

1 AN ACT relating to merchant electric generating facilities and declaring an  
2 emergency.

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

4 ➔Section 1. KRS 278.212 is amended to read as follows:

5 (1) No utility shall begin the construction or installation of any property, equipment, or  
6 facility to establish an electrical interconnection with a merchant electric generating  
7 facility ***that either operates at an aggregate capacity*** in excess of ten megawatts  
8 (10MW) ***or occupies in aggregate ten (10) acres or more of land*** until the plans  
9 and specifications for the electrical interconnection have been filed with the  
10 commission.

11 (2) Notwithstanding any other provision of law, any costs or expenses associated with  
12 upgrading the existing electricity transmission grid, as a result of the additional load  
13 caused by a merchant electric generating facility, shall be borne solely by the person  
14 constructing the merchant electric generating facility and shall in no way be borne  
15 by the retail electric customers of the Commonwealth.

16 ➔Section 2. KRS 278.216 is amended to read as follows:

17 (1) Except for a utility as defined under KRS 278.010(9) that has been granted a  
18 certificate of public convenience and necessity prior to April 15, 2002, no utility  
19 shall begin the construction of a facility for the generation of electricity ***that either***  
20 ***is*** capable of generating in aggregate more than ten megawatts (10MW) ***or occupies***  
21 ***in aggregate ten (10) acres or more of land*** without having first obtained a site  
22 compatibility certificate from the commission.

23 (2) An application for a site compatibility certificate shall include the submission of a  
24 site assessment report as prescribed in KRS 278.708(3) and (4), except that a utility  
25 which proposes to construct a facility on a site that already contains facilities  
26 capable of generating ten megawatts (10MW) or more of electricity shall not be  
27 required to comply with setback requirements established pursuant to KRS

1           278.704(3). A utility may submit and the commission may accept documentation of  
2           compliance with the National Environmental Policy Act (NEPA) rather than a site  
3           assessment report.

4           (3) The commission may deny an application filed pursuant to, and in compliance with,  
5           this section. The commission may require reasonable mitigation of impacts  
6           disclosed in the site assessment report including planting trees, changing outside  
7           lighting, erecting noise barriers, and suppressing fugitive dust, but the commission  
8           shall, in no event, order relocation of the facility.

9           (4) The commission may also grant a deviation from any applicable setback  
10           requirements on a finding that the proposed facility is designed and located to meet  
11           the goals of this section and KRS 224.10-280, 278.010, 278.212, 278.214, 278.218,  
12           and 278.700 to 278.716 at a distance closer than those provided by the applicable  
13           setback requirements.

14           (5) Nothing contained in this section shall be construed to limit a utility's exemption  
15           provided under KRS 100.324.

16           (6) Unless specifically stated otherwise, for the purposes of this section, "utility" has  
17           the same meaning as in KRS 278.010(3)(a) or (9).

18           ➔Section 3. KRS 278.700 is amended to read as follows:

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

20           (1) "Board" means the Kentucky State Board on Electric Generation and Transmission  
21           Siting created in KRS 278.702;

22           (2) "Merchant electric generating facility" means, except for a qualifying facility as  
23           defined in subsection (7) of this section, an electricity generating facility or facilities  
24           that, together with all associated structures and facilities:

25           (a) **Either occupy in aggregate ten (10) acres or more of land or** are capable of  
26           operating at an aggregate capacity of ten megawatts (10MW) or more; and

27           (b) Sell the electricity they produce in the wholesale market, at rates and charges

- 1 not regulated by the Public Service Commission;
- 2 (3) "Person" means any individual, corporation, public corporation, political  
3 subdivision, governmental agency, municipality, partnership, cooperative  
4 association, trust, estate, two (2) or more persons having a joint or common interest,  
5 or any other entity, and no portion of KRS 224.10-280, 278.212, 278.214, 278.216,  
6 278.218, and 278.700 to 278.716 shall apply to a utility owned by a municipality  
7 unless the utility is a merchant plant as defined in this section;
- 8 (4) "Commence to construct" means physical on-site placement, assembly, or  
9 installation of materials or equipment which will make up part of the ultimate  
10 structure of the facility. In order to qualify, these activities must take place at the  
11 site of the proposed facility or must be site-specific. Activities such as site clearing  
12 and excavation work will ~~not~~ satisfy the commence to construct requirements;
- 13 (5) "Nonregulated electric transmission line" means an electric transmission line and  
14 related appurtenances for which no certificate of public convenience and necessity  
15 is required; which is not operated as an activity regulated by the Public Service  
16 Commission; and which is capable of operating at or above sixty-nine thousand  
17 (69,000) volts;
- 18 (6) "Residential neighborhood" means a populated area of five (5) or more acres  
19 containing at least one (1) residential structure per acre;
- 20 (7) "Qualifying facility" means a cogeneration facility as defined in 16 U.S.C. sec.  
21 796(18)(b) which does not exceed a capacity of one hundred fifty megawatts  
22 (150MW) that is located on site at a manufacturer's plant and that uses steam from  
23 the cogeneration facility in its manufacturing process, or an industrial energy facility  
24 as defined in KRS 224.1-010 that does not generate more than one hundred fifty  
25 megawatts (150MW) for sale and has received all local planning and zoning  
26 approvals; and
- 27 (8) "Carbon dioxide transmission pipeline" means the in-state portion of a pipeline,

1 including appurtenant facilities, property rights, and easements, that is used  
 2 exclusively for the purpose of transporting carbon dioxide to a point of sale, storage,  
 3 or other carbon management applications.

4 ➔Section 4. KRS 278.704 is amended to read as follows:

5 (1) No person shall commence to construct a merchant electric generating facility until  
 6 that person has applied for and obtained a construction certificate for the facility  
 7 from the board. The construction certificate shall be valid for a period of **three**  
 8 **(3)**~~two (2)~~ years after the issuance date of the last permit required to be obtained  
 9 from the Energy and Environment Cabinet, after which the certificate shall be void.  
 10 The certificate shall be conditioned upon the applicant obtaining necessary air,  
 11 water, and waste permits. If an applicant has not obtained all necessary permits and  
 12 has not commenced to construct prior to the expiration date of the certificate, the  
 13 applicant shall be required to obtain a **new** valid certificate from the board.

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

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

20 **2.** **The nearest electricity-generating component of a proposed ground-**  
 21 **mounted solar facility is at least fifty (50) feet from the property**  
 22 **boundary of any nonparticipating adjoining property that is in any**  
 23 **nonindustrial use and at least one hundred (100) feet from a residence**  
 24 **located on a property other than the one on which the facility is**  
 25 **proposed to be installed, unless waived in writing by the owner of the**  
 26 **property. The setback requirements of this subparagraph shall not**  
 27 **apply to ground-mounted solar facilities that are proposed to be**

1                    located on brownfield sites as defined in KRS 65.680, state or federal  
 2                    Superfund sites under 42 U.S.C. sec. 9601 et seq., secondary sites as  
 3                    designated by the Cabinet for Economic Development, or reclaimed  
 4                    coal mine sites; and

5                    **3.** All proposed structures or facilities used for generation of electricity are  
 6                    two thousand (2,000) feet from any ~~residential neighborhood,~~ school,  
 7                    hospital, or nursing home facility.

8                    **(b)** For purposes of applications for site compatibility certificates pursuant to  
 9                    KRS 278.216, only the exhaust stack of the proposed facility to be actually  
 10                    used for coal or gas-fired generation or, beginning with applications for site  
 11                    compatibility certificates filed on or after January 1, 2015, the proposed  
 12                    structure or facility to be actually used for solar or wind generation shall be  
 13                    required to be at least one thousand (1,000) feet from the property boundary of  
 14                    any adjoining property owner and two thousand (2,000) feet from any  
 15                    residential neighborhood, school, hospital, or nursing home facility.

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

22                    (a) Have primacy over the setback requirement in subsections (2) and (5) of this  
 23                    section; and

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

26                    (4) The board may grant a deviation from the requirements of subsection (2) of this  
 27                    section on a finding that the proposed facility is designed to and, as located, would

1 meet the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218,  
2 and 278.700 to 278.716 at a distance closer than those provided in subsection (2) of  
3 this section.

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

10 (6) **For an application for a construction certificate pursuant to Section 5 of this Act**  
11 **filed one hundred eighty (180) days or more after the effective date of this Act**~~if~~  
12 ~~requested~~, a merchant electric generating entity considering construction of a  
13 facility for the generation of electricity or a person acting on behalf of such an entity  
14 shall, **no later than one hundred eighty (180) days prior to filing the application,**  
15 **notify the county judge/executive or mayor of all governmental entities of**  
16 **jurisdiction where the interest is being acquired by mail or electronic mail. After**  
17 **the notice has been received, the county judge/executive, the mayor, the board, or**  
18 **any city or county governmental entity may request that the merchant electric**  
19 **generating entity** hold a public meeting in any county where ~~any~~~~acquisition of~~  
20 real estate or any interest in real estate is being **included in the construction**  
21 **certificate application**~~considered~~ for the facility.~~A request for such a meeting~~  
22 ~~may be made by the commission, or by any city or county governmental entity,~~  
23 ~~including a board of commissioners, planning and zoning, fiscal court, mayor, or~~  
24 ~~county judge/executive.~~ The meeting shall be held not more than thirty (30) days  
25 from the date of the request.

26 (7) The purpose of the meeting under subsection (6) of this section is to fully inform  
27 landowners and other interested parties of the **proposed nature and scope**~~full~~

1       ~~extent~~ of the project being considered, including the project time line. One (1) or  
2       more representatives of the entity with full knowledge of all aspects of the project  
3       shall be present and shall answer questions from the public. Upon filing its  
4       application for a construction certificate pursuant to Section 5 of this Act, the  
5       merchant electric generating entity shall post any material changes to the plans  
6       for the project that occurred after the public meeting held under subsection (6) of  
7       this section, including but not limited to changes to the properties involved or the  
8       project timeline, on its Web site and shall inform the county judge/executive or  
9       mayor of all governmental entities of jurisdiction where the project is planned of  
10       the changes by mail or electronic mail no later than the time at which the  
11       information is posted on its Web site.

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

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

- 23       (a) The Energy and Environment Cabinet;
- 24       (b) The Public Service Commission;
- 25       (c) The Transportation Cabinet;
- 26       (d) The Attorney General; and
- 27       (e) The Office of the Governor.

1 (10) ~~[A person that, on or before April 10, 2014, has started acquiring interests in real~~  
2 ~~estate for a project as described in subsection (6) of this section shall hold a meeting~~  
3 ~~that complies with this section within thirty (30) days of April 10, 2014.~~

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

6 ➔Section 5. KRS 278.706 is amended to read as follows:

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

10 (2) A completed application shall include the following:

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

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

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

22 1. Landowners whose property borders the proposed site; and

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

25 (d) A statement certifying that the proposed plant will be in compliance with all  
26 local ordinances and regulations concerning noise control and with any local  
27 planning and zoning ordinances. The statement shall also disclose setback



1 requirements established by the planning and zoning commission as provided  
2 under KRS 278.704(3);

- 3 (e) If the facility is not proposed to be located on a site of a former coal  
4 processing plant and the facility will use on-site waste coal as a fuel source or  
5 in an area where a planning and zoning commission has established a setback  
6 requirement pursuant to KRS 278.704(3), a statement that the exhaust stack of  
7 the proposed facility and any wind turbine is at least one thousand (1,000) feet  
8 from the property boundary of any adjoining property owner, **any proposed**  
9 **ground-mounted solar facility complies with the setback requirements of**  
10 **subsection (2)(a)2. of Section 4 of this Act unless exempted or waived,** and  
11 all proposed structures or facilities used for generation of electricity are two  
12 thousand (2,000) feet from any ~~residential neighborhood,~~ school, hospital, or  
13 nursing home facility, unless facilities capable of generating ten megawatts  
14 (10MW) or more currently exist on the site. If the facility is proposed to be  
15 located on a site of a former coal processing plant and the facility will use on-  
16 site waste coal as a fuel source, a statement that the proposed site is  
17 compatible with the setback requirements provided under KRS 278.704(5). If  
18 the facility is proposed to be located in a jurisdiction that has established  
19 setback requirements pursuant to KRS 278.704(3), a statement that the  
20 proposed site is in compliance with those established setback requirements;
- 21 (f) A complete report of the applicant's public involvement program activities  
22 undertaken prior to the filing of the application, including:
- 23 1. The scheduling and conducting of a public meeting in the county or  
24 counties in which the proposed facility will be constructed at least ninety  
25 (90) days prior to the filing of an application, for the purpose of  
26 informing the public of the project being considered and receiving  
27 comment on it, **unless a public meeting has already been held**

1                                    *pursuant to subsection (6) of Section 4 of this Act;*

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

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

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

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

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

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

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

26                    (l)   A site assessment report as specified in KRS 278.708. The applicant may  
27                                    submit and the board may accept documentation of compliance with the

1 National Environmental Policy Act (NEPA) rather than a site assessment  
2 report.

3 (3) Application fees for a construction certificate shall be set by the board and  
4 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  
6 repair, modification, retrofitting, enhancement, or reconfiguration of a merchant  
7 electric generating facility shall not, for the purposes of this section and KRS  
8 224.10-280, 278.704, 278.708, 278.710, and 278.712, constitute construction of a  
9 merchant electric generating facility.

10 (5) The board shall promulgate administrative regulations prescribing fees to pay  
11 expenses associated with its review of applications filed with it pursuant to KRS  
12 278.700 to 278.716. All application fees collected by the board shall be deposited in  
13 a trust and agency account to the credit of the Public Service Commission. If a  
14 majority of the members of the board find that an applicant's initial fees are  
15 insufficient to pay the board's expenses associated with the application, including  
16 the board's expenses associated with legal review thereof, the board shall assess a  
17 supplemental application fee to cover the additional expenses. An applicant's failure  
18 to pay a fee assessed pursuant to this subsection shall be grounds for denial of the  
19 application.

20 ➔Section 6. KRS 278.708 is amended to read as follows:

21 (1) Any person proposing to construct a merchant electric generating facility shall file a  
22 site assessment report with the board as required under KRS 278.706(2)(1).

23 (2) A site assessment report shall be prepared by the applicant or its designee.

24 (3) A completed site assessment report shall include:

25 (a) A description of the proposed facility that shall include a proposed site  
26 development plan that describes:

27 1. Surrounding land uses for residential, commercial, agricultural, and

- 1 recreational purposes;
- 2 2. The legal boundaries of the proposed site;
- 3 3. Proposed access control to the site;
- 4 4. The location of facility buildings, transmission lines, and other
- 5 structures;
- 6 5. Location and use of access ways, internal roads, and railways;
- 7 6. Existing or proposed utilities to service the facility;
- 8 7. Compliance with applicable setback requirements as provided under
- 9 KRS 278.704(2), (3), (4), or (5); and
- 10 8. Evaluation of the noise levels expected to be produced by the facility;
- 11 (b) An evaluation of the compatibility of the facility with scenic surroundings;
- 12 (c) The potential changes in property values and land use resulting from the
- 13 siting, construction, and operation of the proposed facility for property owners
- 14 adjacent to the facility;
- 15 (d) Evaluation of anticipated peak and average noise levels associated with the
- 16 facility's construction and operation at the property boundary;~~and~~
- 17 (e) The impact of the facility's operation on road and rail traffic to and within the
- 18 facility, including anticipated levels of fugitive dust created by the traffic and
- 19 any anticipated degradation of roads and lands in the vicinity of the facility;
- 20 and
- 21 (f) A decommissioning plan specifically formulated for the proposed facility
- 22 based on the proposed site development plan. The decommissioning plan
- 23 shall explain in detail how the applicant proposes to effectuate the removal
- 24 of all above-ground and underground facility components, excluding
- 25 interconnection facilities that will remain in use, according to the
- 26 timeframes established in subsection (3)(c) of Section 7 of this Act. A
- 27 decommissioning plan for a proposed solar merchant electric generating

1 facility shall at a minimum provide for the following:

2 1. The removal of underground components and the foundations for any  
3 above-ground components to a depth of at least three (3) feet below  
4 the surface grade of the land in or on which the component was  
5 installed; and

6 2. If requested by the landowner:

7 a. The filling of any holes or cavities created by the removal of a  
8 component or its foundation with soil of the same or similar type  
9 as the predominant soil found on the property;

10 b. The removal of any roads made on the property by the applicant;

11 c. The removal of all rocks over twelve (12) inches in diameter  
12 excavated during the decommissioning process; and

13 d. The returning of the property to a substantially similar state,  
14 including revegetation and restoration, as it was prior to the  
15 commencement of construction.

16 (4) The site assessment report shall also suggest any mitigating measures to be  
17 implemented by the applicant to minimize or avoid adverse effects identified in the  
18 site assessment report.

19 (5) The board shall have the authority to hire a consultant to review the site assessment  
20 report and provide recommendations concerning the adequacy of the report and  
21 proposed mitigation measures. The board may direct the consultant to prepare a  
22 separate site assessment report. Any expenses or fees incurred by the board's hiring  
23 of a consultant shall be borne by the applicant.

24 (6) The applicant shall be given the opportunity to present evidence to the board  
25 regarding any mitigation measures. As a condition of approval for an application to  
26 obtain a construction certificate, the board may require the implementation of any  
27 mitigation measures that the board deems appropriate. After the application for the

1       construction certificate has been approved, the secretary of the Energy and  
2       Environment Cabinet shall ensure ongoing compliance with the mitigation  
3       measures that were conditions of the application approval.

4       ➔Section 7. KRS 278.710 is amended to read as follows:

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

- 10       (a) Impact of the facility on scenic surroundings, property values, the pattern and  
11       type of development of adjacent property, and surrounding roads;
- 12       (b) Anticipated noise levels expected as a result of construction and operation of  
13       the proposed facility;
- 14       (c) The economic impact of the facility upon the affected region and the state;
- 15       (d) Whether the facility is proposed for a site upon which existing generating  
16       facilities, capable of generating ten megawatts (10MW) or more of electricity,  
17       are currently located;
- 18       (e) Whether the proposed facility will meet all local planning and zoning  
19       requirements that existed on the date the application was filed;
- 20       (f) Whether the additional load imposed upon the electricity transmission system  
21       by use of the merchant electric generating facility will adversely affect the  
22       reliability of service for retail customers of electric utilities regulated by the  
23       Public Service Commission;
- 24       (g) Except where the facility is subject to a statewide setback established by a  
25       planning and zoning commission as provided in KRS 278.704(3) and except  
26       for a facility proposed to be located on a site of a former coal processing plant  
27       and the facility will use on-site waste coal as a fuel source, whether the

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

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

16 (i) Whether the applicant has a good environmental compliance history; **and**

17 **(j) Whether the proposed decommissioning plan is in the public interest. The**  
 18 **board may require a proposed decommissioning plan to be amended to**  
 19 **ensure that it is in the public interest.**

20 (2) When considering an application for a construction certificate for a merchant  
 21 electric generating facility, the board may consider the policy of the General  
 22 Assembly to encourage the use of coal as a principal fuel for electricity generation  
 23 as set forth in KRS 152.210, provided that any facility, regardless of fuel choice,  
 24 shall comply fully with KRS 224.10-280, 278.212, 278.216, and 278.700 to  
 25 278.716.

26 (3) **(a) Upon the approval of an application for a construction certificate for a**  
 27 **merchant electric generating facility, the board shall require the approved**

1 applicant, before commencing to construct the facility, to furnish a bond or  
2 other similar security to ensure the decommissioning of the facility  
3 according to the timeframes established in paragraph (c) of this subsection.  
4 The amount of the bond or other similar security shall be set by the board  
5 and shall be at least equal to the estimated cost of fully completing the  
6 decommissioning plan approved by the board, less the salvage value for the  
7 decommissioned facilities and components. In proposing the amount of the  
8 bond, the approved construction certificate applicant shall provide evidence  
9 of the decommissioning costs and the salvage value as determined by an  
10 independent, third-party person with experience and expertise in  
11 decommissioning the type of electric generating facility to be constructed.

12 (b) If the facility for which a bond or similar security has been furnished under  
13 this subsection is located on leased property, the bond or similar security  
14 shall name the landowner or landowners where the bonded facility is  
15 located as the primary beneficiaries of the bond. If the facility for which a  
16 bond or similar security is furnished under this subsection is located on  
17 property owned by the party responsible for completing the  
18 decommissioning plan, the bond or similar security shall name the  
19 governing bodies of the cities or counties where the facility is located as the  
20 primary beneficiaries, but only with the consent of those governing bodies.  
21 If in any event a bond or similar security has been forfeited for failure to  
22 begin or complete the decommissioning plan as required under paragraph  
23 (c) of this subsection and there is no person or entity able or willing to claim  
24 the bond or similar security to effectuate the decommissioning plan, the  
25 Energy and Environment Cabinet may claim the bond funds and perform  
26 the decommissioning plan. A city, a county, the board, or the Energy and  
27 Environment Cabinet shall not be financially or legally responsible for the



1           decommissioning of any merchant electric generating facility.

2           (c) The bond or similar security required under this subsection shall be  
3           forfeited if the person responsible for completing the decommissioning plan  
4           approved by the board either fails to begin work on the plan within twelve  
5           (12) months of the date that the facility ceases to produce electricity for sale,  
6           or fails to complete the plan within eighteen (18) months of the date that the  
7           facility ceases to produce electricity for sale. The secretary of the Energy  
8           and Environment Cabinet may extend either of the deadlines established  
9           under this paragraph for good cause shown.

10          (d) Any funds from a bond or similar security required under this subsection  
11          that are forfeited for failure to begin or complete a decommissioning plan in  
12          a timely manner shall only be used to complete the decommissioning of  
13          facilities on the property or properties for which the bond or similar security  
14          was posted.

15          (4) Notwithstanding any provision of law to the contrary, including any order issued  
16          by the board prior to the effective date of this Act, after the board has approved  
17          an application for a construction certificate for a merchant electric generating  
18          facility under this section and the approved applicant has posted the bond or  
19          similar security required under subsection (3)(a) of this section, the board's  
20          authority to enforce any conditions of the construction certificate, including  
21          bonding and decommissioning requirements, shall end and the secretary of the  
22          Energy and Environment Cabinet shall monitor and enforce the construction  
23          certificate holder's compliance with the requirements of KRS 278.700 to 278.718  
24          and the conditions of its construction certificate application approval. In addition  
25          to all compliance monitoring and enforcement performed by the secretary of the  
26          Energy and Environment Cabinet, the secretary shall also review the  
27          decommissioning plan required by Section 6 of this Act and the bond or similar

1 security amount required under subsection (3)(a) of this section as needed,  
 2 including any time a transfer determination is made under subsection (5) of this  
 3 section, but in any event at least once every five (5) years. Upon review, the  
 4 secretary of the Energy and Environment Cabinet shall require the  
 5 decommissioning plan to be updated and the bond amount to be changed to  
 6 match any significant change in circumstances or change to the estimated cost of  
 7 effectuating the decommissioning plan or to the salvage value of the facility or its  
 8 components.

9 **(5)** **(a)** A person that has received a construction certificate for a merchant electric  
 10 generating facility shall not transfer rights and **obligations**~~[obligation]~~ under  
 11 the certificate without having first applied for and received a~~[board]~~  
 12 determination **from the secretary of the Energy and Environment Cabinet**  
 13 that:

14 ~~1.~~~~(a)~~ The acquirer **or transferee** has a good environmental compliance  
 15 history; and

16 ~~2.~~~~(b)~~ The acquirer **or transferee** has the financial, technical, and  
 17 managerial capacity to, **and has agreed to assume responsibility to,**  
 18 meet the obligations imposed by the terms of the **construction**  
 19 **certificate, including performance of the decommissioning plan**  
 20 **required under Section 6 of this Act and posting of the bond or other**  
 21 **similar security required under subsection (3)(a) of this section**~~[~~  
 22 approval or has the ability to contract to meet these obligations].

23 **(b) The secretary of the Energy and Environment Cabinet shall make a**  
 24 **determination under this subsection within ninety (90) days of its**  
 25 **application, and shall issue findings at that time explaining the reasons for**  
 26 **denying or approving any transfer application.**

27 ➔SECTION 8. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER

1 224 IS CREATED TO READ AS FOLLOWS:

2 (1) Within ninety (90) days of the effective date of this Act, the Energy and  
 3 Environment Cabinet shall promulgate administrative regulations pursuant to  
 4 KRS Chapter 13A to establish the monitoring and enforcement requirements  
 5 necessary to ensure that each merchant electric generating facility complies with  
 6 the requirements of KRS 278.700 to 278.718 and the conditions of its  
 7 construction certificate application approval, including but not limited to all  
 8 decommissioning and bonding requirements. The administrative regulations  
 9 shall include the establishment of fees that are reasonably necessary to cover the  
 10 cabinet's monitoring and enforcement costs to be collected from merchant  
 11 electric generating facilities.

12 (2) As part of its enforcement authority, the cabinet may, upon good cause shown,  
 13 suspend the operation of a merchant electric generating facility to ensure its  
 14 compliance with the administrative regulations promulgated under this section,  
 15 the requirements of KRS 278.700 to 278.718, and the conditions of its  
 16 construction certificate approval, including but not limited to decommissioning  
 17 and bonding requirements.

18 ➔Section 9. KRS 224.10-100 is amended to read as follows:

19 In addition to any other powers and duties vested in it by law, the cabinet shall have the  
 20 authority, power, and duty to:

- 21 (1) Exercise general supervision of the administration and enforcement of this chapter,  
 22 and all rules, regulations, and orders promulgated thereunder;
- 23 (2) Prepare and develop a comprehensive plan or plans related to the environment of  
 24 the Commonwealth;
- 25 (3) Encourage industrial, commercial, residential, and community development which  
 26 provides the best usage of land areas, maximizes environmental benefits, and  
 27 minimizes the effects of less desirable environmental conditions;

- 1 (4) Develop and conduct a comprehensive program for the management of water, land,  
2 and air resources to assure their protection and balance utilization consistent with  
3 the environmental policy of the Commonwealth;
- 4 (5) Provide for the prevention, abatement, and control of all water, land, and air  
5 pollution, including but not limited to that related to particulates, pesticides, gases,  
6 dust, vapors, noise, radiation, odor, nutrients, heated liquid, or other contaminants;
- 7 (6) Provide for the control and regulation of surface coal mining and reclamation in a  
8 manner to accomplish the purposes of KRS Chapter 350;
- 9 (7) Secure necessary scientific, technical, administrative, and operational services,  
10 including laboratory facilities, by contract or otherwise;
- 11 (8) Collect and disseminate information and conduct educational and training programs  
12 relating to the protection of the environment;
- 13 (9) Appear and participate in proceedings before any federal regulatory agency  
14 involving or affecting the purposes of the cabinet;
- 15 (10) Enter and inspect any property or premises for the purpose of investigating either  
16 actual or suspected sources of pollution or contamination or for the purpose of  
17 ascertaining compliance or noncompliance with this chapter, or any regulation  
18 which may be promulgated thereunder;
- 19 (11) Conduct investigations and hold hearings and compel the attendance of witnesses  
20 and the production of accounts, books, and records by the issuance of subpoenas;
- 21 (12) Accept, receive, and administer grants or other funds or gifts from public and  
22 private agencies including the federal government for the purpose of carrying out  
23 any of the functions of the cabinet. The funds received by the cabinet shall be  
24 deposited in the State Treasury to the account of the cabinet;
- 25 (13) Request and receive the assistance of any state or municipal educational institution,  
26 experiment station, laboratory, or other agency when it is deemed necessary or  
27 beneficial by the cabinet in the performance of its duties;

- 1 (14) Advise, consult, and cooperate with other agencies of the Commonwealth, other  
2 states, the federal government, and interstate and interlocal agencies, and affected  
3 persons, groups, and industries;
- 4 (15) Formulate guides for measuring presently unidentified environmental values and  
5 relationships so they can be given appropriate consideration along with social,  
6 economic, and technical considerations in decision making;
- 7 (16) Monitor the environment to afford more effective and efficient control practices, to  
8 identify changes and conditions in ecological systems, and to warn of emergency  
9 conditions;
- 10 (17) Adopt, modify, or repeal with the recommendation of the commission any standard,  
11 regulation, or plan;
- 12 (18) Issue, after hearing, orders abating activities in violation of this chapter, or the  
13 provisions of this chapter, or the regulations promulgated pursuant thereto and  
14 requiring the adoption of the remedial measures the cabinet deems necessary;
- 15 (19) Issue, continue in effect, revoke, modify, suspend, or deny under such conditions as  
16 the cabinet may prescribe and require that applications be accompanied by plans,  
17 specifications, and other information the cabinet deems necessary for the following  
18 permits:
- 19 (a) Permits to discharge into any waters of the Commonwealth, and for the  
20 installation, alteration, expansion, or operation of any sewage system;  
21 however, the cabinet may refuse to issue the permits to any person, or any  
22 partnership, corporation, etc., of which the person owns more than ten percent  
23 (10%) interest, who has improperly constructed, operated, or maintained a  
24 sewage system willfully, through negligence, or because of lack of proper  
25 knowledge or qualifications until the time that person demonstrates proper  
26 qualifications to the cabinet and provides the cabinet with a performance  
27 bond;

- 1 (b) Permits for the installation, alteration, or use of any machine, equipment,  
2 device, or other article that may cause or contribute to air pollution or is  
3 intended primarily to prevent or control the emission of air pollution; or
- 4 (c) Permits for the establishment or construction and the operation or  
5 maintenance of waste disposal sites and facilities;
- 6 (20) May establish, by regulation, a fee or schedule of fees for the cost of processing  
7 applications for permits authorized by this chapter, and for the cost of processing  
8 applications for exemptions or partial exemptions which may include but not be  
9 limited to the administrative costs of a hearing held as a result of the exemption  
10 application, except that applicants for existing or proposed publicly owned facilities  
11 shall be exempt from any charge, other than emissions fees assessed pursuant to  
12 KRS 224.20-050, and that certain nonprofit organizations shall be charged lower  
13 fees to process water discharge permits under KRS 224.16-050(5);
- 14 (21) May require for persons discharging into the waters or onto the land of the  
15 Commonwealth, by regulation, order, or permit, technological levels of treatment  
16 and effluent limitations;
- 17 (22) Require, by regulation, that any person engaged in any operation regulated pursuant  
18 to this chapter install, maintain, and use at such locations and intervals as the  
19 cabinet may prescribe any equipment, device, or test and the methodologies and  
20 procedures for the use of the equipment, device, or test to monitor the nature and  
21 amount of any substance emitted or discharged into the ambient air or waters or  
22 land of the Commonwealth and to provide any information concerning the  
23 monitoring to the cabinet in accordance with the provisions of subsection (23) of  
24 this section;
- 25 (23) Require by regulation that any person engaged in any operation regulated pursuant  
26 to this chapter file with the cabinet reports containing information as to location,  
27 size, height, rate of emission or discharge, and composition of any substance

1 discharged or emitted into the ambient air or into the waters or onto the land of the  
2 Commonwealth, and such other information the cabinet may require;

3 (24) Promulgate regulations, guidelines, and standards for waste planning and  
4 management activities, approve waste management facilities, develop and publish a  
5 comprehensive statewide plan for nonhazardous waste management which shall  
6 contain but not be limited to the provisions set forth in KRS 224.43-345, and  
7 develop and publish a comprehensive statewide plan for hazardous waste  
8 management which shall contain but not be limited to the following:

9 (a) A description of current hazardous waste management practices and costs,  
10 including treatment and disposal, within the Commonwealth;

11 (b) An inventory and description of all existing facilities where hazardous waste  
12 is being generated, treated, recycled, stored, or disposed of, including an  
13 inventory of the deficiencies of present facilities in meeting current hazardous  
14 waste management needs and a statement of the ability of present hazardous  
15 waste management facilities to comply with state and federal laws relating to  
16 hazardous waste;

17 (c) A description of the sources of hazardous waste affecting the Commonwealth  
18 including the types and quantities of hazardous waste currently being  
19 generated and a projection of such activities as can be expected to continue for  
20 not less than twenty (20) years into the future; and

21 (d) An identification and continuing evaluation of those locations within the  
22 Commonwealth which are naturally or may be engineered to be suitable for  
23 the establishment of hazardous waste management facilities, and an  
24 identification of those general characteristics, values, and attributes which  
25 would render a particular location unsuitable, consistent with the policy of  
26 minimizing land disposal and encouraging the treatment and recycling of the  
27 wastes.

- 1           The statewide waste management plans shall be developed consistent with state and  
2           federal laws relating to waste;
- 3       (25) Perform other acts necessary to carry out the duties and responsibilities described in  
4           this section;
- 5       (26) Preserve existing clean air resources while ensuring economic growth by issuing  
6           regulations, which shall be no more stringent than federal requirements, setting  
7           maximum allowable increases from stationary sources over baseline concentrations  
8           of air contaminants to prevent significant deterioration in areas meeting the state  
9           and national ambient air quality standards;
- 10       (27) Promulgate regulations concerning the bonding provisions of subsection (19)(a) of  
11           this section, setting forth bonding requirements, including but not limited to  
12           requirements for the amount, duration, release, and forfeiture of the bonds. All  
13           funds from the forfeiture of bonds required pursuant to this section shall be placed  
14           in the State Treasury and credited to a special trust and agency account which shall  
15           not lapse. The account shall be known as the "sewage treatment system  
16           rehabilitation fund" and all moneys placed in the fund shall be used for the  
17           elimination of nuisances and hazards created by sewage systems which were  
18           improperly built, operated, or maintained, and insofar as practicable be used to  
19           correct the problems at the same site for which the bond or other sureties were  
20           originally provided;
- 21       (28) Promulgate administrative regulations not inconsistent with the provisions of law  
22           administered by the cabinet;~~{and}~~
- 23       (29) Through the secretary or designee of the secretary, enter into, execute, and enforce  
24           reciprocal agreements with responsible officers of other states relating to  
25           compliance with the requirements of KRS Chapters 350, 351, and 352 and the  
26           administrative regulations promulgated under those chapters;and
- 27       **(30) Monitor compliance with and enforce the requirements of KRS 278.700 to**



1        **278.718 and the conditions of merchant electric generating facility construction**  
2        **certificate approvals, including decommissioning and bonding requirements.**

3        ➔Section 10. (1) Except as otherwise provided in subsection (2) of this  
4 section, all requirements of this Act shall apply to all new and current applicants for  
5 construction certificates under Section 5 of this Act that have not received application  
6 approval prior to the effective date of this Act.

7        (2) A merchant electric generating entity filing an application for a construction  
8 certificate pursuant to KRS 278.704 within 180 days of the effective date of this Act shall  
9 comply with the requirements of KRS 278.704(6) in effect prior to the effective date of  
10 this Act.

11       ➔Section 11. Whereas it is critical to update and provide clarity on the siting  
12 process for the wave of merchant electric generation facilities wishing to locate in the  
13 Commonwealth, which could result in thousands of acres of land being converted to  
14 energy production, an emergency is declared to exist, and this Act takes effect upon its  
15 passage and approval by the Governor or upon its otherwise becoming a law.