

CHAPTER 50

(SB 124)

AN ACT relating to conservation.

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

➔Section 1. KRS 224.10-022 is amended to read as follows:

There is established in the Office of the Secretary an Office of Administrative Hearings, an Office of Communication, and an Office of Legislative and Intergovernmental Affairs. Each of these offices shall be headed by an executive director appointed by the secretary with the approval of the Governor as required by KRS 12.050. There is also established in the Office of the Secretary an Office of Legal Services, headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050 and 12.210. 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. There is established in the Office of Legal Services a Legal Division I and Legal Division II. Each of these divisions shall be headed by a general counsel appointed by the secretary with the approval of the Governor in accordance with KRS 12.050 and 12.210. The general counsels shall be directly responsible to the executive director of the Office of Legal Services and shall perform the functions, powers, and duties as provided by law and as prescribed by the executive director. The Office of Kentucky Nature Preserves, which shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050 ~~and 12.210~~, 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. The Kentucky Public Service Commission, which shall be headed by an executive director appointed by the commission in accordance with KRS 278.100, shall be attached to the Office of the Secretary for administrative purposes.

➔Section 2. KRS 224.71-100 is amended to read as follows:

As used in KRS 224.71-100 to 224.71-140, unless the context requires otherwise:

- (1) "Agriculture operation" means any farm operation on a tract of land, including all income-producing improvements and farm dwellings, together with other farm buildings and structures incident to the operation and maintenance of the farm, situated on ten (10) contiguous acres or more of land used for the production of livestock, livestock products, poultry, poultry products, milk, milk products, or silviculture products, or for the growing of crops such as, but not limited to, tobacco, corn, soybeans, small grains, fruit and vegetables; or devoted to and meeting the requirements and qualifications for payments to agriculture programs under an agreement with the state or federal government;
- (2) "Bad actor" means any person engaged in agriculture operations, who receives written notification of documented water pollution and of the agriculture water quality plan needed to prevent water pollution, and is provided technical assistance, and financial assistance when possible, to implement the agriculture water quality plan, but still refuses or fails to comply with the requirements of the agriculture water quality plan;
- (3) "Best management practices" means, for agriculture operations, the most effective, practical, and economical means of reducing and preventing water pollution provided by the United States Department of Agriculture *Natural Resources*~~{Soil}~~ Conservation Service and the Soil and Water Conservation Commission. Best management practices shall establish a minimum level of acceptable quality for planning, siting, designing, installing, operating, and maintaining these practices;
- (4) "Conservation plan" means a plan, provided by the United States Department of Agriculture *Natural Resources*~~{Soil}~~ Conservation Service and the Soil and Water Conservation Commission, describing best land management practices, including an installation schedule and maintenance program, which when completely implemented, will improve and maintain soil, water, and related plant and animal resources of the land;
- (5) "Compliance plan" means a conservation plan containing best management practices developed for persons engaged in agriculture operations by the United States Department of Agriculture *Natural Resources*~~{Soil}~~ Conservation Services, in conjunction with local conservation districts as required for eligibility under the Federal Food Security Act;
- (6) "Forest stewardship management plan" means a plan developed by the cabinet's Division of Forestry, the cabinet's Division of Conservation, the Department of Fish and Wildlife Resources, and the United States

Department of Agriculture *Natural Resources* ~~[Soil]~~ Conservation Service which establishes practices for a person engaged in agriculture operations to manage forest lands in accordance with sound silvicultural principles;

- (7) "Conservation district" means a subdivision of state government organized pursuant to KRS Chapter 262 for the specific purpose of assisting persons engaged in agriculture operations and land users in solving soil and water resources problems, setting priorities for conservation work to be accomplished, and coordinating the federal, state, and local resources to carry out these programs;
- (8) "Groundwater" means subsurface water occurring in the zone of saturation beneath the water table and any perched water zones below the B soil horizon;
- (9) "Water priority protection region" means an area specifically delineated where water pollution from agriculture operations has been scientifically documented;
- (10) "Agriculture water quality plan" means a document incorporating the conservation plan, compliance plan, or forest stewardship management plan as necessary to prevent groundwater and surface water pollution from an agriculture operation;
- (11) "Surface water" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters, marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharger shall not be considered to be surface waters of the Commonwealth;
- (12) "Soil and Water Conservation Commission" means the commission created in KRS 146.090 for the purpose of administering the organization of conservation districts; and
- (13) "Livestock" means cattle, sheep, swine, goats, horses, alpacas, llamas, buffaloes, or any other animals of the bovine, ovine, porcine, caprine, equine, or camelid species.

➔Section 3. KRS 224.71-110 is amended to read as follows:

- (1) The Agriculture Water Quality Authority is created and administratively attached to the cabinet. The authority shall be a multidiscipline peer group that shall evaluate, develop, and improve best-management practices in conservation plans, compliance plans, and forest stewardship management plans; establish statewide and regional agriculture water quality plans; and otherwise promote soil and water conservation activities that protect waters of the Commonwealth from the adverse impacts of agriculture operations within the Commonwealth. The cabinet shall provide staff to the authority.
- (2) Within six (6) months of July 15, 1994, the Soil and Water Conservation Commission shall submit to the Governor for appointment to the Agriculture Water Quality Authority a list of three (3) persons recommended by each of the following state agencies and organizations:
 - (a) Kentucky Association of Conservation Districts;
 - (b) Kentucky Department of Agriculture;
 - (c) University of Kentucky College of Agriculture Cooperative Extension Service;
 - (d) Kentucky Farm Bureau Federation, Inc.;
 - (e) Division of Conservation, Energy and Environment Cabinet;
 - (f) Division of Forestry, Energy and Environment Cabinet;
 - (g) Kentucky Geological Survey; and
 - (h) Environmental organizations.

The membership of the Agriculture Water Quality Authority appointed by the Governor shall consist of one (1) representative from each of the groups identified in paragraphs (a) to (h) of this subsection and three (3) members at large from agriculture operations. The Soil and Water Conservation Commission shall solicit nominations from Kentucky agriculture operations organizations and submit those names to the Governor for selection of the three (3) members at large from agriculture operations. The Governor shall select four (4) members to serve two (2) year initial terms, four (4) members to serve three (3) year initial terms, and three (3) members to serve four (4) year initial terms. All succeeding terms shall be four (4) year terms. A representative from the *Natural Resources* ~~[United States Soil]~~ Conservation Service and a representative from

the United States *Department of Agriculture Farm Service Agency* [~~Stabilization and Conservation Service~~] may also be appointed by the Governor to serve on the authority. One (1) representative each from the Division of Water, Energy and Environment Cabinet and the *Department for* [~~Division of~~] Public Health [~~Protection and Safety~~], Cabinet for Health and Family Services shall serve as ex officio members.

- (3) It shall be the responsibility of the Agriculture Water Quality Authority to establish, at a minimum, the following four (4) committees for agriculture operations, with membership outside the Agriculture Water Quality Authority:
- (a) Livestock and poultry;
 - (b) Crops, including but not limited to tobacco, corn, soybeans, small grains, fruits and vegetables, pasture and timber;
 - (c) Pesticides, fertilizers, and other agricultural chemicals; and
 - (d) Farmstead issues.
- (4) The Agriculture Water Quality Authority shall have the following responsibilities:
- (a) Review water quality data as available;
 - (b) Review university research on water quality and alternative best-management practices research;
 - (c) Evaluate the adoption and effectiveness of best-management practices, and modify best-management practice design standards to improve water quality protection practices;
 - (d) Develop by July 1, 1996, statewide agriculture water quality plans to address identifiable water pollution problems from agriculture operations, and continue to evaluate and modify the agriculture water quality plans, as necessary to prevent water pollution from agriculture operations;
 - (e) Assist with the review of state-funded and other water quality monitoring data and with the establishment of agriculture water priority protection regions;
 - (f) Provide technical assistance to persons engaged in agriculture operations and to the Soil and Water Conservation Commission in its efforts to coordinate water quality protection as related to agriculture operations;
 - (g) Work with the *Natural Resources* [~~United States Soil~~] Conservation Service, United States *Department of Agriculture Farm Service Agency* [~~Stabilization and Conservation Service~~], and conservation districts to disseminate to agriculture operations the best-management practices, conservation plans, compliance plans, forest stewardship management plans, and agriculture water quality plans which address the protection of groundwater and surface water;
 - (h) Provide the Governor and the Legislative Research Commission with biennial reports of the progress of the Agriculture Water Quality Authority program; and
 - (i) Establish procedures for modifications to be incorporated into statewide or regional agriculture water quality plans.
- (5) The cabinet's Division of Water shall approve or disapprove any statewide and regional water quality plan within thirty (30) days of receiving the plan from the Agriculture Water Quality Authority. All provisions of a statewide or regional water quality plan not found deficient shall be approved. If the Division of Water finds any provision of the statewide or regional agriculture water quality plan deficient, the Division of Water shall give written notice to the authority of those provisions found to be deficient. Within the thirty (30) days following the notice of deficiency, the authority shall deliver to the Division of Water a written response setting forth proposed solutions to the deficiencies. Any deficiencies which remain unresolved shall be resolved in a manner agreed to jointly by the Division of Water and the authority within sixty (60) days unless the Division of Water and authority jointly agree to an extension or alternate dispute resolution. The Division of Water shall approve or disapprove all modifications to the statewide and regional plans as set forth at KRS 224.71-120(8).

➔Section 4. KRS 262.850 is amended to read as follows:

- (1) This section shall be known as "the Agricultural District and Conservation Act."

- (2) It is the policy of the state to conserve, protect and to encourage development and improvement of its agricultural lands for the production of food and other agricultural products. It is also the policy of this state to conserve and protect the agricultural land base as a valuable natural resource which is both fragile and finite. The pressure imposed by urban expansion, transportation systems, water impoundments, surface mining of mineral resources, utility rights-of-way and industrial development has continually reduced the land resource base necessary to sufficiently produce food and fiber for our future needs. It is the purpose of this section to provide a means by which agricultural land may be protected and enhanced as a viable segment of the state's economy and as an important resource.
- (3) The local governing administrative body for an agricultural district shall be the conservation district board of supervisors. The Soil and Water Conservation Commission shall be responsible for statewide administration of the agricultural district program and shall have sole authority to certify or deny agricultural district petitions. The commission may apply for assistance and funds from the Federal Farmland Protection Act of 1981 (Pub. L. 97-377) which may be available for the development of the agricultural district program and may accept easements as provided in KRS 65.410 to 65.480.
- (4) Any owner or owners of land may submit a petition to the local conservation district board of supervisors requesting the creation of an agricultural district within the county. The petition shall include a description of the proposed area, description of each land parcel, location of the proposed boundaries, petitioners' names and addresses, adjacent landowners' names and addresses, and other pertinent information as required in the petition application. The boundary of an agricultural district shall be contiguous. No land shall be included in an agricultural district without the consent of the owner.
- (5) Upon receipt of a petition, the local conservation district board of supervisors shall notify the fiscal court and any local or regional planning or zoning body, if any, by sending a copy of the petition and accompanying materials to that body.
- (6) The following factors shall be considered by the local conservation district board of supervisors and the Soil and Water Conservation Commission when considering the formation of any agricultural district:
 - (a) The capability of the land to support agricultural production, as indicated by: soil, climate, topography or other natural factors;
 - (b) The viability of active farmlands, as indicated by: markets for farm products, extent and nature of farm improvements, present status of farming, anticipated trends in agricultural economic conditions and technology;
 - (c) That the proposed agricultural district meets the minimum size limit of two hundred fifty (250) contiguous acres, unless the local conservation district board and the Soil and Water Conservation Commission allow fewer than two hundred fifty (250) contiguous acres if the proposed area meets a minimum annual production performance established by the district board and approved by the commission;
 - (d) County development patterns and needs and the location of the district in relation to any urban development boundaries within the county;
 - (e) Any matter which may be relevant to evaluate the petition; and
 - (f) Whether an application is from more than one (1) farm owner, in which case a preference shall be given to the application.
- (7) The local soil and water conservation district board of supervisors shall review the petition application and submit a recommendation to the Soil and Water Conservation Commission within **one hundred (100)**~~sixty (60)~~ days of receipt. The local conservation district recommendation shall be submitted to the commission in the form of approval, approval with modifications, or denial of the petition accompanied by justification for such a denial.
- (8) The Soil and Water Conservation Commission shall review the recommendation of the district board of supervisors and certify or deny the agricultural district's petition within **one hundred (100)**~~sixty (60)~~ days of receipt.
- (9) Upon the approval of a petition by the Soil and Water Conservation Commission, the commission shall notify the area development district in which the agricultural district will lie, the local county clerk, and the secretary of the Governor's Cabinet.
- (10) Land within the boundary of an agricultural district shall not be annexed.

- (11) The owners of land within the boundary of an agricultural district shall be exempt under KRS 74.177 from any assessment authorized for the extension of water service lines until the land is removed from the district and developed for nonagricultural use. Any member, or any successor heir of the member, of an agricultural district may withdraw from the district upon notifying the local conservation district board of supervisors in writing.
- (12) It shall be the policy of all state agencies to support the formation of agricultural districts as a means of preserving Kentucky's farmlands and to mitigate the impact of their present and future plans and programs upon the continued agricultural use of land within an agricultural district.
- (13) Agricultural districts shall be comprised only of agricultural land as defined in KRS 132.010.
- (14) An agricultural district shall be established for five (5) years with a review to be made by the local soil and water conservation district board of supervisors at the end of the five-year period and every five (5) years thereafter. Each owner of land shall agree to remain in the district for a five (5) year period, which is renewable at the end of the five (5) years. However, the board shall make a review any time upon the written request of a local government which demonstrates that the review is necessary in order to consider development needs of the local government. The board shall consider whether the continued existence of the district is justified, any adjustments which may be necessary due to urban or county development, and other factors the board finds relevant. The board shall revise the district as necessary based on the review and subject to approval of the State Soil and Water Conservation Commission. Before the state commission takes final action, all interested parties shall be given the opportunity to request the state commission to amend or overturn the local board's decision.
- (15) The withdrawal of a member from a district reducing the remaining acreage of agricultural district land to less than two hundred fifty (250) acres or resulting in the remaining land being noncontiguous shall not cause the decertification of the district.
- (16) Any member of an agricultural district who has received a summons of condemnation proceedings being instituted concerning the member's land located in the district may request the local soil and water conservation district board of supervisors to hold a public hearing on the proposed taking of land. However a hearing under this section shall not be held if the petitioner in the condemnation proceeding is a utility as defined in KRS 278.010(3) and obtained a certificate of convenience and necessity as required by KRS 278.020(1).
- (17) (a) The board shall notify the local property valuation administrator of the farms which belong to an agricultural district and whenever a farm is withdrawn from a district. The board shall also inform all members of a district of the right to have their land assessed by the local property valuation administrator at the land's agricultural use value and shall offer advice and assistance on obtaining such an assessment.
- (b) The board shall also notify the local property valuation administrator whenever a farm is released or withdrawn from an agricultural district.
- (18) The board may allow an amendment to an existing certified agricultural district if approved by the commission.

➔Section 5. KRS 262.900 is amended to read as follows:

~~{(1)}~~As used in KRS 262.900 to 262.920, unless the context clearly indicates otherwise:

- ~~(1){(a)}~~ "Agricultural conservation easement" or "easement" means an interest in land, less than fee simple, which represents the right to restrict or prevent the development or improvement of the land for purposes other than agricultural production. The easement may be granted by the owner of the fee simple to the Commonwealth or to a qualified organization described in Section 170(c) of the Internal Revenue Code. It may be granted in perpetuity, as the equivalent of the covenants running with the land;~~{-}~~
- ~~(2){(b)}~~ "Agricultural district" means a land use category created by voluntary agreement between the Commonwealth and one (1) or more landowners under Kentucky's agricultural district law, KRS 262.850, where the primary use of land is and will remain to be agriculture;~~{-}~~
- ~~(3){(e)}~~ "Agricultural production" means the production for commercial purposes of crops, livestock and livestock products, and nursery and greenhouse products, including the processing or retail marketing of these crops, livestock and livestock products, and nursery and greenhouse products, if more than fifty percent (50%)

of those processed or merchandised products are produced by the farm operator, and the raising and stabling of horses for commercial purposes;{+}

- (4){(d)} "Applicant" means a person or qualified organization described in Section 170(c) of the Internal Revenue Code offering to sell to the PACE Corporation under the PACE Program an easement on a tract of land which is in or available for agricultural use;{+}
- (5){(e)} "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture;{+}
- (6){(f)} "Bargain sale" means the sale of an easement by a landowner at a price below appraised market value, when a portion of the value of the easement is donated by the landowner in a properly executed document as a charitable contribution to a qualified organization described in Section 170(c) of the Internal Revenue Code;{+}
- (7){(g)} "Capability class" means a group of soils that have similar characteristics when used for field crop production;{+}
- (8){(h)} "Comparable sales" means market sales of similar land. In locating comparable sales, first priority shall be given to parcels located in the same general vicinity. The second priority shall be given to farms located in other areas;{+}
- (9){(i)} "Conservation plan" means a plan describing best land management practices, including an installation schedule and maintenance program, which, when completely implemented, will improve and maintain soil, water, and related plant and animal resources of the land;{+}
- (10){(j)} "Contract of sale" means a legally enforceable agreement in a form provided by the PACE Board obligating the owner of a farmland tract to sell and the Commonwealth to purchase an easement or other less-than-fee interest on the farmland tract;{+}
- (11){(k)} "Commonwealth funds" means money appropriated to the PACE Corporation for the purchase of agricultural conservation easements;{+}
- (12){(l)} "Development" means the carrying out of any material change in the use or appearance of land, or dividing into two (2) or more parcels;{+}
- (13){(m)} "Easement value" means the value per acre as determined by a numerical point system or, if an appraisal is used, the difference between the unrestricted value of a farm and its value as restricted by an easement. If only one (1) appraisal is used, unrestricted value is equal to market value and restricted value is equal to the value of the farm, subject to an agricultural conservation easement. If the landowner obtains an independent appraisal, easement value shall be calculated according to the average between the landowner's appraisal and the numerical point system, or if the Commonwealth also obtains an appraisal, the average between the landowner's appraisal and the Commonwealth's appraisal;{+}
- (14){(n)} "Eligible land" means a farmland tract in which the Commonwealth may acquire an agricultural conservation easement or other property interest as provided by this section;{+}
- (15){(o)} "Farm" means land in the Commonwealth which is being used for or is available for agricultural production as defined in this section;{+}
- (16){(p)} "Farmland tract" means land constituting all or part of a farm that is proposed for the purchase of an agricultural conservation easement;{+}
- (17){(q)} "Farmland value" means the price as of the valuation date for property used for normal farming operations, subject to the terms of an agricultural conservation easement, which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is not obligated to buy would pay for the property;{+}
- (18){(r)} "Fund" means the agricultural enhancement fund created by KRS 262.920;{+}
- (19){(s)} "Grantor" means the person or entity holding title to the farmland tract on which an easement is conveyed;{+}
- (20){(t)} "Grazing or pasture land" means land used for horse paddocks or the growing of grasses and legumes which are consumed by livestock in the field, and at least ninety percent (90%) of which is clear of trees, shrubs, vines, or other woody growth not consumed by livestock;{+}
- (21){(u)} "Harvested cropland" means land used for the commercial production of field crops, fruit crops, vegetables, and horticultural specialties, such as flowers, nursery stock, and ornamentals;{+}

- (22)~~(v)~~ "Horse paddock" means an enclosed area used for pasturing and exercising horses;~~[-]~~
- (23)~~(w)~~ "Landowner" means a person holding title to land;~~[-]~~
- (24)~~(x)~~ "Market value" means the price as of the valuation date for the highest and best use of the property which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is not obligated to buy would pay for the property;~~[-]~~
- (25)~~(y)~~ "Nonprofit land conservation organization" means nonprofit organization dedicated to land conservation purposes recognized by the Internal Revenue Service as a tax-exempt organization under Section 170(c) of the Internal Revenue Code;~~[-]~~
- (26)~~(z)~~ "PACE Corporation" means the Purchase of Agricultural Conservation Easement Corporation created by KRS 262.906(1);~~[-]~~
- (27)~~(aa)~~ "PACE board" means the board of directors of the Purchase of Agricultural Conservation Easement Corporation created by KRS 262.906(2);~~[-]~~
- (28)~~(ab)~~ "Qualified organization" means a tax-exempt organization described in Section 170(c) of the Internal Revenue Code;~~[-]~~
- (29)~~(ac)~~ "Reserved life estate" means property deeded to a nonprofit organization during an owner's lifetime with the owner retaining full use of and responsibility for the property until the death of the last survivor of those retaining life estates, whereupon, the responsibility of the property falls to the nonprofit organization. The property owner is entitled to an income tax deduction based on an appraised value and Internal Revenue Service actuarial tables, and the taxable estate may also be reduced;~~[-]~~
- (30)~~(ad)~~ "Restricted land" means land and buildings, the use of which is subject to the terms of an agricultural conservation easement;~~[-]~~
- (31)~~(ae)~~ "Restricted value" means the price as of the valuation date for property subject to an agricultural conservation easement which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is not obligated to buy would pay for the property;~~[-]~~
- (32)~~(af)~~ "Soils report" means a report which sets forth the amount and description of each soil type and class found on a specific farm;~~[-]~~
- (33)~~(ag)~~ "Title report" means a report prepared by a person authorized by the state to engage in the sale of title insurance or an attorney setting forth the existence of any liens, restrictions, or other encumbrances on a farmland tract;~~[-]~~
- (34)~~(ah)~~ "Unrestricted value" means the current market value of a property;~~[-]~~
- (35)~~(ai)~~ "USDA" means the United States Department of Agriculture; *and*~~[-]~~
- (36)~~(aj)~~ ~~"USDA SCS" means the Soil Conservation Service of the United States Department of Agriculture.~~
- ~~(ak)~~ "Viable agriculture land" means land suitable for agricultural production and which will continue to be economically feasible for use if real estate taxes, farm use restrictions, and interference with and constraints on normal farming operations are limited to levels approximating those in commercial agricultural areas not influenced by the proximity of urban and related nonagricultural development.

➔ Section 6. KRS 353.655 is amended to read as follows:

- (1) No operator shall utilize shackle rods or related cables for the production of oil or gas without the permission of the present owner of the land upon which the wells exist or are drilled unless such rods or cables are placed in conduit and buried at least twenty-four (24) inches below the surface of the land between all wellheads and power stations or are attached to power poles with the rods or cables twenty (20) feet above the surface of the land between all wellheads and power stations.
- (2) Nothing in this section shall apply to lands classified by the *Natural Resources*~~[United States Soil]~~ Conservation Service as class 5, 6, 7, or 8.

➔ Section 7. The following KRS section is repealed:

262.096 Budget reports -- What to include.

➔Section 8. The General Assembly confirms Executive Order 2018-601, dated July 25, 2018, to the extent not otherwise confirmed or superseded by this Act, relating to the reorganization of the Energy and Environment Cabinet.

Signed by Governor March 22, 2019.