CHAPTER 152

(HB 677)

AN ACT relating to energy production and byproduct management.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

The purposes of Sections 1 to 24 of this Act are to:

(1) Establish a legal and regulatory framework for the development and approval of underground carbon dioxide sequestration facilities;

(2) Designate a government agency responsible for establishing standards and promulgating administrative regulations for the development and approval of underground carbon dioxide sequestration and sequestration facilities;

(3) Safeguard and protect the correlative rights of operators, mineral owners, pore space owners, and surface owners and provide for just and reasonable compensation for their respective interests in underground carbon dioxide sequestration facilities; and

(4) Ensure that long-term geologic sequestration of carbon dioxide in the Commonwealth is accomplished without unreasonable disturbance of surface, mineral, or water resources or endangering public safety.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 24 of this Act:

(1) "Administratively complete," with respect to an application means an application for permit approval that the cabinet determines contains:

(a) Information addressing each application requirement of the regulatory program; and

(b) All information necessary to initiate technical processing and public review;

(2) "Cabinet" means the Energy and Environment Cabinet;

(3) "Carbon dioxide" means anthropogenic carbon dioxide of sufficient purity and quality as to not compromise:

(a) The safety of geologic sequestration; and

(b) Those properties of the sequestration reservoir which allow the reservoir to effectively enclose and contain a stored gas;

(4) "Carbon dioxide sequestration" means the injection of carbon dioxide and associated constituents into subsurface geologic reservoirs intended to provide for the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream in subsurface geologic formations and thereby prevent its release into the atmosphere;

(5) "Class II well" has the same meaning as in KRS 353.510;

(6) "Class VI injection well" or "Class VI well" means the classification by the US EPA of wells for injection of substances or materials into subsurface rock formations and, specifically, to the class of wells that are used to inject carbon dioxide into subsurface rock formations;

(7) "Class VI underground injection control permit" or "Class VI permit" means a permit for a specified site authorizing a person or business entity to construct and operate a carbon dioxide sequestration facility issued by the:

(a) US EPA prior to granting the cabinet primary enforcement authority; or

(b) Cabinet after primary enforcement authority is granted by the US EPA;

(8) "Completion certificate" means a Certificate of Underground Carbon Dioxide Sequestration Project Completion;

(9) "Control person" has the same meaning as in KRS 353.510;

(10) "Drilling permit" means a permit issued by the cabinet to drill a well or convert an existing well for the purposes of constructing a Class VI underground injection control facility;

(11) "Gas well" has the same meaning as in KRS 353.010;

(12) "Monitoring well" means a well authorized under a Class VI underground injection control permit that is designed and completed in a specified subsurface interval to monitor pressure, fluid chemistry, or other parameters to confirm containment of injected carbon dioxide within the sequestration reservoir and confining system and to demonstrate non-endangerment of underground sources of drinking water;

(13) "Oil well" has the same meaning as in KRS 353.010;

(14) "Person" has the same meaning as in KRS 353.510;

(15) "Pore space" means a cavity or void, whether naturally or artificially created, in subsurface stratum beneath individual properties within a reservoir into which injection of carbon dioxide is proposed;

(16) "Reservoir" means a subsurface stratum, formation, cavity, or void, whether naturally or artificially created, including oil and gas reservoirs, saline formation, and coal seams suitable for, or capable of being made suitable for, the injection and storage of carbon dioxide;

(17) "Secretary" means the secretary of the Energy and Environment Cabinet;

(18) "Sequestration facility" means the reservoir, well, underground equipment, and surface facilities and equipment used or proposed to be used in a carbon dioxide sequestration project, but does not include pipelines used to transport carbon dioxide to the sequestration facility;

(19) "Sequestration operator" means a person applying for or holding a Class VI permit until the issuance of a completion certificate for the relevant sequestration facility;

(20) "Sequestration reservoir" means a reservoir proposed, authorized, and used for storing carbon dioxide;

(21) "Surface waters":

(a) Means:

1. Those waters having well-defined banks and beds, either constantly or intermittently flowing;

2. Lakes and impounded waters;

3. Marshes and wetlands; and

4. Any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface; and

(b) Does not include lagoons used for waste treatment and effluent ditches that are situated on property owned, leased, or under valid easement by a permitted discharger;

(22) "Third party" means a party who is independent of the corporate structure of a sequestration operator;

(23) "Underground source of drinking water" or "USDW" has the same meaning as in 40 C.F.R. sec. 144.3;

(24) "Unknown or missing owner" means a person vested with a present ownership interest in the pore space whose present identity or location cannot be determined from:

(a) A reasonable review of county clerk records for the county or counties in which the property is located, and includes unknown heirs, successors, and assigns known to be alive;

(b) A reasonable inquiry in the county of the owner's last known place of residence;

(c) A diligent inquiry into known interest owners in the same tract; and

(d) A reasonable review of available internet resources commonly utilized by the industry; and

(25) "US EPA" means the United States Environmental Protection Agency.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

(1) A person shall not construct or operate a carbon dioxide sequestration facility without first securing a:

(a) Class VI underground injection control permit from the US EPA or the cabinet; and

(b) Drilling permit issued by the cabinet.

(2) The injection of carbon dioxide for purposes of enhancing the recovery of oil or natural gas pursuant to a permit approved by the cabinet under KRS 353.592 shall not be subject to the provisions of Sections 1 to 24 of this Act.

(3) If an oil, natural gas, or coalbed methane well operator proposes to convert its operations to carbon dioxide sequestration, then the underground carbon dioxide sequestration facility shall be regulated pursuant to Sections 1 to 24 of this Act.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

(1) Every Class VI underground injection control permit application filed under this section shall:

(a) Be on a form prescribed by the cabinet;

(b) Be certified by the applicant; and

(c) Contain all information specified by administrative regulations promulgated by the cabinet in accordance with KRS Chapter 13A.

(2) (a) Upon filing an application for a Class VI permit, an applicant shall:

1. Pay a fee in an amount set by the cabinet; and

2. Submit proof of public notice of the application pursuant to Section 5 of this Act.

(b) The fee shall be deposited into the carbon dioxide sequestration facility administrative fund established in Section 14 of this Act.

(3) In addition to obtaining a Class VI underground injection control permit, the applicant shall secure drilling permits from the cabinet for each well described in the approved Class VI permit.

(4) If, prior to approval of an application, the cabinet determines that the proposed sequestration facility contains commercially valuable minerals, the cabinet shall ensure that the interests of the mineral owners or mineral lessees:

(a) Will not be adversely affected; or

(b) Have been addressed in a written agreement entered into by the mineral owners, mineral lessees, and the sequestration operator pursuant to Section 10 of this Act.

(5) To be considered an administratively complete application, a Class VI permit application shall include documentation that:

(a) The sequestration operator has the written consent of those persons having ownership interests in at least seventy-five percent (75%) of the proposed sequestration reservoir's pore space acreage; and

(b) A pooling order has been requested pursuant to Section 20 of this Act for up to twenty-five percent (25%) of the proposed sequestration reservoir's pore space acreage for nonconsenting, unknown, and missing pore space owners.

(6) The cabinet shall not begin technical review of an administratively complete application until the sequestration operator has:

(a) Demonstrated that it possesses through the requisite consent and the petition for a pooling order in accordance with Section 20 of this Act, the legal right to utilize one hundred percent (100%) of the pore space acreage of the proposed sequestration reservoir; and

(b) Provided documentation demonstrating the legal right to enter onto and conduct all surface activities and operations associated with the proposed sequestration facility.

(7) If the cabinet determines that a bona fide dispute exists regarding the applicant's legal right, consistent with subsections (5) and (6) of this section, to utilize any of the pore space acreage of the proposed sequestration reservoir, the cabinet shall:

(a) Suspend technical permit review pending resolution of the property dispute by a court of competent jurisdiction or resolution by the parties; or

(b) Require the applicant to revise the permit application to exclude the contested pore space acreage.

(8) A Class VI permit shall not be issued under this section unless the cabinet finds that:

(a) The application and proposed operations comply with all requirements established by the cabinet, including any applicable Class VI underground injection control administrative regulations, and all applicable provisions of state and federal law;

(b) The sequestration facility is suitable and feasible for carbon dioxide injection and sequestration;

(c) The sequestration operator has made a good-faith effort to obtain the written consent of all persons who own the sequestration reservoir's pore space;

(d) The applicant has demonstrated the legal right to utilize one hundred percent (100%) of the sequestration reservoir's pore space acreage;

(e) The application contains documentation sufficient to demonstrate the legal right to enter onto and conduct all surface activities and operations associated with the proposed sequestration facility;

(f) The proposed sequestration facility will not endanger surface waters or any USDW;

(g) The creation, operation, and maintenance of the sequestration facility will not appreciably endanger human health or the environment;

(h) Adequate horizontal and vertical boundaries of the sequestration reservoir are defined, including buffer areas, to ensure that the sequestration facility is operated safely and prudently;

(i) The sequestration operator will establish monitoring facilities and protocols to assess the location and migration of carbon dioxide injected for sequestration and to ensure compliance with all Class VI permit, statutory, and administrative regulation requirements;

(j) All nonconsenting pore space owners are or will be justly and reasonably compensated in accordance with the administrative regulations and procedures set forth in and promulgated under this section by the cabinet; and

(k) The sequestration operator demonstrates financial responsibility as determined by the cabinet pursuant to subsections (10) and (11) of this section and applicable administrative regulations.

(9) The cabinet shall render a decision on a permit application in accordance with Section 6 of this Act.

(10) (a) A permit shall not be issued under this section unless the sequestration operator posts qualifying financial responsibility sufficient to cover the cost of:

1. Corrective action;

2. Well plugging of Class VI injection wells and monitoring wells;

3. Post-injection site care and facility closure;

4. Emergency and remedial response; and

5. Addressing endangerment of underground sources of drinking water.

(b) The financial responsibility instruments shall contain protective conditions for coverage for cancellation, renewal, and continuation provisions. The sequestration operator shall have detailed written estimates, in current dollars, of the cost of performing the activities contained in paragraph (a)1. to 5. of this subsection. The cost estimates shall be separate for each phase and shall be based on the costs of the cabinet to hire third parties to perform the required activity.

(c) For the duration of the permit, the sequestration operator shall annually adjust the cost estimates of each activity and provide the information to the cabinet. Any decrease or increase in the initial cost estimate shall be subject to the cabinet's approval. If at any time the current cost estimate:

1. Increases to an amount greater than the face amount of the financial responsibility instruments currently in use, the sequestration operator shall submit to the cabinet within sixty (60) days, written evidence of an increase of the face amount of the existing financial responsibility instruments or substitute another instrument in the increased amount; or

2. Decreases to an amount lesser than the face amount of the financial responsibility instruments, those instruments may be reduced to the amount of the current estimate upon receipt of written approval from the cabinet.

(d) The cabinet shall perform an annual evaluation of the qualifying financial responsibility to determine if the amount of financial responsibility provided by the sequestration operator is sufficient to secure the operator's obligations under state and federal law. A cabinet determination under this subsection is considered final. If the cabinet determines the amount of financial responsibility is insufficient, the sequestration operator shall:

1. Provide an adjustment of the cost estimate to the cabinet within sixty (60) days of notification by the cabinet; and

2. Adjust the financial responsibility instruments in accordance with paragraph (c) of this subsection.

(e) The initial deposit, use, and length of pay-in periods for trust funds or escrow accounts are subject to the cabinet's approval. The sequestration operator may make periodic deposits into a trust fund or escrow account throughout the operational period to ensure sufficient funds are available to carry out the required activities on the date on which they may occur. The cabinet shall consider project-specific risk assessments, projected timing of activities, and interest accumulation in determining whether sufficient funds are available to conduct the required activities.

(11) (a) In demonstrating and maintaining financial responsibility as determined by the cabinet, the sequestration operator shall provide financial responsibility from the following list of qualifying instruments:

1. Trust funds;

2. Surety or cash bonds;

3. Letters of credit;

4. Insurance;

5. Self-insurance; or

6. Any other instrument the cabinet finds satisfactory.

(b) The cabinet may promulgate administrative regulations in accordance with KRS Chapter 13A to allow self-insurance as a financial responsibility mechanism for some or all of the costs and obligations of the sequestration operator under terms and conditions as the cabinet deems necessary to ensure completion of all obligations of the Class VI permit. To account for the risks of default and resulting responsibility obligations incurred by the carbon dioxide sequestration facility trust fund established in Section 16 of this Act, the cabinet's terms and conditions may include:

1. Corporate guarantees;

2. Securing performance by lien or collateral; and

3. Adjustments in assessed contributions by the sequestration operator to the carbon dioxide sequestration facility trust fund established in Section 16 of this Act.

(c) All qualifying financial instruments are subject to the cabinet's approval.

(12) (a) The cabinet shall not issue a permit under this section or approve an application to transfer a sequestration facility to a successor operator pursuant to subsection (13) of this section, and an operator shall not be eligible to receive any permits or become a successor operator under this section if:

1. The applicant has falsified or otherwise misrepresented any information on or relating to the permit application;

2. The applicant has failed to abate or reach an agreement with the cabinet regarding an unappealed violation of Sections 1 to 24 of this Act or the administrative regulations promulgated thereunder;

3. A control person of the applicant has a forfeiture of a financial responsibility instrument;

4. The applicant is a control person for another operator that has a forfeiture of a financial responsibility instrument;

5. A control person for the applicant served as a control person for another operator when an unresolved financial responsibility instrument forfeiture occurred;

6. The applicant is or has a control person who controls or is controlled by another operator that has a forfeiture of a bond; or

7. The cabinet determines that an activity of the applicant is currently in violation of KRS Chapter 149, 151, 224, 349, 350, 351, 352, or 353 or any administrative regulation promulgated thereunder.

(b) The cabinet:

1. May restore the eligibility of applicants, operators, and control persons who are deemed permit-ineligible pursuant to paragraph (a)1. of this subsection upon resubmission of the application correcting the false or misrepresented information;

2. Shall restore the eligibility of applicants, operators, or control persons who are deemed permit-ineligible pursuant to paragraph (a)2. of this subsection upon satisfactory abatement of the violation and payment of any civil penalties;

3. Shall restore the eligibility of applicants, operators, or control persons who are deemed permit-ineligible pursuant to paragraph (a)3. to 6. of this subsection upon entry of and satisfactory compliance with an agreed order between the operator and the cabinet that resolves all the operator's outstanding violations, requires payment of any civil penalties, and provides restitution to the cabinet for any costs associated with the forfeiture, plugging, and proper abandonment of a well in excess of the financial responsibility instruments forfeited to the cabinet by the operator; and

4. a. Shall provisionally restore the eligibility of applicants who are deemed permit-ineligible pursuant to paragraph (a)7. of this subsection upon either submittal of proof that the violation is in the process of being corrected to the satisfaction of the cabinet or a demonstration that the applicant has filed and is pursuing a good-faith administrative or judicial appeal to contest the violation. If the Circuit Court affirms the violation, then the applicant shall, within thirty (30) days of the judicial action, submit proof that the violation is in the process of being corrected to the satisfaction of the cabinet. Provisional restoration of permit eligibility related to paragraph (a)7. of this subsection may be withdrawn at any time if the cabinet determines that the applicant no longer satisfies the requirements of this section.

b. The cabinet shall fully restore the eligibility of applicants who are deemed permit-ineligible pursuant to paragraph (a)7. of this subsection upon either submittal of proof that the violation has been corrected to the satisfaction of the cabinet or that the violations have been ordered vacated in a final decision of the secretary or a reviewing court after all appeals have been exhausted.

(13) A permit issued pursuant to this section shall not be transferred by sale, assignment, lease, or otherwise, except upon the written approval by the cabinet of a joint application submitted by both the transferor and the transferee. The joint application for transfer shall be on a form prescribed by the cabinet and accompanied by a fee in an amount set by the cabinet. Fees under this subsection shall be deposited in the carbon dioxide sequestration facility administrative fund established in Section 14 of this Act. The transferee shall file financial responsibility with the application in an amount and form that the cabinet deems satisfactory to cover the costs of the activities listed in subsection (10)(a) of this section. All rights and liabilities under the permit shall pass to the transferee upon written approval of the transfer by the cabinet.

(14) The cabinet shall conduct periodic reviews of each permit issued pursuant to this section. The cabinet shall review each permit at least once every five (5) years from the date of the permit issuance and whenever the cabinet has reason to believe, based on available information, that the permit may no longer be in compliance with Sections 1 to 24 of this Act. During permit review, the cabinet shall review all provisions of the existing permit, including the adequacy of the financial responsibility required by this section. The cabinet may, by determination issued to the permit holder, require revision or modification of the permit provisions, including requiring the posting of additional financial responsibility, in order to ensure compliance with this section.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

(1) Public notice of an application for a Class VI well permit under Sections 1 to 24 of this Act shall allow at least thirty (30) days for public comment.

(2) The cabinet shall send the public notice to the applicant, who shall be responsible for publication of the notice pursuant to KRS Chapter 424 within thirty (30) days prior to the submission of an application. Upon publication, the applicant shall send the cabinet a copy of the certificate of publication. The cost of publication shall be borne by the applicant.

(3) Notice of an application for a Class VI well permit shall be served on each mineral lessee, mineral owner, and pore space owner with a legal interest in the property or properties that involves the sequestration reservoir, and adjoining surface and mineral owners of record.

(4) Service of individual notices required by this section shall be through personal service, by registered mail, or by any method of delivery that requires a receipt or signature confirmation.

(5) Service of any unknown or missing owners shall be deemed to have occurred, provided that the sequestration operator has complied with this section and Section 20 of this Act.

(6) The cabinet may hold a public hearing at its discretion if a hearing may assist in clarifying one (1) or more issues involved in the Class VI well permit decision. If a public hearing is held, notice of the hearing shall be provided in the same manner as set forth in subsection (2) of this section.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

(1) Within sixty (60) calendar days of receiving an application for a Class VI underground injection control well, the cabinet shall provide written notice to the applicant as to the administrative completeness of the application. If the application is determined to be administratively:

(a) Complete, the cabinet shall notify the applicant in writing that the technical review period provided by subsection (2) of this section has begun; or

(b) Incomplete, the cabinet shall notify the applicant of the deficiencies that render it administratively incomplete. The applicant shall have thirty (30) calendar days from receiving the cabinet's notice of deficiency to correct the deficiencies and render the application administratively complete.

(2) (a) Technical review of an application shall begin when the cabinet has deemed the application administratively complete and ready for review. The cabinet shall issue a final determination to either approve or deny the application within three hundred sixty-five (365) calendar days from the date an administrative completeness determination has been made by the cabinet.

(b) If the application is found deficient during technical review, the cabinet shall notify the applicant in writing of the deficiencies identified by the cabinet during the review. The applicant shall respond to the deficiencies with information that addresses the identified deficiencies.

(3) An application shall be considered temporarily withdrawn when an applicant is correcting deficiencies noted by the cabinet pursuant to subsection (1)(b) or (2)(b) of this section. Periods of temporary withdrawal shall not be counted against the review period allotted to the cabinet for administrative or technical review. Upon resubmittal the review period allotted to the cabinet shall resume.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

(1) The cabinet shall include in any Class VI underground injection control permit or order all provisions necessary to:

(a) Carry out the objectives of Sections 1 to 24 of this Act;

(b) Protect and adjust the respective rights and obligations of persons affected by a carbon dioxide sequestration facility; and

(c) Protect public health, safety, and the environment.

(2) The cabinet shall require that a copy of any Class VI permit issued and a land survey of the permitted sequestration reservoir indicating impacted surface, pore space and mineral owners and mineral lessees be filed with the county clerk in the county or counties where the carbon dioxide sequestration facility is located. Any amendments or modifications to the Class VI permit or land survey shall also be filed.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

(1) A person shall not drill, deepen, reopen, or convert a well for the purposes of developing a Class VI underground injection control well without first securing drilling permits from the cabinet.

(2) To both protect and prevent endangerment of underground sources of drinking water, the cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A regarding the drilling, casing, and construction of the wells. The cabinet shall prescribe the use of materials that are compatible and can withstand contact with carbon dioxide over the life of the sequestration project, including the project's conversion, maintenance, and abandonment of wells.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

(1) For the purposes of Sections 1 to 24 of this Act and in all other respects, any carbon dioxide injected and sequestered in accordance with a Class VI underground injection control permit issued by the cabinet and in compliance with Sections 1 to 24 of this Act and the cabinet's administrative regulations shall not be considered a pollutant, and the operation and existence of such a carbon dioxide sequestration facility shall not be considered a public nuisance.

(2) The cabinet's authority under Sections 1 to 24 of this Act shall not otherwise limit the authority or jurisdiction of the cabinet in any manner under any other state or federal law.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

The provisions of this section shall apply to activities occurring within or proposed to occur within a sequestration reservoir:

(1) Nothing contained in Sections 1 to 24 of this Act prohibits the mineral owner or lessee or the pore space owner or lessee from exploring, developing, or producing oil, gas, or other minerals above or below a sequestration reservoir or from using other strata or formations for carbon dioxide sequestration. Wells penetrating sequestration reservoirs shall protect their integrity and prevent carbon dioxide release. Wells penetrating oil and gas formations shall protect their integrity and prevent contamination or damage;

(2) Before drilling, deepening, reopening, converting, or plugging wells drilled pursuant to KRS Chapters 349 and 353 on any property with a permitted sequestration reservoir, the oil and gas operator shall, at the time of filing with the cabinet, forward a copy of the application to the sequestration operator via registered or certified mail or by personal service;

(3) When the cabinet receives a permit application for a well within a sequestration reservoir or buffer zone, the cabinet shall notify both the oil and gas operator and sequestration operator by registered or certified mail or by personal service;

(4) Before drilling, deepening, reopening, converting, or plugging a Class VI injection well or monitoring well on a property where oil, gas, or other minerals are owned by a person other than the sequestration operator, the sequestration operator shall, at the time of filing, forward a copy of the application and plat to the oil, gas, or other mineral owner via registered or certified mail or by personal service;

(5) The sequestration operator shall:

(a) Notify the oil, gas, or other mineral operator when sequestration rights are acquired on property with:

1. An oil or gas lease or oil and gas operations; or

2. A coal or noncoal lease, or coal or noncoal operations pursuant to KRS Chapter 350; and

(b) Ensure that notice of future applications to drill Class VI injection wells or monitoring wells are sent to the oil, gas, coal, or other mineral lessee and operator, if any;

(6) Upon receiving an application to drill, deepen, convert, reopen, complete, or plug an oil or gas well or a Class VI injection or monitoring well, the cabinet shall hold the application for fifteen (15) days to allow non-applicant operators to file objections. If objections are filed, the objecting non-applicant operator shall serve the objections on the applicant operator. The cabinet shall schedule a hearing, pursuant to subsection (6) of Section 5 of this Act, within ten (10) days of receiving the objection. If, during or before the hearing, the parties reach an agreement regarding the objections, changes to the drilling plan in accordance with the agreement shall be submitted by the applicant operator in an amended application. If an agreement is not reached, the cabinet, after considering the objections and the evidence presented at the hearing, shall enter

an order and issue a permit to drill with modifications to protect the rights and resources of the parties involved;

(7) If the oil and gas operator and the sequestration operator disagree on the drilling, deepening, reopening, completing, or plugging of an oil or gas well or a Class VI or monitoring well, the cabinet shall:

(a) Determine how the costs above those normally incurred in the drilling, completion, or plugging of the well will be allocated to the applicant operator and non-applicant operator; and

(b) Specify the payment terms;

(8) Upon receipt of notice of an application to drill, deepen, reopen, complete, or plug an oil or gas well or a Class VI or monitoring well, a non-applicant operator may waive his or her objection and specify whether the waiver applies to one (1) or more wells, a group of wells, or specific areas. The waiver shall be made by letter or by telephone with written confirmation. If the waiver is filed and the cabinet determines that the application is otherwise complete and the public interest is served, the permit shall be issued; and

(9) (a) Before plugging and abandoning an oil or gas well that penetrates a sequestration reservoir or a Class VI or monitoring well that penetrates an oil or gas formation:

1. The operator proposing to plug and abandon the well shall notify the other non-plugging operator and the cabinet of the operator's intention to plug and abandon the well and shall state the date and time when the plugging will occur;

2. Notice shall be sufficient to reasonably allow the non-plugging operator to attend and view the plugging of the well. The operator may proceed with plugging the well if, after notice, the non-plugging operator does not attend; and

3. The operator shall:

a. Seek and receive the approval of the cabinet; and

b. Allow a cabinet representative to be present at the well plugging.

(b) Plugging shall not occur except pursuant to the approval of the cabinet and with a cabinet representative present at the plugging.

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

The secretary may enter into cooperative agreements with corresponding officials in other state governments or governmental agencies for the purpose of regulating carbon dioxide sequestration projects that extend beyond state regulatory authority under Sections 1 to 24 of this Act.

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

The sequestration operator shall be the owner of the carbon dioxide injected into and stored in a sequestration reservoir approved under Sections 1 to 24 of this Act and shall maintain ownership and control until the cabinet issues a completion certificate. While the sequestration operator has ownership, the sequestration operator is liable for any damage the carbon dioxide may cause, including damage caused by carbon dioxide that escapes from the sequestration facility.

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

(1) The cabinet may issue a completion certificate upon application by the sequestration operator demonstrating compliance with Sections 1 to 24 of this Act at one (1) of the following times:

(a) Fifty (50) years after carbon dioxide injections into a reservoir end; or

(b) At any other time frame established on a site-specific basis by administrative regulations promulgated pursuant to KRS Chapter 13A regarding the time frame for a sequestration operator's post-injection site care and site closure plan.

(2) The completion certificate shall only be issued:

(a) After public notice and hearing; and

(b) If the sequestration operator demonstrates that:

1. The operator is in full compliance with all laws and other requirements governing the sequestration facility, including without limitation, the requirements of any Class VI underground injection control permit associated with the facility and other applicable requirements;

2. All pending claims regarding the sequestration facility's operation have been addressed and resolved; and

3. The carbon dioxide injected into the sequestration reservoir has stabilized, and the reservoir is reasonably expected to retain the stored carbon dioxide.

(3) As of the effective date of a completion certificate:

(a) Ownership of the stored carbon dioxide shall transfer by operation of law, without payment of any compensation, to the Commonwealth;

(b) If any claim for damages or injury is made against the pore space or surface owner arising from stored carbon dioxide, the Commonwealth shall defend the pore space or surface owner against that claim and indemnify and hold the pore space or surface owner harmless from any damages awarded, except that a pore space owner or surface owner may be liable for causing or contributing to migration or release of stored carbon dioxide from the reservoir. The Commonwealth's liability for such claims and its obligation to indemnify a pore space owner or surface owner for any claim shall not obligate payment of any damages in excess of the balance of the carbon dioxide sequestration facility trust fund established in Section 16 of this Act;

(c) The sequestration operator and all persons who transported or generated any stored carbon dioxide shall be released from all regulatory liability and regulatory requirements associated with the sequestration facility, provided that the sequestration operator shall not be released from regulatory liability for fraud or misrepresentation, nor from any liability existing at common law; and

(d) The Commonwealth's responsibility for monitoring and managing the sequestration facility following issuance of the completion certificate and assumption of ownership of the sequestered carbon dioxide shall be funded from the carbon dioxide sequestration facility trust fund established in Section 16 of this Act until and unless the federal government assumes responsibility for the long-term monitoring and management of sequestration facilities.

(4) The cabinet shall require that a copy of the completion certificate and a survey of the sequestration field be filed with the county clerk in the county or counties where the carbon dioxide sequestration facility is located.

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created in the State Treasury an interest-bearing, restricted, agency account to be known as the carbon dioxide sequestration facility administrative fund. All amounts required to be deposited into the fund shall not be segregated into separate accounts but may be used by the cabinet as provided in this section for any carbon dioxide sequestration project. Notwithstanding KRS 45.229, any balance remaining in the fund at the end of any fiscal year shall not lapse but shall be carried forward for the purposes of the fund until expended. Expenditures from the fund shall be made by the cabinet for the purposes of:

(a) Payment of all expenses of the cabinet in processing Class VI permits and certificate applications;

(b) Regulating sequestration facilities during their construction, operation, and pre-closure phases; and

(c) Certifying the sequestration amount determinations under Section 18 of this Act.

(2) The secretary may:

(a) Enter into a cooperative agreement with another government agency to carry out regulatory responsibilities over a sequestration facility on behalf of the Commonwealth; and

(b) Compensate the government agency for its expenses with money from the fund.

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

(1) Class VI permit applicants shall pay an application fee to the cabinet. The application fee established on the fee schedule developed under Section 24 of this Act shall be calculated to ensure sufficient funds are available for the actual or anticipated cost to the cabinet for the review of the application.

(2) Sequestration operators shall pay an annual administrative fee to the cabinet. The administrative fee established on the fee schedule developed under Section 24 of this Act shall be calculated to ensure sufficient funds are available for the actual or anticipated cost to the cabinet for the regulation of sequestration facilities.

(3) Sequestration operators seeking completion certificates shall pay the cabinet a fee established on the fee schedule developed under Section 24 of this Act. The fee shall be calculated to ensure sufficient funds are available for the actual or anticipated cost to the cabinet for the review of the permit and records relating to the operation of the sequestration facility to determine eligibility for issuance of the completion certificate.

(4) The application and completion certificate fees shall be deposited in the carbon dioxide sequestration facility administrative fund established in Section 14 of this Act.

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created in the State Treasury an interest-bearing, restricted, agency account to be known as the carbon dioxide sequestration facility trust fund. Moneys in the fund shall be used for:

(a) The long-term monitoring and management of sequestration facilities prior to closure, plugging, and abandonment of all monitoring wells in the event of operator default;

(b) Expenses associated with the long-term monitoring and management after issuance of a completion certificate; and

(c) Determining the causes and remediating the effects of any releases or environmental emergencies associated with sequestration facilities.

(2) All amounts required to be deposited into the fund shall not be segregated into separate accounts but may be used by the cabinet as provided in this section for any carbon dioxide sequestration project. Notwithstanding KRS 45.229, any balance remaining in the fund at the end of any fiscal year shall not lapse but shall be carried forward to carry out the purposes of the fund until fully expended.

(3) The secretary may:

(a) Enter into a cooperative agreement with another government agency to carry out regulatory responsibilities over a sequestration facility on behalf of the Commonwealth; and

(b) Compensate the government agency for its expenses with money from the fund.

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

(1) Sequestration operators shall pay the cabinet a fee on each ton of carbon dioxide injected for sequestration. The fee shall be paid at the time of injection and deposited into the carbon dioxide sequestration facility trust fund established in Section 16 of this Act. The fee shall be calculated to ensure sufficient funds are available for the actual or anticipated cost of:

(a) Long-term monitoring and management of sequestration facilities; and

(b) The effects of any releases or environmental emergencies associated with the sequestration facilities.

(2) On or before December 31 of the first year in which the cabinet receives its first application for a Class VI underground injection control permit and each December 31 thereafter, the cabinet shall prepare and make publicly available an annual report on the carbon dioxide sequestration facility trust fund established in Section 16 of this Act that includes, at a minimum, information on receipts, disbursements, and projections for meeting the fund's objectives in Section 16 of this Act. The purpose of the report is to determine the sufficiency of fees authorized in Section 24 of this Act.

➔SECTION 18. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

(1) The cabinet shall, upon request of an operator, certify the amount of injected carbon dioxide demonstrated to have been stored in a reservoir that has been or is being used for a Class II well in an enhanced oil or gas recovery project. Upon request of an operator, the cabinet may also certify the amount of injected carbon dioxide sequestered under Sections 1 to 24 of this Act.

(2) The amounts determined by the cabinet under subsection (1) of this section may be used for such matters as establishing the amounts of carbon credits, allowances, trading, emissions allocations, offsets, and for other similar purposes.

(3) A person requesting a certification of a sequestration determination shall pay the cabinet a certification fee as authorized in Section 24 of this Act. The fee shall be calculated to ensure sufficient funds are available for the actual or anticipated cost to the cabinet to provide the certifications described in subsection (1) of this section.

(4) Any fees the cabinet receives to provide the certifications described in subsection (1) of this section shall be deposited into the carbon dioxide sequestration facility administrative fund established in Section 14 of this Act.

➔SECTION 19. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 24 of this Act shall not be construed as altering the respective legal rights or relationship between the severed mineral estate and a pore space owner as they exist at common law.

➔SECTION 20. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

(1) If a sequestration operator is unable, after reasonable effort, to obtain the consent of all pore space owners within a proposed reservoir for an underground carbon dioxide sequestration facility, the cabinet may on petition satisfying the conditions established in this section, issue an order that the identified pore space owned by nonconsenting owners be included in a sequestration facility for the purpose of geologic sequestration of carbon dioxide pursuant to subsection (5) of this section.

(2) The Class VI permit applicant shall negotiate in good faith with the pore space owners and acquire rights needed to access the pore space.

(3) Except for temporary access in cases of emergency, the cabinet shall not allow any surface disturbance on any surface tract or tracts overlying the pore space of a nonconsenting owner.

(4) The sequestration operator shall provide a list to the cabinet of all persons reasonably known to own an interest in pore space proposed to be included in the reservoir.

(5) (a) If the applicant or operator cannot reach an agreement with the owners of the pore space acreage in a proposed reservoir, but has secured written consent for at least seventy-five percent (75%) of the pore space acreage in the proposed reservoir, all the pore space in the sequestration reservoir shall be declared to be included within the proposed sequestration facility if the cabinet finds that the requirements of this section have been met.

(b) For the purposes of this section, the interests of any unknown or missing pore space owners may be declared to be included through the pooling order provided reasonable effort to locate and notify the owners has been made and the sequestration operator has complied with the publication requirements of subsection (7) of this section. A pooling order shall be made only after the cabinet provides notice to all pore space owners proposed to be included within the order.

(6) The applicant shall pay to the cabinet all costs associated with the conduct of the administrative hearing as assessed in the pooling order. The payment shall be made prior to the pooling order becoming effective. These funds shall be deposited into the carbon dioxide sequestration facility administrative fund established in Section 14 of this Act.

(7) If the proposed pooling order concerns pore space with unknown or missing owners, the sequestration operator shall, after reasonable efforts to locate the pore space owners, publish one (1) notice in the newspaper of the largest circulation in each county in which the pore space is located. The notice shall appear no more than forty-five (45) days nor less than thirty (30) days prior to the initial application for the pooling order. The applicant shall file proof of notice with the cabinet concurrently with the application. The notice shall:

(a) State that an application for a pooling order has been filed with the cabinet;

(b) Describe the property under which the pore space proposed to be collectively used is located;

(c) In the case of an unknown pore space owner, indicate the name of the last known owner;

(d) In the case of a missing pore space owner, identify the owner and the owner's last known address; and

(e) State that any person claiming an interest in the pore space proposed to be collectively used shall notify the cabinet and the Class VI permit applicant at the published address within twenty (20) days of the publication date.

(8) A pooling order shall authorize the injection and sequestration of carbon dioxide beneath the tract or portion thereof. The pooling order shall identify the compensation to be paid to unknown, missing, and nonconsenting pore space owners and the basis for valuation of the collective interest. The cabinet may consider evidence submitted by nonconsenting pore space owners as to the valuation of their interest.

(9) Except for temporary access in cases of emergency, the pooling order issued by the cabinet shall not authorize any surface entry or surface disturbance by the permittee on any surface tract or tracts overlying the pore space of a nonconsenting, missing, or unknown owner.

(10) A certified copy of any pooling order and a survey of the sequestration field shall be maintained by the cabinet.

(11) If the cabinet or US EPA requires a seismic survey of lands owned by the nonconsenting surface owner and an operator is unable to reasonably obtain by negotiation with a property owner the right to conduct seismic surveys on lands owned by the nonconsenting surface owner, then:

(a) The cabinet may issue an order allowing the operator to conduct a seismic survey of the lands owned by the nonconsenting surface owner from outside the boundaries of the lands owned by the nonconsenting surface owner;

(b) The operator shall, prior to conducting the survey, pay the surface owner just and reasonable compensation as established by the cabinet; and

(c) Any data obtained by the operator through a seismic survey of the lands owned by a nonconsenting surface owner shall be held as confidential and shall be used only by the permittee, the cabinet, and US EPA for the purpose of satisfying statutory or regulatory requirements.

(12) Except for the authorized persons and circumstances in subsection (11) of this section, any person disclosing confidential seismic survey data may be liable to the nonconsenting surface owner as provided under law.

(13) The operator shall defend, indemnify, and hold harmless the property owner for all claims arising out of any surface or subsurface entry onto the property by the operator, its contractors, and its agents, except those claims arising from the intentional acts of a property owner.

➔SECTION 21. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

(1) The sequestration operator shall deposit the funds due to unknown or missing pore space owners in an interest-bearing trust account.

(2) If the unknown or missing pore space owners remain unknown or missing for a period of seven (7) years from the date of first injection into the sequestration reservoir, the sequestration operator shall pay the funds held in trust to the surface owners of the tract overlying the pore space owned by the unknown or missing pore space owners.

(3) If a surface owner remains missing or unknown for a period of seven (7) years from the date of first injection into the sequestration reservoir, the sequestration operator shall deposit the funds held in trust to the carbon dioxide sequestration facility trust fund established in Section 16 of this Act.

➔SECTION 22. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

If any provision of Sections 1 to 24 of this Act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of Sections 1 to 24 of this Act which can be given effect without the invalid provision or application, and to this end the provisions of Sections 1 to 24 of this Act are severable.

➔SECTION 23. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

(1) (a) If a person or operator fails to comply with the requirements of Sections 1 to 24 of this Act or any administrative regulation or order promulgated or issued thereunder, the cabinet shall issue a notice of noncompliance to the person or operator and serve the notice in accordance with subsection (5) of this section. The notice shall specify the nature of the violation, the remedial action required to abate the violation, and the period of time set by the cabinet for abatement of the violation.

(b) If a person or operator fails to abate the violation within the time prescribed in the notice, the cabinet shall issue a failure to abate cessation order to the person or operator and serve the notice in accordance with subsection (5) of this section. The order shall:

1. Require the person or operator to immediately complete remedial actions to abate the violation described in the notice and to cease any underground injection activity at the sequestration facility or site where the violation is occurring; and

2. Remain in effect until the violation has been abated or the order is vacated or terminated in writing by the cabinet.

(c) The cabinet shall issue a forfeiture order and order the financial responsibility instruments covering the sequestration facility be forfeited to the cabinet if:

1. An agreement has not been reached with the cabinet regarding the alleged failure to comply with the notice to abate the violation; and

2. The director determines the operator has not complied with the requirements set forth in the notice of noncompliance or the failure to abate cessation order.

(d) The forfeiture order shall become effective thirty (30) days after the cabinet gives the operator notice of the order, unless a petition has been filed pursuant to KRS 353.700, in which case the forfeiture order shall become effective only upon a final determination of the secretary affirming the forfeiture order following the conclusion of the petition process.

(2) (a) In addition to a notice of noncompliance or failure to abate cessation order issued pursuant to subsection (1) of this section, the cabinet may issue a closure order to any person or operator where:

1. A sequestration facility is in violation of Sections 1 to 24 of this Act or any administrative regulation or order promulgated or issued thereunder, and the violation creates an imminent danger to the health or safety of the public or is causing or can be reasonably expected to cause significant imminent environmental harm; or

2. A sequestration facility is in operation by any person without first posting financial responsibility and obtaining written approval of the cabinet.

(b) The closure order shall be affixed by a red tag marker at the conspicuous location at the facility with a letter of violation and a copy of the closure order mailed to the address of record for the responsible person or operator, if an address is on file with the cabinet. The letter of violation and closure order shall notify the person or operator to immediately:

1. Cease operation of the sequestration facility; and

2. Abate the violation.

(c) Any person operating a sequestration facility under the circumstances described in paragraph (a)2. of this subsection may be ordered to either submit financial responsibility and obtain transfer of the facility or complete final reclamation and site closure for the facility, but the order does not relieve any prior obligation owed by the current operator of record. The closure order may be appealed pursuant to KRS 353.700 within thirty (30) days of issuance. Any person or operator that fails to comply with a closure order issued pursuant to this section shall be subject to a civil and criminal penalty under KRS 353.990.

(3) (a) A copy of:

1. All enforcement documents under this section shall be served on the surface and pore space owner, if they are different from the property owner, where the violation occurred; and

2. The notice, at the time of issuance, shall be delivered to the complaining party if he or she is different from the operator, and if the enforcement document arises out of a citizen complaint.

(b) Resolution of the enforcement action issued under this section shall require reimbursement of costs incurred by the cabinet.

(4) When it appears that any person is violating or threatening to violate any provision of Sections 1 to 24 of this Act or any rule, administrative regulation, or order promulgated or issued thereunder, the cabinet may bring suit to restrain the person from continuing the violation or from carrying out the threatened violation. A suit brought under this subsection shall:

(a) Be filed in the:

1. Franklin Circuit Court;

2. Circuit Court of the county in which the violation occurred or is threatened; or

3. Circuit Court of the county in which the defendant resides or in which any defendant resides if there is more than one (1) defendant; and

(b) Give the court jurisdiction to grant without bond or other undertaking the prohibitory or mandatory injunction, as the facts may warrant, including a temporary restraining order or injunction.

(5) (a) Service of any notice or order issued under this section shall be:

1. Handed to the person in charge of the sequestration facility;

2. Sent by certified mail, return receipt requested, addressed to the permanent address shown on the application for a permit;

3. Sent by electronic mail to the address shown on the permit application or to an address provided to the cabinet voluntarily; or

4. Sent by certified or electronic mail to the address known to the cabinet, if no address is shown on the application for a permit or the address is no longer valid.

(b) Service in accordance with paragraph (a)3. or 4. of this subsection shall be effective upon delivery of the notice or the order to the recipient's inbox by email and verification sent to the cabinet by an electronic registered receipt.

(6) The commencement of a proceeding pursuant to KRS 353.700 shall not operate as a stay of a notice or order, including a notice or order that contains the requirement to complete all remedial measures to abate the cited violation, issued under this section. A party served with a notice or order under this section may request a stay of the notice or order by filing a written petition for temporary relief with the cabinet's Office of Administrative Hearings. A hearing on the petition shall occur within ten (10) days of the office's receipt of the petition for temporary relief unless the petitioner waives this requirement. The hearing officer shall render a decision on the petition for temporary relief within three (3) working days of the hearing. A party aggrieved by the decision of the hearing officer may file a written request for review by the secretary. Temporary relief may be granted from a notice or order issued under this section if:

(a) The person requesting relief shows that there is substantial likelihood that the findings on the merits in an administrative hearing conducted by the cabinet will be favorable to the person; and

(b) The relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(7) (a) If the cabinet fails to bring suit to enjoin a violation or threatened violation of any provision of Sections 1 to 24 of this Act or any rule, administrative regulation, or order promulgated or issued thereunder within ten (10) days after receipt of a written request to do so by any person who is or will be adversely affected by the violation, the person making the request may bring suit to restrain the violation or threatened violation in any court in which the cabinet might have brought suit.

(b) The cabinet shall be made a party defendant in the suit in addition to the person allegedly violating or threatening to violate a provision of Sections 1 to 24 of the Act, or any rule, administrative regulation, or order promulgated or issued thereunder.

➔SECTION 24. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

(1) In addition to the powers conferred upon the cabinet in other provisions of Sections 1 to 24 of this Act, the cabinet may develop, promulgate, and submit for approval a regulatory program for the purpose of accepting primary responsibility for the administration of the underground injection control program under 42 U.S.C. sec. 300h et seq. The cabinet shall include in any regulatory program developed in administrative regulations promulgated in accordance with KRS Chapter 13A:

(a) Regarding the plugging, conversion, maintenance, monitoring, and abandonment of Class VI wells, measures to protect underground sources of drinking water and to prevent their endangerment;

(b) A prohibition of underground injection through Class VI wells, except as authorized by a Class VI permit issued pursuant thereto;

(c) The details of the requirements for a permit application, including:

1. Site characterization;

2. Operation of injection wells;

3. A permitting process, including detailed time frames and methods to modify and transfer permits;

4. Comprehensive monitoring that addresses all aspects of well integrity, carbon dioxide injection and sequestration, and air and groundwater quality during the injection operation and the post-injection site care period;

5. Financial responsibility ensuring the availability of funds for the life of a carbon dioxide sequestration project, including post-injection site care and emergency response; and

6. Reporting and recordkeeping that provide project-specific information to evaluate the site operations and ensure environmental protection;

(d) The criteria for reviewing compliance with eligibility requirements in subsection (12) of Section 4 of this Act and procedures for restoration of eligibility for a permit;

(e) The requisite features of the Class VI underground injection control program including those for the:

1. Administration of the carbon dioxide sequestration facility administration fund established in Section 14 of this Act;

2. Issuance of determinations that certify the amount of carbon dioxide stored pursuant to individual Class VI underground injection control permits issued for that purpose, based upon requests for sequestration determination;

3. Issuance of pooling orders as part of the development of a proposed carbon dioxide sequestration project;

4. Issuance of completion certificates; and

5. Requirement for owners or operators of Class VI underground injection control wells to demonstrate financial responsibility for the cost of closing all Class VI underground injection control wells. The demonstration of financial responsibility may include but is not be limited to the qualifying instruments required by Section 4 of this Act;

(f) The requirements for reasonable public notice and public participation for:

1. Applications for Class VI underground injection control permits;

2. Applications for drilling permits;

3. Issuance of a completion certificate; and

4. Unknown or missing owners; and

(g) A schedule of fees to be assessed on applicants and operators. The fees shall cover all costs to the cabinet for administering the underground injection control program. The schedule of fees shall be reviewed and amended as necessary to ensure that the underground injection control program is fully funded at all times. The cabinet may collect application fees for the drilling of wells for use as Class VI wells prior to delegation of authority by the US EPA.

(2) Administrative regulations promulgated pursuant to this section to allow for assumption of primary responsibility for administration of the underground injection control program under 42 U.S.C. sec. 300h et seq. shall conform to the standards and procedures established by US EPA for Class VI wells.

(3) Any administrative regulations promulgated pursuant to Sections 1 to 24 of this Act shall be:

(a) Promulgated in accordance with KRS Chapter 13A; and

(b) Deemed to be necessary to prevent the loss of federal or state funds for the purposes of KRS 13A.105.

(4) ***(a)*** ***Any order or final determination of the cabinet that is issued pursuant to Sections 1 to 24 of this Act shall be subject to review in accordance with KRS 353.700 and any administrative regulation promulgated thereunder.***

(b) ***As used in this subsection, "order or final determination" includes but is not limited to the issuance, denial, modification, or revocation of a permit, but does not include the issuance of a letter identifying deficiencies in an application for a permit or other nonfinal determinations.***

➔Section 25. KRS 278.704 is amended to read as follows:

(1) No person shall commence to construct a merchant electric generating facility until that person has applied for and obtained a construction certificate for the facility from the board. The construction certificate shall be valid for a period of three (3) years after the issuance date of the last permit required to be obtained from the Energy and Environment Cabinet after which the certificate shall be void. The certificate shall be conditioned upon the applicant obtaining necessary air, water, and waste permits. If an applicant has not obtained all necessary permits and has not commenced to construct prior to the expiration date of the certificate, the applicant shall be required to obtain a new valid certificate from the board.

(2) ***(a)*** Except as provided in subsections (3), (4), and (5) of this section, no construction certificate shall be issued to construct a merchant electric generating facility unless***:***

1. The exhaust stack of the proposed facility and any wind turbine is at least one thousand (1,000) feet from the property boundary of any adjoining property owner***;*** ~~[and]~~

2. All proposed structures or facilities used ***in connection with the generation or storage*** ~~[for generation]~~ of electricity are two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility***; and***

3. ***With regard to a wind power facility, the maximum height of the wind turbine, as measured from the natural grade to the top of the hub where the rotor attaches, does not exceed three hundred fifty (350) feet***.

(b) For purposes of applications for site compatibility certificates pursuant to KRS 278.216***:*** ~~[,]~~

1. Only the exhaust stack of the proposed facility to be actually used for coal or gas-fired generation~~[or, beginning with applications for site compatibility certificates filed on or after January 1, 2015, the proposed structure or facility to be actually used for solar or wind generation]~~ shall be required to be at least one thousand (1,000) feet from the property boundary of any adjoining property owner and two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility***;***

2. ***Any proposed structure to be actually used for the generation of electricity from solar or wind power shall be at least one thousand (1,000) feet from the property boundary of any adjoining property owner; and***

3. ***Any proposed structures or facilities used in connection with the generation or storage of electricity from solar or wind power shall be at least two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility***.

(3) If the merchant electric generating facility is proposed to be located in a county or a municipality with planning and zoning, then ***maximum height,*** decommissioning***,*** and setback requirements from a property boundary, residential neighborhood, school, hospital, or nursing home facility may be established by the planning and zoning commission. Any decommissioning requirement***, maximum height limitation,*** or setback established by a planning and zoning commission for a facility in an area over which it has jurisdiction shall:

(a) ***Except with regard to the minimum decommission bonding amount required in subsection (2)(m)5.a. of Section 26 of this Act,*** have primacy over the decommissioning requirements in KRS 278.706(2)(m)***, the maximum height limitation in subsection (2)(a)3. of this section,*** and the setback requirement in subsections (2) and (5) of this section; and

(b) Not be subject to modification or waiver by the board through a request for deviation by the applicant, as provided in subsection (4) of this section or otherwise.

(4) The board may grant a deviation from the requirements of subsection (2) of this section on a finding that the proposed facility is designed to and, as located, would meet the goals of KRS 224.10-280, 278.010, 278.212,

278.214, 278.216, 278.218, and 278.700 to 278.716 at a distance closer than those provided in subsection (2) of this section.

(5) If the merchant electric generating facility is proposed to be located on a site of a former coal processing plant in the Commonwealth where the electric generating facility will utilize on-site waste coal as a fuel source, then the one thousand (1,000) foot property boundary requirement in subsection (2)***(a)1.*** of this section shall not be applicable; however, the applicant shall be required to meet any other setback requirements contained in subsection (2)***(a)2.*** of this section.

(6) If requested, a merchant electric generating entity considering construction of a facility for the generation of electricity or a person acting on behalf of such an entity shall hold a public meeting in any county where acquisition of real estate or any interest in real estate is being considered for the facility. A request for such a meeting may be made by the commission, or by any city or county governmental entity, including a board of commissioners, planning and zoning, fiscal court, mayor, or county judge/executive. The meeting shall be held not more than thirty (30) days from the date of the request.

(7) The purpose of the meeting under subsection (6) of this section is to fully inform landowners and other interested parties of the full extent of the project being considered, including the project time line. One (1) or more representatives of the entity with full knowledge of all aspects of the project shall be present and shall answer questions from the public.

(8) Notice of the time, subject, and location of the meeting under subsection (6) of this section shall be posted in both a local newspaper, if any, and a newspaper of general circulation in the county. Notice shall also be placed on the websites of the unregulated entity, and any local governmental unit. Owners of real estate known to be included in the project and any person whose property adjoins at any point any property to be included in the project shall be notified personally by mail. All notices must be mailed or posted at least two (2) weeks prior to the meeting.

(9) The merchant electric generating entity or a person acting on behalf of a merchant electric generating entity shall, on or before the date of the public meeting held under subsection (6) of this section, provide notice of all research, testing, or any other activities being planned or considered to:

(a) The Energy and Environment Cabinet;

(b) The Public Service Commission;

(c) The Transportation Cabinet;

(d) The Attorney General; and

(e) The Office of the Governor.

(10) Subsections (6) to (9) of this section shall not apply to any facility or project that has already received a certificate of construction from the board.

➔Section 26. KRS 278.706 is amended to read as follows:

(1) Any person seeking to obtain a construction certificate from the board to construct a merchant electric generating facility shall file an application at the office of the Public Service Commission.

(2) A completed application shall include the following:

(a) The name, address, and telephone number of the person proposing to construct and own the merchant electric generating facility;

(b) A full description of the proposed site, including a map showing the distance of the proposed site from residential neighborhoods, the nearest residential structures, schools, and public and private parks that are located within a two (2) mile radius of the proposed facility;

(c) Evidence of public notice that shall include the location of the proposed site and a general description of the project, state that the proposed construction is subject to approval by the board, and provide the telephone number and address of the Public Service Commission. Public notice shall be given within thirty (30) days immediately preceding the application filing to:

1. Landowners whose property borders the proposed site; and

2. The general public in a newspaper of general circulation in the county or municipality in which the facility is proposed to be located;

(d) A statement certifying that the proposed plant will be in compliance with all local ordinances and regulations concerning noise control and with any local planning and zoning ordinances. The statement shall also disclose setback requirements established by the planning and zoning commission as provided under KRS 278.704(3);

(e) If the facility is not proposed to be located on a site of a former coal processing plant and the facility will use on-site waste coal as a fuel source or in an area where a planning and zoning commission has established a setback requirement pursuant to KRS 278.704(3), a statement that the exhaust stack of the proposed facility and any wind turbine is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and all proposed structures or facilities used ***in connection with the generation or storage*** ~~[for generation]~~ of electricity are two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility, unless ***coal or gas-fired generating*** facilities capable of generating ten megawatts (10MW) or more currently exist on the site. If the facility is proposed to be located on a site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, a statement that the proposed site is compatible with the setback requirements provided under KRS 278.704(5). If the facility is proposed to be located in a jurisdiction that has established setback requirements pursuant to KRS 278.704(3), a statement that the proposed site is in compliance with those established setback requirements;

(f) A complete report of the applicant's public involvement program activities undertaken prior to the filing of the application, including:

1. The scheduling and conducting of a public meeting in the county or counties in which the proposed facility will be constructed at least ninety (90) days prior to the filing of an application, for the purpose of informing the public of the project being considered and receiving comment on it;

2. Evidence that notice of the time, subject, and location of the meeting was published in the newspaper of general circulation in the county, and that individual notice was mailed to all owners of property adjoining the proposed project at least two (2) weeks prior to the meeting; and

3. Any use of media coverage, direct mailing, fliers, newsletters, additional public meetings, establishment of a community advisory group, and any other efforts to obtain local involvement in the siting process;

(g) A summary of the efforts made by the applicant to locate the proposed facility on a site where existing electric generating facilities are located;

(h) Proof of service of a copy of the application upon the chief executive officer of each county and municipal corporation in which the proposed facility is to be located, and upon the chief officer of each public agency charged with the duty of planning land use in the jurisdiction in which the facility is proposed to be located;

(i) An analysis of the proposed facility's projected effect on the electricity transmission system in Kentucky;

(j) An analysis of the proposed facility's economic impact on the affected region and the state;

(k) A detailed listing of all violations by it, or any person with an ownership interest, of federal or state environmental laws, rules, or administrative regulations, whether judicial or administrative, where violations have resulted in criminal convictions or civil or administrative fines exceeding five thousand dollars ($5,000). The status of any pending action, whether judicial or administrative, shall also be submitted;

(l) A site assessment report as specified in KRS 278.708. The applicant may submit and the board may accept documentation of compliance with the National Environmental Policy Act (NEPA) rather than a site assessment report; ~~[and]~~

(m) A decommissioning plan that shall describe how the merchant electric generating facility will be decommissioned and dismantled following the end of its useful life. The decommissioning plan shall, at a minimum, include plans to:

1. Unless otherwise requested by the ***current*** landowner ***at the time of decommissioning***, remove all above-ground facilities;

2. Unless otherwise requested by the ***current*** landowner ***at the time of decommissioning***, remove any underground components and foundations of above-ground facilities. Facilities removed under this subparagraph shall be removed ***in their entirety***~~[to a depth of three (3) feet below the surface grade of the land in or on which the component was installed]~~, unless the ***current*** landowner and the applicant otherwise agree ***at the time of decommissioning*** to a different depth;

3. Return the land to a substantially similar state ***with the same or similar soil quality*** as it was prior to the commencement of construction;

4. Unless otherwise requested by the ***current*** landowner ***at the time of decommissioning***, leave any interconnection or other facilities in place for future use at the completion of the decommissioning process;

5. Secure a bond or other similar security for the project to assure financial performance of the decommissioning obligation, provided that:

   a. The amount of the proposed bond or similar security shall be determined by an independent, licensed engineer who is experienced in the decommissioning ***the type*** of~~[solar]~~ electric generating ***facility to be decommissioned***~~[facilities]~~ and has no financial interest in either the merchant electric generating facility or any parcel of land upon which the merchant electric generating facility is located. The proposed amount of the bond or similar security shall be ***the greater of***~~[either]~~:

      i. The net present value of the total estimated cost of completing the decommissioning plan~~[, less the current net salvage value of the merchant electric generating facility's components]~~; or

      ii. The bond amount required by a county or municipal government that has established a decommissioning bond requirement or similar security obligation in the county or municipality where the merchant electric generating facility will be located. If the facility will be located in more than one (1) county or municipality that has established a decommissioning bond or similar security obligation, then the higher amount shall be required for the facility;

   b. The bond or other similar security names:

      i. For property that is leased by the applicant, each landowner from whom the applicant leases land and the Energy and Environment Cabinet as the primary co-beneficiaries; or

      ii. For property that is owned by the applicant, the Energy and Environment Cabinet as the primary beneficiary;

   c. If the merchant electric generating facility is to be located in a county or municipality that has not established a decommissioning bond or other similar security obligation, the bond or other similar security shall name the county or municipality as a secondary beneficiary with the county's or municipality's consent;

   d. The bond or other similar security shall be provided by an insurance company or surety that shall at all times maintain at least an "Excellent" rating as measured by the AM Best rating agency or an investment grade credit rating by any national credit rating agency and, if available, shall be noncancelable by the provider or the customer until completion of the decommissioning plan or until a replacement bond is secured; and

   e. The bond or other similar security shall provide that at least thirty (30) days prior to its cancellation or lapse, the surety shall notify the applicant, its successor or assign, each landowner, the Energy and Environment Cabinet, and ***each***~~[the]~~ county or city in which the facility is located of the impending cancellation or lapse. The notice shall specify the reason for the cancellation or lapse and provide any of the parties, either jointly or separately, the opportunity to cure the cancellation or lapse prior to it becoming effective. The applicant, its successor, or its assign, shall be responsible for all costs incurred by all

parties to cure the cancellation or lapse of the bond. Each landowner, or the Energy and Environment Cabinet with the prior approval of each landowner, may make a demand on the bond and initiate and complete the decommissioning plan***;***~~.~~

6. Communicate with each affected landowner at the end of the merchant electric generating facility's useful life so that any requests of the landowner that are in addition to the minimum requirements set forth in this paragraph and in addition to any other requirements specified in the lease with the landowner may, in the sole discretion of the applicant or its successor or assign, be accommodated; and

7. Incorporate the requirements of subparagraphs 1. to 6. of this paragraph into the applicant's leases with landowners***; and***

(n) For applications for the construction of wind power facilities, a statement certifying that:

1. Any wind turbine will not be artificially lighted except as required by law;

2. Wind power facilities will be sited in a manner that minimizes shadowing or flicker impacts; and

3. Any shadowing or flicker impacts will not have a significant adverse impact on neighboring or adjacent property uses through siting or mitigation.

(3) ***(a) The entity causing the decommissioning plan required under subsection (2)(m) of this section to be carried out shall be entitled to the proceeds from the sale of any salvaged materials or components of the merchant electric generating facility recovered during the decommissioning process.***

(b) Any proceeds that the Energy and Environment Cabinet recovers from the sale of salvaged materials or components in the course of carrying out a decommissioning plan under subsection (2)(m) of this section that, taken with the decommissioning bond amounts that have been drawn upon, exceed the cost of completing the decommissioning plan shall be deposited in the merchant electric generating facility monitoring and enforcement fund established in KRS 224.10-285.

(4) Application fees for a construction certificate shall be set by the board and deposited into a trust and agency account to the credit of the commission.

(5)~~[(4)]~~ Replacement of a merchant electric generating facility with a like facility, or the repair, modification, retrofitting, enhancement, or reconfiguration of a merchant electric generating facility shall not, for the purposes of this section and KRS 224.10-280, 278.704, 278.708, 278.710, and 278.712, constitute construction of a merchant electric generating facility.

(6)~~[(5)]~~ The board shall promulgate administrative regulations prescribing fees to pay expenses associated with its review of applications filed with it pursuant to KRS 278.700 to 278.716. All application fees collected by the board shall be deposited in a trust and agency account to the credit of the Public Service Commission. If a majority of the members of the board find that an applicant's initial fees are insufficient to pay the board's expenses associated with the application, including the board's expenses associated with legal review thereof, the board shall assess a supplemental application fee to cover the additional expenses. An applicant's failure to pay a fee assessed pursuant to this subsection shall be grounds for denial of the application.

➔Section 27. KRS 278.710 is amended to read as follows:

(1) Within one hundred twenty (120) days of receipt of an administratively complete application, or within one hundred eighty (180) days of receipt of an administratively complete application if a hearing is requested, the board shall, by majority vote, grant or deny a construction certificate, either in whole or in part, based upon the following criteria:

(a) Impact of the facility on scenic surroundings, property values, the pattern and type of development of adjacent property, and surrounding roads;

(b) Anticipated noise levels expected as a result of construction and operation of the proposed facility;

(c) The economic impact of the facility upon the affected region and the state;

(d) Whether the facility is proposed for a site upon which existing generating facilities, capable of generating ten megawatts (10MW) or more of electricity, are currently located;

(e) Whether the proposed facility will meet all local planning and zoning requirements that existed on the date the application was filed;

(f) Whether the additional load imposed upon the electricity transmission system by use of the merchant electric generating facility will adversely affect the reliability of service for retail customers of electric utilities regulated by the Public Service Commission;

(g) Except where the facility is subject to a statewide setback established by a planning and zoning commission as provided in KRS 278.704(3) and except for a facility proposed to be located on a site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, whether the exhaust stack of the proposed merchant electric generating facility and any wind turbine is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and all proposed structures or facilities used ***in connection with the generation or storage*** ~~[for generation]~~ of electricity are two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility, unless a different setback has been requested and approved under KRS 278.704(4). If a planning and zoning commission has established setback requirements that differ from those under KRS 278.704(2), the applicant shall provide evidence of compliance. If the facility is proposed to be located on site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, the applicant shall provide evidence of compliance with the setback requirements provided in KRS 278.704(5);

(h) The efficacy of any proposed measures to mitigate adverse impacts that are identified pursuant to paragraph (a), (b), (e), or (f) of this subsection from the construction or operation of the proposed facility;

(i) Whether the applicant has a good environmental compliance history; ~~[and]~~

(j) Whether the decommissioning plan is complete and complies with the requirements of KRS 278.706(2)(m) and any other local requirements that may apply***; and***

(k) Whether, for applications for the construction of wind power facilities, the applicant and facilities will comply with the certifications required in subsection (2)(n) of Section 26 of this Act.

(2) When considering an application for a construction certificate for a merchant electric generating facility, the board may consider the policy of the General Assembly to encourage the use of coal as a principal fuel for electricity generation as set forth in KRS 152.210, provided that any facility, regardless of fuel choice, shall comply fully with KRS 224.10-280, 278.212, 278.216, and 278.700 to 278.716.

(3) A person that has received a construction certificate for a merchant electric generating facility shall:

(a) File with the Energy and Environment Cabinet the copy of the bond or other similar security that, pursuant to KRS 278.706(2)(m)5., is required by a county or a municipal government or as part of a decommissioning plan, no later than the date upon which the construction of the merchant generating facility commences, and refile an updated copy at least once every five (5) years thereafter;

(b) Not transfer rights and obligation under the certificate without having first applied for and received a board determination that:

1. The acquirer has a good environmental compliance history; and

2. The acquirer has the financial, technical, and managerial capacity to meet the obligations imposed by the terms of the approval or has the ability to contract to meet these obligations;

(c) File with the Energy and Environment Cabinet a notice of the date that construction is complete and the merchant electric generating facility begins producing electricity for sale; and

(d) Following the date the merchant electric generating facility begins producing electricity for sale, file a notice of any transaction involving the transfer or sale of ownership, control, or the right to control the merchant electric generating facility, with lessors of property where the merchant electric generating facility is located, the Energy and Environment Cabinet, the county judge/executive of a county and, if applicable, the mayor of a municipality in which the merchant electric generating facility is located, within ten (10) days of completing the transaction. The notice shall include the name, street address, telephone number, and e-mail address of the person acquiring ownership, control, or the right to control the merchant electric generating facility.

(4) A person that has acquired ownership, control, or the right to control a merchant electric generating facility from the applicant or its successor or assign shall file with the Energy and Environment Cabinet within ten (10) days of completing the acquisition:

(a) A written consent to assume the obligations set forth in the decommissioning plan as of the date the acquisition occurred; and

(b) A notice of adoption of an existing bond or other similar security previously filed pursuant to subsection (3)(a) of this section or a replacement bond or other similar security that complies with KRS 278.706(2)(m)5. An existing bond or other similar security shall be adopted, or a replacement bond or other similar security shall be in place, as of the date the acquisition occurs so that there is no lapse in coverage of the decommissioning bond or other similar security. A person making a filing pursuant to this subsection shall file an updated bond or other similar security that complies with KRS 278.706(2)(m)5. at least once every five (5) years.

(5) Any person who transfers or sells ownership, control, or the right to control a merchant electric generating facility shall remain liable for all existing decommissioning obligations and bond requirements until the person who acquires ownership, control, or the right to control the merchant electric generating facility files with the Energy and Environment Cabinet the documents required by subsection (4) of this section and they are accepted as complete by the secretary.

(6) Any application approval condition that requires the approval of the transfer of control of a merchant electric generating facility after construction is complete shall be void and unenforceable, but any transfer of control of a merchant electric generating facility shall be subject to compliance with the requirements of subsections (3)(d), (4), and (5) of this section.

(7) Notwithstanding any provision of law to the contrary, including any order issued by the board prior to June 29, 2023, after the board has approved an application for a construction certificate for a merchant electric generating facility under this section, the approved applicant has posted the bond or similar security required under KRS 278.706(2)(m)5., and the facility is constructed and begins generating electricity for sale, the board's authority to enforce any conditions of the construction certificate, including bonding and decommissioning requirements, shall end and the secretary of the Energy and Environment Cabinet shall monitor and enforce the construction certificate holder's compliance with the requirements of KRS 278.700 to 278.716 and the conditions of its construction certificate application approval.

(8) In addition to all compliance monitoring and enforcement performed by the secretary of the Energy and Environment Cabinet, and notwithstanding any provision of law to the contrary, the secretary shall also review the decommissioning plan required by KRS 278.706(2)(m) or by local ordinance, license, or permit and the bond or similar security amount required by KRS 278.706(2)(m)5. or by local ordinance, license, or permit as needed, including any time a transfer determination is made under subsection (5) of this section, but in any event at least once every five (5) years. Upon review, the secretary of the Energy and Environment Cabinet shall require the decommissioning plan to be updated and the bond amount to be changed to match any significant change in circumstances or change to the estimated cost of effectuating the decommissioning plan~~[or to the salvage value of the facility or its components]~~.

(9) After the facility for which an application for a construction certificate has been approved is constructed and begins generating electricity for sale, the secretary of the Energy and Environment Cabinet shall ensure ongoing compliance with the mitigation measures that were conditions of the application approval under KRS 278.708(6) and any enforcement by the board of the mitigation measures shall cease.

(10) During the period that the merchant electric generating facility is operational, if solar panels ***or wind turbine components*** are replaced and discarded, the facility owner-operator shall remove discarded solar panels ***or wind turbine components*** from the site within ninety (90) days of completion of the work. Upon request of the facility owner-operator, the secretary of the Energy and Environment Cabinet may extend the time period under this subsection for removing discarded solar panels ***or wind turbine components***.

➔Section 28. 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 (6) 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 one hundred twenty (120) days of receipt of the application, or one hundred eighty (180) 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***(4)***~~[(3)]~~ and ***(6)***~~[(5)]~~, the board shall promulgate administrative regulations to establish an application fee for a construction certificate for:

(a) A nonregulated transmission line; and

(b) A carbon dioxide transmission pipeline.

(7) With respect to carbon dioxide transmission lines, within one hundred twenty (120) days of receipt of the application or one hundred eighty (180) 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.

➔Section 29. KRS 278.718 is amended to read as follows:

The provisions of KRS 278.700, 278.704, 278.706, 278.708, and 278.710 shall not supplant, any other state or federal law, including the powers available to local governments under the provisions of home rule under KRS 67.080, 67.083, 67.850, 67.922, 67A.060, 67C.101, and 82.082. ***Except with regard to the minimum decommissioning bond amount required in subsection (2)(m)5.a. of Section 26 of this Act,*** an ordinance, permit, or license issued by a local government shall have primacy over the provisions and requirements of KRS 278.700, 278.704, 278.706, and 278.708, and any conflict between an order of the board and a local ordinance, permit, or license shall be resolved in favor of the local government's ordinance, permit, or license.

➔Section 30. The following KRS sections are repealed:

353.800 Definitions for KRS 353.800 to 353.812.

353.802 Legislative findings and declarations relating to geologic storage of carbon dioxide.

353.804 Jurisdiction and authority over geologic storage of carbon dioxide -- Application for and approval of demonstration projects -- Cabinet to testify annually on program's development.

353.806 Negotiations between storage operators and pore space owners -- Hearings and findings preceding pooling of pore space -- Carbon dioxide wells exempt -- Review under KRS 353.700.

353.808 Pooling orders -- Requirements for contents of order and notice -- Fees -- Recording of pooling orders with county clerks -- Review under KRS 353.700.

353.810 Carbon injection wells to be closed and plugged after completion of active injection -- Monitoring for leaking and migration -- Transfer of ownership and liability of storage facilities -- Finance and Administration Cabinet to effect transfer.

353.812 Cabinet and bordering states to discuss and develop unified approach to subsurface migration -- Reports to Governor and Legislative Research Commission.

Became law without Governor's signature April 14, 2026.