

1 AN ACT relating to conservation.

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

3 ➔Section 1. KRS 65A.010 is amended to read as follows:

4 As used in this chapter:

- 5 (1) "County" means any county, consolidated local government, urban-county
6 government, unified local government, or charter county;
- 7 (2) "DLG" means the Department for Local Government established by KRS
8 147A.002;
- 9 (3) "Establishing entity" means the city or county, or any combination of cities and
10 counties, that established a special purpose governmental entity and that has not
11 subsequently withdrawn its affiliation with the special purpose governmental entity
12 by ordinance or other official action;
- 13 (4) "Federally regulated municipal utility" means a municipal utility governed by the
14 provisions of KRS 96.550 to 96.901, that maintains a wholesale power contract
15 with a federal agency that also serves as its regulatory authority;
- 16 (5) (a) "Fee" means any user charge, levy, assessment, fee, schedule of rates, or tax,
17 other than an ad valorem tax, imposed by a special purpose governmental
18 entity.
- 19 (b) "Fee" shall not include the following charges imposed by special purpose
20 governmental entities that provide utility services:
- 21 1. Any fuel cost adjustment that is:
- 22 a. Made pursuant to an agreement with a power supplier;
- 23 b. Amended by the power supplier based on the variable cost of fuel;
24 and
- 25 c. Passed through to the consumer by the utility pursuant to the
26 agreement between the utility and the power supplier;
- 27 2. Any power or energy cost adjustment implemented pursuant to a duly

- 1 adopted base rate that provides for the periodic adjustment of a
2 component of the rate, including any fuel costs or transmission costs, in
3 accordance with the formula or conditions set forth in the base rate; or
4 3. Any environmental control cost adjustments or surcharges implemented
5 pursuant to a duly adopted base rate that provides for the periodic
6 adjustment of a component of the rate in accordance with a formula or
7 conditions set forth in the base rate;
- 8 (6) (a) "Private entity" means any entity whose sole source of public funds is from
9 payments pursuant to a contract with a city, county, or special purpose
10 governmental entity, including funds received as a grant or as a result of a
11 competitively bid procurement process.
- 12 (b) "Private entity" does not include any entity:
- 13 1. Created, wholly or in part, by a city, county, or combination of cities
14 and counties to perform one (1) or more of the types of public services
15 listed in subsection (9)(c) of this section; or
16 2. Governed by a board, council, commission, committee, authority, or
17 corporation with any member or members who are appointed by the
18 chief executive or governing body of a city, county, or combination of
19 cities and counties, or whose voting membership includes governmental
20 officials who serve in an ex officio capacity;
- 21 (7) "Public funds" means any funds derived from the levy of a tax, fee, assessment, or
22 charge, or the issuance of bonds by the state or a city, county, or special purpose
23 governmental entity;
- 24 (8) "Registry" means the online central registry and reporting portal established
25 pursuant to KRS 65A.020; and
- 26 (9) (a) "Special purpose governmental entity" or "entity" means any agency,
27 authority, or entity created or authorized by statute which:

- 1 1. Exercises less than statewide jurisdiction;
- 2 2. Exists for the purpose of providing one (1) or a limited number of
- 3 services or functions;
- 4 3. Is governed by a board, council, commission, committee, authority, or
- 5 corporation with policy-making authority that is separate from the state
- 6 and the governing body of the city, county, or cities and counties in
- 7 which it operates; and
- 8 4. a. Has the independent authority to generate public funds; or
- 9 b. May receive and expend public funds, grants, awards, or
- 10 appropriations from the state, from any agency, or authority of the
- 11 state, from a city or county, or from any other special purpose
- 12 governmental entity.
- 13 (b) "Special purpose governmental entity" shall include entities meeting the
- 14 requirements established by paragraph (a) of this subsection, whether the
- 15 entity is formed as a nonprofit corporation under KRS Chapter 273, pursuant
- 16 to an interlocal cooperation agreement under KRS 65.210 to 65.300, or
- 17 pursuant to any other provision of the Kentucky Revised Statutes.
- 18 (c) Examples of the types of public services that may be provided by special
- 19 purpose governmental entities include but are not limited to the following:
- 20 1. Ambulance, emergency, and fire protection services;
- 21 2. Flood control, drainage, levee, water, and water conservation services,
- 22 and services provided by watershed conservancy districts~~[,]~~ and soil
- 23 and water conservation districts~~[services]~~;
- 24 3. Area planning, management, community improvement, and community
- 25 development services;
- 26 4. Library services;
- 27 5. Public health, public mental health, and public hospital services;

- 1 6. Riverport and airport services;
 - 2 7. Sanitation, sewer, waste management, and solid waste services;
 - 3 8. Industrial and economic development;
 - 4 9. Parks and recreation services;
 - 5 10. Construction, maintenance, or operation of roads and bridges;
 - 6 11. Mass transit services;
 - 7 12. Pollution control;
 - 8 13. Construction or provision of public housing, except as set out in
 - 9 paragraph (d)8. of this subsection;
 - 10 14. Tourism and convention services; and
 - 11 15. Agricultural extension services.
- 12 (d) "Special purpose governmental entity" shall not include:
- 13 1. Cities;
 - 14 2. Counties;
 - 15 3. School districts;
 - 16 4. Private entities;
 - 17 5. Chambers of commerce;
 - 18 6. Any incorporated entity that:
 - 19 a. Provides utility services;
 - 20 b. Is member-owned; and
 - 21 c. Has a governing body whose voting members are all elected by the
 - 22 membership of the entity;
 - 23 7. Any entity whose budget, finances, and financial information are fully
 - 24 integrated with and included as a part of the budget, finances, and
 - 25 financial reporting of the city, county, or cities and counties in which it
 - 26 operates;
 - 27 8. Federally regulated public housing authorities established pursuant to

1 KRS Chapter 80 that receive no more than twenty percent (20%) of their
 2 total funding for any fiscal year from nonfederal fees, not including
 3 rental income; or

4 9. a. Any fire protection district or volunteer fire department district
 5 operating under KRS Chapter 75 with the higher of annual receipts
 6 from all sources or annual expenditures of less than one hundred
 7 thousand dollars (\$100,000); or

8 b. Any fire department incorporated under KRS Chapter 273.

9 ➔Section 2. KRS 262.097 is amended to read as follows:

10 (1) The supervisors of the respective soil and water conservation districts shall submit
 11 to the commission such statements, estimates, budgets, and other information at
 12 such time and in such manner as the commission requires.

13 (2) The supervisors of the soil and water conservation districts shall comply with the
 14 provisions of KRS 65A.010 to 65A.090, except that KRS 65A.030 shall not apply
 15 to soil and water conservation districts.

16 ➔Section 3. KRS 262.280 is amended to read as follows:

17 (1) The board shall provide for the keeping of a full and accurate record of all its
 18 proceedings and of all resolutions, regulations, and orders issued or adopted by it.

19 (2) Notwithstanding KRS 65A.030~~[For fiscal periods ending prior to July 1, 2014],~~ an
 20 audit of the accounts of each soil and water conservation district shall take place
 21 once every four (4) years unless the soil and water conservation district receives or
 22 expends one million dollars (\$1,000,000)~~[seven hundred fifty thousand dollars~~
 23 ~~(\$750,000)]~~ or more in any year, in which case the soil and water conservation
 24 district shall provide for the performance of an annual audit. The audit shall be
 25 conducted in accordance with audit standards and requirements stipulated in KRS
 26 65.065(5).~~[For fiscal periods beginning on and after July 1, 2014, the provisions of~~
 27 ~~KRS 65A.030 shall apply to audits of the accounts of each district.]~~

1 (3) Upon request of the commission, the board shall furnish the commission with
2 copies of ordinances, regulations, orders, contracts, forms, and other documents
3 adopted or employed by the board and any other information requested by the
4 commission concerning the board's activities.

5 ➔Section 4. KRS 262.763 is amended to read as follows:

6 (1) ~~[(a)]~~**Notwithstanding KRS 65A.030**~~[For fiscal periods ending prior to July 1,~~
7 ~~2014],~~ an audit of the accounts of each watershed conservancy district shall take
8 place once every four (4) years unless the **watershed conservancy** district receives
9 or expends **one million dollars (\$1,000,000)**~~[seven hundred fifty thousand dollars~~
10 ~~(\$750,000)]~~ or more in any year, in which case the **watershed conservancy** district
11 shall provide for the performance of an annual audit. The audit shall be conducted
12 in accordance with audit standards and requirements stipulated in KRS 65.065(5).
13 The board of directors of each watershed conservancy district shall select to make
14 the audit certified public accountants who have no personal interest in the financial
15 affairs of the board of directors or in any of its officers or employees.}]

16 ~~(b) For fiscal periods beginning on and after July 1, 2015, the provisions of KRS~~
17 ~~65A.030 shall apply to the audit of accounts of each watershed conservancy~~
18 ~~district.]~~

19 (2) Immediately upon completion of each audit, the accountant shall prepare a report of
20 his **or her** findings and recommendations. This report shall be to the board of
21 directors and in such number of copies as specified by the board of directors. The
22 actual expense of any audit authorized under this section shall be borne by the
23 watershed conservancy district.

24 (3) The board of directors shall comply with the provisions of KRS 65A.010 to
25 65A.090, **except that KRS 65A.030 shall not apply to watershed conservancy**
26 **districts.**

27 ➔Section 5. KRS 262.910 is amended to read as follows:

- 1 (1) During the term of an easement, the restricted land shall be used solely for the
2 production of crops, livestock and livestock products, and nursery and greenhouse
3 products including the processing or retail marketing of these crops, livestock and
4 livestock products, and nursery and greenhouse products if more than fifty percent
5 (50%) of the processed or merchandised products are produced on the subject land,
6 and for the raising and stabling of horses for commercial purposes. For the purposes
7 of this section and administrative regulations promulgated under its provisions,
8 "crops, livestock and livestock products, and nursery and greenhouse products"
9 include, but are not limited to:
- 10 (a) Tobacco;
 - 11 (b) Wheat, soybeans, corn, and all commercially-produced fruits and vegetables;
 - 12 (c) Horticultural specialties, including nursery stock ornamental shrubs,
13 ornamental trees, and flowers;
 - 14 (d) Livestock and livestock products, including cattle; sheep; swine; goats;
15 horses; alpacas; llamas; buffaloes; any other animals of the bovine, ovine,
16 porcine, caprine, equine, or camelid species; poultry; milk; and eggs; and
 - 17 (e) Aquatic plants and animals and their by-products.
- 18 (2) (a) During the term of an easement the landowner and the landowner's assigns,
19 agents, or leasees shall not perform, nor knowingly allow others to perform,
20 any act on or affecting the restricted land that is inconsistent with the
21 provisions of this section. The landowner shall be deemed to have authorized
22 the PACE board to enforce these provisions.
- 23 (b) Unless otherwise specified, the landowner shall not be required to take any
24 action to restore the condition of the restricted land after any act of God or
25 other event over which the landowner had no control.
 - 26 (c) Nothing in the PACE Program shall relieve the landowner of any obligation
27 or restriction on the use of the property imposed by law.

1 (d) The Commonwealth shall not locate landfills, sewage treatment plants, or
2 other public service facilities that are not compatible with or complimentary
3 to agricultural production on restricted lands.

4 (3) (a) To retain the agricultural viability of the restricted land, the PACE board shall
5 require, and the owner of the restricted land shall implement, a conservation
6 plan approved by the soil and water conservation district. This plan shall be
7 updated every ten (10) years and any time the basic farming operation
8 conducted on restricted lands is changed. All farming operations shall be
9 conducted substantially in accordance with the plan.

10 (b) In addition to the requirements established by the soil and water conservation
11 district, the conservation plan shall require that:

12 1. The use of the land for growing sod, nursery stock, and ornamental trees
13 and shrubs does not remove excessive soil from the restricted land;

14 2. The excavation of soil, sand, gravel, stone, or other materials for use in
15 agricultural production on the restricted land is consistent with
16 subsection (4)(h) of this section and is conducted in a location and
17 manner that retains the viability of the restricted land for agricultural
18 production; and

19 3. The mining of minerals is consistent with subsection (4)(h) of this
20 section and is conducted only through the use of methods which will not
21 interfere with the viability of the restricted land for agricultural
22 production.

23 (4) The construction or reconstruction of any building or other structure, except those
24 existing on the date of the easement or previously approved by the PACE board, is
25 prohibited except in accordance with this subsection.

26 (a) Existing fences may be repaired and replaced, and new fences may be built
27 anywhere on the restricted land for purposes of reasonable and customary

- 1 management of livestock and wildlife, without approval of the PACE board.
- 2 (b) New buildings and other structures and improvements to be used solely for
3 agricultural purposes including the processing or sale of farm products
4 predominantly grown or raised on the restricted land, but not including any
5 dwelling or farm labor housing, may not be built on the restricted land without
6 the advance approval of the PACE board. The PACE board shall give
7 approval within a reasonable time, unless it determines that the proposed
8 building, structure, or improvement would not be properly located or would
9 significantly diminish the agricultural production capacity of the restricted
10 land.
- 11 (c) All existing single-family residential dwellings may be repaired, reasonably
12 enlarged, and replaced at their current locations without further permission of
13 the PACE board. No new single-family residential dwellings may be built on
14 the restricted land without the advance approval of the PACE board. The
15 PACE board shall give approval within a reasonable time, unless it determines
16 that a proposed dwelling would not be properly located or would significantly
17 diminish the agricultural production capacity of the restricted land.
- 18 (d) The subdivision of the restricted land, whether by physical or legal process, is
19 prohibited without the advance written approval of the PACE board. The
20 PACE board shall give approval within a reasonable time, unless it determines
21 that the proposed subdivision will diminish or impair the agricultural
22 productivity of the restricted land.
- 23 (e) The granting of rights-of-way through restricted land for the installation of,
24 transportation of, or use of, lines for water, sewage, electric, telephone, gas,
25 oil or oil products is permitted. The term "granting of rights-of-way" includes
26 the right to construct or install the lines. The construction or installation of
27 utility lines other than the types stated in this paragraph is prohibited on the

1 restricted land.

2 (f) No portion of the restricted land shall be paved or otherwise be covered with
3 concrete, asphalt, gravel, or any other paving material, nor shall any road for
4 access or other purposes be constructed, without the advance written approval
5 of the PACE board. The PACE board shall give approval within a reasonable
6 time, unless it determines that the proposed paving or covering of the soil, or
7 the location of any road, will substantially diminish or impair the agricultural
8 productivity of the restricted land.

9 (g) Trees may be cut to control insects and disease, to prevent personal injury and
10 property damage, and for firewood and other domestic uses, including
11 construction of permitted buildings and fences on the restricted land. Trees
12 may also be cut to clear land for cultivation or use of livestock, but only if
13 done in accordance with the conservation plan required by subsection (3) of
14 this section. Any commercial timber harvesting on the restricted land shall be
15 conducted on a sustainable yield basis and in substantial accordance with a
16 forest management plan prepared by a competent professional forester.

17 (h) The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel or
18 any other mineral substance, using any method that disturbs the surface of the
19 land, is prohibited without the advance written approval of the PACE board.
20 The PACE board shall give approval within a reasonable time, unless it
21 determines that the proposed mining or extraction will substantially diminish
22 or impair the agricultural productivity of the restricted land.

23 (i) The dumping or accumulation of any kind of trash or refuse on the restricted
24 land is prohibited. However, this shall not prevent the storage of agricultural
25 products and by-products on the restricted land, so long as it is done in
26 accordance with all applicable laws, administrative regulations, and
27 ordinances.

1 (j) Golf courses are prohibited on the restricted land. Buildings and facilities for
2 any other public or private recreational use may not be built on the restricted
3 land without the advance written approval of the PACE board. The PACE
4 board shall not give approval unless it determines that the proposed use or
5 facilities will not substantially diminish or impair the agricultural productivity
6 of the restricted land.

7 (k) Notwithstanding any other provision of this section to the contrary, upon a
8 proper application, which shall include supporting documentation from the
9 appropriate federal agency, the PACE board may give its written approval
10 of a proposal to erect structures, roads, and pathways on the surface of the
11 restricted land as long as:

12 1. An underground training facility for federal agency personnel exists
13 below the restricted land surface;

14 2. Any such structures, roads, or pathways constructed will be used for
15 the purpose of training federal agency personnel; and

16 3. The applicant:

17 a. Signs an agreement with the PACE board requiring the
18 applicant to:

19 i. Remove such structures, roads, or pathways; and

20 ii. Restore the land to its previous condition and to the
21 satisfaction of the PACE board on or before a date that is
22 specified in the agreement;

23 b. Provides documentation of the county fiscal court's consent to
24 the construction of the proposed structures, roads, or pathways;
25 and

26 c. Agrees in writing to all of the requirements for the exemption as
27 established by the PACE board.

1 (5) Landowners shall retain the right to perform any act not specifically prohibited or
2 limited by this section and administrative regulations promulgated under its
3 provisions. These ownership rights include, but are not limited to, the right to
4 exclude any member of the public from trespassing on the restricted land and the
5 right to sell or otherwise transfer the restricted land to anyone of the landowner's
6 choice.