

1 AN ACT relating to the Department of Fish and Wildlife Resources and declaring
2 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 *(1) The department shall:*

7 *(a) Conduct all procurements necessary for the performance of its duties in*
8 *accordance with KRS Chapter 45A and this chapter, provided that this*
9 *chapter controls if any provision in this chapter is expressly inconsistent*
10 *with any provision of KRS Chapter 45A; or*

11 *(b) Promulgate administrative regulations pursuant to KRS Chapter 13A*
12 *establishing its procurement procedures.*

13 *(2) If the department elects to promulgate administrative regulations establishing its*
14 *procurement procedures rather than conduct procurements in accordance with*
15 *KRS Chapter 45A, the department may include sections of KRS Chapter 45A as*
16 *part of its administrative regulations and shall require review of personal service*
17 *contracts, tax incentive agreements, and memoranda of agreement by the*
18 *Government Contract Review Committee as established by KRS 45A.705.*

19 *(3) The department's procurement procedures or administrative regulations shall be*
20 *designed to provide for the purchase of supplies, equipment, services, and*
21 *construction items that provide the greatest long-term benefit to the*
22 *Commonwealth, the greatest integrity for the department, and the best service*
23 *and products for the public.*

24 *(4) In its bidding and negotiation processes, the department may:*

25 *(a) Perform its own bidding and procurement;*

26 *(b) Utilize the services of the Finance and Administration Cabinet; or*

27 *(c) Utilize a combination thereof.*

1 **(5) The commissioner of the department may, in lieu of the secretary of the Finance**
 2 **and Administration Cabinet, declare an emergency for purchasing purposes.**

3 ➔Section 2. KRS 150.021 is amended to read as follows:

4 (1) The Department of Fish and Wildlife Resources shall constitute **an independent**^[a]
 5 department of state government within the meaning of KRS Chapter 12, **and shall**
 6 **be administratively attached to the Tourism, Arts and Heritage Cabinet only for**
 7 **those limited functions and purposes expressly requested by the department to be**
 8 **performed by the Tourism, Arts and Heritage Cabinet. The department shall have**
 9 **sole discretion as to which functions shall be deemed necessary for the efficient**
 10 **operation of the department and the properties in its custody and control.** The
 11 department shall consist of a commissioner, a Fish and Wildlife Resources
 12 Commission, the Division of Law Enforcement, and other agents and employees
 13 provided for in this chapter. The department shall enforce the laws and regulations
 14 adopted under this chapter relating to wildlife and shall exercise all powers
 15 necessarily incident thereto.

16 (2) ~~{Except with regard to the commissioner's authority to appoint and compensate a~~
 17 ~~commissioner under KRS 150.061, any powers conferred by this chapter upon the~~
 18 ~~Department of Fish and Wildlife Resources, the Fish and Wildlife Resources~~
 19 ~~Commission, or the commissioner of the Department of Fish and Wildlife~~
 20 ~~Resources, and any powers conferred by KRS Chapter 235 shall be exercised~~
 21 ~~subject to the provisions of KRS Chapters 42, 45, 45A, 56, and 64, which chapters~~
 22 ~~in all respects are controlling.~~

23 ~~(3)}~~ (a) The Finance and Administration Cabinet shall assess the Department of Fish
 24 and Wildlife Resources each fiscal year a fee in an amount equal to five
 25 percent (5%) of the debt service associated with all phases and
 26 implementation of the capital project to replace, repair, or maintain the two (2)
 27 way radio system utilized by the Department of Kentucky State Police.

1 (b) The fee shall be assessed on each phase of the implementation of the two (2)
 2 way radio system and shall continue to be assessed until all debt for the
 3 system has been retired.

4 **(3) On the effective date of this Act, any records, files, or documents, including any**
 5 **legal documents or memoranda, associated with functions of the Department of**
 6 **Fish and Wildlife Resources that were previously performed by the Tourism, Arts**
 7 **and Heritage Cabinet, but for which it is no longer deemed responsible, shall be**
 8 **transferred to the department.**

9 **(4) The department shall not be subject to reorganization under KRS Chapter 12.**

10 ➔Section 3. KRS 150.022 is amended to read as follows:

11 (1) The Department of Fish and Wildlife Resources Commission shall consist of nine
 12 (9) members, one (1) from each **commission**~~[wildlife]~~ district, as set out by the
 13 commissioner with the approval of the commission, and not more than five (5) of
 14 the same political party.

15 (2) The Governor shall appoint the members of the commission subject to confirmation
 16 by the Senate **as described in subsection (3) of this section.** Each of the members
 17 shall be appointed for a term **ending on December 31 of the fourth calendar year**
 18 **following his or her appointment, except that a member's term shall continue**
 19 **until his or her successor is duly appointed and confirmed by the Senate. A**
 20 **member, including any member appointed prior to the effective date of this Act,**
 21 **shall not take office or act in any official capacity until confirmed by the Senate.**
 22 **A member shall serve no more than two (2) full terms, not including any partial**
 23 **term that a member may additionally serve**~~[of four (4) years and may be~~
 24 ~~reappointed only once].~~ **A**~~[No]~~ person who has been convicted of a felony offense
 25 **or a misdemeanor violation of game and fish laws,** in Kentucky or under the law
 26 of any other state, or any other law of the United States shall **not** be eligible to serve
 27 on the commission.

- 1 (3) (a) Vacancies through the expiration of terms of the members of the commission
2 shall be filled by appointment by the Governor from a list of five (5) names
3 from each commission~~[wildlife]~~ district, recommended and submitted by the
4 sportsmen of each respective district.
- 5 (b) When the term of a member expires, the commissioner shall call a meeting of
6 the sportsmen in that district not later than thirty (30) days prior to the
7 expiration of the member's term. Notice of the meeting shall be given by
8 publication pursuant to KRS Chapter 424.
- 9 (c) At the meeting, the sportsmen in attendance shall select and submit to the
10 Governor a list of five (5) residents and citizens of the district who have held
11 hunting and fishing licenses in Kentucky or another state for at least the
12 previous five (5) consecutive years and who are well informed on the subject
13 of wildlife conservation and restoration. Each sportsman may vote for one (1)
14 candidate only, and the list submitted to the Governor shall be made up of the
15 names of the five (5) candidates receiving the five (5) highest vote totals.
16 Candidate lists under this subsection shall be submitted no later than
17 January 1 of the year following the year in which the term for the
18 commissioner to be replaced has expired.
- 19 (d) The Governor shall appoint a successor to the member whose term has
20 expired no later than January 20 of the year following the year in which the
21 member's term expired~~[is about to expire within sixty (60) days following the~~
22 ~~submission to him of the list referred to in this subsection, and in no event~~
23 ~~later than August 13].~~
- 24 (4) Upon appointment to the ~~[commission of the]~~Department of Fish and Wildlife
25 Resources Commission, each commissioner shall execute a bond of one thousand
26 dollars (\$1,000) in favor of the Department of Fish and Wildlife Resources, the
27 premium on this bond to be paid out of department funds.

- 1 (5) In the event of vacancies other than by expiration, the Governor shall fill the
2 vacancy for the unexpired part of the term from the names remaining on the list
3 previously submitted for the district from which the vacancy arose.
- 4 (6) Each member of the commission shall take the constitutional oath of office.
- 5 (7) The Governor shall remove any member of the commission for cause under
6 subsection (2) of this section and may remove any member of the commission for
7 inefficiency, neglect of duty, or misconduct in office; but shall first deliver to the
8 member a copy of all charges in writing and afford to him or her an opportunity of
9 being publicly heard in person or by counsel in defense of the charges, upon not less
10 than ten (10) days' notice. In order to remove~~if~~ a member of the commission~~]~~
11 ~~shall be removed~~, the Governor shall file in the office of the Secretary of State a
12 complete statement of all charges made against the member and his or her findings
13 thereon, together with a complete record of the proceedings.
- 14 (8) Each member of the commission shall be entitled to reimbursement for actual and
15 necessary traveling and other expenses incurred by him or her in the discharge of
16 his or her official duties and to be paid from the game and fish fund.
- 17 (9) A majority of the commission shall constitute a quorum for the transaction of any
18 business, for the performance of any duty or for the exercise of any power vested in
19 the commission.
- 20 (10) The department shall have its principal office in Franklin County, and is authorized
21 to purchase all supplies, equipment, and printed forms and to issue any notices and
22 publications as the commissioner may deem necessary to carry out the provisions of
23 this chapter.
- 24 (11) The word "sportsman" as used in this section shall mean a resident hunter or
25 fisherman who has been licensed in Kentucky for each of the past two (2)
26 consecutive years.
- 27 ➔Section 4. KRS 150.0241 is amended to read as follows:

- 1 (1) As used in this section unless the context otherwise requires:
- 2 (a) "Commission" has the same meaning as in KRS 150.010;
- 3 (b) "Commission-managed lands" means those lands owned by the commission,
4 those lands owned by the Commonwealth over which the commission holds
5 management authority, or those privately owned lands that are leased or
6 managed by the commission; and
- 7 (c) "Hunting" means the lawful pursuit, trapping, shooting, capture, collection, or
8 killing of wildlife or the lawful attempt to do the same.
- 9 (2) Commission-managed lands shall be open to access and use for hunting except as
10 limited by the commission for reasons of fish or wildlife management, or as
11 otherwise limited by a statute outside KRS Chapter 150 or 235.
- 12 (3) The commission, in exercising its authority under the Constitution of the
13 Commonwealth of Kentucky and statutes, shall exercise its authority consistent
14 with subsection (2) of this section, in a manner that supports, promotes, and
15 enhances hunting opportunities to the extent authorized by law.
- 16 (4) Commission land management decisions and actions, including decisions made by
17 private owners to close land managed by the commission, shall not result in any net
18 loss of habitat land acreage available for hunting opportunities on commission-
19 managed lands that exists on July 15, 2010. The commission shall expeditiously
20 find replacement acreage for hunting to compensate for closures of any existing
21 hunting land. Replacement lands shall, to the greatest extent possible, be located
22 within the same commission~~[wildlife]~~ district and shall be consistent with the
23 hunting discipline that the commission allowed on the closed land.
- 24 (5) Any state agency that owns or manages lands shall assist and coordinate and
25 cooperate with the commission to allow hunting on these lands if the lands are
26 determined by the commission and that agency to be suitable for hunting. To ensure
27 no net loss of land acreage available for hunting, state agencies shall cooperate with

1 the commission to open new, additional hunting lands to replace lost hunting
2 acreage. Lands officially designated as units within the state park system may be
3 considered for replacement hunting lands and may be open for hunting when
4 necessary as a wildlife control or management tool as determined by the
5 Department of Parks.

6 (6) By October 1 of each year, the commissioner shall submit to the Legislative
7 Research Commission and the Interim Joint Committee on Natural Resources and
8 Environment a written report describing:

9 (a) The acreage managed by the commission that was closed to hunting during the
10 previous fiscal year and the reasons for the closures; and

11 (b) The acreage managed by the commission that was opened to hunting to
12 compensate for closures of existing land pursuant to subsection (4) of this
13 section.

14 (7) By October 1 of each year, any state agency that owns or manages lands shall
15 submit a written report to the commission, the Legislative Research Commission,
16 and the Interim Joint Committee on Natural Resources and Environment describing:

17 (a) A list of properties that were open for hunting during the previous fiscal year;

18 (b) A list of properties that were not open for hunting during the previous fiscal
19 year; and

20 (c) 1. The acreage for each property and the county where each property is
21 located, including lands on which a right-of-way exists which make the
22 lands unsuitable for hunting, and an explanation of why the right-of-way
23 makes the land unsuitable for hunting; and

24 2. Parcels under fifty (50) acres. No agency shall subdivide land it owns or
25 manages into parcels under fifty (50) acres in an attempt to avoid
26 compliance with the provisions of this section.

27 (8) The first report under this section shall be due no later than October 1, 2010.

1 ➔Section 5. KRS 150.061 is amended to read as follows:

- 2 (1) Notwithstanding any provisions of KRS Chapter 18A, 42, 45, 45A, 56, or 64 to the
3 contrary, the commission shall have the sole authority to appoint a commissioner of
4 the Department of Fish and Wildlife Resources, who shall be a person with
5 knowledge of and experience in the requirements for the protection, conservation
6 and restoration of the wildlife resources of the state. The commission shall be the
7 sole contracting body for the purposes of KRS Chapter 45A and shall submit any
8 proposed personal service contract with a commissioner to the Government Contact
9 Review Committee for its review pursuant to KRS 45A.690 to 45A.725. The
10 commissioner shall serve for a defined employment contract term not to exceed four
11 (4) years and shall be subject to:
- 12 (a) Annual review by the commission in closed, executive session;
 - 13 (b) Removal by the commission for the same cause and in the same manner in
14 which the Governor may remove a member of the commission; and
 - 15 (c) Reappointment by the commission.
- 16 (2) The commissioner shall receive such compensation as the commission may solely
17 determine, and shall be reimbursed for all actual and necessary travel and other
18 expenses incurred by him or her in the performance of his or her official duties.
- 19 (3) Before entering upon the duties of his or her office, the commissioner shall take and
20 subscribe to the constitutional oath of office, and shall, in addition thereto, swear or
21 affirm that he or she holds no other public office, nor any position upon or under
22 any political committee or party. Upon appointment by the commission, the
23 commissioner shall execute a bond of five thousand dollars (\$5,000) in favor of the
24 Department of Fish and Wildlife Resources, the premium on said bond to be paid
25 out of department funds.
- 26 (4) **Notwithstanding any provision of law to the contrary,** the commissioner shall **be**
27 **the sole appointing authority for the department for the purposes of KRS Chapter**

1 **18A and shall** have general supervision and control of all activities, functions,
2 appointments, and employees of the department~~[- of Fish and Wildlife Resources].~~
3 He or she shall enforce all provisions of the laws of the state relating to wild
4 animals, birds, fish and amphibians, and shall exercise all powers necessarily
5 incident thereto not specifically conferred on the commission. The commissioner
6 shall make an annual report of all receipts and disbursements and file same with the
7 Secretary of State of the Commonwealth of Kentucky.

8 (5) If federal or other grant funds become available to pay their salaries, the
9 commissioner may appoint and employ other persons that he or she may deem
10 necessary or desirable to accomplish the purposes of this chapter. The
11 commissioner shall determine the compensation, duties, and terms of employment
12 of these employees, and grant funded, time-limited positions shall be approved by
13 the commission as needed. Employees whose salaries are funded through federal or
14 other grant funds shall not be counted in any tally of permanent employees made for
15 employee cap or budgetary purposes.

16 ➔Section 6. KRS 235.010 is amended to read as follows:

17 As used in this chapter, unless the context clearly requires a different meaning:

- 18 (1) "Vessel" means every description of watercraft, other than a seaplane on the water;
- 19 (2) "Motorboat" means any vessel propelled by machinery, whether or not such
20 machinery is the principal source of propulsion, except for the following:
- 21 (a) Boats or vessels propelled totally by a direct current battery-powered motor
22 when used on private waters;
- 23 (b) Boats propelled by human power employing the use of hand or foot operation;
- 24 and
- 25 (c) Federally regulated commercial vessels;
- 26 (3) "Owner" means a person, other than a lienholder, having the property in or title to a
27 motorboat. The term includes a person entitled to the use or possession of a

- 1 motorboat subject to an interest in another person, reserved or created by agreement
2 and securing payment or performance of an obligation, but the term excludes a
3 lessee under a lease not intended as security;
- 4 (4) "Personal watercraft" means a vessel which uses an internal combustion engine to
5 power a jet pump for its primary source of propulsion and is designed to be operated
6 by a person sitting, standing, or kneeling on the vessel rather than to be operated by
7 a person sitting or standing inside the vessel;
- 8 (5) "Safe boating certificate" means a document attesting the successful completion of
9 instruction, approved by the department or given by the United States Coast Guard
10 or Coast Guard Auxiliary or the United States Power Squadron, to prepare an
11 individual to safely operate a motorboat or personal watercraft on the waters of the
12 Commonwealth;
- 13 (6) "Waters of this state" means any waters within the territorial limits of this state;
- 14 (7) "Person" means an individual, partnership, firm, corporation, association, or other
15 entity;
- 16 (8) "Operate" means to navigate or otherwise use a motorboat or a vessel;
- 17 (9) "Cabinet" means the Tourism, Arts and Heritage Cabinet;
- 18 (10) "Department" means the Department of Fish and Wildlife Resources;
- 19 (11) "License" and "certificate of number" as used herein are synonymous;
- 20 (12) "Clerk" means county clerk;
- 21 (13) "Division of Law Enforcement" means the Division of Law Enforcement *in the*[-]
22 Department of Fish and Wildlife Resources[- within the Tourism, Arts and Heritage
23 Cabinet];
- 24 (14) "Title" means the certificate of title;
- 25 (15) "Commissioner" means the commissioner of the Department of Fish and Wildlife
26 Resources;
- 27 (16) "Federally regulated commercial vessel" means any vessel holding a United States

1 certificate of documentation with a coastwise trade endorsement;

2 (17) "Marina" means a dock or basin providing moorings for motorboats and offering
3 supply, repair, or other services for remuneration; and

4 (18) "Marine sanitation device" means equipment that is identified by the United States
5 Coast Guard as meeting the standards of the United States Environmental
6 Protection Agency or that is approved by the Energy and Environment Cabinet, to
7 eliminate the discharge of untreated sewage from vessels into the waters of the
8 Commonwealth and is a device that receives, treats, retains, or discharges sewage.

9 ➔Section 7. KRS 235.030 is amended to read as follows:

10 This chapter shall be known as the State Boating Act and shall be administered by the
11 Department of Fish and Wildlife Resources, *which is administratively attached to the*
12 *Tourism, Arts and Heritage Cabinet only for those limited functions and purposes*
13 *expressly requested by the department to be performed by the Tourism, Arts and*
14 *Heritage Cabinet. The department shall have sole discretion as to which functions*
15 *shall be deemed necessary for the efficient operation of the department and the*
16 *properties in its custody and control.* [~~in the Tourism, Arts and Heritage Cabinet, except~~]

17 The Transportation Cabinet shall be responsible for administering the boat numbering,
18 registration, and titling requirements.

19 ➔Section 8. KRS 235.130 is amended to read as follows:

20 (1) No person acting for himself or another shall buy or trade for any motorboat without
21 receiving the certificate of title issued for that boat with a certificate of transfer
22 endorsed thereon. If the motorboat has not been issued a certificate of title as noted
23 on the certificate of registration, the person shall receive a completed assignment of
24 title on a boat transaction record and the certificate of registration.

25 (2) It shall be the duty of the purchaser to promptly submit the endorsed certificate of
26 title or boat transaction record and certificate of registration to the county clerk of
27 the county of the purchaser's residence or in which the motorboat is to be principally

1 operated. The purchaser shall apply for a new certificate of title and registration
2 pursuant to KRS 235.050. The county clerk shall thereupon issue to the purchaser a
3 transfer of registration bearing the same data and information. The clerk shall
4 forward the endorsed certificate of title or boat transaction record and certificate of
5 registration and new application for title and registration to the Transportation
6 Cabinet. Except when registration is prohibited by law, any unexpired registration
7 shall remain valid after transfer until expiration occurs according to law.

8 (3) For transferring the registration, the clerk shall collect a fee of five dollars (\$5). The
9 clerk shall retain two dollars (\$2), the Transportation Cabinet shall receive two
10 dollars (\$2) and the Department of Fish and Wildlife Resources~~[within the~~
11 ~~Tourism, Arts and Heritage Cabinet]~~ shall receive one dollar (\$1). The fee received
12 by the Transportation Cabinet shall be deposited in a trust and agency account for
13 use by the Transportation Cabinet in defraying the cost of implementing and
14 operating the boat titling and registration program. The fee for transferring the title
15 shall be as required by KRS 235.085.

16 (4) If a transferee does not promptly submit the necessary documents to the county
17 clerk as required by law in order to complete the transfer transaction, a transferor
18 may submit to the county clerk, after the passage of fifteen (15) calendar days, in his
19 county of residence, an affidavit that he has transferred his interest in a specific
20 motorboat and the clerk may enter appropriate data into the AVIS system which
21 would restrict any registration transaction from occurring on that vehicle until the
22 transfer was processed.

23 (5) If the owner junks or otherwise renders a motorboat unfit for future use, he shall
24 deliver the title to the county clerk of the county in which the motorboat is junked.
25 The county clerk shall immediately return the title to the Transportation Cabinet.
26 The owner shall pay to the county clerk fifty cents (\$0.50) for his services.

27 ➔Section 9. Whereas it is critical to the proper management and administration of

1 the Department of Fish and Wildlife Resources that it is able to exercise independent
2 authority in managing the natural resources under its jurisdiction and that its
3 commissioners be appointed in an orderly and equitable manner, an emergency is
4 declared to exist, and this Act takes effect upon its passage and approval by the Governor
5 or upon its otherwise becoming a law.