignment of classification pursuant to Section 7 of this Act, sanctions for non-payment of fees established in Sections 6 and 7 of this Act, or assessment of the fee pursuant to Section 7 of this Act, shall not participate in any discussion or vote pertaining to specific mining operations for which the member is an owner or employee.*
 - (9) *Misuse of the office by a member of the board to obtain personal, pecuniary, or material gain or advantage for himself or a company in his dominion or control shall be automatic grounds for removal by the Governor.*

- (10) *Members of the commission, its agents, and employees shall be immune from suit in any action, civil or criminal, which is based upon any official act or acts performed by them in good faith.*
- (11) *Members of the commission, its agents, and employees shall be subject to the terms and provisions of the Executive Branch Code of Ethics, as set forth in KRS Chapter 11A.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

The commission shall be attached to the cabinet for administrative purposes and staffed by the Office of the Reclamation Guaranty Fund established pursuant to Section 5 of this Act. The commission shall:

- (1) *Review, recommend, and promulgate administrative regulations, pursuant to KRS Chapter 13A, which are necessary to:*
- (a) *Monitor and maintain the fund;*
 - (b) *Establish a structure for the administration of processing claims and making payments;*
 - (c) *Establish mechanisms for review of the viability of the fund and criteria for determining when a recommendation shall be made to the secretary of the cabinet to close the fund for failure to maintain actuarial soundness;*
 - (d) *Set the schedule of penalties consistent with this chapter associated with late payment, failure to pay, and defrauding the commission through the submission of fraudulent information or withholding requested documentation;*
 - (e) *Review, in accordance with the applicable administrative regulations of the cabinet and Sections 6 and 7 of this Act, all assignments of permittee classification of mine type and assessment of established fees; and*
 - (f) *Establish a structure for the payment of the assessments required in subsection (2)(b) of Section 6 and Section 7 of this Act;*
- (2) *Notify permittees of suspension or reinstatement of the fees required by subsection (2) of Section 7 of this Act;*
- (3) *Employ, in accordance with KRS 45A.690 to 45A.725, a certified public accountant in good standing to perform an annual audit of the fund for the first five (5) years of the operations of the fund. Thereafter, the commission shall have audits performed every two (2) years or more frequently as determined necessary by the commission. Audit results shall be reported to the commission and to the Governor;*
- (4) *Employ, in accordance with KRS 45A.690 to 45A.725, a qualified actuary to perform an actuarial study annually for the first three (3) years of the operation of the fund. Thereafter, the commission shall have actuarial studies performed every two (2) years or more frequently as determined necessary by the commission. Results of these studies shall be reported to the commission and to the Governor.*
- (5) *Perform all functions necessary and authorize expenditures from the fund necessary to carry out the provisions of law and the administrative regulations of the commission;*
- (6) *Report to the Governor and the Interim Joint Committee on Natural Resources and Environment no later than December 31 of each year as to the financial status of the reclamation guaranty fund;*
- (7) *Conduct investigations and issue subpoenas on behalf of the commission to verify reporting, payment, and other activities of permittees related to the fund. All documents produced in response to investigations and subpoenas by the commission shall remain confidential and not subject to the provisions of KRS 61.870 through 61.882; and*
- (8) *Bring an action in Franklin Circuit Court against any permittee for the recovery of funds spent by the commission by reason of forfeiture of that permittee. The commission may utilize the legal department of the cabinet for this purpose.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

- (1) *The Governor shall establish an Office of the Reclamation Guaranty Fund and appoint an executive director to manage its affairs. The executive director shall serve at the pleasure of the Governor and have all the authority to hire staff, contract for necessary services, and implement the collection of fees and assessments set forth by the commission.*
- (2) *The executive director shall be responsible for:*

- (a) *Collecting and depositing into the fund all fees submitted by permittees;*
- (b) *Assessing permit eligibility of permittees for late payment or nonpayment of fees, in accordance with Sections 6 and 7 of this Act;*
- (c) *Compiling information about permittees for use by the commission in assigning or revising classifications and fees;*
- (d) *Paying moneys out of the fund as authorized by the commission;*
- (e) *At each meeting of the commission, reporting to the same, the status of the fund and activities of the fund's executive director; and*
- (f) *Performing other administrative functions as are necessary to carry out the purposes of Sections 1 to 8 of this Act.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

- (1) *Any permittee of a surface coal mining operation, as defined in KRS 350.010(1), located in Kentucky who meets the criteria set forth in this section and in administrative regulations promulgated by the cabinet, shall be a mandatory participant in the fund, except as provided in subsection (5) of this section.*
- (2) *The initial capitalization of the fund shall be accomplished in the following manner:*
 - (a) *Transfer of the assets and liabilities of the voluntary bond pool fund to the Kentucky reclamation guaranty fund upon the effective date of this Act; and*
 - (b) *On the date of the establishment of the fund, each entity holding a permit subject to subsection (1) of this section shall be liable to the fund for the following one (1) time assessments, which shall be payable to the fund within thirty (30) days' notice of the amounts thereof:*
 - 1. *A start-up assessment of one thousand five hundred dollars (\$1,500); and*
 - 2. *An assessment of ten dollars (\$10) per active permitted acre.*
- (3) *Members of the former voluntary bond pool as established prior to the effective date of this Act, shall be exempt from the requirements of subsection (2)(b) and (4) of this section.*
- (4) *Entities entering the fund after the date of the establishment of the fund shall pay a one (1) time assessment of ten thousand dollars (\$10,000) to the fund. The cabinet shall not issue a permit to the entity until the one (1) time assessment is paid.*
- (5) *Member entities shall be given the option to provide full-cost bonds based on a reclamation cost estimate that reflects reclamation costs to the cabinet and certified by a registered professional engineer in lieu of participation in the fund. The estimate's calculations shall be equivalent to those set forth in the United States Office of Surface Mining Reclamation and Enforcement's Handbook for the Calculation of Reclamation Bond Amounts, OSM Directive TSR-1, and calculated on forms developed by the cabinet. If an applicant opts out and elects to provide a full cost bond, the applicant shall not be subject to any fees or to any provisions of Sections 1 to 8 of this Act.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

- (1) *In addition to the provisions of Sections 1 to 8 of this Act, each permittee shall submit a permit-specific bond, in accordance with KRS 350.060(11) and all administrative regulations promulgated thereunder.*
- (2) *Each permittee subject to subsection (1) of Section 6 of this Act shall pay to the fund a fee for each ton of coal mined and sold by surface and underground coal mining operations from each permit area. For the purposes of assessing tonnage fees, all permits subject to eligibility for expenditures from the fund shall be assigned to one (1) of the following classifications:*
 - (a) *Surface coal mining operations, including auger and highwall mining, for which an initial rate of seven and fifty-seven hundredths cents (\$0.0757) per ton of coal shall be paid to the fund;*
 - (b) *Underground coal mining operations, for which an initial rate of three and fifty-seven hundredths cents (\$0.0357) per ton of coal shall be paid to the fund;*
 - (c) *Permits that consist of combined surface and underground mining operations shall pay a fee in accordance with the predominant method of coal extraction;*

- (d) *All permits previously subject to the voluntary bond pool fund at the time of its repeal by Section 12 of this Act shall:*
1. *Be excluded from the start-up fee established in Section 6 of this Act;*
 2. *Pay the tonnage fees set forth in subsection (2)(a) and (b) of Section 7 of this Act to the fund in lieu of tonnage fees otherwise due under KRS 350.725(2);*
 3. *The fund shall continue to provide coverage for existing bonds previously issued for them by the voluntary bond pool; and*
 4. *Continue to receive subsidization of the reclamation bonding authorized under Sections 1 to 8 of this Act and the administrative regulations adopted pursuant thereto;*
- (e) *Permits which are used exclusively for coal preparation and processing operations, loading activities, disposal of refuse operations, coal haulage and access roads, mine maintenance areas and other support facilities, and other permits not subject to the provisions of subsection (2)(a) and (b) of this section as determined by the commission shall pay an annual fee of ten dollars (\$10) per acre to the fund in equal quarterly installments; and*
- (f) *Any permits, or expired permits, not subject to the fees in subsection (2)(a) to (e) of this section shall pay an annual fee of six dollars (\$6) per surface acre to the fund in equal quarterly installments. The fee shall not apply to permits that:*
1. *Have not been initially disturbed after permit issuance by the permittees;*
 2. *Contain underground acreage only; or*
 3. *Have received an initial bond release in accordance with KRS 350.093(4)(a).*
- (3) (a) *The commission shall include in the fund under the terms set forth in paragraph (2)(d) of this section, future permits obtained by entities that are members of the voluntary bond pool fund at the date of the establishment of the fund, provided the entity and the entity's owners seeking permit coverage have:*
1. *Never committed a violation for mining without having first obtained the required permit under this chapter;*
 2. *Never forfeited a bond or had a permit revoked under this chapter;*
 3. *Never avoided forfeiture of a bond under this chapter because of a surety-performed reclamation work to avoid forfeiture;*
 4. *Never been determined to have demonstrated a pattern of violations pursuant to KRS 350.028(4), 350.130(3), or 350.465(3)(f);*
 5. *Not been issued more than four (4) order for cessation and immediate compliance pursuant to a failure to perform remediation within the time or under the terms specified by the cabinet in a notice of noncompliance and order for remedial measures in the most recent thirty-six (36) months of operation and the order was abated as ordered by the cabinet in a timely manner and was not for a violation of contemporaneous reclamation requirements as prescribed in administrative regulations promulgated by the cabinet and have reached final dispositions;*
 6. *Not committed more than three (3) violations for contemporaneous reclamation requirements as prescribed in administrative regulations promulgated by the cabinet in the most recent thirty-six (36) months of operation and the order was abated as ordered by the cabinet in a timely manner and have reached final disposition, except the commission may for good cause shown and by unanimous vote exclude violations that have been terminated by the cabinet with no civil penalty;*
 7. *Not committed more than eight (8) violations of surface mining permanent program requirements set forth in this chapter or any performance standards for mining established in administrative regulation promulgated by the cabinet pursuant to this chapter and which have reached final disposition on any one (1) permit in any twelve (12) month period of the most recent thirty-six (36) months of operation, except the commission may for good cause shown and by unanimous vote exclude the twelve (12) month period on one (1) permit during which the largest number of violations occurred and may for good cause shown and by unanimous*

vote exclude violations that were timely abated and terminated by the cabinet with no civil penalty; or

8. *Not had civil penalties under this chapter or imposed pursuant to administrative hearing of the cabinet remaining unpaid more than thirty (30) days after they were due and payable, within the most recent thirty-six (36) months of operation.*
 - (b) *The existing members of the voluntary bond pool are deemed to qualify as members thereof under the provisions of this subsection and the provisions of this subsection shall only apply to the existing members of the voluntary bond pool prospectively from the effective date of this Act.*
- (4) *The increase in the total amount of bonds issued to any one (1) member of the voluntary bond pool under subsection (3) of this section shall not exceed twenty-five percent (25%) of the greater of:*
 - (a) *The member's aggregate amount of bonds in force and issued by the voluntary bond pool at the time of the effective date of this Act; or*
 - (b) *The total of that member's aggregate amount of bonds in force and issued by the voluntary bond pool at the time of the effective date of this Act plus fifty-five percent (55%) of that total.*
- (5) *The commission may consider for inclusion in the fund under the terms set forth in paragraph (2)(d) of this section permits obtained by an entity which is not a participant of the fund at the time of the effective date of this Act provided the entity and the entity's owners can meet eligibility standards established in administrative regulations promulgated by the commission.*
- (6) *Any permits accepted into the fund under the terms set forth in subsection (3) of this section shall require payment of a permit-specific penal bond computed as a rate of two thousand dollars (\$2,000) for each acre or fraction of an acre included in the proposed permit area and shall pay the actuarially determined tonnage rates set forth in paragraphs (a) to (c) of subsection (2) of this section.*
- (7) *Changes to the rates set forth in this section and others, including those set out in paragraph (2)(d) of this section, shall be made by the commission through administrative regulation and shall be in an amount sufficient to maintain actuarial soundness of the fund in accordance with the annual actuarial study.*
- (8) *Reporting and payment of fees shall be made in accordance with administrative regulations promulgated by the commission. The commission may request and review documents and reports from the Kentucky Department for Natural Resources and the United States Office of Surface Mining Reclamation and Enforcement to verify production records submitted by permittees.*
- (9) *Upon the receipt of notification from the commission that a permittee is in arrearage in the payment of any fees assessed to a permit, the cabinet shall forthwith suspend the permit. A suspension of a permit under this subsection may be appealed pursuant to the hearing provisions of KRS 350.0301.*
- (10) *A permit suspended by the cabinet under subsection (9) of this section shall have that suspension immediately lifted upon notification by the commission that the arrearage has been paid in full by the permittee.*
- (11) *Penalties collected pursuant to KRS 350.990(1) in excess of eight hundred thousand dollars (\$800,000) in any fiscal year shall be deposited in the following manner:*
 - (a) *Fifty percent (50%) shall be applied to the fund for purposes set forth in this chapter; and*
 - (b) *Fifty percent (50%) shall be applied to the abandoned mine land supplemental fund established in KRS 350.139.*
- (12) *Any person who considers himself or herself to be aggrieved by any determination made by the commission under Sections 1 to 8 of this Act shall have all of the rights and remedies provided in KRS 350.0301.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

- (1) *Bonds for permits covered by the fund forfeited after January 1, 2014, in accordance with KRS 350.130(1) shall be placed in the fund. The commission, its members, and employees shall not be named a party to any forfeiture action.*
- (2) *Whenever the bond for a permit covered by the fund is forfeited by the cabinet, and a cost estimate prepared by the cabinet indicates the forfeited bond is insufficient to reclaim the permit to the requirements of this chapter, the cabinet shall first use any outstanding permit-specific performance bond for reclamation on the forfeited permit. Any additional moneys necessary to reclaim the permit area to the standards of this*

chapter shall be withdrawn from the reclamation guaranty fund upon request by the cabinet to the extent that moneys exist in the fund.

- (3) *Within seven (7) days following receipt of a request for payment of funds by the cabinet, the executive director of the fund shall pay to the cabinet the sum requested not to exceed the estimated reclamation cost subject to the limitations set forth in subsection (2) of this section.*

➔Section 9. 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 and Public Safety Cabinet:
 - (a) Department of Kentucky State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Office of Drug Control Policy.
 - (g) Office of Legal Services.
 - (h) Office of the Kentucky State Medical Examiner.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Office of Legislative and Intergovernmental Services.

- (l) Office of Management and Administrative Services.
- (m) Office of Investigations.
- (n) Department for Public Advocacy.
- 2. Education and Workforce Development Cabinet:
 - (a) Office of the Secretary.
 - 1. Governor's Scholars Program.
 - (b) Office of Legal and Legislative Services.
 - 1. Client Assistance Program.
 - (c) Office of Communication.
 - (d) Office of Budget and Administration.
 - 1. Division of Human Resources.
 - 2. Division of Administrative Services.
 - 3. Division of Technology Services.
 - (e) Office of Educational Programs.
 - (f) Board of Directors for the Center for School Safety.
 - (g) Council on Postsecondary Education.
 - 1. Foundation for Adult Education.
 - (h) Department of Education.
 - 1. Kentucky Board of Education.
 - (i) Department for Libraries and Archives.
 - (j) Department of Workforce Investment.
 - 1. Office for the Blind.
 - 2. Office of Vocational Rehabilitation.
 - 3. Office of Career and Technical Education.
 - 4. Office of Employment and Training.
 - (k) Foundation for Workforce Development.
 - (l) Kentucky Office for the Blind State Rehabilitation Council.
 - (m) Kentucky Technical Education Personnel Board.
 - (n) Kentucky Workforce Investment Board.
 - (o) Statewide Council for Vocational Rehabilitation.
 - (p) Statewide Independent Living Council.
 - (q) Unemployment Insurance Commission.
 - (r) Education Professional Standards Board.
 - 1. Division of Educator Preparation.
 - 2. Division of Certification.
 - 3. Division of Professional Learning and Assessment.
 - 4. Division of Legal Services.
 - (s) Kentucky Commission on the Deaf and Hard of Hearing.
 - (t) Kentucky Educational Television.

- (u) Kentucky Environmental Education Council.
- 3. Energy and Environment Cabinet:
 - (a) Office of the Secretary.
 - 1. Office of Legislative and Intergovernmental Affairs.
 - 2. Office of General Counsel.
 - a. Environmental Protection Legal Division.
 - 3. Office of Administrative Hearings.
 - 4. Mine Safety Review Commission.
 - 5. Kentucky State Nature Preserves Commission.
 - 6. Kentucky Environmental Quality Commission.
 - 7. Kentucky Public Service Commission.
 - (b) Department for Environmental Protection.
 - 1. Office of the Commissioner.
 - 2. Division for Air Quality.
 - 3. Division of Water.
 - 4. Division of Environmental Program Support.
 - 5. Division of Waste Management.
 - 6. Division of Enforcement.
 - 7. Division of Compliance Assistance.
 - (c) Department for Natural Resources.
 - 1. Office of the Commissioner.
 - 2. Division 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.
 - 7. Office of Mine Safety and Licensing.
 - 8. Division of Forestry.
 - 9. Division of Conservation.
 - 10. *Office of the Reclamation Guaranty Fund.***
 - (d) Department for Energy Development and Independence.
 - 1. Division of Efficiency and Conservation.
 - 2. Division of Renewable Energy.
 - 3. Division of Biofuels.
 - 4. Division of Energy Generation Transmission and Distribution.
 - 5. Division of Carbon Management.
 - 6. Division of Fossil Energy Development.
- 4. Public Protection Cabinet.
 - (a) Office of the Secretary.

1. Office of Communications and Public Outreach.
2. Office of Legal Services.
 - a. Insurance Legal Division.
 - b. Charitable Gaming Legal Division.
 - c. Alcoholic Beverage Control Legal Division.
 - d. Housing, Buildings and Construction Legal Division.
 - e. Financial Institutions Legal Division.
- (b) Crime Victims Compensation Board.
- (c) Board of Claims.
- (d) Kentucky Board of Tax Appeals.
- (e) Kentucky Boxing and Wrestling Authority.
- (f) Kentucky Horse Racing Commission.
 1. Division of Licensing.
 2. Division of Incentives and Development.
 3. Division of Veterinary Services.
 4. Division of Security and Enforcement.
- (g) Department of Alcoholic Beverage Control.
 1. Division of Distilled Spirits.
 2. Division of Malt Beverages.
 3. Division of Enforcement.
- (h) Department of Charitable Gaming.
 1. Division of Licensing and Compliance.
 2. Division of Enforcement.
- (i) Department of Financial Institutions.
 1. Division of Depository Institutions.
 2. Division of Non-Depository Institutions.
 3. Division of Securities.
- (j) Department of Housing, Buildings and Construction.
 1. Division of Fire Prevention.
 2. Division of Plumbing.
 3. Division of Heating, Ventilation, and Air Conditioning.
 4. Division of Building Code Enforcement.
- (k) Department of Insurance.
 1. Property and Casualty Division.
 2. Health and Life Division.
 3. Division of Financial Standards and Examination.
 4. Division of Agent Licensing.
 5. Division of Insurance Fraud Investigation.
 6. Consumer Protection Division.

7. Division of Kentucky Access.
- (l) Office of Occupations and Professions.
5. Labor Cabinet.
 - (a) Office of the Secretary.
 1. Division of Management Services.
 2. Office of General Counsel.
 - (b) Office of General Administration and Program Support for Shared Services.
 1. Division of Human Resource Management.
 2. Division of Fiscal Management.
 3. Division of Budgets.
 4. Division of Information Services.
 - (c) Office of Inspector General for Shared Services.
 - (d) Department of Workplace Standards.
 1. Division of Employment Standards, Apprenticeship, and Mediation.
 2. Division of Occupational Safety and Health Compliance.
 3. Division of Occupational Safety and Health Education and Training.
 4. Division of Workers' Compensation Funds.
 - (e) Department of Workers' Claims.
 1. Office of General Counsel for Workers' Claims.
 2. Office of Administrative Law Judges.
 3. Division of Claims Processing.
 4. Division of Security and Compliance.
 5. Division of Information and Research.
 6. Division of Ombudsman and Workers' Compensation Specialist Services.
 7. Workers' Compensation Board.
 8. Workers' Compensation Advisory Council.
 9. Workers' Compensation Nominating Commission.
 - (f) Workers' Compensation Funding Commission.
 - (g) Kentucky Labor-Management Advisory Council.
 - (h) Occupational Safety and Health Standards Board.
 - (i) Prevailing Wage Review Board.
 - (j) Apprenticeship and Training Council.
 - (k) State Labor Relations Board.
 - (l) Employers' Mutual Insurance Authority.
 - (m) Kentucky Occupational Safety and Health Review Commission.
6. Transportation Cabinet:
 - (a) Department of Highways.
 1. Office of Project Development.
 2. Office of Project Delivery and Preservation.

3. Office of Highway Safety.
 4. Highway District Offices One through Twelve.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Aviation.
 - (d) Department of Rural and Municipal Aid.
 1. Office of Local Programs.
 2. Office of Rural and Secondary Roads.
 - (e) Office of the Secretary.
 1. Office of Public Affairs.
 2. Office for Civil Rights and Small Business Development.
 3. Office of Budget and Fiscal Management.
 4. Office of Inspector General.
 - (f) Office of Support Services.
 - (g) Office of Transportation Delivery.
 - (h) Office of Audits.
 - (i) Office of Human Resource Management.
 - (j) Office of Information Technology.
 - (k) Office of Legal Services.
7. Cabinet for Economic Development:
- (a) Office of Administration and Support.
 - (b) Department for New Business Development.
 - (c) Department of Financial Incentives.
 - (d) Department for Existing Business Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
 - (g) Office of Research and Information Technology.
 - (h) Department of Commercialization and Innovation.
 - (i) Office of Legal Services.
 - (j) Commission on Small Business Advocacy.
8. Cabinet for Health and Family Services:
- (a) Office of the Secretary.
 - (b) Office of Health Policy.
 - (c) Office of Legal Services.
 - (d) Office of Inspector General.
 - (e) Office of Communications and Administrative Review.
 - (f) Office of the Ombudsman.
 - (g) Office of Policy and Budget.
 - (h) Office of Human Resource Management.
 - (i) Office of Administrative and Technology Services.

- (j) Department for Public Health.
 - (k) Department for Medicaid Services.
 - (l) Department for Behavioral Health, Developmental and Intellectual Disabilities.
 - (m) Department for Aging and Independent Living.
 - (n) Department for Community Based Services.
 - (o) Department for Income Support.
 - (p) Department for Family Resource Centers and Volunteer Services.
 - (q) Kentucky Commission on Community Volunteerism and Service.
 - (r) Kentucky Commission for Children with Special Health Care Needs.
 - (s) Governor's Office of Electronic Health Information.
9. Finance and Administration Cabinet:
- (a) Office of General Counsel.
 - (b) Office of the Controller.
 - (c) Office of Administrative Services.
 - (d) Office of Public Information.
 - (e) Office of Policy and Audit.
 - (f) Department for Facilities and Support Services.
 - (g) Department of Revenue.
 - (h) Commonwealth Office of Technology.
 - (i) State Property and Buildings Commission.
 - (j) Office of Equal Employment Opportunity and Contract Compliance.
 - (k) Kentucky Employees Retirement Systems.
 - (l) Commonwealth Credit Union.
 - (m) State Investment Commission.
 - (n) Kentucky Housing Corporation.
 - (o) Kentucky Local Correctional Facilities Construction Authority.
 - (p) Kentucky Turnpike Authority.
 - (q) Historic Properties Advisory Commission.
 - (r) Kentucky Tobacco Settlement Trust Corporation.
 - (s) Kentucky Higher Education Assistance Authority.
 - (t) Kentucky River Authority.
 - (u) Kentucky Teachers' Retirement System Board of Trustees.
 - (v) Executive Branch Ethics Commission.
10. Tourism, Arts and Heritage Cabinet:
- (a) Kentucky Department of Travel and Tourism.
 - (1) Division of Tourism Services.
 - (2) Division of Marketing and Administration.
 - (3) Division of Communications and Promotions.
 - (b) Kentucky Department of Parks.

- (1) Division of Information Technology.
 - (2) Division of Human Resources.
 - (3) Division of Financial Operations.
 - (4) Division of Facilities Management.
 - (5) Division of Facilities Maintenance.
 - (6) Division of Customer Services.
 - (7) Division of Recreation.
 - (8) Division of Golf Courses.
 - (9) Division of Food Services.
 - (10) Division of Rangers.
 - (11) Division of Resort Parks.
 - (12) Division of Recreational Parks and Historic Sites.
- (c) Department of Fish and Wildlife Resources.
- (1) Division of Law Enforcement.
 - (2) Division of Administrative Services.
 - (3) Division of Engineering.
 - (4) Division of Fisheries.
 - (5) Division of Information and Education.
 - (6) Division of Wildlife.
 - (7) Division of Public Affairs.
- (d) Kentucky Horse Park.
- (1) Division of Support Services.
 - (2) Division of Buildings and Grounds.
 - (3) Division of Operational Services.
- (e) Kentucky State Fair Board.
- (1) Office of Administrative and Information Technology Services.
 - (2) Office of Human Resources and Access Control.
 - (3) Division of Expositions.
 - (4) Division of Kentucky Exposition Center Operations.
 - (5) Division of Kentucky International Convention Center.
 - (6) Division of Public Relations and Media.
 - (7) Division of Venue Services.
 - (8) Division of Personnel Management and Staff Development.
 - (9) Division of Sales.
 - (10) Division of Security and Traffic Control.
 - (11) Division of Information Technology.
 - (12) Division of the Louisville Arena.
 - (13) Division of Fiscal and Contract Management.
 - (14) Division of Access Control.

- (f) Office of the Secretary.
 - (1) Office of Finance.
 - (2) Office of Research and Administration.
 - (3) Office of Governmental Relations and Tourism Development.
 - (4) Office of the Sports Authority.
 - (5) Kentucky Sports Authority.
 - (g) Office of Legal Affairs.
 - (h) Office of Human Resources.
 - (i) Office of Public Affairs and Constituent Services.
 - (j) Office of Creative Services.
 - (k) Office of Capital Plaza Operations.
 - (l) Office of Arts and Cultural Heritage.
 - (m) Kentucky African-American Heritage Commission.
 - (n) Kentucky Foundation for the Arts.
 - (o) Kentucky Humanities Council.
 - (p) Kentucky Heritage Council.
 - (q) Kentucky Arts Council.
 - (r) Kentucky Historical Society.
 - (1) Division of Museums.
 - (2) Division of Oral History and Educational Outreach.
 - (3) Division of Research and Publications.
 - (4) Division of Administration.
 - (s) Kentucky Center for the Arts.
 - (1) Division of Governor's School for the Arts.
 - (t) Kentucky Artisans Center at Berea.
 - (u) Northern Kentucky Convention Center.
 - (v) Eastern Kentucky Exposition Center.
11. Personnel Cabinet:
- (a) Office of the Secretary.
 - (b) Department of Human Resources Administration.
 - (c) Office of Employee Relations.
 - (d) Kentucky Public Employees Deferred Compensation Authority.
 - (e) Office of Administrative Services.
 - (f) Office of Legal Services.
 - (g) Governmental Services Center.
 - (h) Department of Employee Insurance.
 - (i) Office of Diversity and Equality.
 - (j) Center of Strategic Innovation.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.
2. Department for Local Government.
3. Kentucky Commission on Human Rights.
4. Kentucky Commission on Women.
5. Department of Veterans' Affairs.
6. Kentucky Commission on Military Affairs.
7. Office of Minority Empowerment.
8. Governor's Council on Wellness and Physical Activity.

➔Section 10. KRS 350.595 is amended to read as follows:

- (1) An applicant who desires to remine property which is classified as abandoned mine land under KRS 350.560 may apply to the **Reclamation Guaranty Fund Commission established in Section 3 of this Act**~~[Bond Pool Commission established in KRS 350.705]~~ for inclusion under the Abandoned Mine Land Enhancement Program. The~~[Bond Pool]~~ commission may provide coverage under the bond pool fund **established pursuant to Section 2 of this Act** not to exceed fifty percent (50%) of the bond amount which the cabinet determines under KRS 350.060 is necessary for the abandoned mine land.
- (2) When the bond required for the abandoned mine land under KRS 350.060 is increased or reduced, or is released in whole or in part, the coverage provided by the bond pool shall be proportionately increased or reduced.
- (3) In the event of bond forfeiture on the property, moneys from the bond pool fund shall be used to supplement the forfeited bond~~[as provided in KRS 350.745]~~.

➔Section 11. KRS 350.990 is amended to read as follows:

- (1) Any permittee, person, or operator who violates any of the provisions of this chapter or administrative regulations promulgated pursuant thereto or who fails to perform the duties imposed by these provisions, except the refusal or failure to obtain a permit or other authorization as provided in this chapter, or who violates any determination or order issued pursuant to the provisions of this chapter, may be liable to a civil penalty of not more than five thousand dollars (\$5,000) for the violation, and an additional civil penalty of not more than five thousand dollars (\$5,000) for each day during which the violation continues, and in addition, may be enjoined from continuing the violations provided in this section. Any permittee, operator, or person who fails to abate a violation noted in a notice of noncompliance or an order for immediate compliance and cessation within the time period prescribed for the abatement shall be assessed a civil penalty of not less than seven hundred fifty dollars (\$750) for each day during which the violation continues. Any person issued an order pursuant to KRS 350.130(4) shall be assessed a civil penalty of not more than five thousand dollars (\$5,000) for each violation cited in the underlying notice of noncompliance issued therewith. No separate civil penalty shall be assessed for the order issued pursuant to KRS 350.130(4). Each day of continuing violation may be deemed a separate violation for purposes of penalty assessment. The cabinet shall develop a method for calculating monetary penalties and shall promulgate it as an administrative regulation. The secretary or a designated representative, upon his or her own initiative or upon written request received within fifteen (15) days after the cabinet mails its proposed penalty assessment, may waive the use of the method for calculating monetary penalties if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. The basis for every waiver shall be fully explained and documented in the records of the case. If the secretary or his or her designated representative waives the use of the formula, he or she shall determine the appropriate penalty upon consideration of the permittee's history of previous violations at the particular surface coal mining operation, the seriousness of the violation, whether the permittee was negligent, and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation. The penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the cabinet. The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil and injunctive actions instituted by the cabinet for the enforcement of the provisions of this chapter or the orders and administrative regulations of the cabinet promulgated pursuant thereto. All sums recovered shall be placed in the State Treasury, except those moneys collected in excess of eight hundred thousand dollars (\$800,000) in any fiscal year shall be deposited **fifty percent (50%)** in the **reclamation guaranty**~~[bond pool]~~ fund for purposes set forth in KRS 350.595 and **Sections 1 to 8 of this Act**~~[KRS 350.700 to 350.755 until the fund reaches sixteen million dollars (\$16,000,000) or a higher amount~~

~~as may be established by the most recent actuarial study, after which excess money collected shall be deposited fifty percent (50%) to the bond pool fund} and fifty percent (50%) to the supplemental fund established under KRS 350.139(1), and used for the purposes of that section. {If the bond pool fund falls below sixteen million dollars (\$16,000,000) or a higher amount as may be established by the most recent actuarial study, all excess moneys shall be deposited in the bond pool fund until that fund reaches sixteen million dollars (\$16,000,000) or a higher amount as may be established by the most recent actuarial study.}~~ All moneys previously deposited in the abandoned mine land enhancement fund shall be redeposited in the *reclamation guaranty*~~{bond pool}~~ fund.

- (2) Any person or operator who engages in surface coal mining operations without first securing a permit, as provided in KRS 350.060, or any person who engages in coal exploration operations, exclusive of core drilling, without proper authorization, as required by the cabinet pursuant to KRS 350.057 or administrative regulations promulgated pursuant thereto, or any person or operator who engages in other mining operations, without proper authorization as required by this chapter or administrative regulations promulgated pursuant thereto, shall be liable to a civil penalty for damages to the Commonwealth of not less than five thousand dollars (\$5,000) nor more than twenty-five thousand dollars (\$25,000) and in addition, may be enjoined from continuing the violations. Each day shall constitute a separate violation. In addition to the foregoing penalties, any permittee, person, or operator who fails to abate a violation of KRS 350.060 or KRS 350.029 or KRS 350.057, as noted in a notice of noncompliance or an order for immediate compliance and cessation within the time period prescribed for the abatement, shall be assessed an additional civil penalty of not less than seven hundred fifty dollars (\$750) for each day during which the violation continues. However, the penalties provided in subsection (1) of this section shall apply in lieu of the penalties provided in this subsection where an operator or permittee through inadvertence has exceeded the boundaries or expiration date of the permit in effect at that time.
- (3) The cabinet shall bring an action for the recovery of penalties and bring an action for a restraining order, temporary or permanent injunction, against any permittee, operator, or person violating or threatening to violate any of the provisions of this chapter or violating or threatening to violate any order or determination issued pursuant to the provisions of this chapter. The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil and injunctive actions instituted by the cabinet for the enforcement of the provisions of this chapter or the orders and administrative regulations of the cabinet promulgated pursuant thereto.
- (4) Any permittee, operator, or person who knowingly and willfully violates any of the provisions of this chapter, except as provided in subsection (5) of this section, or any determination or order issued pursuant to the sections of this chapter which have become final, shall be guilty of a Class A misdemeanor. Each day on which the violation occurs may constitute a separate offense.
- (5)
 - (a) Any person or operator who, in violation of KRS 350.060(1)(a) willfully and knowingly engages in surface coal mining operations without first obtaining a permit from the cabinet, or any person or operator who willfully and knowingly engages in coal exploration operations, exclusive of core drilling, without proper authorization, as required by the cabinet pursuant to KRS 350.057 or administrative regulations promulgated pursuant thereto, or any person or operator who willfully and knowingly engages in other mining operations without proper authorization as required by this chapter or administrative regulations promulgated pursuant thereto, with the intent to violate the laws, shall be guilty of a Class D felony.
 - (b) Any person or operator who in violation of KRS 350.060(1)(b) willfully and knowingly receives, transports, sells, conveys, transfers, trades, exchanges, donates, purchases, delivers, or in any way derives benefit from coal removed from any surface mining operations conducted in violation of KRS 350.060(1)(a) or 350.057 shall be guilty of a Class D felony.
- (6) Any person who violates any of the provisions of KRS 350.600 or administrative regulations promulgated pursuant thereto shall be subject to civil penalties of not more than twenty-five thousand dollars (\$25,000). Each day of continuing violation shall be deemed a separate violation.
- (7) Any permittee, operator, or person who knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained by the cabinet, shall upon conviction be guilty of a Class A misdemeanor.
- (8) Except as permitted by law, any permittee, operator, or person who willfully and knowingly resists, prevents, impedes, or interferes with the secretary or other personnel of the cabinet in the performance of duties pursuant to this chapter shall be guilty of a Class A misdemeanor.

- (9) When a corporate permittee violates any provision of this chapter or administrative regulation promulgated pursuant thereto or fails or refuses to comply with any final order issued by the secretary, any director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment as may be imposed upon a person pursuant to this section.
- (10) Upon notice by the secretary that any surety has failed to comply with the provisions of KRS 350.032(3), the commissioner of the Kentucky Department of Insurance shall revoke the surety's certificate of authority to conduct insurance business within the Commonwealth of Kentucky.
- (11) The cabinet, upon written request by any permittee, person, or operator subject to any penalty assessment under this section and pursuant to procedures, if any, set forth by administrative regulation and after consultation with the local county fiscal court, may allow as an alternative to the payment of any assessed penalty under this section the performance of in-kind reclamation, environmental rehabilitation, or similar action to correct environmental pollution. The in-kind work shall not substitute for those remedial measures mandated by the cabinet for the correction of any violations. The estimated cost of the in-kind work shall be greater than the penalty assessment. The cabinet's Division of Abandoned Mine Lands shall have the authority to approve proposed in-kind projects and to recommend projects to the cabinet, and shall determine whether the estimated cost of the in-kind work exceeds the penalty assessment. For the purposes of this subsection, the cost of the in-kind work shall include only those expenditures for actual on-site reclamation or rehabilitation work, including direct equipment, personnel, and material cost, but excluding administrative overhead or transportation costs. Failure to perform the in-kind work as agreed upon by the person or operator subject to the penalty assessment shall reinstate the liability of the person, permittee, or operator for the full amount of the assessed penalty. The cabinet may prepare and promulgate administrative regulations as are necessary to implement and administer the provisions of this subsection.

➔Section 12. The following KRS sections are repealed:

- 350.700 Bond pool fund established.
- 350.705 Bond Pool Commission.
- 350.710 Powers of commission.
- 350.720 Bond pool -- Criteria -- Compliance records.
- 350.725 Membership fee -- Tonnage fee.
- 350.730 Tonnage fee suspension or reinstatement.
- 350.735 Permit-specific penal bond.
- 350.740 Permit issuance.
- 350.745 Payments from fund for reclamation.
- 350.750 Revocation of membership in bond pool.
- 350.755 Grounds for refusal of permit.

➔Section 13. Upon the effective date of this Act, the assets and liabilities of the voluntary bond pool established pursuant to KRS 350.700 to KRS 350.755, and repealed by this Act, shall be immediately transferred to the Kentucky Reclamation Guaranty Fund. Any records, files, and documents associated with the activities of the voluntary bond pool shall be transferred to the Office of the Reclamation Guaranty Fund. The affairs of the voluntary bond pool shall be wound up, and the cabinet shall have disposition over placement or transfer of any personnel of the voluntary bond pool. Nothing contained in Sections 1 to 8 of this Act shall impair any existing contract.

➔Section 14. Whereas the implementation of the Kentucky Reclamation Guaranty Fund is essential in Kentucky rectifying inadequacies in the Commonwealth's performance bonding program identified as in noncompliance by the federal Office of Surface Mining, Reclamation and Enforcement, an emergency is declared to exist, and the provisions of this Act shall take effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Signed by Governor March 22, 2013.