

1 AN ACT relating to stream and wetland mitigation, making an appropriation
2 therefor, and declaring an emergency.

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

4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
5 READ AS FOLLOWS:

6 *As used in Sections 1 to 7, 15, and 16 of this Act:*

- 7 *(1) "Acquire" to come into possession of by sale, trade, exchange, or other*
8 *transaction;*
- 9 *(2) "Aquatic resources" means the ecological functions, services, and values*
10 *provided by the waters of the United States that are subject to compensatory*
11 *mitigation under 33 U.S.C. sec. 1251 et seq. and 33 U.S.C. sec. 401 and 403;*
- 12 *(3) "Compensatory mitigation" means the restoration, establishment, enhancement,*
13 *or preservation of the jurisdictional waters of the United States and their aquatic*
14 *habitats that is required as a condition of a permit issued by the United States*
15 *Army Corps of Engineers for the purposes of offsetting unavoidable adverse*
16 *impacts which remain after all appropriate and practicable avoidance and*
17 *minimization has been achieved;*
- 18 *(4) "Compensatory mitigation credit" means a non-tangible ecosystem service asset*
19 *comprising a unit of measure that represents the accrual or attainment of aquatic*
20 *functions or improvements;*
- 21 *(5) "Compensatory mitigation project" means the work associated with*
22 *implementing compensatory mitigation as required by a Department of Army*
23 *(DA) permit or by a mitigation bank or an in-lieu fee program which results in*
24 *the ultimate production of mitigation credits, including but not limited to property*
25 *acquisition, design, construction, and monitoring;*
- 26 *(6) "Compensatory mitigation site" means the location where compensatory*
27 *mitigation is implemented by the permittee, mitigation bank, or in-lieu fee*

1 program in order to meet the obligations imposed by the United States Army
2 Corps of Engineers;

3 (7) "Conservation easement" has the same meaning as in KRS 382.800;

4 (8) "DA permit" means Department of Army permit;

5 (9) "Design-bid-build" has the same meaning as in Section 11 of this Act;

6 (10) "Design-build" has the same meaning as in Section 11 of this Act;

7 (11) "Design-build mitigation" means a project delivery method in which the
8 Commonwealth enters into a single contract for design and construction of a
9 compensatory mitigation project on a property that the Commonwealth either
10 owns in fee or possesses a conservation easement in its favor for:

11 (a) A stream;

12 (b) A wetland; or

13 (c) Both streams and wetlands;

14 (12) "FILO" means the in-lieu fee program operated by the department in
15 accordance with the in-lieu fee program instrument approved by the United
16 States Army Corps of Engineers and this chapter;

17 (13) "Foreign entity" has the same meaning as in KRS 14A.1-070;

18 (14) "Full delivery compensatory mitigation" means a performance contract for
19 construction management services where the Commonwealth procures and
20 obtains the production and delivery of mitigation credits from a vendor who
21 acquires the land and develops or preserves a stream or wetland mitigation site
22 that has been approved by the United States Army Corps of Engineers for the
23 purposes of executing a site protection instrument and the vendor may:

24 (a) Donate the property to the Commonwealth;

25 (b) Provide a conservation easement in favor of the Commonwealth;

26 (c) Donate the property, after approved by the United States Army Corps of
27 Engineers, to a third party holder for purposes of permanent site protection;

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or

(d) Retain ownership and remain responsible for the permanent protection of the site;

(15) "In-lieu fee program" means a program involving the restoration, establishment, enhancement, and preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for Department of Army permits;

(16) "In-lieu fee program instrument" or "program instrument" means the legal document for the establishment, operation, and use of an in-lieu fee program;

(17) "Mitigation bank" means a site, or a suite of sites, where aquatic resources are restored, enhanced, and preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits;

(18) "Performance-based" with respect to a contract means the inclusion of or reliance on both quantitative and qualitative indicators or measures that demonstrate acceptable completion of tasks or deliverables;

(19) "Person" has the same meaning as in KRS 151.100;

(20) "Request for proposal" has the same meaning as in Section 11 of this Act;

(21) "Responsible bidder" has the same meaning as in KRS 45A.070;

(22) "Service area" means a defined geographic area approved by the United States Army Corps of Engineers within which mitigation providers including in-lieu fee mitigation and mitigation bank sponsors may provide compensatory mitigation for aquatic impacts as designated in the program instrument;

(23) "Site protection instrument" means a written description of the legal arrangements, including site ownership, management, and enforcement of any use restrictions that will be used to ensure the long-term protection of the compensatory mitigation project site in perpetuity or for any other duration prescribed and approved by USACE for fulfilling the site protection instrument

1 portion of mitigation requirements; and

2 (24) "USACE" means the United States Army Corps of Engineers.

3 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) Upon approval of the commission, the department may acquire, as necessary for
6 the construction, operation, and protection of a compensatory mitigation project,
7 with payment being made solely from funds under Section 16 of this Act:

8 (a) Lands or interests therein including subsurface mineral rights;

9 (b) Structures or other surface property;

10 (c) Rights-of-way, franchises, or other easements; and

11 (d) Compensatory mitigation credits.

12 (2) Notwithstanding KRS Chapters 45 and 45A and except when an acquisition is
13 made under full delivery compensatory mitigation under subsection (2) of Section
14 3 of this Act, title to any real property or interests therein shall be made in the
15 name of the Commonwealth and for use and benefit of the department. All
16 property acquisitions made pursuant to Sections 1 to 7 of this Act shall be only
17 for the purposes stated in, and paid out of funds from, Section 16 of this Act.

18 (3) The acquisition price shall be subject to the approval of the commission, and
19 interests in real property may be purchased at an amount greater than the
20 appraised value when a comparable sales comparison or market approach
21 appraisal method is used to determine the property interest's value.

22 (4) The department shall have the authority to acquire lands, rights, rights of way,
23 franchises, easements, or other property from any person, for the purposes of
24 performing compensatory mitigation and expending funds from Section 16 of
25 this Act, by condemnation or by the exercise of eminent domain if:

26 (a) There is a severance between surface ownership and subsurface mineral
27 rights of the property to be acquired;

1 (b) The mineral rights have not been exercised or acted upon within one
2 hundred (100) years of the commission's approval of the acquisition;

3 (c) The owner or owners are unknown, absent, or no longer in legal existence;

4 (d) The acquisition is deemed necessary for the construction, operation, or
5 protection of a compensatory mitigation project including the restoration of
6 wetlands or streams; and

7 (e) The proceedings are conducted in accordance with KRS 416.540 to 416.760.

8 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
9 READ AS FOLLOWS:

10 (1) Notwithstanding any provision of law to the contrary, the department may use
11 design-build or design-bid-build construction methodology as an alternative
12 method of procuring engineering or construction-related services for
13 compensatory mitigation projects and the production of compensatory mitigation
14 credits, solely expending funds from Section 16 of this Act, and shall not be
15 subject to title, acquisition requirements, and other restrictions and limitations
16 under KRS Chapters 45 and 45A.

17 (2) Notwithstanding any provision of law to the contrary, the department may utilize
18 full delivery compensatory mitigation as an alternative method of procuring
19 construction contracting for compensatory mitigation projects to produce or
20 purchase compensatory mitigation credits and shall be exempt from title,
21 acquisition requirements, and other restrictions and limitations pursuant to KRS
22 Chapter 45 and 45A. The department shall be authorized to approve the transfer
23 of title, receive a conservation easement, or take fee simple title to any property,
24 including the site protection instrument or any other interests or rights that is a
25 part of the compensatory mitigation site, from the vendor upon:

26 (a) Approval of the site protection instrument by the department and USACE;

27 and

- 1 **(b) Project completion and the production of compensatory mitigation credits.**
- 2 **(3) If any work, tasks, or deliverables for a compensatory mitigation project cannot**
- 3 **be fulfilled under this section, the department may procure the same from an**
- 4 **existing compensatory mitigation bank if:**
- 5 **(a) The procurement is approved by USACE; and**
- 6 **(b) The compensatory mitigation credits purchased offset impacts from a**
- 7 **compensatory mitigation project that is approved by USACE.**
- 8 **(4) All full delivery compensatory mitigation procurement shall be performance-**
- 9 **based with payment conditioned on successful completion of work, tasks, or**
- 10 **deliverables as defined by the contract. The contract shall include:**
- 11 **(a) Commencement and completion dates for work, tasks, or deliverables;**
- 12 **(b) Remittance dates and the manner of payment for the work, tasks, or**
- 13 **deliverables, which may include a provision for withholding or delaying a**
- 14 **percentage of the contract price or a fixed amount until a specified date or**
- 15 **until certain work, tasks, or deliverables are completed by the contractor**
- 16 **and accepted by the department; and**
- 17 **(c) A long-term site protection instrument approved by USACE that covers the**
- 18 **entire compensatory mitigation site and runs with the land in perpetuity.**

19 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
20 READ AS FOLLOWS:

21 **The following requirements shall apply to design-build, design-bid-build, and full**

22 **delivery compensatory mitigation procurement methodologies:**

- 23 **(1) When the contract provides for partial payment based on the completion of work,**
- 24 **a department representative supervising the project shall certify, each time a**
- 25 **payment comes due, the amount of work completed for which payment is to be**
- 26 **made;**
- 27 **(2) When the work has been fully completed, the department representative**

1 supervising the project shall certify the final cost of work in a detailed and
2 itemized statement to the department, and the department shall review the
3 statement for correctness;

4 (3) Once the project cost has been certified and reviewed in accordance with
5 subsection (2) of this section, the department shall certify the final project cost to
6 the Finance and Administration Cabinet and the cabinet shall draw a warrant for
7 the amount due;

8 (4) Once a contract is awarded to a vendor:

9 (a) The contractor or vendor shall not deviate from the contract's provisions,
10 plans, or specifications without first having obtained written authorization
11 from the department; and

12 (b) No agency of the Commonwealth of Kentucky, including the department,
13 the Finance and Administration Cabinet, and the State Treasurer, shall
14 assume liability or make payment for any unauthorized work performed by
15 the contractor; and

16 (c) If the contractor or vendor fails to perform any of work, tasks, or
17 deliverables in the contract, the department may:

18 1. Cancel the contract; and

19 2. Re-award the contract to a qualified contractor without advertisement
20 as provided in subsection (5) of this section, but only if the new
21 contractor can perform the work at or below the original price;

22 (5) Solicitation of the bid and public notice shall be advertised by publication
23 pursuant to KRS Chapter 424. The department may contract for the performance
24 of a compensatory mitigation project via:

25 (a) Competitive sealed bidding;

26 (b) Competitive negotiation; and

27 (c) Noncompetitive negotiation; and

1 (6) The department may:

2 (a) Determine the type of credits, restoration, improvement, and property
 3 interest to be included in the contract for a compensatory mitigation
 4 project;

5 (b) Advertise and receive bids for only the types of credits, restoration,
 6 improvement, or property interest to be included in the contract;

7 (c) Adopt rules and promulgate administrative regulations to:

8 1. Implement the FILO program; and

9 2. Establish procedures, forms, and requirements for procurement,
 10 adjudication of disputes, and collection of fines pursuant to Sections 7
 11 and 17 of this Act, and any other matters to implement Sections 1 to 7
 12 of this Act; and

13 (d) Investigate the financial status, experience, responsibility, capacity,
 14 previous record of experience, resource sufficiency including required plant
 15 and equipment, and any other pertinent fact necessary to determine whether
 16 the bidder is a responsible bidder.

17 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
 18 READ AS FOLLOWS:

19 (1) For compensatory mitigation projects designed to produce compensatory
 20 mitigation credits procured through a request for proposals, at a minimum a
 21 proposal shall include:

22 (a) Identification of the service area or other geographic area where
 23 compensatory mitigation credits are to be produced;

24 (b) The amount of compensatory mitigation credits to be produced;

25 (c) A timeline for the needed production of compensatory mitigation credits;

26 (d) The estimated price for the compensatory mitigation credits;

27 (e) The required experience and credentials of the vendor; and

- 1 (f) Any other information requested by the department.
- 2 (2) In order to evaluate each proposal, the department shall develop criteria and a
3 method of scoring each submitted proposal. Each submitted proposal shall have
4 the individual scores for the criteria clearly marked on the scoring sheet, and the
5 department shall calculate a final grade which reflects the bidder's placement in
6 the hierarchy of submitted proposals. The department may pre-qualify suppliers
7 of particular types of services, products, supplies, or construction as responsible
8 bidders.
- 9 (3) All bids shall be opened publicly, at a time and place designated in the invitation
10 for bids. Each bid, together with the name of the bidder, shall be recorded and
11 open to public inspection.
- 12 (4) The contract shall be awarded to the bidder who receives the highest score out of
13 all the proposals submitted for the request for proposals. If the department deems
14 it advisable, the department may require bonds or any other form of security or
15 financial assurance of any contractor to secure the performance of the contract.
16 The provisions of KRS 45A.015 shall apply to all contracts issued under this
17 section.
- 18 (5) The department may reject any bid when it finds it is in the best interest of the
19 state to do so. If all bids for a request for proposal are rejected, the department
20 may advertise for new bids or may engage a different method of procurement if
21 the department deems that it is prudent and necessary to obtain the required
22 work.
- 23 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
24 READ AS FOLLOWS:
- 25 (1) For the purposes of this section, "protest" means a written objection by an
26 interested party to any of the following:
- 27 (a) A solicitation or request by the department for offers for a contract or for

- 1 procurement of property or services;
- 2 (b) The cancellation of the solicitation or other request;
- 3 (c) An award or proposed award of a contract; or
- 4 (d) The termination or cancellation of an award of the contract if the written
- 5 objection contains an allegation that the termination or cancellation is
- 6 based in whole or in part on improprieties concerning the award of the
- 7 contract.
- 8 (2) The commissioner or designee shall have the authority to determine protests and
- 9 other controversies of actual or prospective bidders or offerors in connection with
- 10 the soliciting or awarding a contract.
- 11 (3) Any actual or prospective bidder, offeror, or contractor who is aggrieved in
- 12 connection with the soliciting or awarding of a contract may file a protest or
- 13 notice of other controversy with the commissioner or designee. Protests or notices
- 14 of other controversy shall be deemed complete and actionable when the protest or
- 15 notice:
- 16 (a) Is written and physically delivered to the department;
- 17 (b) Is concise and logically presented to facilitate review by the department;
- 18 (c) Contains all relevant information as prescribed by the department; and
- 19 (c) Has been filed not later than ten (10) calendar days after the facts giving
- 20 rise to the protest are known or should have been known.
- 21 (4) A protest or notice filed in accordance with the requirements of subsection (3) of
- 22 this section shall suspend the solicitation or award involved until the
- 23 commissioner or designee makes a written and adequately supported
- 24 determination that continuation of the procurement is necessary to protect
- 25 substantial interests of the Commonwealth.
- 26 (5) The commissioner promptly shall issue a decision in writing. A copy of the
- 27 decision shall be mailed or otherwise furnished to the aggrieved party and shall

1 state the reasons for the action taken.

2 (6) The commissioner's or designee's decision shall:

3 (a) Be final and conclusive;

4 (b) Be entitled to the presumption of correctness with respect to any controversy
 5 arising under, or in connection with, the solicitation or award of a contract;
 6 and

7 (c) Not be disturbed unless the decision was procured by fraud or the findings
 8 of fact by the commissioner or designee do not support the decision.

9 (7) Any actual or prospective bidder who is aggrieved by the final decision of the
 10 commissioner or designee may appeal to the Franklin Circuit Court within
 11 fifteen (15) calendar days of the issuance of the decision.

12 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
 13 READ AS FOLLOWS:

14 (1) No contract for building, construction, or any other type of work on a
 15 compensatory mitigation project, shall be awarded by the department or any other
 16 agency of the Commonwealth to:

17 (a) Any person until that person assures, by affidavit, that all contractors and
 18 subcontractors employed or that will be employed under the provisions of
 19 the contract are covered by the Commonwealth's unemployment insurance
 20 and workers' compensation insurance requirements pursuant to KRS
 21 Chapter 341 and 342, respectively; or

22 (b) A foreign entity unless that foreign entity, on record with the Secretary of
 23 State, holds a certificate of authority or a statement of foreign qualification
 24 and is in good standing pursuant to KRS 14A.9-010.

25 (2) Any person who fails to comply with the requirements of subsection (1) of this
 26 section during the term of the contract, upon a finding by a court of competent
 27 jurisdiction, shall be fined the greater amount of either:

- 1 (a) Four thousand dollars (\$4,000); or
- 2 (b) An amount equal to the sum of the unemployment insurance claims for
- 3 which no wages were reported as required by KRS Chapter 341 and
- 4 uninsured and unsatisfied claims brought under the provisions of KRS
- 5 Chapter 342.
- 6 (3) The penalty imposed under this section shall be enforced by the department in
- 7 Franklin Circuit Court. Proceeds from penalties imposed and collected under this
- 8 section shall be deposited into the fund established under Section 16 of this Act
- 9 and expended solely for the purposes of the fund stated therein.
- 10 (4) Nothing contained in this section shall be construed to impair any right of action
- 11 under KRS Chapters 341 and 342.

12 ➔Section 8. KRS 45.750 is amended to read as follows:

- 13 (1) As used in KRS 45.760 to 45.810:
- 14 (a) "Committee" means the Capital Projects and Bond Oversight Committee;
- 15 (b) "Capital construction item" means:
- 16 1. The construction, reconstruction, acquisition, and structural maintenance
- 17 of buildings;
- 18 2. The installation of utility services, including roads and sewers;
- 19 3. The acquisition or improvement of real property;
- 20 4. The purchase and installation initially or during major renovation of
- 21 equipment, facilities, and furnishings of a permanent nature for
- 22 buildings; ~~or~~
- 23 5. The acquisition of any building to be occupied by any:
- 24 a. Subdivision of state government as defined in KRS 12.010 or
- 25 enumerated in KRS 12.020;
- 26 b. Municipal corporation which exercises its authority on a statewide
- 27 basis including, but not limited to, the Kentucky Employees

1 Retirement System, Teachers' Retirement System of the State of
 2 Kentucky, Kentucky Higher Education Student Loan Corporation,
 3 Kentucky Lottery Corporation, Kentucky Housing Corporation, or
 4 any entity with a governing body whose membership is
 5 substantially similar to the membership of the governing body of a
 6 municipal corporation which exercises its authority on a statewide
 7 basis; and

8 c. Institution of higher education; or

9 **6. The purchase of compensatory mitigation credits solely using funds**
 10 **from Section 16 of this Act from a vendor, including a third party**
 11 **vendor, who acquires or improves the real property on behalf of the**
 12 **Commonwealth for the purpose of satisfying performance of a**
 13 **compensatory mitigation project; and**

14 (c) "Lease" means any lease, lease-purchase, or lease with an option to purchase
 15 of any real property space occupied by:

- 16 1. Any entity listed in paragraph (b)5. of this subsection;
- 17 2. The legislative branch; or
- 18 3. The judicial branch when leased from a private sector landlord;

19 (d) "Equipment" means:

- 20 1. Any major item of equipment, including aircraft;
- 21 2. Any movable furnishing, appurtenance, or other equipment, necessary to
 22 make a building operable; and
- 23 3. Equipment purchased or otherwise acquired, or equipment to be
 24 purchased or otherwise to be acquired, under a lease or lease-purchase
 25 contract or agreement or an arrangement equivalent to a lease or lease-
 26 purchase contract or agreement;

27 (e) "Information technology system" means any related computer or

1 telecommunications components that provide a functional system for a
2 specific business purpose and contain one (1) or more of the following:

- 3 1. Hardware;
- 4 2. Software, including application software, systems management software,
5 utility software, or communications software;
- 6 3. Professional services for requirements analysis, system integration,
7 installation, implementation, or data conversion services; or
- 8 4. Digital data products, including acquisition and quality control;

9 (f) "Capital projects" means, regardless of the source of cash or other
10 consideration:

- 11 1. Any capital construction item, or any combination of capital
12 construction items necessary to make a building or utility installation
13 complete, estimated to cost one million dollars (\$1,000,000) or more in
14 cash or other consideration;
- 15 2. Any lease of real property space with an annual rental cost exceeding
16 two hundred thousand dollars (\$200,000);
- 17 3. The use allowance paid by the judicial branch for a real property space
18 pursuant to KRS 26A.090(2) and 26A.115 when the use allowance for
19 the space exceeds two hundred thousand dollars (\$200,000) on an
20 annual basis;
- 21 4. Any item of equipment estimated to cost two hundred thousand dollars
22 (\$200,000) or more in cash or other consideration;
- 23 5. Any lease of an item of movable equipment if the annual cost of the
24 lease is two hundred thousand dollars (\$200,000) or more or if the total
25 cost of the lease-purchase or lease with an option to purchase is two
26 hundred thousand dollars (\$200,000) or more;~~and~~
- 27 6. Any new acquisition, upgrade, or replacement of an information

1 technology system estimated to cost one million dollars (\$1,000,000) or
2 more in cash or other consideration;

3 7. The purchase of compensatory mitigation credits from a vendor,
4 including a third party vendor, for performance of a compensatory
5 mitigation project which may entail real property held in easement or
6 fee simple interest and any improvements, enhancements, or
7 preservation of streams, wetlands, and habitat located on the property;
8 and

9 8. A compensatory mitigation project, construction project, or other
10 contract to procure full delivery compensatory mitigation or
11 compensatory mitigation credits, solely using funds from Section 16 of
12 this Act; and

13 (g) "Emergency repair, maintenance, or replacement project" means the
14 maintenance, repair, or reconstruction of a capital construction project or the
15 maintenance, repair, or replacement of a major item of equipment that is:

- 16 1. Necessitated by injury or damage resulting from a disaster;
- 17 2. Necessary to maintain government operations or to prevent or minimize
18 injury or damage that could reasonably be expected to result from an
19 impending disaster; or
- 20 3. Necessitated by an unforeseen mechanical breakdown, electrical
21 breakdown, or structural defect that must be corrected to make a facility
22 or item of equipment usable;

23 (h) "Disaster" means a fire, flood, tornado, other natural disaster, riot, enemy
24 attack, sabotage, explosion, power failure, energy shortage, transportation
25 emergency, or other man-caused disaster;

26 (i) "Capital construction funds" means any funds used for capital construction,
27 including, but not limited to, appropriated capital construction funds, agency

1 funds, federal funds, private funds, or funds from any source held by an
2 agency for management or investment purposes; ~~and~~

3 (j) "Entity head" means the Chief Justice of the Supreme Court, the President of
4 the Senate and the Speaker of the House of Representatives, the secretary of
5 the Finance and Administration Cabinet, the president of any university which
6 complies with KRS 164A.585, 164A.595, and 164A.600, the board of trustees
7 of the Kentucky Employees Retirement System, the board of trustees of the
8 Teachers' Retirement System of the State of Kentucky, the board of directors
9 of the Kentucky Higher Education Student Loan Corporation, the board of
10 directors of the Kentucky Lottery Corporation, or the board of directors of the
11 Kentucky Housing Corporation;

12 **(k) "Compensatory mitigation" has the same meaning as Section 1 of this Act;**

13 **(l) "Compensatory mitigation credit" has the same meaning as Section 1 of**
14 **this Act;**

15 **(m) "Compensatory mitigation project" has the same meaning as Section 1 of**
16 **this Act; and**

17 **(n) "Full delivery compensatory mitigation" has the same meaning as Section**
18 **1 of this Act.**

19 (2) Except as provided in subsection (3) of this section, KRS 45.760 to 45.810 shall
20 apply to capital projects and bonds for use by:

21 (a) The state government;

22 (b) One of its departments or agencies, as defined in KRS 12.010 or enumerated
23 in KRS 12.020;

24 (c) A municipal corporation which exercises its authority on a statewide basis,
25 including but not limited to the Kentucky Employees Retirement System,
26 Teachers' Retirement System of the State of Kentucky, Kentucky Higher
27 Education Student Loan Corporation, Kentucky Lottery Corporation, and

1 Kentucky Housing Corporation; and

2 (d) Institutions of higher education.

3 (3) KRS 45.760 to 45.810 shall not apply to:

4 (a) Capital projects or bonds used directly in or for the construction or
5 maintenance of roads, including but not limited to bulldozers, graders, earth
6 movers, and real estate purchased for rights-of-way or for compensatory
7 mitigation projects or compensatory mitigation credits purchased solely
8 using funds from Section 16 of this Act; and

9 (b) Political subdivisions, except for those defined in KRS 12.010, enumerated in
10 KRS 12.020, or created as a municipal corporation which exercises its
11 authority on a statewide basis including, but not limited to, the Kentucky
12 Employees Retirement System, Teachers' Retirement System of the State of
13 Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky
14 Lottery Corporation, Kentucky Housing Corporation, or any entity with a
15 governing body whose membership is substantially similar to the membership
16 of the governing body of a municipal corporation which exercises its authority
17 on a statewide basis. However, the provisions of KRS 45.750 to 45.810 shall
18 not apply to acquisition or maintenance of any building or land which is
19 purchased as a legal investment by any of the state retirement systems, which
20 is not to be occupied by the retirement system, and which is financed solely
21 with those assets of the retirement system used for investment purposes.

22 ➔Section 9. KRS 45.777 is amended to read as follows:

23 (1) The proceeds from the sale of major items of equipment or real property, purchased
24 in whole or in part with capital construction funds, shall be deposited into the
25 general fund unless federal funding restraints require otherwise.

26 (2) The provisions of this section shall not apply to:

27 (a) The sale of real property held as right-of-way;

- 1 (b) The sale of equipment by the Transportation Cabinet; ~~{or}~~
- 2 (c) The sale of confiscated firearms; or
- 3 (d) The sale or transfer of title, and any interests therein, to real property
- 4 subject to a compensatory mitigation project or used to procure
- 5 compensatory mitigation credits solely using funds from Section 16 of this
- 6 Act.

7 ➔Section 10. KRS 45.760 is amended to read as follows:

8 The provisions of any other law notwithstanding:

- 9 (1) During any biennium the amount allotted, from all sources, for expenditure on any
- 10 project in the state capital construction program for that biennium shall not exceed
- 11 the estimated cost of the project during that biennium, as shown in any branch
- 12 budget bill enacted by the General Assembly, except as provided in this section and
- 13 KRS 45.770 and 45.780.
- 14 (2) When the General Assembly disapproves a capital project or item of equipment that
- 15 was previously approved, it shall be eliminated as a capital project or major item of
- 16 equipment in the Capital Projects Program. General fund moneys appropriated for
- 17 that project or item of equipment but not allotted, and general fund moneys allotted
- 18 but not expended to the project or equipment account, shall be transferred to the
- 19 capital construction and equipment purchase contingency account in the capital
- 20 construction fund. Agency or federal funds for a disapproved project or item, that
- 21 have been appropriated but unallotted or allotted but unexpended, shall be returned
- 22 to the appropriate agency fund. Road fund moneys for a disapproved project or item
- 23 that have been appropriated but unallotted or allotted but unexpended, shall be
- 24 returned to the Road Fund Surplus Account.
- 25 (3) Capital projects and major items of equipment disapproved under subsection (2) of
- 26 this section shall be terminated.
- 27 (4) During any biennium, the amount allotted from all sources for expenditure for the

1 purchase of any major item of equipment shall not exceed the estimated cost of the
2 item as shown in any branch budget bill enacted by the General Assembly and
3 authorizing the purchase, except as provided in subsections (5) and (6) of this
4 section and in KRS 45.770 and 45.780.

5 (5) A major item of equipment to be used for medical, scientific, or research purposes,
6 excluding computer equipment and aircraft, or an expenditure of funds from
7 Section 16 of this Act for a compensatory mitigation project, may be authorized
8 even though it is not specifically listed in any branch budget bill enacted for the
9 current biennium, subject to the following conditions and procedures:

10 (a) Moneys specifically budgeted and appropriated by the General Assembly for
11 another purpose shall not be reallocated for expenditure on the item; moneys
12 utilized shall not jeopardize any existing program and shall not require the use
13 of any current general funds specifically dedicated to existing programs;

14 (b) Funds are available for the purchase and the method of financing the purchase
15 will not require an additional appropriation of state funds to acquire the item;
16 and

17 (c) The purchasing agency shall, within thirty (30) days after making the
18 purchase, report the purchase to the Capital Projects and Bond Oversight
19 Committee. The report shall include a description of the item, the purpose for
20 which it will be used, the necessity for the purchase, and the amount expended
21 for the purchase from each source of funds used.

22 (6) Moneys from any source may be transferred to the allotment account of any capital
23 project authorized by the General Assembly under this section, subject to the
24 following conditions and procedures:

25 (a) The total amount transferred shall not exceed fifteen percent (15%) of the
26 amount authorized by the General Assembly unless:

27 1. The source of funds is private or federal; ~~or~~

- 1 2. *The source of funds is restricted to expenditure solely for the*
2 *performance of compensatory mitigation and the production of*
3 *compensatory mitigation credits under Section 16 of this Act; or*
4 3. An unforeseen decision by a federal or state court or regulatory agency
5 requires the transfer.
- 6 (b) Moneys specifically budgeted and appropriated by the General Assembly for
7 another purpose shall not be allotted or reallocated for expenditure on the
8 capital project.
- 9 (c) Moneys utilized shall not jeopardize any existing program and shall not
10 require the use of any current general funds specifically dedicated to existing
11 programs.
- 12 (d) The relevant entity head, or his designee, shall submit the capital project to the
13 Capital Projects and Bond Oversight Committee at least fourteen (14) days
14 prior to the committee meeting. The submission shall include a written
15 certification to the committee that the transfer, in excess of fifteen percent
16 (15%) of the amount authorized by the General Assembly, is:
- 17 1. Paid for out of private *funds, restricted funds under Section 16 of this*
18 *Act for performance of compensatory mitigation and production of*
19 *compensatory mitigation credits,* or federal funds; or
- 20 2. Required by an unforeseen decision by a federal or state court or
21 regulatory agency; and
- 22 3. Not allotted or reallocated from moneys specifically budgeted and
23 appropriated by the General Assembly for another purpose; and
- 24 4. Not jeopardizing any existing program and not requiring the use of any
25 current general funds specifically dedicated to existing programs.
- 26 (e) If a capital project is financed with road funds, the cost overruns or scope
27 increases shall be paid out of the highway contingency account established

1 pursuant to KRS 45.247.

- 2 (7) **Except for a capital construction project or major equipment purchase for**
3 **compensatory mitigation funded solely from Section 16 of this Act which shall be**
4 **authorized pursuant to this subsection,** a capital construction project or a major
5 item of equipment may be authorized even though it is not specifically listed in any
6 branch budget bill, subject to the following conditions and procedures:
- 7 (a) Fifty percent (50%) or more of the actual cost shall be funded by federal or
8 private funds, and fifty percent (50%) or less of the actual cost shall be funded
9 by moneys appropriated to the capital construction and equipment purchase
10 contingency account or, if the purpose of the project or equipment is to reduce
11 energy costs, the relevant entity head certifies projected energy cost savings
12 associated with the project or equipment are reasonable and sufficient to
13 produce an aggregate simple payback period, as defined by KRS 56.770, of
14 five (5) years or less;
- 15 (b) Moneys specifically budgeted and appropriated by the General Assembly for
16 another purpose shall not be allotted or reallocated for expenditure on the
17 project or major item of equipment; moneys utilized shall not jeopardize any
18 existing program and shall not require the use of any current general funds
19 specifically dedicated to existing programs; and
- 20 (c) The relevant entity head, or his designee, shall submit the project or major
21 item of equipment to the committee for review as provided by KRS 45.800.
- 22 (8) The capital construction and equipment purchase contingency fund may be used to
23 advance funds to projects authorized to be financed by bonds, to finance feasibility
24 studies for projects which may be contemplated for future funding, or to audit the
25 capital projects program when authorized by the General Assembly.
- 26 (9) On or before October 1, each branch of government shall submit to the committee
27 the following information:

- 1 (a) A complete list and summary description of every capital construction project
2 and major item of equipment not completed as of June 30 of the prior fiscal
3 year; and
- 4 (b) For each project and major item of equipment, as of July 1, of the current
5 fiscal year:
- 6 1. The project phase;
 - 7 2. The project account number, project name, and any other term employed
8 to identify the project or major item of equipment;
 - 9 3. The available balance in the project or major item of equipment account,
10 and any sums considered available for that project or major item of
11 equipment;
 - 12 4. A statement of the transfers of funds to or from the project or major item
13 of equipment account; and, any account to which transfers from each
14 project or major item of equipment has been made;
 - 15 5. The year in which the project or major item of equipment was approved,
16 with specific reference to the legislation by which the project or item
17 was approved;
 - 18 6. Total expenditure on the project or major item of equipment;
 - 19 7. The current estimated completion cost, including the amount required
20 for annual inflation; and
 - 21 8. A statement that additional funds for the completion of the project or
22 major item of equipment are or are not required; and, if required, why
23 sufficient funds for completion are not available; and
- 24 (c) The balance in the appropriated, but unallotted account; and the balance in any
25 account, however designated, that contains appropriated, but unallotted funds
26 for capital construction.
- 27 (10) When the General Assembly authorizes a capital construction item in the capital

1 construction section of a branch budget bill, the entity head charged with executing
 2 the branch budget shall construct the capital construction item according to the
 3 requirements set forth in the branch budget bill, supporting documentation
 4 considered by the General Assembly, and branch budget records. The entity head
 5 shall not deviate from these requirements with regard to:

- 6 (a) Purpose or location to the extent that the capital construction item no longer
 7 meets the identified needs; or
 8 (b) Configuration for reasons other than practical accommodation to the
 9 construction site or specific program to be accommodated within that capital
 10 construction item.

11 ➔Section 11. KRS 45A.030 is amended to read as follows:

12 As used in this code, unless the context requires otherwise:

- 13 (1) "Business" means any corporation, partnership, individual, sole proprietorship, joint
 14 stock company, joint venture, or any other legal entity through which business is
 15 conducted;
 16 (2) "Change order" means a written order signed by the purchasing officer, directing the
 17 contractor to make changes that the changes clause of the contract authorizes the
 18 purchasing officer to order without the consent of the contractor;
 19 (3) "Chief purchasing officer" means the secretary of the Finance and Administration
 20 Cabinet, who shall be responsible for all procurement of the Commonwealth except
 21 as provided by KRS Chapters 175, 175B, 176, 177, and 180, **and compensatory**
 22 **mitigation projects and credits contracted for under KRS Chapter 150;**
 23 (4) **"Compensatory mitigation" has the same meaning as Section 1 of this Act;**
 24 **(5) "Compensatory mitigation credit" has the same meaning as Section 1 of this Act;**
 25 **(6) "Compensatory mitigation project" has the same meaning as Section 1 of this**
 26 **Act;**
 27 **(7) "Construction" means the process of building, altering, repairing, improving, or**

1 demolishing any public structures or buildings, or other public improvements,
2 including compensatory mitigation projects for streams or wetlands, of any kind
3 to any public real property. It does not include the routine maintenance of existing
4 structures, buildings, or real property;

5 ~~(8)~~~~(5)~~ "Construction manager-agency" means services to assist the purchasing
6 agency manage construction that are procured through a contract that is
7 qualifications-based;

8 ~~(9)~~~~(6)~~ "Construction management-at-risk" means a project delivery method in which
9 the purchasing officer enters into a single contract with an offeror that assumes the
10 risk for construction at a contracted guaranteed maximum price as a general
11 contractor, and provides consultation and collaboration regarding the construction
12 during and after design of a capital project. The contract shall be subject to the
13 bonding requirements of KRS 45A.190;

14 ~~(10)~~~~(7)~~ "Construction manager-general contractor" means a project delivery method
15 in which the purchasing officer enters into a single contract with an offeror to
16 provide preconstruction and construction services. During the preconstruction
17 phase, the successful offeror provides design consulting services. During the
18 construction phase, the successful offeror acts as general contractor by:

- 19 (a) Contracting with subcontractors; and
20 (b) Providing for management and construction at a fixed price with a completion
21 deadline;

22 ~~(11)~~~~(8)~~ "Contract" means all types of state agreements, including grants and orders,
23 for the acquisition, purchase, or disposal of supplies, services, construction, or any
24 other item. It includes: awards; contracts of a fixed-price, cost, cost-plus-a-fixed-
25 fee, contingency fee, or incentive type; contracts providing for the issuance of job or
26 task orders; leases; letter contracts; purchase orders; public-private partnership
27 agreements; and insurance contracts except as provided in KRS 45A.022. It

1 includes supplemental agreements with respect to any of the foregoing;

2 ~~(12)~~~~(9)~~ "Contract modification" means any written alteration in the specifications,
3 delivery point, rate of delivery, contract period, price, quantity, or other contract
4 provisions of any existing contract, whether accomplished by unilateral action in
5 accordance with a contract provision or by mutual action of the parties to the
6 contract. It includes bilateral actions, such as supplemental agreements, and
7 unilateral actions, such as change orders, administrative changes, notices of
8 termination, and notices of the exercise of a contract option;

9 ~~(13)~~~~(10)~~ "Contractor" means any person having a contract with a governmental body;

10 ~~(14)~~~~(11)~~ "Data" means recorded information, regardless of form or characteristic;

11 ~~(15)~~~~(12)~~ "Design-bid-build" means a project delivery method in which the purchasing
12 officer sequentially awards separate contracts, the first for architectural,
13 engineering, or engineering-related services to design the project and the second for
14 construction of the capital project according to the design. The contract shall be
15 subject to the bonding requirements of KRS 45A.185;

16 ~~(16)~~~~(13)~~ "Design-build" means a project delivery method in which the purchasing
17 officer enters into a single contract for design and construction of a capital project.
18 The contract shall be subject to the bonding requirements of KRS 45A.190;

19 ~~(17)~~~~(14)~~ **"Design-build mitigation" has the same meaning as Section 1 of this Act;**

20 ~~(18)~~ "Designee" means a duly authorized representative of a person holding a superior
21 position;

22 ~~(19)~~~~(15)~~ "Document" means any physical embodiment of information or ideas,
23 regardless of form or characteristic, including electronic versions thereof;

24 ~~(20)~~~~(16)~~ "Employee" means an individual drawing a salary from a governmental body,
25 whether elected or not, and any nonsalaried individual performing personal services
26 for any governmental body;

27 ~~(21)~~~~(17)~~ **"Full delivery compensatory mitigation" has the same meaning as Section**

1 *1 of this Act;*

2 *(22) "Goods" means:*

3 *(a) Any tangible property, including all equipment, materials, supplies, and*
4 *other unique and specialty nontangible commodities such as compensatory*
5 *mitigation credits; and*

6 *(b) Unless the context otherwise requires, acquisition of printing;*

7 *(23)* "Governmental body" means any department, commission, council, board, bureau,
8 committee, institution, legislative body, agency, government corporation, or other
9 establishment of the executive or legislative branch of the state government;

10 ~~*(24)*~~~~*(18)*~~ "Meeting" means all gatherings of every kind, including video
11 teleconferences;

12 ~~*(25)*~~~~*(19)*~~ "Negotiation" means contracting by either the method set forth in KRS
13 45A.085, 45A.090, or 45A.095;

14 ~~*(26)*~~~~*(20)*~~ "Person" means any business, individual, organization, or group of
15 individuals;

16 ~~*(27)*~~~~*(21)*~~ "Private partner" means any entity that is a partner in a public-private
17 partnership other than:

18 (a) The Commonwealth of Kentucky, or any agency or department thereof;

19 (b) The federal government;

20 (c) Any other state government; or

21 (d) Any agency of a state, federal, or local government;

22 ~~*(28)*~~~~*(22)*~~ "Procurement" means the purchasing, buying, renting, leasing, or otherwise
23 obtaining of any supplies, services, or construction *including compensatory*
24 *mitigation credits, a compensatory mitigation project, or construction work for*
25 *the performance of compensatory mitigation.* It includes all functions that pertain
26 to the procurement of any supply, service, or construction item, including
27 description of requirements, selection and solicitation of sources, preparation and

1 award of contract, and all phases of contract administration;

2 ~~(29)~~~~(23)~~ "Public-private partnership" means a project delivery method for construction
3 or financing of capital projects, as defined in KRS 45.750, or procurement of
4 services, pursuant to a written public-private partnership agreement entered into
5 pursuant to KRS 45A.077 and administrative regulations promulgated thereunder,
6 between:

7 (a) At least one (1) private partner; and

8 (b) The Commonwealth of Kentucky, or any agency or department thereof;

9 ~~(30)~~~~(24)~~ "Purchase request" or "purchase requisition" means that document whereby a
10 using agency requests that a contract be obtained for a specified need, and may
11 include, but is not limited to, the technical description of the requested item,
12 delivery schedule, transportation, criteria for evaluation of solicitees, suggested
13 sources of supply, and information supplied for the making of any written
14 determination and finding required by KRS 45A.025;

15 ~~(31)~~~~(25)~~ "Purchasing agency" means any governmental body that is authorized by this
16 code or its implementing administrative regulations or by way of delegation from
17 the chief purchasing officer to contract on its own behalf rather than through the
18 central contracting authority of the chief purchasing officer;

19 ~~(32)~~~~(26)~~ "Purchasing officer" means any person authorized by a governmental body in
20 accordance with procedures prescribed by administrative regulations to enter into
21 and administer contracts and make written determinations and findings with respect
22 thereto. The term includes an authorized representative acting within the limits of
23 authority;

24 ~~(33)~~~~(27)~~ "Services" means the rendering by a contractor of its time and effort rather
25 than the furnishing of a specific end product, other than reports that are merely
26 incidental to the required performance of services;

27 ~~(34)~~~~(28)~~ **"Service contract" means any contract or agreement for:**

1 (a) Professional services, including consultant and personal services, for
2 stream or wetland compensatory mitigation that requires specialized
3 knowledge, experience, and expertise to perform the work that will result in
4 the production of compensatory mitigation credits; or

5 (b) The direct purchase of compensatory mitigation credits;

6 **(35)** "Supplemental agreement" means any contract modification that is accomplished by
7 the mutual action of the parties;

8 **(36)**~~(29)~~ "Supplies" means all property, including but not limited to leases of real
9 property, printing, and insurance, except land or a permanent interest in land;

10 **(37)**~~(30)~~ "Using agency" means any governmental body of the state that utilizes any
11 supplies, services, or construction purchased under this code;

12 **(38)**~~(31)~~ "Video teleconference" means one (1) meeting, occurring in two (2) or more
13 locations, where individuals can see and hear each other by means of video and
14 audio equipment; and

15 **(39)**~~(32)~~ "Writing" or "written" means letters, words, or numbers, or their equivalent,
16 set down by handwriting, typewriting, printing, photostating, photographing,
17 magnetic impulse, mechanical or electronic recording, or other form of data
18 compilation.

19 ➔Section 12. KRS 45A.045 is amended to read as follows:

20 (1) The Finance and Administration Cabinet shall serve as the central procurement and
21 contracting agency of the Commonwealth.

22 (a) The cabinet shall require all agencies to furnish an estimate of specific needs
23 for supplies, materials, and equipment to be purchased by competitive bidding
24 for the purpose of permitting scheduling of purchasing in large volume. The
25 cabinet shall establish and enforce schedules for purchasing supplies,
26 materials, and equipment. In addition, prior to the beginning of each fiscal
27 year all agencies shall submit to the Finance and Administration Cabinet an

1 estimate of all needs for supplies, materials, and equipment during that year
2 which will have to be required through competitive bidding.

3 (b) The Finance and Administration Cabinet shall have power, with the approval
4 of the secretary of the Finance and Administration Cabinet, to transfer
5 between departments, to salvage, to exchange, and to condemn supplies,
6 equipment, and real property.

7 (c) The Finance and Administration Cabinet shall attempt in every practicable
8 way to ensure that state agencies are fulfilling their business needs through the
9 application of the best value criteria.

10 (2) The Finance and Administration Cabinet shall recommend regulations, rules, and
11 procedures and shall have supervision over all purchases by the various spending
12 agencies, except as otherwise provided by law, and, subject to the approval of the
13 secretary of the Finance and Administration Cabinet, shall promulgate
14 administrative regulations to govern purchasing by or for all these agencies. The
15 cabinet shall publish a manual of procedures which shall be incorporated by
16 reference as an administrative regulation pursuant to KRS Chapter 13A. This
17 manual shall be distributed to agencies and shall be revised upon issuance of
18 amendments to these procedures. No purchase or contract shall be binding on the
19 state or any agency thereof unless approved by the Finance and Administration
20 Cabinet or made under general administrative regulations promulgated by the
21 cabinet.

22 (3) The Finance and Administration Cabinet shall purchase or otherwise acquire, or,
23 with the approval of the secretary, may delegate and control the purchase and
24 acquisition of the combined requirements of all spending agencies of the state,
25 including, but not limited to, interests in real property, contractual services, rentals
26 of all types, supplies, materials, equipment, and services.

27 (4) The Finance and Administration Cabinet shall sell, trade, or otherwise dispose of

1 any interest in real property of the state which is not needed, or has become
2 unsuitable for public use, or would be more suitable to the public's interest if used
3 in another manner, as determined by the secretary of the Finance and
4 Administration Cabinet. The determination of the secretary of the Finance and
5 Administration Cabinet shall be set forth in an order and shall be reached only after
6 review of a written request by the agency desiring to dispose of the property. This
7 request shall describe the property and state the reasons why the agency believes the
8 property should be disposed. All instruments required by law to be recorded which
9 convey any interest in any real property so disposed of shall be executed and signed
10 by the secretary of the Finance and Administration Cabinet and approved by the
11 Governor. Unless the secretary of the Finance and Administration Cabinet deems it
12 in the best interest of the state to proceed otherwise, all interests in real property
13 shall be sold either by invitation of sealed bids or by public auction. The selling
14 price of any interest in real property shall not be less than the appraised value
15 thereof as determined by the cabinet, or the Transportation Cabinet for the
16 requirements of that cabinet.

17 (5) The Finance and Administration Cabinet shall sell, trade, or otherwise dispose of all
18 personal property of the state that is not needed, or has become unsuitable for public
19 use, or would be more suitable to the public's interest if used in another manner, or,
20 with the approval of the secretary, may delegate the sale, trade, or other disposal of
21 the personal property. In the event the authority is delegated, the method for
22 disposal shall be determined by the agency head, in accordance with administrative
23 regulations promulgated by the Finance and Administration Cabinet, and shall be
24 set forth in a document describing the property and stating the method of disposal
25 and the reasons why the agency believes the property should be disposed of. In the
26 event the authority is not delegated, requests to the Finance and Administration
27 Cabinet to sell, trade, or otherwise dispose of the property shall describe the

1 property and state the reasons why the agency believes the property should be
2 disposed of. The method for disposal shall be determined by the Division of Surplus
3 Properties, and approved by the secretary of the Finance and Administration
4 Cabinet or his or her designee.

5 (6) The Finance and Administration Cabinet shall exercise general supervision and
6 control over all warehouses, storerooms, and stores and of all inventories of
7 supplies, services, and construction belonging to the Commonwealth. The cabinet
8 shall promulgate administrative regulations to require agencies to take and maintain
9 inventories of plant property, buildings, structures, other fixed assets, and
10 equipment. The cabinet shall conduct periodic physical audits of inventories.

11 (7) The Finance and Administration Cabinet shall establish and maintain programs for
12 the development and use of purchasing specifications and for the inspection, testing,
13 and acceptance of supplies, services, and construction.

14 (8) Nothing in this section shall prevent the Finance and Administration Cabinet from
15 negotiating with vendors who maintain a General Services Administration price
16 agreement with the United States of America or any agency thereof. No contract
17 executed under this provision shall authorize a price higher than is contained in the
18 contract between the General Services Administration and the vendor affected.

19 (9) Except as provided in KRS Chapters 175, 176, 177, and 180, **and KRS Chapter 150**
20 **solely for the purposes of procurement for compensatory mitigation projects and**
21 **compensatory mitigation credits,** and subject to the provisions of this code, the
22 Finance and Administration Cabinet shall purchase or otherwise acquire all real
23 property determined to be needed for state use, upon approval of the secretary of the
24 Finance and Administration Cabinet as to the determination of need and as to the
25 action of purchase or other acquisition. The amount paid for this real property shall
26 not exceed the appraised value as determined by the cabinet or the Transportation
27 Cabinet (for such requirements of that cabinet), or the value set by eminent domain

1 procedure. Subject to the provisions of this code, real property or any interest
2 therein may be purchased, leased, or otherwise acquired from any officer or
3 employee of any agency of the state upon a finding by the Finance and
4 Administration Cabinet, based upon a written application by the head of the agency
5 requesting the purchase, and approved by the secretary of the Finance and
6 Administration Cabinet and the Governor, that the employee has not either himself
7 or herself, or through any other person, influenced or attempted to influence either
8 the agency requesting the acquisition of the property or the Finance and
9 Administration Cabinet in connection with such acquisition. Whenever such an
10 acquisition is consummated, the request and finding shall be recorded and kept by
11 the Secretary of State along with the other documents recorded pursuant to the
12 provisions of KRS Chapter 56.

13 (10) The Finance and Administration Cabinet shall maintain records of all purchases and
14 sales made under its authority and shall make periodic summary reports of all
15 transactions to the secretary of the Finance and Administration Cabinet, the
16 Governor, and the General Assembly. The Finance and Administration Cabinet
17 shall also report trends in costs and prices, including savings realized through
18 improved practices, to the above authorities. The Finance and Administration
19 Cabinet shall also compile an annual report of state purchases by all spending
20 agencies in the state's statewide accounting and reporting system. The report format
21 shall include, but not be limited to, dollar amount, volume, type of purchase, and
22 vendor.

23 (11) For capital construction projects, subject to the provisions of this code and KRS
24 45A.180, the procurement may be on whichever of the following alternative project
25 delivery methods, in the judgment of the secretary of the Finance and
26 Administration Cabinet after first considering the traditional design-bid-build
27 project delivery method, offers the best value to the taxpayer:

- 1 (a) A design-build basis; or
- 2 (b) A construction management-at-risk basis.

3 Proposals shall be reviewed by the engineering staff to assure quality and value, and
4 compliance with procurement procedures. All specifications shall be written to
5 promote competition. Nothing in this section shall prohibit the procurement of
6 phased bidding or construction manager-agency services.

7 (12) The Finance and Administration Cabinet shall have control and supervision over all
8 purchases of energy-consuming equipment, supplies, and related equipment
9 purchased or acquired by any agency of the state as provided in this code, and shall
10 promulgate administrative regulations to designate the manner in which an energy-
11 consuming item will be purchased so as to promote energy conservation and
12 acquisition of energy efficient products. Major energy components shall be
13 amortized on a seven (7) to ten (10) years' recovery basis and shall take into
14 consideration the projected cost of fuel. The Finance and Administration Cabinet, in
15 consultation with the Cabinet for Economic Development, shall conduct a thorough
16 economic feasibility analysis on any major energy-using component of at least three
17 million (3,000,000) BTU's per hour heat input and shall issue a certificate of
18 economic feasibility prior to the Finance and Administration Cabinet's purchasing
19 or retrofitting any such component that utilizes any fuel other than coal. The
20 economic feasibility analysis shall consist of life-cycle cost comparisons of a
21 component that would utilize coal and one(s) that would utilize any fuel other than
22 coal. For the analysis, the Finance and Administration Cabinet shall provide
23 detailed estimates of equipment purchase price, installation cost, annual operation
24 and maintenance costs, and usage patterns of energy-using components.

25 ➔Section 13. KRS 45A.050 is amended to read as follows:

26 (1) Except as provided in KRS 45A.800 to 45A.835 and KRS Chapters 175, 176, 177,
27 and 180, and 150 solely for the purposes of procurement for compensatory

1 **mitigation projects and compensatory mitigation credits**, all rights, powers, duties,
2 and authority relating to the procurement of supplies, services, and construction,
3 and the management, control, warehousing, sale, and disposal of supplies, services,
4 and construction now vested in or exercised by any state agency under the several
5 statutes relating thereto, are hereby transferred to the secretary of the Finance and
6 Administration Cabinet as provided in this code, subject to the provisions of
7 subsection (2) of this section.

8 (2) Unless otherwise ordered by the secretary of the Finance and Administration
9 Cabinet, the acquisition of the following shall not be required through the Finance
10 and Administration Cabinet:

11 (a) Works of art for museum and public display;

12 (b) Published books, maps, periodicals, and technical pamphlets; and

13 (c) Services of visiting speakers, professors, and performing artists.

14 (3) The Finance and Administration Cabinet shall include in all state agency price
15 contracts for the purchase of materials or supplies a provision that, as approved by
16 the secretary of the Finance and Administration Cabinet, any political subdivision,
17 including cities of all classes, counties, school districts, or special districts, may
18 participate in these contracts to the same extent as the Commonwealth. Any
19 political subdivision may purchase materials and supplies in accordance with a
20 contract for supplies and materials entered into by the Finance and Administration
21 Cabinet for the Commonwealth, including those contracts negotiated by the cabinet
22 with vendors who maintain a General Services Administration price agreement as
23 provided in KRS 45A.045(8). Political subdivisions of the Commonwealth must
24 comply with other provisions of the Kentucky Revised Statutes which require
25 purchase by competitive bidding, before participating in the contract, unless the
26 state contract has been let by competitive bidding, or the contract was negotiated as
27 provided in KRS 45A.045(8).

- 1 (4) The Finance and Administration Cabinet shall inform the Department for Local
2 Government, which shall then inform the appropriate purchasing agent of each
3 political subdivision interested in participating under this section, of all state agency
4 contracts in effect between the Commonwealth and vendors.
- 5 (5) The secretary of the Finance and Administration Cabinet shall promulgate
6 administrative regulations necessary for the implementation of this section and
7 necessary to provide that the Commonwealth be reimbursed for any additional
8 expenses incurred by the Commonwealth in allowing political subdivisions to
9 participate in contracts with vendors.
- 10 (6) The Finance and Administration Cabinet shall comply with all provisions relating to
11 the methods of purchasing in the Kentucky Revised Statutes. This section is not
12 intended to repeal or otherwise affect any provision of the Kentucky Revised
13 Statutes regarding purchasing methods of the Finance and Administration Cabinet.
- 14 (7) Notwithstanding any other statute to the contrary, all public agencies as defined in
15 KRS 45A.490 shall comply with the provisions for reciprocal preference for
16 resident bidders in KRS 45A.490 to 45A.494.
- 17 ➔Section 14. KRS 45A.425 is amended to read as follows:
- 18 (1) A local public agency may sell or otherwise dispose of any personal property which
19 is not needed or has become unsuitable for public use, or which would be suitable,
20 consistent with the public interest, for some other use.
- 21 (2) A written determination as to need of suitability of any personal property of the
22 local public agency shall be made; and such determination shall fully describe the
23 personal property; its intended use at the time of acquisition; the reasons why it is in
24 the public interest to dispose of the item; and the method of disposition to be used.
- 25 (3) Surplus or excess personal property as described in this section may be transferred,
26 with or without compensation, to another governmental agency; or it may be sold at
27 public auction or by sealed bids in accordance with KRS 45A.365.

- 1 (4) In the event that a local public agency receives no bids for surplus or excess
 2 personal property, either at public auction or by sealed bid, such property may be
 3 disposed of, consistent with the public interest, in any manner deemed appropriate
 4 by the local public agency. In such instances, a written description of the property,
 5 the method of disposal, and the amount of compensation, if any, shall be made. Any
 6 compensation resulting from the disposal of surplus or excess personal property
 7 shall be transferred to the general fund of the local public agency.
- 8 (5) A local board of education may dispose of its surplus technology in accordance with
 9 KRS 160.335.
- 10 (6) As an alternative procedure to that set out in this section, a county may dispose of
 11 personal property pursuant to KRS 67.0802.
- 12 (7) Notwithstanding subsections (1) to (4) of this section, a city, urban-county
 13 government, or consolidated local government that has adopted KRS 45A.345 to
 14 45A.460 may dispose of surplus property using the procedures in KRS 82.083.
- 15 **(8) Interests in real property purchased solely with funds under Section 16 of this Act**
 16 **may be declared surplus by the Fish and Wildlife Commission pursuant to KRS**
 17 **150.023 once compensatory mitigation has been completed and all compensatory**
 18 **mitigation credits have been released. Upon approval of the United States Army**
 19 **Corps of Engineers, the property may be transferred to another governmental**
 20 **agency or local government using the procedures under KRS 82.083.**
- 21 ➔Section 15. KRS 150.024 is amended to read as follows:
- 22 **(1)** The department shall have the right:
- 23 **(a)** To acquire ~~such~~ property as may be necessary to carry out the purpose of this
 24 chapter; ~~and~~ ~~it shall have the right~~
- 25 **(b)** **Except for the limitation set forth in subsection (2) of this section, to**
 26 **exercise** ~~of~~ eminent domain as provided in the Eminent Domain Act of
 27 Kentucky.

1 (2) When property or interests therein are acquired using funds provided under
 2 Section 16 of this Act for a compensatory mitigation project, the department shall
 3 only exercise the right of eminent domain if the acquisition meets the
 4 requirements of subsection (4) of Section 2 of this Act.

5 ➔Section 16. KRS 150.255 is amended to read as follows:

6 (1) Upon request of any state agency or any other entity, the department may contract
 7 with the agency or party to undertake any compensatory mitigation project,
 8 including, but not limited to, the performance of a wetland or stream mitigation
 9 project or the purchase of compensatory mitigation credits.

10 (2) The department may establish and manage wetland or stream compensatory
 11 mitigation banks, the purpose of which shall be to restore, create, or enhance
 12 wetlands and streams as compensatory mitigation where a state agency or other
 13 party is required to provide compensatory mitigation, and where the use of banked
 14 mitigation is approved by the agency requiring mitigation and USACE. The
 15 department may create the bank in advance of requests for banked mitigation
 16 credits.

17 (3) There is established and created in the State Treasury the "Kentucky Wetland and
 18 Stream Mitigation Fund" for the purpose of:

19 (a) Restoring, creating, enhancing, or preserving the Commonwealth's wetlands
 20 or streams that may be damaged or destroyed due to any project approved
 21 under a DA permit requiring compensatory mitigation;~~[,]~~

22 (b) Recovering costs associated with performing these compensatory mitigation
 23 projects and producing the required compensatory mitigation credits;~~[,]~~ and

24 (c) Administering these programs.

25 (4) The fund shall be deemed a trust and agency fund account and made available
 26 solely for the purposes and benefits of the Kentucky wetland and stream
 27 compensatory mitigation projects and the FILO program. Funds may be used to

1 allow for and make payments whenever remittance is due regardless of the
 2 procurement methodology utilized for the performance of compensatory
 3 mitigation, capital construction projects for compensatory mitigation, or the
 4 development of mitigation credits.

5 (5) The fund may receive state appropriations, gifts, grants, federal funds, revolving
 6 funds, and any other funds both public and private. Money deposited in the fund
 7 shall be disbursed by the State Treasurer upon the request of the commissioner with
 8 the approval of the commission. Any unallocated or unencumbered balance in the
 9 fund shall be invested as provided in KRS 42.500(9), and any income earned from
 10 the investments, along with the unallocated or unencumbered balance in the fund,
 11 shall not lapse.

12 (6) The department shall coordinate all aspects of the performance of compensatory
 13 mitigation required by DA permits or authorizations issued by USACE. The
 14 regulatory requirements for the establishment, operation, and monitoring of a
 15 compensatory mitigation bank or a full delivery compensatory mitigation project
 16 shall vest at the time of the execution of the mitigation banking instrument or the
 17 award of the procurement contract for compensatory mitigation services.

18 ➔Section 17. KRS 382.850 is amended to read as follows:

19 (1) A conservation easement shall not be transferred by owners of property in which
 20 there are outstanding subsurface rights without the prior written consent of the
 21 owners of the subsurface rights.

22 (2) A conservation easement may be acquired by the Department of Fish and
 23 Wildlife Resources, using funds under Section 16 of this Act, or by a mitigation
 24 bank on the surface lands where the mineral and subsurface rights are severed in
 25 order to produce compensatory mitigation credits. If mineral right are
 26 subsequently exercised or the surface is disturbed on a compensatory mitigation
 27 site as a result of mining activity where compensatory mitigation credits were

1 produced or acquired, the mining entity shall be responsible for:

2 (a) Ensuring the site is restored to its previous condition as described in the site
3 protection instrument; or

4 (b) Paying into the Kentucky Wetland and Stream Mitigation Fund under
5 Section 16 of this Act an amount equal to what it would cost to restore the
6 site.

7 **(3)** A conservation easement shall not operate to limit, preclude, delete or require
8 waivers for the conduct of coal mining operations, including the transportation of
9 coal, upon any part or all of adjacent or surrounding properties; and shall not
10 operate to impair or restrict any right or power of eminent domain created by
11 statute, and all such rights and powers shall be exercisable as if the conservation
12 easement did not exist.

13 (4) Notwithstanding subsection (3) of this section, the holder of a conservation
14 easement may utilize and enforce the terms of the conservation easement in the
15 Circuit Court of jurisdiction to protect the project areas subject to compensatory
16 mitigation from environmental damage from activities occurring on or adjacent
17 to surrounding properties if:

18 (a) The easement was acquired solely using funds pursuant to Section 16 of
19 this Act or that is being used to produce compensatory mitigation credits;
20 and

21 (b) The site is subject to a site protection instrument approved by United States
22 Army Corps of Engineers.

23 (5) As used in this section, the following terms have the same meaning as in Section
24 1 of this Act:

25 (a) "Compensatory mitigation";

26 (b) "Compensatory mitigation credit";

27 (c) "Compensatory mitigation site";

1 (d) "Mitigation bank"; and

2 (e) "Site protection instrument."

3 ➔Section 18. Whereas the lack of compensatory mitigation credits available to
4 certain areas of the state due to the lack of completed compensatory mitigation projects
5 constrains economic development, an emergency is declared to exist, and this Act takes
6 effect upon its passage and approval by the Governor or upon its otherwise becoming a
7 law.