

1 AN ACT relating to merchant electric generating facilities and making an
2 appropriation therefor.

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

4 ➔Section 1. KRS 278.702 is amended to read as follows:

- 5 (1) There is hereby established the Kentucky State Board on Electric Generation and
6 Transmission Siting. The board shall be composed of seven (7) members as
7 follows:
- 8 (a) The three (3) members of the Kentucky Public Service Commission;
 - 9 (b) The secretary of the Energy and Environment Cabinet or the secretary's
10 designee;
 - 11 (c) The secretary of the Cabinet for Economic Development or the secretary's
12 designee;
 - 13 (d) 1. If the facility subject to board approval is proposed to be located in one
14 (1) county, two (2) ad hoc public members to be appointed by the
15 Governor from a county where a facility subject to board approval is
16 proposed to be located:
 - 17 a. One (1) of the ad hoc public members shall be the chairman of the
18 planning commission with jurisdiction over an area in which a
19 facility subject to board approval is proposed to be located. If the
20 proposed location is not within a jurisdiction with a planning
21 commission, then the Governor shall appoint either the county
22 judge/executive of a county that contains the proposed location of
23 the facility or the mayor of a city, if the facility is proposed to be
24 within a city; and
 - 25 b. One (1) of the ad hoc public members shall be appointed by the
26 Governor and shall be a resident of the county in which the facility
27 is proposed to be located.

- 1 2. If the facility subject to board approval is proposed to be located in more
2 than one (1) county, two (2) ad hoc public members to be chosen as
3 follows:
4 a. One (1) ad hoc public member shall be the county judge/executive
5 of a county in which the facility is proposed to be located, to be
6 chosen by majority vote of the county judge/executives of the
7 counties in which the facility is proposed to be located; and
8 b. One (1) ad hoc public member shall be a resident of a county in
9 which the facility is proposed to be located, and shall be appointed
10 by the Governor.

11 If a member has not been chosen by majority vote, as provided in
12 subdivision a. of this subparagraph, by thirty (30) days after the filing of
13 the application, the Governor shall directly appoint the member.

- 14 3. Ad hoc public members appointed to the board shall have no direct
15 financial interest in the facility proposed to be constructed.

16 (2) The term of service for the ad hoc members of the board shall continue until the
17 merchant electric generating facility~~board issues a final determination in the~~
18 ~~proceeding~~ for which they were appointed has been constructed and begins
19 generating electricity for sale or the construction certificate expires. The
20 remaining members of the board shall be permanent members.

21 (3) The board shall be attached to the Public Service Commission for administrative
22 purposes. The commission staff shall serve as permanent administrative staff for the
23 board. The members of the board identified in subsection (1)(a) to (d) of this
24 section shall promulgate administrative regulations in accordance with KRS
25 Chapter 13A to implement KRS 278.700 to 278.716.

26 (4) No member of the board shall receive any salary or fee for service on the board or
27 shall have any financial interest in any facility the application for which comes

1 before the board, but each member shall be reimbursed for actual travel and
2 expenses directly related to service on the board.

3 (5) The chairman of the Public Service Commission shall be the chairman of the board.
4 The chairman shall designate one (1) member of the board as vice chairman. A
5 majority of the members of the board shall constitute a quorum for the transaction
6 of business. No vacancy on the board shall impair the right of the remaining
7 members to exercise all of the powers of the board. The board shall convene upon
8 the call of the chairman.

9 ➔Section 2. KRS 278.704 is amended to read as follows:

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

19 (2) Except as provided in subsections (3), (4), and (5) of this section, no construction
20 certificate shall be issued to construct a merchant electric generating facility unless
21 the exhaust stack of the proposed facility and any wind turbine is at least one
22 thousand (1,000) feet from the property boundary of any adjoining property owner
23 and all proposed structures or facilities used for generation of electricity are two
24 thousand (2,000) feet from any residential neighborhood, school, hospital, or
25 nursing home facility. For purposes of applications for site compatibility certificates
26 pursuant to KRS 278.216, only the exhaust stack of the proposed facility to be
27 actually used for coal or gas-fired generation or, beginning with applications for site

1 compatibility certificates filed on or after January 1, 2015, the proposed structure or
2 facility to be actually used for solar or wind generation shall be required to be at
3 least one thousand (1,000) feet from the property boundary of any adjoining
4 property owner and two thousand (2,000) feet from any residential neighborhood,
5 school, hospital, or nursing home facility.

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

13 (a) Have primacy over the decommissioning requirements in subsection (2)(m)
14 of Section 3 of this Act and the setback requirement in subsections (2) and (5)
15 of this section; and

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

19 (4) The board may grant a deviation from the requirements of subsection (2) of this
20 section on a finding that the proposed facility is designed to and, as located, would
21 meet the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218,
22 and 278.700 to 278.716 at a distance closer than those provided in subsection (2) of
23 this section.

24 (5) If the merchant electric generating facility is proposed to be located on a site of a
25 former coal processing plant in the Commonwealth where the electric generating
26 facility will utilize on-site waste coal as a fuel source, then the one thousand (1,000)
27 foot property boundary requirement in subsection (2) of this section shall not be

1 applicable; however, the applicant shall be required to meet any other setback
2 requirements contained in subsection (2) of this section.

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

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

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

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

- 1 (a) The Energy and Environment Cabinet;
- 2 (b) The Public Service Commission;
- 3 (c) The Transportation Cabinet;
- 4 (d) The Attorney General; and
- 5 (e) The Office of the Governor.

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

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

11 ➔Section 3. KRS 278.706 is amended to read as follows:

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

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

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

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

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

- 27 1. Landowners whose property borders the proposed site; and

- 1 2. The general public in a newspaper of general circulation in the county or
2 municipality in which the facility is proposed to be located;
- 3 (d) A statement certifying that the proposed plant will be in compliance with all
4 local ordinances and regulations concerning noise control and with any local
5 planning and zoning ordinances. The statement shall also disclose setback
6 requirements established by the planning and zoning commission as provided
7 under KRS 278.704(3);
- 8 (e) If the facility is not proposed to be located on a site of a former coal
9 processing plant and the facility will use on-site waste coal as a fuel source or
10 in an area where a planning and zoning commission has established a setback
11 requirement pursuant to KRS 278.704(3), a statement that the exhaust stack of
12 the proposed facility and any wind turbine is at least one thousand (1,000) feet
13 from the property boundary of any adjoining property owner and all proposed
14 structures or facilities used for generation of electricity are two thousand
15 (2,000) feet from any residential neighborhood, school, hospital, or nursing
16 home facility, unless facilities capable of generating ten megawatts (10MW)
17 or more currently exist on the site. If the facility is proposed to be located on a
18 site of a former coal processing plant and the facility will use on-site waste
19 coal as a fuel source, a statement that the proposed site is compatible with the
20 setback requirements provided under KRS 278.704(5). If the facility is
21 proposed to be located in a jurisdiction that has established setback
22 requirements pursuant to KRS 278.704(3), a statement that the proposed site
23 is in compliance with those established setback requirements;
- 24 (f) A complete report of the applicant's public involvement program activities
25 undertaken prior to the filing of the application, including:
- 26 1. The scheduling and conducting of a public meeting in the county or
27 counties in which the proposed facility will be constructed at least

- 1 ninety (90) days prior to the filing of an application, for the purpose of
2 informing the public of the project being considered and receiving
3 comment on it;
- 4 2. Evidence that notice of the time, subject, and location of the meeting
5 was published in the newspaper of general circulation in the county, and
6 that individual notice was mailed to all owners of property adjoining the
7 proposed project at least two (2) weeks prior to the meeting; and
- 8 3. Any use of media coverage, direct mailing, fliers, newsletters, additional
9 public meetings, establishment of a community advisory group, and any
10 other efforts to obtain local involvement in the siting process;
- 11 (g) A summary of the efforts made by the applicant to locate the proposed facility
12 on a site where existing electric generating facilities are located;
- 13 (h) Proof of service of a copy of the application upon the chief executive officer
14 of each county and municipal corporation in which the proposed facility is to
15 be located, and upon the chief officer of each public agency charged with the
16 duty of planning land use in the jurisdiction in which the facility is proposed
17 to be located;
- 18 (i) An analysis of the proposed facility's projected effect on the electricity
19 transmission system in Kentucky;
- 20 (j) An analysis of the proposed facility's economic impact on the affected region
21 and the state;
- 22 (k) A detailed listing of all violations by it, or any person with an ownership
23 interest, of federal or state environmental laws, rules, or administrative
24 regulations, whether judicial or administrative, where violations have resulted
25 in criminal convictions or civil or administrative fines exceeding five
26 thousand dollars (\$5,000). The status of any pending action, whether judicial
27 or administrative, shall also be submitted;~~and~~

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

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

9 1. Unless otherwise requested by the landowner, remove all above-
10 ground facilities;

11 2. At the request of the landowner, remove any underground components
12 and foundations of above-ground facilities to a depth of three (3) feet
13 below the surface grade of the land in or on which the component was
14 installed;

15 3. Return the land to a substantially similar state as it was prior to the
16 commencement of construction;

17 4. Leave any interconnection or other facilities in place for future use at
18 the completion of the decommissioning process;

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

22 a. The amount of the proposed bond or similar security shall be
23 determined by an independent, licensed engineer who is
24 experienced in the decommissioning of solar electric generating
25 facilities and has no financial interest in either the merchant
26 electric generating facility or any parcel of land upon which the
27 merchant electric generating facility is located. The proposed

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- amount of the bond or similar security shall be either:
- i. The net present value of the total estimated cost of completing the decommissioning plan, less the current net salvage value of the merchant electric generating facility's components; or
 - ii. The bond amount required by a county or municipal government that has established a decommissioning bond requirement or similar security obligation in the county or municipality where the merchant electric generating facility will be located. If the facility will be located in more than one (1) county or municipality that has established a decommissioning bond or similar security obligation, then the higher amount shall be required for the facility;
- b. The bond or other similar security names:
- i. For property that is leased by the applicant, each landowner from whom the applicant leases land and the Energy and Environment Cabinet as the primary co-beneficiaries; or
 - ii. For property that is owned by the applicant, the Energy and Environment Cabinet as the primary beneficiary;
- c. If the merchant electric generating facility is to be located in a county or municipality that has not established a decommissioning bond or other similar security obligation, the bond or other similar security shall name the county or municipality as a secondary beneficiary with the county's or municipality's consent; and
- d. The bond or other similar security shall be provided by an

1 insurance company or surety that shall at all times maintain at
 2 least an "Excellent" rating as measured by the AM Best rating
 3 agency or an investment grade credit rating by any national
 4 credit rating agency and shall be noncancelable by the provider
 5 or the customer until completion of the decommissioning plan or
 6 until a replacement bond is secured;

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

12 7. Incorporate the requirements of paragraphs (m)1. to 6. of this
 13 subsection into the applicant's leases with landowners.

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

16 (4) Replacement of a merchant electric generating facility with a like facility, or the
 17 repair, modification, retrofitting, enhancement, or reconfiguration of a merchant
 18 electric generating facility shall not, for the purposes of this section and KRS
 19 224.10-280, 278.704, 278.708, 278.710, and 278.712, constitute construction of a
 20 merchant electric generating facility.

21 (5) The board shall promulgate administrative regulations prescribing fees to pay
 22 expenses associated with its review of applications filed with it pursuant to KRS
 23 278.700 to 278.716. All application fees collected by the board shall be deposited in
 24 a trust and agency account to the credit of the Public Service Commission. If a
 25 majority of the members of the board find that an applicant's initial fees are
 26 insufficient to pay the board's expenses associated with the application, including
 27 the board's expenses associated with legal review thereof, the board shall assess a

1 supplemental application fee to cover the additional expenses. An applicant's failure
2 to pay a fee assessed pursuant to this subsection shall be grounds for denial of the
3 application.

4 ➔Section 4. KRS 278.708 is amended to read as follows:

- 5 (1) Any person proposing to construct a merchant electric generating facility shall file a
6 site assessment report with the board as required under KRS 278.706(2)(1).
- 7 (2) A site assessment report shall be prepared by the applicant or its designee.
- 8 (3) A completed site assessment report shall include:
- 9 (a) A description of the proposed facility that shall include a proposed site
10 development plan that describes:
- 11 1. Surrounding land uses for residential, commercial, agricultural, and
12 recreational purposes;
 - 13 2. The legal boundaries of the proposed site;
 - 14 3. Proposed access control to the site;
 - 15 4. The location of facility buildings, transmission lines, and other
16 structures;
 - 17 5. Location and use of access ways, internal roads, and railways;
 - 18 6. Existing or proposed utilities to service the facility;
 - 19 7. Compliance with applicable setback requirements as provided under
20 KRS 278.704(2), (3), (4), or (5); and
 - 21 8. Evaluation of the noise levels expected to be produced by the facility;
- 22 (b) An evaluation of the compatibility of the facility with scenic surroundings;
- 23 (c) The potential changes in property values and land use resulting from the
24 siting, construction, and operation of the proposed facility for property owners
25 adjacent to the facility;
- 26 (d) Evaluation of anticipated peak and average noise levels associated with the
27 facility's construction and operation at the property boundary; and

- 1 (e) The impact of the facility's operation on road and rail traffic to and within the
2 facility, including anticipated levels of fugitive dust created by the traffic and
3 any anticipated degradation of roads and lands in the vicinity of the facility.
- 4 (4) The site assessment report shall also suggest any mitigating measures to be
5 implemented by the applicant to minimize or avoid adverse effects identified in the
6 site assessment report.
- 7 (5) The board shall have the authority to hire a consultant to review the site assessment
8 report and provide recommendations concerning the adequacy of the report and
9 proposed mitigation measures. The board may direct the consultant to prepare a
10 separate site assessment report. Any expenses or fees incurred by the board's hiring
11 of a consultant shall be borne by the applicant.
- 12 (6) The applicant shall be given the opportunity to present evidence to the board
13 regarding any mitigation measures. As a condition of approval for an application to
14 obtain a construction certificate, the board may require the implementation of any
15 mitigation measures that the board deems appropriate. **Ongoing compliance with**
16 **any mitigation measures that were conditions of construction certificate**
17 **application approval shall be enforced by the Energy and Environment Cabinet**
18 **pursuant to subsection (8) of Section 5 of this Act.**
- 19 ➔Section 5. KRS 278.710 is amended to read as follows:
- 20 (1) Within one hundred twenty (120) days of receipt of an administratively complete
21 application, or within one hundred eighty (180) days of receipt of an
22 administratively complete application if a hearing is requested, the board shall, by
23 majority vote, grant or deny a construction certificate, either in whole or in part,
24 based upon the following criteria:
- 25 (a) Impact of the facility on scenic surroundings, property values, the pattern and
26 type of development of adjacent property, and surrounding roads;
- 27 (b) Anticipated noise levels expected as a result of construction and operation of

- 1 the proposed facility;
- 2 (c) The economic impact of the facility upon the affected region and the state;
- 3 (d) Whether the facility is proposed for a site upon which existing generating
4 facilities, capable of generating ten megawatts (10MW) or more of electricity,
5 are currently located;
- 6 (e) Whether the proposed facility will meet all local planning and zoning
7 requirements that existed on the date the application was filed;
- 8 (f) Whether the additional load imposed upon the electricity transmission system
9 by use of the merchant electric generating facility will adversely affect the
10 reliability of service for retail customers of electric utilities regulated by the
11 Public Service Commission;
- 12 (g) Except where the facility is subject to a statewide setback established by a
13 planning and zoning commission as provided in KRS 278.704(3) and except
14 for a facility proposed to be located on a site of a former coal processing plant
15 and the facility will use on-site waste coal as a fuel source, whether the
16 exhaust stack of the proposed merchant electric generating facility and any
17 wind turbine is at least one thousand (1,000) feet from the property boundary
18 of any adjoining property owner and all proposed structures or facilities used
19 for generation of electricity are two thousand (2,000) feet from any residential
20 neighborhood, school, hospital, or nursing home facility, unless a different
21 setback has been requested and approved under KRS 278.704(4). If a
22 planning and zoning commission has established setback requirements that
23 differ from those under KRS 278.704(2), the applicant shall provide evidence
24 of compliance. If the facility is proposed to be located on site of a former coal
25 processing plant and the facility will use on-site waste coal as a fuel source,
26 the applicant shall provide evidence of compliance with the setback
27 requirements provided in KRS 278.704(5);

- 1 (h) The efficacy of any proposed measures to mitigate adverse impacts that are
 2 identified pursuant to paragraph (a), (b), (e), or (f) of this subsection from the
 3 construction or operation of the proposed facility;~~and~~
- 4 (i) Whether the applicant has a good environmental compliance history; **and**
- 5 **(j) Whether the decommissioning plan is complete and complies with the**
 6 **requirements of subsection (2)(m) of Section 3 of this Act and any other**
 7 **local requirements that may apply.**
- 8 (2) When considering an application for a construction certificate for a merchant
 9 electric generating facility, the board may consider the policy of the General
 10 Assembly to encourage the use of coal as a principal fuel for electricity generation
 11 as set forth in KRS 152.210, provided that any facility, regardless of fuel choice,
 12 shall comply fully with KRS 224.10-280, 278.212, 278.216, and 278.700 to
 13 278.716.
- 14 (3) A person that has received a construction certificate for a merchant electric
 15 generating facility shall:
- 16 **(a) File with the Energy and Environment Cabinet the copy of the bond or**
 17 **other similar security that, pursuant to subsection (2)(m)5. of Section 3 of**
 18 **this Act, is required by a county or a municipal government or as part of a**
 19 **decommissioning plan, no later than the date upon which the construction**
 20 **of the merchant generating facility commences, and refile an updated copy**
 21 **at least once every five (5) years thereafter;**
- 22 **(b)** Not transfer rights and obligation under the certificate without having first
 23 applied for and received a board determination that:
- 24 **1.(a)** The acquirer has a good environmental compliance history; and
- 25 **2.(b)** The acquirer has the financial, technical, and managerial capacity
 26 to meet the obligations imposed by the terms of the approval or has the
 27 ability to contract to meet these obligations;

- 1 (c) File with the Energy and Environment Cabinet a notice of the date that
2 construction is complete and the merchant electric generating facility
3 begins producing electricity for sale; and
- 4 (d) Following the date the merchant electric generating facility begins
5 producing electricity for sale, file a notice of any transaction involving the
6 transfer or sale of ownership, control, or the right to control the merchant
7 electric generating facility, with lessors of property where the merchant
8 electric generating facility is located, the Energy and Environment Cabinet,
9 the county judge/executive of a county and, if applicable, the mayor of a
10 municipality in which the merchant electric generating facility is located,
11 within ten (10) days of completing the transaction. The notice shall include
12 the name, street address, telephone number, and e-mail address of the
13 person acquiring ownership, control, or the right to control the merchant
14 electric generating facility.
- 15 (4) A person that has acquired ownership, control, or the right to control a merchant
16 electric generating facility from the applicant or its successor or assign shall file
17 with the Energy and Environment Cabinet within ten (10) days of completing the
18 acquisition:
- 19 (a) A written consent to assume the obligations set forth in the
20 decommissioning plan as of the date the acquisition occurred; and
- 21 (b) A notice of adoption of an existing bond or other similar security previously
22 filed pursuant to subsection (3)(a) of this section or a replacement bond or
23 other similar security that complies with subsection (2)(m)5. of Section 3 of
24 this Act. An existing bond or other similar security shall be adopted, or a
25 replacement bond or other similar security shall be in place, as of the date
26 the acquisition occurs so that there is no lapse in coverage of the
27 decommissioning bond or other similar security. A person making a filing

1 pursuant to this subsection shall file an updated bond or other similar
2 security that complies with subsection (2)(m)5. of Section 3 of this Act at
3 least once every five (5) years.

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

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

16 (7) Notwithstanding any provision of law to the contrary, including any order issued
17 by the board prior to the effective date of this Act, after the board has approved
18 an application for a construction certificate for a merchant electric generating
19 facility under this section, the approved applicant has posted the bond or similar
20 security required under subsection (2)(m)5. of Section 3 of this Act, and the
21 facility is constructed and begins generating electricity for sale, the board's
22 authority to enforce any conditions of the construction certificate, including
23 bonding and decommissioning requirements, shall end and the secretary of the
24 Energy and Environment Cabinet shall monitor and enforce the construction
25 certificate holder's compliance with the requirements of KRS 278.700 to 278.716
26 and the conditions of its construction certificate application approval. In addition
27 to all compliance monitoring and enforcement performed by the secretary of the

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

11 (8) After the facility for which an application for a construction certificate has been
 12 approved is constructed and begins generating electricity for sale, the secretary of
 13 the Energy and Environment Cabinet shall ensure ongoing compliance with the
 14 mitigation measures that were conditions of the application approval under
 15 subsection (6) of Section 4 of this Act and any enforcement by the board of the
 16 mitigation measures shall cease.

17 (9) During the period that the merchant electric generating facility is operational, if
 18 solar panels are replaced and discarded, the facility owner-operator shall remove
 19 discarded solar panels from the site within ninety (90) days of completion of the
 20 work.

21 ➔Section 6. KRS 278.718 is amended to read as follows:

22 The provisions of KRS 278.700, 278.704, 278.706, 278.708, and 278.710 shall ~~be in~~
 23 ~~addition to, and shall~~ not supplant, any other state or federal law, including the powers
 24 available to local governments under the provisions of home rule under KRS 67.080,
 25 67.083, 67.850, 67.922, 67A.060, 67C.101, and 82.082. An ordinance, permit, or license
 26 issued by a local government shall have primacy over the provisions and requirements
 27 of KRS 278.700 and Sections 2, 3, and 4 of this Act, and any conflict between an order

1 *of the board and a local ordinance, permit, or license shall be resolved in favor of the*
2 *local government's ordinance, permit, or license.*

3 ➔Section 7. KRS 224.10-100 is amended to read as follows:

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

- 6 (1) Exercise general supervision of the administration and enforcement of this chapter,
7 and all rules, regulations, and orders promulgated thereunder;
- 8 (2) Prepare and develop a comprehensive plan or plans related to the environment of
9 the Commonwealth;
- 10 (3) Encourage industrial, commercial, residential, and community development which
11 provides the best usage of land areas, maximizes environmental benefits, and
12 minimizes the effects of less desirable environmental conditions;
- 13 (4) Develop and conduct a comprehensive program for the management of water, land,
14 and air resources to assure their protection and balance utilization consistent with
15 the environmental policy of the Commonwealth;
- 16 (5) Provide for the prevention, abatement, and control of all water, land, and air
17 pollution, including but not limited to that related to particulates, pesticides, gases,
18 dust, vapors, noise, radiation, odor, nutrients, heated liquid, or other contaminants;
- 19 (6) Provide for the control and regulation of surface coal mining and reclamation in a
20 manner to accomplish the purposes of KRS Chapter 350;
- 21 (7) Secure necessary scientific, technical, administrative, and operational services,
22 including laboratory facilities, by contract or otherwise;
- 23 (8) Collect and disseminate information and conduct educational and training programs
24 relating to the protection of the environment;
- 25 (9) Appear and participate in proceedings before any federal regulatory agency
26 involving or affecting the purposes of the cabinet;
- 27 (10) Enter and inspect any property or premises for the purpose of investigating either

- 1 actual or suspected sources of pollution or contamination or for the purpose of
2 ascertaining compliance or noncompliance with this chapter, or any regulation
3 which may be promulgated thereunder;
- 4 (11) Conduct investigations and hold hearings and compel the attendance of witnesses
5 and the production of accounts, books, and records by the issuance of subpoenas;
- 6 (12) Accept, receive, and administer grants or other funds or gifts from public and
7 private agencies including the federal government for the purpose of carrying out
8 any of the functions of the cabinet. The funds received by the cabinet shall be
9 deposited in the State Treasury to the account of the cabinet;
- 10 (13) Request and receive the assistance of any state or municipal educational institution,
11 experiment station, laboratory, or other agency when it is deemed necessary or
12 beneficial by the cabinet in the performance of its duties;
- 13 (14) Advise, consult, and cooperate with other agencies of the Commonwealth, other
14 states, the federal government, and interstate and interlocal agencies, and affected
15 persons, groups, and industries;
- 16 (15) Formulate guides for measuring presently unidentified environmental values and
17 relationships so they can be given appropriate consideration along with social,
18 economic, and technical considerations in decision making;
- 19 (16) Monitor the environment to afford more effective and efficient control practices, to
20 identify changes and conditions in ecological systems, and to warn of emergency
21 conditions;
- 22 (17) Adopt, modify, or repeal with the recommendation of the commission any standard,
23 regulation, or plan;
- 24 (18) Issue, after hearing, orders abating activities in violation of this chapter, or the
25 provisions of this chapter, or the regulations promulgated pursuant thereto and
26 requiring the adoption of the remedial measures the cabinet deems necessary;
- 27 (19) Issue, continue in effect, revoke, modify, suspend, or deny under such conditions as

1 the cabinet may prescribe and require that applications be accompanied by plans,
2 specifications, and other information the cabinet deems necessary for the following
3 permits:

4 (a) Permits to discharge into any waters of the Commonwealth, and for the
5 installation, alteration, expansion, or operation of any sewage system;
6 however, the cabinet may refuse to issue the permits to any person, or any
7 partnership, corporation, etc., of which the person owns more than ten percent
8 (10%) interest, who has improperly constructed, operated, or maintained a
9 sewage system willfully, through negligence, or because of lack of proper
10 knowledge or qualifications until the time that person demonstrates proper
11 qualifications to the cabinet and provides the cabinet with a performance
12 bond;

13 (b) Permits for the installation, alteration, or use of any machine, equipment,
14 device, or other article that may cause or contribute to air pollution or is
15 intended primarily to prevent or control the emission of air pollution; or

16 (c) Permits for the establishment or construction and the operation or
17 maintenance of waste disposal sites and facilities;

18 (20) May establish, by regulation, a fee or schedule of fees for the cost of processing
19 applications for permits authorized by this chapter, and for the cost of processing
20 applications for exemptions or partial exemptions which may include but not be
21 limited to the administrative costs of a hearing held as a result of the exemption
22 application, except that applicants for existing or proposed publicly owned facilities
23 shall be exempt from any charge, other than emissions fees assessed pursuant to
24 KRS 224.20-050, and that certain nonprofit organizations shall be charged lower
25 fees to process water discharge permits under KRS 224.16-050(5);

26 (21) May require for persons discharging into the waters or onto the land of the
27 Commonwealth, by regulation, order, or permit, technological levels of treatment

1 and effluent limitations;

2 (22) Require, by regulation, that any person engaged in any operation regulated pursuant
3 to this chapter install, maintain, and use at such locations and intervals as the
4 cabinet may prescribe any equipment, device, or test and the methodologies and
5 procedures for the use of the equipment, device, or test to monitor the nature and
6 amount of any substance emitted or discharged into the ambient air or waters or
7 land of the Commonwealth and to provide any information concerning the
8 monitoring to the cabinet in accordance with the provisions of subsection (23) of
9 this section;

10 (23) Require by regulation that any person engaged in any operation regulated pursuant
11 to this chapter file with the cabinet reports containing information as to location,
12 size, height, rate of emission or discharge, and composition of any substance
13 discharged or emitted into the ambient air or into the waters or onto the land of the
14 Commonwealth, and such other information the cabinet may require;

15 (24) Promulgate regulations, guidelines, and standards for waste planning and
16 management activities, approve waste management facilities, develop and publish a
17 comprehensive statewide plan for nonhazardous waste management which shall
18 contain but not be limited to the provisions set forth in KRS 224.43-345, and
19 develop and publish a comprehensive statewide plan for hazardous waste
20 management which shall contain but not be limited to the following:

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

23 (b) An inventory and description of all existing facilities where hazardous waste
24 is being generated, treated, recycled, stored, or disposed of, including an
25 inventory of the deficiencies of present facilities in meeting current hazardous
26 waste management needs and a statement of the ability of present hazardous
27 waste management facilities to comply with state and federal laws relating to

1 hazardous waste;

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

6 (d) An identification and continuing evaluation of those locations within the
7 Commonwealth which are naturally or may be engineered to be suitable for
8 the establishment of hazardous waste management facilities, and an
9 identification of those general characteristics, values, and attributes which
10 would render a particular location unsuitable, consistent with the policy of
11 minimizing land disposal and encouraging the treatment and recycling of the
12 wastes.

13 The statewide waste management plans shall be developed consistent with state and
14 federal laws relating to waste;

15 (25) Perform other acts necessary to carry out the duties and responsibilities described in
16 this section;

17 (26) Preserve existing clean air resources while ensuring economic growth by issuing
18 regulations, which shall be no more stringent than federal requirements, setting
19 maximum allowable increases from stationary sources over baseline concentrations
20 of air contaminants to prevent significant deterioration in areas meeting the state
21 and national ambient air quality standards;

22 (27) Promulgate regulations concerning the bonding provisions of subsection (19)(a) of
23 this section, setting forth bonding requirements, including but not limited to
24 requirements for the amount, duration, release, and forfeiture of the bonds. All
25 funds from the forfeiture of bonds required pursuant to this section shall be placed
26 in the State Treasury and credited to a special trust and agency account which shall
27 not lapse. The account shall be known as the "sewage treatment system

1 rehabilitation fund" and all moneys placed in the fund shall be used for the
 2 elimination of nuisances and hazards created by sewage systems which were
 3 improperly built, operated, or maintained, and insofar as practicable be used to
 4 correct the problems at the same site for which the bond or other sureties were
 5 originally provided;

6 (28) Promulgate administrative regulations not inconsistent with the provisions of law
 7 administered by the cabinet;~~and~~

8 (29) Through the secretary or designee of the secretary, enter into, execute, and enforce
 9 reciprocal agreements with responsible officers of other states relating to
 10 compliance with the requirements of KRS Chapters 350, 351, and 352 and the
 11 administrative regulations promulgated under those chapters;

12 **(30) Monitor and enforce the compliance of a merchant electric generating entity to**
 13 **which a construction certificate has been issued pursuant to Section 5 of this Act**
 14 **with respect to its obligations under subsections (3), (4), (5), (7), (8), and (9) of**
 15 **Section 5 of this Act; and**

16 **(31) Draw upon a decommissioning bond or similar security for which it is named as**
 17 **a beneficiary and decommission and dismantle a merchant electric generating**
 18 **facility in accordance with its approved decommissioning plan.**

19 ➔Section 8. KRS 224.99-010 is amended to read as follows:

20 (1) Any person who violates KRS 224.10-110(2) or (3), 224.70-110, 224.73-120,
 21 224.20-050, 224.20-110, 224.46-580, 224.1-400, or who fails to perform any duties
 22 imposed by these sections, or who violates any determination, permit,
 23 administrative regulation, or order of the cabinet promulgated pursuant thereto shall
 24 be liable for a civil penalty not to exceed the sum of twenty-five thousand dollars
 25 (\$25,000) for each day during which such violation continues, and in addition, may
 26 be concurrently enjoined from any violations as hereinafter provided in this section
 27 and KRS 224.99-020.

- 1 (2) Any person who violates KRS 224.10-110(4) or (5), or KRS 224.40-100, 224.40-
2 305, or any provision of this chapter relating to noise, or who fails to perform any
3 determination, permit, administrative regulation, or order of the cabinet
4 promulgated pursuant thereto shall be liable for a civil penalty not to exceed the
5 sum of five thousand dollars (\$5,000) for said violation and an additional civil
6 penalty not to exceed five thousand dollars (\$5,000) for each day during which such
7 violation continues, and in addition, may be concurrently enjoined from any
8 violations as hereinafter provided in this section and KRS 224.99-020.
- 9 (3) (a) Any person who shall knowingly violate any of the provisions of this chapter
10 relating to noise or any determination or order of the cabinet promulgated
11 pursuant to those sections which have become final shall be guilty of a Class
12 A misdemeanor. Each day upon which the violation occurs shall constitute a
13 separate violation.
- 14 (b) For offenses by motor vehicles, a person shall be guilty of a violation.
- 15 (4) Any person who knowingly violates KRS 224.70-110, 224.73-120, 224.40-100,
16 224.20-110, 224.20-050, 224.40-305, or 224.10-110(2) or (3), or any determination,
17 permit, administrative regulation, or order of the cabinet promulgated pursuant to
18 those sections which have become final, or who knowingly provides false
19 information in any document filed or required to be maintained under this chapter,
20 or who knowingly renders inaccurate any monitoring device or method, or who
21 tampers with a water supply, water purification plant, or water distribution system
22 so as to knowingly endanger human life, shall be guilty of a Class D felony, and
23 upon conviction thereof, shall be punished by a fine not to exceed twenty-five
24 thousand dollars (\$25,000), or by imprisonment for a term of not less than one (1)
25 year and not more than five (5) years, or by both fine and imprisonment, for each
26 separate violation. Each day upon which a violation occurs shall constitute a
27 separate violation.

- 1 (5) If any person engages in generation, treatment, storage, transportation, or disposal
2 of hazardous waste in violation of the hazardous waste management provisions of
3 this chapter or contrary to a permit, order, or rule issued or promulgated under this
4 chapter, or fails to provide information or to meet reporting requirements required
5 by terms and conditions of a permit or administrative regulations promulgated
6 pursuant to this chapter, the secretary may issue an order requiring compliance
7 within a specified time period or may commence a civil action in a court of
8 appropriate jurisdiction. The violator shall be liable for a civil penalty not to exceed
9 the sum of twenty-five thousand dollars (\$25,000) for each day during which the
10 violation continues, and in addition, may be enjoined from any violations in a court
11 of appropriate jurisdiction.
- 12 (6) Any person who knowingly is engaged in generation, treatment, storage,
13 transportation, or disposal of hazardous waste in violation of this chapter or
14 contrary to a permit, order, or administrative regulation issued or promulgated
15 under this chapter, or knowingly makes a false statement, representation, or
16 certification in an application for or form pertaining to a permit or in a notice or
17 report required by the terms and conditions of an issued permit, shall be guilty of a
18 Class D felony, and upon conviction thereof, shall be punished by a fine not to
19 exceed twenty-five thousand dollars (\$25,000) for each day of violation, or by
20 imprisonment for a term of not less than one (1) year and not more than five (5)
21 years, or by both fine and imprisonment, for each separate violation. Each day upon
22 which a violation occurs shall constitute a separate violation.
- 23 (7) Nothing contained in subsections (4) or (5) of this section shall abridge the right of
24 any person to recover actual compensatory damages resulting from any violation.
- 25 (8) Any person who violates any provision of this chapter to which no express penalty
26 provision applies, except as provided in KRS 211.995, or who fails to perform any
27 duties imposed by those sections, or who violates any determination or order of the

1 cabinet promulgated pursuant thereto shall be liable for a civil penalty not to exceed
2 the sum of one thousand dollars (\$1,000) for said violation and an additional civil
3 penalty not to exceed one thousand dollars (\$1,000) for each day during which the
4 violation continues, and in addition, may be concurrently enjoined from any
5 violations as hereinafter provided in this section and KRS 224.99-020.

6 (9) The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil,
7 criminal, and injunctive actions instituted by the cabinet or by the Attorney General
8 on its behalf for the enforcement of the provisions of this chapter or the orders and
9 administrative regulations of the cabinet promulgated pursuant thereto, except for
10 any actions arising from or related to subsections (3), (4), or (5) of Section 5 of
11 this Act or subsection (16) of this section, which shall be brought in the Circuit
12 Court in any county in which the merchant electric generating facility is located.

13 (10) Any person who deposits leaves, clippings, prunings, garden refuse, or household
14 waste materials in any litter receptacle, except with permission of the owner of the
15 receptacle, or who places litter into a receptacle in such a manner that the litter may
16 be carried away or deposited by the elements upon any property or water not owned
17 by him or her is guilty of a Class B misdemeanor. Penalties imposed under this
18 subsection shall be, when collected, transferred to the county treasurer where the
19 offense occurred and placed into a fund for solid waste cleanup. This subsection
20 shall not be construed to divert any other fines assessed and collected by the cabinet
21 or funds available to the cabinet for the purpose of remediation of open dumps.

22 (11) In addition to or in lieu of the penalties set forth in this section or in KRS Chapters
23 532 and 534, any person found guilty of a second or subsequent offense related to
24 littering may be ordered by the court to pick up litter for not less than four (4)
25 hours.

26 (12) Any person who violates KRS 224.20-300, 224.20-310, any other provision of this
27 chapter, or any determination, permit, administrative regulation, or order of the

1 cabinet relating to the Asbestos Hazard Emergency Response Act of 1986
2 (AHERA), Public Law 99-519, as amended, shall be liable to the Commonwealth
3 of Kentucky for a civil penalty in an amount not to exceed twenty-five thousand
4 dollars (\$25,000) for each violation. Each day a violation continues shall, for
5 purposes of this subsection, constitute a separate violation of provisions of this
6 chapter relating to AHERA.

7 (13) A violation of KRS 224.50-413 shall be subject to a fifty dollar (\$50) fine for each
8 day the violation continues.

9 (14) Any person who removes a methamphetamine contamination notice posted under
10 KRS 224.1-410(9) contrary to the administrative regulations governing
11 methamphetamine contamination notice removal shall be guilty of a Class A
12 misdemeanor.

13 (15) Any person who leases, rents, or sells a property that has been determined to be
14 contaminated property under KRS 224.1-410(4) to a lessee, renter, or buyer without
15 giving written notice that the property is a contaminated property pursuant to KRS
16 224.1-410(10) shall be guilty of a Class D felony.

17 **(16) Any person who violates subsection (3), (4), or (5) of Section 5 of this Act may be**
18 **subject to civil penalties not to exceed two thousand five hundred dollars (\$2,500)**
19 **per day. In determining the civil penalty to be imposed under this subsection, the**
20 **cabinet shall consider all relevant circumstances including but not limited to the**
21 **extent of harm or potential harm caused by the violation, the nature and duration**
22 **of the violation, the number of past violations, and any corrective action taken by**
23 **the merchant electric generating facility owner. If a merchant electric generating**
24 **facility fails to pay any civil penalty for noncompliance under this subsection for**
25 **a period of three hundred sixty-five (365) days after a final determination of the**
26 **assessment of the civil penalty, or fails to post a bond or replacement bond in**
27 **compliance with subsections (3), (4), or (5) of Section 5 of this Act within ninety**

1 (90) days of a final determination that the bond or replacement bond is required,
2 the cabinet may order suspension of its operations until it is brought back into
3 compliance and all civil penalties have been paid or the bond or replacement
4 bond is posted. If after a final determination that the cabinet's order suspending
5 operations of the facility is valid, and the merchant electric generating facility
6 fails to bring the facility back into compliance by paying all outstanding civil
7 penalties or posting the bond or replacement bond within ninety (90) days of that
8 final determination, the cabinet may order the decommissioning of the facility to
9 commence.

10 ➔SECTION 9. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER
11 224 IS CREATED TO READ AS FOLLOWS:

12 (1) If the owner of a merchant electric generating facility fails to complete the
13 decommissioning plan within eighteen (18) months of the date that the facility
14 ceases to produce electricity for sale and the secretary has not extended the
15 deadline, the cabinet shall draw upon the decommissioning bond and implement
16 the decommissioning plan.

17 (2) Within ninety (90) days of the effective date of this Act, the cabinet shall
18 promulgate administrative regulations pursuant to KRS Chapter 13A to establish
19 the monitoring and enforcement requirements for the obligations set forth in
20 subsections (3), (4), (5), (7), (8), and (9) of Section 5 of this Act and subsections
21 (30) and (31) of Section 7 of this Act. The cabinet shall establish a fee structure
22 covering the entire useful life of a merchant electric generating facility to be
23 charged to each facility for which the cabinet has monitoring and enforcement
24 responsibilities. The fees collected shall be deposited in the restricted fund
25 established in subsection (3) of this section.

26 (3) (a) There is hereby established in the State Treasury a restricted fund to be
27 known as the merchant electric generating facility monitoring and

- 1 enforcement fund, which shall be administered by the cabinet and shall
2 consist of the fees collected under subsection (2) of this section and any
3 moneys collected pursuant to enforcement actions taken by the cabinet in
4 the course of performing its monitoring and enforcement responsibilities for
5 merchant electric generating facilities.
- 6 (b) Amounts deposited in the fund shall only be used to defray the costs of the
7 cabinet's monitoring and enforcement responsibilities for merchant electric
8 generating facilities and for no other purpose.
- 9 (c) Notwithstanding KRS 45.229, fund amounts not expended at the close of the
10 fiscal year shall not lapse, but shall be carried forward into the next fiscal
11 year.
- 12 (d) Any interest earnings of the fund shall become part of the fund and shall
13 not lapse.
- 14 (e) Moneys deposited in the fund are hereby appropriated for the purposes set
15 forth in this subsection and shall not be appropriated or transferred by the
16 General Assembly for any other purposes.
- 17 (4) In carrying out its decommissioning plan and bond adequacy review under
18 subsection (7) of Section 5 of this Act, the cabinet shall have the authority to hire
19 a consulting independent licensed engineer to review the secured
20 decommissioning bond or similar security instrument and decommissioning plan
21 and provide recommendations concerning the adequacy of the security
22 instrument to cover actual costs. The cabinet may direct the independent licensed
23 engineer to prepare an assessment report. Any expenses or fees incurred by the
24 cabinet's hiring of the independent licensed engineer shall be paid by the owner-
25 operator of the merchant electric generating facility.