

1 AN ACT relating to geologic sequestration of carbon dioxide.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
4 READ AS FOLLOWS:

5 *The purposes of Sections 1 to 24 of this Act are to:*

- 6 *(1) Establish a legal and regulatory framework for the development and approval of*
7 *underground carbon dioxide sequestration facilities;*
8 *(2) Designate a government agency responsible for establishing standards and*
9 *promulgating administrative regulations for the development and approval of*
10 *underground carbon dioxide sequestration and sequestration facilities;*
11 *(3) Safeguard and protect the correlative rights of operators, mineral owners, pore*
12 *space owners, and surface owners and provide for just and reasonable*
13 *compensation for their respective interests in underground carbon dioxide*
14 *sequestration facilities; and*
15 *(4) Ensure that long-term geologic sequestration of carbon dioxide in the*
16 *Commonwealth is accomplished without unreasonable disturbance of surface,*
17 *mineral, or water resources or endangering public safety.*

18 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
19 READ AS FOLLOWS:

20 *As used in Sections 1 to 24 of this Act:*

- 21 *(1) "Administratively complete," with respect to an application means an application*
22 *for permit approval that the cabinet determines contains:*
23 *(a) Information addressing each application requirement of the regulatory*
24 *program; and*
25 *(b) All information necessary to initiate technical processing and public review;*
26 *(2) "Cabinet" means the Energy and Environment Cabinet;*
27 *(3) "Carbon dioxide" means anthropogenic carbon dioxide of sufficient purity and*

- 1 quality as to not compromise:
- 2 (a) The safety of geologic sequestration; and
- 3 (b) Those properties of the sequestration reservoir which allow the reservoir to
- 4 effectively enclose and contain a stored gas;
- 5 (4) "Carbon dioxide sequestration" means the injection of carbon dioxide and
- 6 associated constituents into subsurface geologic reservoirs intended to provide for
- 7 the long-term containment of a gaseous, liquid, or supercritical carbon dioxide
- 8 stream in subsurface geologic formations and thereby prevent its release into the
- 9 atmosphere;
- 10 (5) "Class II well" has the same meaning as in KRS 353.510;
- 11 (6) "Class VI injection well" or "Class VI well" means the classification by the US
- 12 EPA of wells for injection of substances or materials into subsurface rock
- 13 formations and, specifically, to the class of wells that are used to inject carbon
- 14 dioxide into subsurface rock formations;
- 15 (7) "Class VI underground injection control permit" or "Class VI permit" means a
- 16 permit for a specified site authorizing a person or business entity to construct and
- 17 operate a carbon dioxide sequestration facility issued by the:
- 18 (a) US EPA prior to granting the cabinet primary enforcement authority; or
- 19 (b) Cabinet after primary enforcement authority is granted by the US EPA;
- 20 (8) "Completion certificate" means a Certificate of Underground Carbon Dioxide
- 21 Sequestration Project Completion;
- 22 (9) "Control person" has the same meaning as in KRS 353.510;
- 23 (10) "Drilling permit" means a permit issued by the cabinet to drill a well or convert
- 24 an existing well for the purposes of constructing a Class VI underground
- 25 injection control facility;
- 26 (11) "Gas well" has the same meaning as in KRS 353.010;
- 27 (12) "Monitoring well" means a well authorized under a Class VI underground

1 injection control permit that is designed and completed in a specified subsurface
2 interval to monitor pressure, fluid chemistry, or other parameters to confirm
3 containment of injected carbon dioxide within the sequestration reservoir and
4 confining system and to demonstrate non-endangerment of underground sources
5 of drinking water;

6 (13) "Oil well" has the same meaning as in KRS 353.010;

7 (14) "Person" has the same meaning as in KRS 353.510;

8 (15) "Pore space" means a cavity or void, whether naturally or artificially created, in
9 subsurface stratum beneath individual properties within a reservoir into which
10 injection of carbon dioxide is proposed;

11 (16) "Reservoir" means a subsurface stratum, formation, cavity, or void, whether
12 naturally or artificially created, including oil and gas reservoirs, saline
13 formation, and coal seams suitable for, or capable of being made suitable for, the
14 injection and storage of carbon dioxide;

15 (17) "Secretary" means the secretary of the Energy and Environment Cabinet;

16 (18) "Sequestration facility" means the reservoir, well, underground equipment, and
17 surface facilities and equipment used or proposed to be used in a carbon dioxide
18 sequestration project, but does not include pipelines used to transport carbon
19 dioxide to the sequestration facility;

20 (19) "Sequestration operator" means a person applying for or holding a Class VI
21 permit until the issuance of a completion certificate for the relevant sequestration
22 facility;

23 (20) "Sequestration reservoir" means a reservoir proposed, authorized, and used for
24 storing carbon dioxide;

25 (21) "Surface waters":

26 (a) Means:

27 1. Those waters having well-defined banks and beds, either constantly or

- 1 intermittently flowing;
- 2 2. Lakes and impounded waters;
- 3 3. Marshes and wetlands; and
- 4 4. Any subterranean waters flowing in well-defined channels and having
- 5 a demonstrable hydrologic connection with the surface; and
- 6 (b) Does not include lagoons used for waste treatment and effluent ditches that
- 7 are situated on property owned, leased, or under valid easement by a
- 8 permitted discharger;
- 9 (22) "Third party" means a party who is independent of the corporate structure of a
- 10 sequestration operator;
- 11 (23) "Underground source of drinking water" or "USDW" has the same meaning as
- 12 in 40 C.F.R. sec. 144.3;
- 13 (24) "Unknown or missing owner" means a person vested with a present ownership
- 14 interest in the pore space whose present identity or location cannot be determined
- 15 from:
- 16 (a) A reasonable review of county clerk records for the county or counties in
- 17 which the property is located, and includes unknown heirs, successors, and
- 18 assigns known to be alive;
- 19 (b) A reasonable inquiry in the county of the owner's last known place of
- 20 residence;
- 21 (c) A diligent inquiry into known interest owners in the same tract; and
- 22 (d) A reasonable review of available internet resources commonly utilized by
- 23 the industry; and
- 24 (25) "US EPA" means the United States Environmental Protection Agency.

25 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
26 READ AS FOLLOWS:

27 (1) A person shall not construct or operate a carbon dioxide sequestration facility

1 without first securing a:

2 (a) Class VI underground injection control permit from the US EPA or the
3 cabinet; and

4 (b) Drilling permit issued by the cabinet.

5 (2) The injection of carbon dioxide for purposes of enhancing the recovery of oil or
6 natural gas pursuant to a permit approved by the cabinet under KRS 353.592
7 shall not be subject to the provisions of Sections 1 to 24 of this Act.

8 (3) If an oil, natural gas, or coalbed methane well operator proposes to convert its
9 operations to carbon dioxide sequestration, then the underground carbon dioxide
10 sequestration facility shall be regulated pursuant to Sections 1 to 24 of this Act.

11 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
12 READ AS FOLLOWS:

13 (1) Every Class VI underground injection control permit application filed under this
14 section shall:

15 (a) Be on a form prescribed by the cabinet;

16 (b) Be certified by the applicant; and

17 (c) Contain all information specified by administrative regulations promulgated
18 by the cabinet in accordance with KRS Chapter 13A.

19 (2) (a) Upon filing an application for a Class VI permit, an applicant shall:

20 1. Pay a fee in an amount set by the cabinet; and

21 2. Submit proof of public notice of the application pursuant to Section 5
22 of this Act.

23 (b) The fee shall be deposited into the carbon dioxide sequestration facility
24 administrative fund established in Section 14 of this Act.

25 (3) In addition to obtaining a Class VI underground injection control permit, the
26 applicant shall secure drilling permits from the cabinet for each well described in
27 the approved Class VI permit.

- 1 (4) If, prior to approval of an application, the cabinet determines that the proposed
2 sequestration facility contains commercially valuable minerals, the cabinet shall
3 ensure that the interests of the mineral owners or mineral lessees:
- 4 (a) Will not be adversely affected; or
5 (b) Have been addressed in a written agreement entered into by the mineral
6 owners, mineral lessees, and the sequestration operator pursuant to Section
7 10 of this Act.
- 8 (5) To be considered an administratively complete application, a Class VI permit
9 application shall include documentation that:
- 10 (a) The sequestration operator has the written consent of those persons having
11 ownership interests in at least seventy-five percent (75%) of the proposed
12 sequestration reservoir's pore space acreage; and
- 13 (b) A pooling order has been requested pursuant to Section 20 of this Act for up
14 to twenty-five percent (25%) of the proposed sequestration reservoir's pore
15 space acreage for nonconsenting, unknown, and missing pore space
16 owners.
- 17 (6) The cabinet shall not begin technical review of an administratively complete
18 application until the sequestration operator has:
- 19 (a) Demonstrated that it possesses through the requisite consent and the
20 petition for a pooling order in accordance with Section 20 of this Act, the
21 legal right to utilize one hundred percent (100%) of the pore space acreage
22 of the proposed sequestration reservoir; and
- 23 (b) Provided documentation demonstrating the legal right to enter onto and
24 conduct all surface activities and operations associated with the proposed
25 sequestration facility.
- 26 (7) If the cabinet determines that a bona fide dispute exists regarding the applicant's
27 legal right, consistent with subsections (5) and (6) of this section, to utilize any of

1 *the pore space acreage of the proposed sequestration reservoir, the cabinet shall:*

2 *(a) Suspend technical permit review pending resolution of the property dispute*
3 *by a court of competent jurisdiction or resolution by the parties; or*

4 *(b) Require the applicant to revise the permit application to exclude the*
5 *contested pore space acreage.*

6 *(8) A Class VI permit shall not be issued under this section unless the cabinet finds*
7 *that:*

8 *(a) The application and proposed operations comply with all requirements*
9 *established by the cabinet, including any applicable Class VI underground*
10 *injection control administrative regulations, and all applicable provisions of*
11 *state and federal law;*

12 *(b) The sequestration facility is suitable and feasible for carbon dioxide*
13 *injection and sequestration;*

14 *(c) The sequestration operator has made a good-faith effort to obtain the*
15 *written consent of all persons who own the sequestration reservoir's pore*
16 *space;*

17 *(d) The applicant has demonstrated the legal right to utilize one hundred*
18 *percent (100%) of the sequestration reservoir's pore space acreage;*

19 *(e) The application contains documentation sufficient to demonstrate the legal*
20 *right to enter onto and conduct all surface activities and operations*
21 *associated with the proposed sequestration facility;*

22 *(f) The proposed sequestration facility will not endanger surface waters or any*
23 *USDW;*

24 *(g) The creation, operation, and maintenance of the sequestration facility will*
25 *not appreciably endanger human health or the environment;*

26 *(h) Adequate horizontal and vertical boundaries of the sequestration reservoir*
27 *are defined, including buffer areas, to ensure that the sequestration facility*

1 is operated safely and prudently;

2 (i) The sequestration operator will establish monitoring facilities and protocols
3 to assess the location and migration of carbon dioxide injected for
4 sequestration and to ensure compliance with all Class VI permit, statutory,
5 and administrative regulation requirements;

6 (j) All nonconsenting pore space owners are or will be justly and reasonably
7 compensated in accordance with the administrative regulations and
8 procedures set forth in and promulgated under this section by the cabinet;
9 and

10 (k) The sequestration operator demonstrates financial responsibility as
11 determined by the cabinet pursuant to subsections (10) and (11) of this
12 section and applicable administrative regulations.

13 (9) The cabinet shall render a decision on a permit application in accordance with
14 Section 6 of this Act.

15 (10) (a) A permit shall not be issued under this section unless the sequestration
16 operator posts qualifying financial responsibility sufficient to cover the cost
17 of:

18 1. Corrective action;

19 2. Well plugging of Class VI injection wells and monitoring wells;

20 3. Post-injection site care and facility closure;

21 4. Emergency and remedial response; and

22 5. Addressing endangerment of underground sources of drinking water.

23 (b) The financial responsibility instruments shall contain protective conditions
24 for coverage for cancellation, renewal, and continuation provisions. The
25 sequestration operator shall have detailed written estimates, in current
26 dollars, of the cost of performing the activities contained in paragraph (a)1.
27 to 5. of this subsection. The cost estimates shall be separate for each phase

1 and shall be based on the costs of the cabinet to hire third parties to perform
2 the required activity.

3 (c) For the duration of the permit, the sequestration operator shall annually
4 adjust the cost estimates of each activity and provide the information to the
5 cabinet. Any decrease or increase in the initial cost estimate shall be subject
6 to the cabinet's approval. If at any time the current cost estimate:

7 1. Increases to an amount greater than the face amount of the financial
8 responsibility instruments currently in use, the sequestration operator
9 shall submit to the cabinet within sixty (60) days, written evidence of
10 an increase of the face amount of the existing financial responsibility
11 instruments or substitute another instrument in the increased amount;

12 or

13 2. Decreases to an amount lesser than the face amount of the financial
14 responsibility instruments, those instruments may be reduced to the
15 amount of the current estimate upon receipt of written approval from
16 the cabinet.

17 (d) The cabinet shall perform an annual evaluation of the qualifying financial
18 responsibility to determine if the amount of financial responsibility provided
19 by the sequestration operator is sufficient to secure the operator's
20 obligations under state and federal law. A cabinet determination under this
21 subsection is considered final. If the cabinet determines the amount of
22 financial responsibility is insufficient, the sequestration operator shall:

23 1. Provide an adjustment of the cost estimate to the cabinet within sixty
24 (60) days of notification by the cabinet; and

25 2. Adjust the financial responsibility instruments in accordance with
26 paragraph (c) of this subsection.

27 (e) The initial deposit, use, and length of pay-in periods for trust funds or

1 escrow accounts are subject to the cabinet's approval. The sequestration
2 operator may make periodic deposits into a trust fund or escrow account
3 throughout the operational period to ensure sufficient funds are available to
4 carry out the required activities on the date on which they may occur. The
5 cabinet shall consider project-specific risk assessments, projected timing of
6 activities, and interest accumulation in determining whether sufficient
7 funds are available to conduct the required activities.

8 (11) (a) In demonstrating and maintaining financial responsibility as determined by
9 the cabinet, the sequestration operator shall provide financial responsibility
10 from the following list of qualifying instruments:

- 11 1. Trust funds;
- 12 2. Surety or cash bonds;
- 13 3. Letters of credit;
- 14 4. Insurance;
- 15 5. Self-insurance; or
- 16 6. Any other instrument the cabinet finds satisfactory.

17 (b) The cabinet may promulgate administrative regulations in accordance with
18 KRS Chapter 13A to allow self-insurance as a financial responsibility
19 mechanism for some or all of the costs and obligations of the sequestration
20 operator under terms and conditions as the cabinet deems necessary to
21 ensure completion of all obligations of the Class VI permit. To account for
22 the risks of default and resulting responsibility obligations incurred by the
23 carbon dioxide sequestration facility trust fund established in Section 16 of
24 this Act, the cabinet's terms and conditions may include:

- 25 1. Corporate guarantees;
- 26 2. Securing performance by lien or collateral; and
- 27 3. Adjustments in assessed contributions by the sequestration operator to

1 the carbon dioxide sequestration facility trust fund established in
2 Section 16 of this Act.

3 (c) All qualifying financial instruments are subject to the cabinet's approval.

4 (12) (a) The cabinet shall not issue a permit under this section or approve an
5 application to transfer a sequestration facility to a successor operator
6 pursuant to subsection (13) of this section, and an operator shall not be
7 eligible to receive any permits or become a successor operator under this
8 section if:

9 1. The applicant has falsified or otherwise misrepresented any
10 information on or relating to the permit application;

11 2. The applicant has failed to abate or reach an agreement with the
12 cabinet regarding an unappealed violation of Sections 1 to 24 of this
13 Act or the administrative regulations promulgated thereunder;

14 3. A control person of the applicant has a forfeiture of a financial
15 responsibility instrument;

16 4. The applicant is a control person for another operator that has a
17 forfeiture of a financial responsibility instrument;

18 5. A control person for the applicant served as a control person for
19 another operator when an unresolved financial responsibility
20 instrument forfeiture occurred;

21 6. The applicant is or has a control person who controls or is controlled
22 by another operator that has a forfeiture of a bond; or

23 7. The cabinet determines that an activity of the applicant is currently in
24 violation of KRS Chapter 149, 151, 224, 349, 350, 351, 352, or 353 or
25 any administrative regulation promulgated thereunder.

26 (b) The cabinet:

27 1. May restore the eligibility of applicants, operators, and control persons

- 1 who are deemed permit-ineligible pursuant to paragraph (a)1. of this
2 subsection upon resubmission of the application correcting the false
3 or misrepresented information;
- 4 2. Shall restore the eligibility of applicants, operators, or control persons
5 who are deemed permit-ineligible pursuant to paragraph (a)2. of this
6 subsection upon satisfactory abatement of the violation and payment
7 of any civil penalties;
- 8 3. Shall restore the eligibility of applicants, operators, or control persons
9 who are deemed permit-ineligible pursuant to paragraph (a)3. to 6. of
10 this subsection upon entry of and satisfactory compliance with an
11 agreed order between the operator and the cabinet that resolves all the
12 operator's outstanding violations, requires payment of any civil
13 penalties, and provides restitution to the cabinet for any costs
14 associated with the forfeiture, plugging, and proper abandonment of a
15 well in excess of the financial responsibility instruments forfeited to
16 the cabinet by the operator; and
- 17 4. a. Shall provisionally restore the eligibility of applicants who are
18 deemed permit-ineligible pursuant to paragraph (a)7. of this
19 subsection upon either submittal of proof that the violation is in
20 the process of being corrected to the satisfaction of the cabinet or
21 a demonstration that the applicant has filed and is pursuing a
22 good-faith administrative or judicial appeal to contest the
23 violation. If the Circuit Court affirms the violation, then the
24 applicant shall, within thirty (30) days of the judicial action,
25 submit proof that the violation is in the process of being
26 corrected to the satisfaction of the cabinet. Provisional
27 restoration of permit eligibility related to paragraph (a)7. of this

1 subsection may be withdrawn at any time if the cabinet
2 determines that the applicant no longer satisfies the
3 requirements of this section.

4 b. The cabinet shall fully restore the eligibility of applicants who
5 are deemed permit-ineligible pursuant to paragraph (a)7. of this
6 subsection upon either submittal of proof that the violation has
7 been corrected to the satisfaction of the cabinet or that the
8 violations have been ordered vacated in a final decision of the
9 secretary or a reviewing court after all appeals have been
10 exhausted.

11 (13) A permit issued pursuant to this section shall not be transferred by sale,
12 assignment, lease, or otherwise, except upon the written approval by the cabinet
13 of a joint application submitted by both the transferor and the transferee. The
14 joint application for transfer shall be on a form prescribed by the cabinet and
15 accompanied by a fee in an amount set by the cabinet. Fees under this subsection
16 shall be deposited in the carbon dioxide sequestration facility administrative fund
17 established in Section 14 of this Act. The transferee shall file financial
18 responsibility with the application in an amount and form that the cabinet deems
19 satisfactory to cover the costs of the activities listed in subsection (10)(a) of this
20 section. All rights and liabilities under the permit shall pass to the transferee
21 upon written approval of the transfer by the cabinet.

22 (14) The cabinet shall conduct periodic reviews of each permit issued pursuant to this
23 section. The cabinet shall review each permit at least once every five (5) years
24 from the date of the permit issuance and whenever the cabinet has reason to
25 believe, based on available information, that the permit may no longer be in
26 compliance with Sections 1 to 24 of this Act. During permit review, the cabinet
27 shall review all provisions of the existing permit, including the adequacy of the

1 financial responsibility required by this section. The cabinet may, by
2 determination issued to the permit holder, require revision or modification of the
3 permit provisions, including requiring the posting of additional financial
4 responsibility, in order to ensure compliance with this section.

5 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
6 READ AS FOLLOWS:

7 (1) Public notice of an application for a Class VI well permit under Sections 1 to 24
8 of this Act shall allow at least thirty (30) days for public comment.

9 (2) The cabinet shall send the public notice to the applicant, who shall be responsible
10 for publication of the notice pursuant to KRS Chapter 424 within thirty (30) days
11 prior to the submission of an application. Upon publication, the applicant shall
12 send the cabinet a copy of the certificate of publication. The cost of publication
13 shall be borne by the applicant.

14 (3) Notice of an application for a Class VI well permit shall be served on each
15 mineral lessee, mineral owner, and pore space owner with a legal interest in the
16 property or properties that involves the sequestration reservoir, and adjoining
17 surface and mineral owners of record.

18 (4) Service of individual notices required by this section shall be through personal
19 service, by registered mail, or by any method of delivery that requires a receipt or
20 signature confirmation.

21 (5) Service of any unknown or missing owners shall be deemed to have occurred,
22 provided that the sequestration operator has complied with this section and
23 Section 20 of this Act.

24 (6) The cabinet may hold a public hearing at its discretion if a hearing may assist in
25 clarifying one (1) or more issues involved in the Class VI well permit decision. If
26 a public hearing is held, notice of the hearing shall be provided in the same
27 manner as set forth in subsection (2) of this section.

1 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
2 READ AS FOLLOWS:

3 (1) Within sixty (60) calendar days of receiving an application for a Class VI
4 underground injection control well, the cabinet shall provide written notice to the
5 applicant as to the administrative completeness of the application. If the
6 application is determined to be administratively:

7 (a) Complete, the cabinet shall notify the applicant in writing that the technical
8 review period provided by subsection (2) of this section has begun; or

9 (b) Incomplete, the cabinet shall notify the applicant of the deficiencies that
10 render it administratively incomplete. The applicant shall have thirty (30)
11 calendar days from receiving the cabinet's notice of deficiency to correct the
12 deficiencies and render the application administratively complete.

13 (2) (a) Technical review of an application shall begin when the cabinet has deemed
14 the application administratively complete and ready for review. The cabinet
15 shall issue a final determination to either approve or deny the application
16 within three hundred sixty-five (365) calendar days from the date an
17 administrative completeness determination has been made by the cabinet.

18 (b) If the application is found deficient during technical review, the cabinet
19 shall notify the applicant in writing of the deficiencies identified by the
20 cabinet during the review. The applicant shall respond to the deficiencies
21 with information that addresses the identified deficiencies.

22 (3) An application shall be considered temporarily withdrawn when an applicant is
23 correcting deficiencies noted by the cabinet pursuant to subsection (1)(b) or (2)(b)
24 of this section. Periods of temporary withdrawal shall not be counted against the
25 review period allotted to the cabinet for administrative or technical review. Upon
26 resubmittal the review period allotted to the cabinet shall resume.

27 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO

1 READ AS FOLLOWS:

2 *(1) The cabinet shall include in any Class VI underground injection control permit*
 3 *or order all provisions necessary to:*

4 *(a) Carry out the objectives of Sections 1 to 24 of this Act;*

5 *(b) Protect and adjust the respective rights and obligations of persons affected*
 6 *by a carbon dioxide sequestration facility; and*

7 *(c) Protect public health, safety, and the environment.*

8 *(2) The cabinet shall require that a copy of any Class VI permit issued and a land*
 9 *survey of the permitted sequestration reservoir indicating impacted surface, pore*
 10 *space and mineral owners and mineral lessees be filed with the county clerk in*
 11 *the county or counties where the carbon dioxide sequestration facility is located.*
 12 *Any amendments or modifications to the Class VI permit or land survey shall also*
 13 *be filed.*

14 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
 15 READ AS FOLLOWS:

16 *(1) A person shall not drill, deepen, reopen, or convert a well for the purposes of*
 17 *developing a Class VI underground injection control well without first securing*
 18 *drilling permits from the cabinet.*

19 *(2) To both protect and prevent endangerment of underground sources of drinking*
 20 *water, the cabinet shall promulgate administrative regulations in accordance with*
 21 *KRS Chapter 13A regarding the drilling, casing, and construction of the wells.*
 22 *The cabinet shall prescribe the use of materials that are compatible and can*
 23 *withstand contact with carbon dioxide over the life of the sequestration project,*
 24 *including the project's conversion, maintenance, and abandonment of wells.*

25 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
 26 READ AS FOLLOWS:

27 *(1) For the purposes of Sections 1 to 24 of this Act and in all other respects, any*

1 carbon dioxide injected and sequestered in accordance with a Class VI
2 underground injection control permit issued by the cabinet and in compliance
3 with Sections 1 to 24 of this Act and the cabinet's administrative regulations shall
4 not be considered a pollutant, and the operation and existence of such a carbon
5 dioxide sequestration facility shall not be considered a public nuisance.

6 (2) The cabinet's authority under Sections 1 to 24 of this Act shall not otherwise limit
7 the authority or jurisdiction of the cabinet in any manner under any other state
8 or federal law.

9 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
10 READ AS FOLLOWS:

11 The provisions of this section shall apply to activities occurring within or proposed to
12 occur within a sequestration reservoir:

13 (1) Nothing contained in Sections 1 to 24 of this Act prohibits the mineral owner or
14 lessee or the pore space owner or lessee from exploring, developing, or producing
15 oil, gas, or other minerals above or below a sequestration reservoir or from using
16 other strata or formations for carbon dioxide sequestration. Wells penetrating
17 sequestration reservoirs shall protect their integrity and prevent carbon dioxide
18 release. Wells penetrating oil and gas formations shall protect their integrity and
19 prevent contamination or damage;

20 (2) Before drilling, deepening, reopening, converting, or plugging wells drilled
21 pursuant to KRS Chapters 349 and 353 on any property with a permitted
22 sequestration reservoir, the oil and gas operator shall, at the time of filing with
23 the cabinet, forward a copy of the application to the sequestration operator via
24 registered or certified mail or by personal service;

25 (3) When the cabinet receives a permit application for a well within a sequestration
26 reservoir or buffer zone, the cabinet shall notify both the oil and gas operator and
27 sequestration operator by registered or certified mail or by personal service;

- 1 (4) Before drilling, deepening, reopening, converting, or plugging a Class VI
2 injection well or monitoring well on a property where oil, gas, or other minerals
3 are owned by a person other than the sequestration operator, the sequestration
4 operator shall, at the time of filing, forward a copy of the application and plat to
5 the oil, gas, or other mineral owner via registered or certified mail or by personal
6 service;
- 7 (5) The sequestration operator shall:
- 8 (a) Notify the oil, gas, or other mineral operator when sequestration rights are
9 acquired on property with:
- 10 1. An oil or gas lease or oil and gas operations; or
11 2. A coal or noncoal lease, or coal or noncoal operations pursuant to
12 KRS Chapter 350; and
- 13 (b) Ensure that notice of future applications to drill Class VI injection wells or
14 monitoring wells are sent to the oil, gas, coal, or other mineral lessee and
15 operator, if any;
- 16 (6) Upon receiving an application to drill, deepen, convert, reopen, complete, or plug
17 an oil or gas well or a Class VI injection or monitoring well, the cabinet shall
18 hold the application for fifteen (15) days to allow non-applicant operators to file
19 objections. If objections are filed, the objecting non-applicant operator shall serve
20 the objections on the applicant operator. The cabinet shall schedule a hearing,
21 pursuant to subsection (6) of Section 5 of this Act, within ten (10) days of
22 receiving the objection. If, during or before the hearing, the parties reach an
23 agreement regarding the objections, changes to the drilling plan in accordance
24 with the agreement shall be submitted by the applicant operator in an amended
25 application. If an agreement is not reached, the cabinet, after considering the
26 objections and the evidence presented at the hearing, shall enter an order and
27 issue a permit to drill with modifications to protect the rights and resources of the

1 parties involved;

2 (7) If the oil and gas operator and the sequestration operator disagree on the drilling,
3 deepening, reopening, completing, or plugging of an oil or gas well or a Class VI
4 or monitoring well, the cabinet shall:

5 (a) Determine how the costs above those normally incurred in the drilling,
6 completion, or plugging of the well will be allocated to the applicant
7 operator and non-applicant operator; and

8 (b) Specify the payment terms;

9 (8) Upon receipt of notice of an application to drill, deepen, reopen, complete, or
10 plug an oil or gas well or a Class VI or monitoring well, a non-applicant operator
11 may waive his or her objection and specify whether the waiver applies to one (1)
12 or more wells, a group of wells, or specific areas. The waiver shall be made by
13 letter or by telephone with written confirmation. If the waiver is filed and the
14 cabinet determines that the application is otherwise complete and the public
15 interest is served, the permit shall be issued; and

16 (9) (a) Before plugging and abandoning an oil or gas well that penetrates a
17 sequestration reservoir or a Class VI or monitoring well that penetrates an
18 oil or gas formation:

19 1. The operator proposing to plug and abandon the well shall notify the
20 other non-plugging operator and the cabinet of the operator's
21 intention to plug and abandon the well and shall state the date and
22 time when the plugging will occur;

23 2. Notice shall be sufficient to reasonably allow the non-plugging
24 operator to attend and view the plugging of the well. The operator may
25 proceed with plugging the well if, after notice, the non-plugging
26 operator does not attend; and

27 3. The operator shall:

- 1 a. Seek and receive the approval of the cabinet; and
 2 b. Allow a cabinet representative to be present at the well plugging.
 3 (b) Plugging shall not occur except pursuant to the approval of the cabinet and
 4 with a cabinet representative present at the plugging.

5 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
 6 READ AS FOLLOWS:

7 The secretary may enter into cooperative agreements with corresponding officials in
 8 other state governments or governmental agencies for the purpose of regulating carbon
 9 dioxide sequestration projects that extend beyond state regulatory authority under
 10 Sections 1 to 24 of this Act.

11 ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
 12 READ AS FOLLOWS:

13 The sequestration operator shall be the owner of the carbon dioxide injected into and
 14 stored in a sequestration reservoir approved under Sections 1 to 24 of this Act and shall
 15 maintain ownership and control until the cabinet issues a completion certificate. While
 16 the sequestration operator has ownership, the sequestration operator is liable for any
 17 damage the carbon dioxide may cause, including damage caused by carbon dioxide
 18 that escapes from the sequestration facility.

19 ➔SECTION 13. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
 20 READ AS FOLLOWS:

21 (1) The cabinet may issue a completion certificate upon application by the
 22 sequestration operator demonstrating compliance with Sections 1 to 24 of this Act
 23 at one (1) of the following times:

- 24 (a) Fifty (50) years after carbon dioxide injections into a reservoir end; or
 25 (b) At any other time frame established on a site-specific basis by administrative
 26 regulations promulgated pursuant to KRS Chapter 13A regarding the time
 27 frame for a sequestration operator's post-injection site care and site closure

1 plan.

2 (2) The completion certificate shall only be issued:

3 (a) After public notice and hearing; and

4 (b) If the sequestration operator demonstrates that:

5 1. The operator is in full compliance with all laws and other
6 requirements governing the sequestration facility, including without
7 limitation, the requirements of any Class VI underground injection
8 control permit associated with the facility and other applicable
9 requirements;

10 2. All pending claims regarding the sequestration facility's operation
11 have been addressed and resolved; and

12 3. The carbon dioxide injected into the sequestration reservoir has
13 stabilized, and the reservoir is reasonably expected to retain the stored
14 carbon dioxide.

15 (3) As of the effective date of a completion certificate:

16 (a) Ownership of the stored carbon dioxide shall transfer by operation of law,
17 without payment of any compensation, to the Commonwealth;

18 (b) If any claim for damages or injury is made against the pore space or
19 surface owner arising from stored carbon dioxide, the Commonwealth shall
20 defend the pore space or surface owner against that claim and indemnify
21 and hold the pore space or surface owner harmless from any damages
22 awarded, except that a pore space owner or surface owner may be liable for
23 causing or contributing to migration or release of stored carbon dioxide
24 from the reservoir. The Commonwealth's liability for such claims and its
25 obligation to indemnify a pore space owner or surface owner for any claim
26 shall not obligate payment of any damages in excess of the balance of the
27 carbon dioxide sequestration facility trust fund established in Section 16 of

1 this Act;

2 (c) The sequestration operator and all persons who transported or generated
3 any stored carbon dioxide shall be released from all regulatory liability and
4 regulatory requirements associated with the sequestration facility, provided
5 that the sequestration operator shall not be released from regulatory
6 liability for fraud or misrepresentation, nor from any liability existing at
7 common law; and

8 (d) The Commonwealth's responsibility for monitoring and managing the
9 sequestration facility following issuance of the completion certificate and
10 assumption of ownership of the sequestered carbon dioxide shall be funded
11 from the carbon dioxide sequestration facility trust fund established in
12 Section 16 of this Act until and unless the federal government assumes
13 responsibility for the long-term monitoring and management of
14 sequestration facilities.

15 (4) The cabinet shall require that a copy of the completion certificate and a survey of
16 the sequestration field be filed with the county clerk in the county or counties
17 where the carbon dioxide sequestration facility is located.

18 ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
19 READ AS FOLLOWS:

20 (1) There is hereby created in the State Treasury an interest-bearing, restricted,
21 agency account to be known as the carbon dioxide sequestration facility
22 administrative fund. All amounts required to be deposited into the fund shall not
23 be segregated into separate accounts but may be used by the cabinet as provided
24 in this section for any carbon dioxide sequestration project. Notwithstanding KRS
25 45.229, any balance remaining in the fund at the end of any fiscal year shall not
26 lapse but shall be carried forward for the purposes of the fund until expended.
27 Expenditures from the fund shall be made by the cabinet for the purposes of:

- 1 (a) Payment of all expenses of the cabinet in processing Class VI permits and
2 certificate applications;
3 (b) Regulating sequestration facilities during their construction, operation, and
4 pre-closure phases; and
5 (c) Certifying the sequestration amount determinations under Section 18 of this
6 Act.

7 (2) The secretary may:

- 8 (a) Enter into a cooperative agreement with another government agency to
9 carry out regulatory responsibilities over a sequestration facility on behalf
10 of the Commonwealth; and
11 (b) Compensate the government agency for its expenses with money from the
12 fund.

13 ➔SECTION 15. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
14 READ AS FOLLOWS:

15 (1) Class VI permit applicants shall pay an application fee to the cabinet. The
16 application fee established on the fee schedule developed under Section 24 of this
17 Act shall be calculated to ensure sufficient funds are available for the actual or
18 anticipated cost to the cabinet for the review of the application.

19 (2) Sequestration operators shall pay an annual administrative fee to the cabinet.
20 The administrative fee established on the fee schedule developed under Section
21 24 of this Act shall be calculated to ensure sufficient funds are available for the
22 actual or anticipated cost to the cabinet for the regulation of sequestration
23 facilities.

24 (3) Sequestration operators seeking completion certificates shall pay the cabinet a fee
25 established on the fee schedule developed under Section 24 of this Act. The fee
26 shall be calculated to ensure sufficient funds are available for the actual or
27 anticipated cost to the cabinet for the review of the permit and records relating to

1 the operation of the sequestration facility to determine eligibility for issuance of
2 the completion certificate.

3 (4) The application and completion certificate fees shall be deposited in the carbon
4 dioxide sequestration facility administrative fund established in Section 14 of this
5 Act.

6 ➔SECTION 16. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
7 READ AS FOLLOWS:

8 (1) There is hereby created in the State Treasury an interest-bearing, restricted,
9 agency account to be known as the carbon dioxide sequestration facility trust
10 fund. Moneys in the fund shall be used for:

11 (a) The long-term monitoring and management of sequestration facilities prior
12 to closure, plugging, and abandonment of all monitoring wells in the event
13 of operator default;

14 (b) Expenses associated with the long-term monitoring and management after
15 issuance of a completion certificate; and

16 (c) Determining the causes and remediating the effects of any releases or
17 environmental emergencies associated with sequestration facilities.

18 (2) All amounts required to be deposited into the fund shall not be segregated into
19 separate accounts but may be used by the cabinet as provided in this section for
20 any carbon dioxide sequestration project. Notwithstanding KRS 45.229, any
21 balance remaining in the fund at the end of any fiscal year shall not lapse but
22 shall be carried forward to carry out the purposes of the fund until fully
23 expended.

24 (3) The secretary may:

25 (a) Enter into a cooperative agreement with another government agency to
26 carry out regulatory responsibilities over a sequestration facility on behalf
27 of the Commonwealth; and

1 **(b) Compensate the government agency for its expenses with money from the**
2 **fund.**

3 ➔SECTION 17. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
4 READ AS FOLLOWS:

5 **(1) Sequestration operators shall pay the cabinet a fee on each ton of carbon dioxide**
6 **injected for sequestration. The fee shall be paid at the time of injection and**
7 **deposited into the carbon dioxide sequestration facility trust fund established in**
8 **Section 16 of this Act. The fee shall be calculated to ensure sufficient funds are**
9 **available for the actual or anticipated cost of:**

10 **(a) Long-term monitoring and management of sequestration facilities; and**

11 **(b) The effects of any releases or environmental emergencies associated with**
12 **the sequestration facilities.**

13 **(2) On or before December 31 of the first year in which the cabinet receives its first**
14 **application for a Class VI underground injection control permit and each**
15 **December 31 thereafter, the cabinet shall prepare and make publicly available an**
16 **annual report on the carbon dioxide sequestration facility trust fund established**
17 **in Section 16 of this Act that includes, at a minimum, information on receipts,**
18 **disbursements, and projections for meeting the fund's objectives in Section 16 of**
19 **this Act. The purpose of the report is to determine the sufficiency of fees**
20 **authorized in Section 24 of this Act.**

21 ➔SECTION 18. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
22 READ AS FOLLOWS:

23 **(1) The cabinet shall, upon request of an operator, certify the amount of injected**
24 **carbon dioxide demonstrated to have been stored in a reservoir that has been or is**
25 **being used for a Class II well in an enhanced oil or gas recovery project. Upon**
26 **request of an operator, the cabinet may also certify the amount of injected carbon**
27 **dioxide sequestered under Sections 1 to 24 of this Act.**

1 (2) The amounts determined by the cabinet under subsection (1) of this section may
2 be used for such matters as establishing the amounts of carbon credits,
3 allowances, trading, emissions allocations, offsets, and for other similar
4 purposes.

5 (3) A person requesting a certification of a sequestration determination shall pay the
6 cabinet a certification fee as authorized in Section 24 of this Act. The fee shall be
7 calculated to ensure sufficient funds are available for the actual or anticipated
8 cost to the cabinet to provide the certifications described in subsection (1) of this
9 section.

10 (4) Any fees the cabinet receives to provide the certifications described in subsection
11 (1) of this section shall be deposited into the carbon dioxide sequestration facility
12 administrative fund established in Section 14 of this Act.

13 ➔SECTION 19. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
14 READ AS FOLLOWS:

15 Sections 1 to 24 of this Act shall not be construed as altering the respective legal rights
16 or relationship between the severed mineral estate and a pore space owner as they exist
17 at common law.

18 ➔SECTION 20. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
19 READ AS FOLLOWS:

20 (1) If a sequestration operator is unable, after reasonable effort, to obtain the
21 consent of all pore space owners within a proposed reservoir for an underground
22 carbon dioxide sequestration facility, the cabinet may on petition satisfying the
23 conditions established in this section, issue an order that the identified pore space
24 owned by nonconsenting owners be included in a sequestration facility for the
25 purpose of geologic sequestration of carbon dioxide pursuant to subsection (5) of
26 this section.

27 (2) The Class VI permit applicant shall negotiate in good faith with the pore space

- 1 owners and acquire rights needed to access the pore space.
- 2 (3) Except for temporary access in cases of emergency, the cabinet shall not allow
3 any surface disturbance on any surface tract or tracts overlying the pore space of
4 a nonconsenting owner.
- 5 (4) The sequestration operator shall provide a list to the cabinet of all persons
6 reasonably known to own an interest in pore space proposed to be included in the
7 reservoir.
- 8 (5) (a) If the applicant or operator cannot reach an agreement with the owners of
9 the pore space acreage in a proposed reservoir, but has secured written
10 consent for at least seventy-five percent (75%) of the pore space acreage in
11 the proposed reservoir, all the pore space in the sequestration reservoir shall
12 be declared to be included within the proposed sequestration facility if the
13 cabinet finds that the requirements of this section have been met.
- 14 (b) For the purposes of this section, the interests of any unknown or missing
15 pore space owners may be declared to be included through the pooling
16 order provided reasonable effort to locate and notify the owners has been
17 made and the sequestration operator has complied with the publication
18 requirements of subsection (7) of this section. A pooling order shall be made
19 only after the cabinet provides notice to all pore space owners proposed to
20 be included within the order.
- 21 (6) The applicant shall pay to the cabinet all costs associated with the conduct of the
22 administrative hearing as assessed in the pooling order. The payment shall be
23 made prior to the pooling order becoming effective. These funds shall be
24 deposited into the carbon dioxide sequestration facility administrative fund
25 established in Section 14 of this Act.
- 26 (7) If the proposed pooling order concerns pore space with unknown or missing
27 owners, the sequestration operator shall, after reasonable efforts to locate the

- 1 pore space owners, publish one (1) notice in the newspaper of the largest
2 circulation in each county in which the pore space is located. The notice shall
3 appear no more than forty-five (45) days nor less than thirty (30) days prior to the
4 initial application for the pooling order. The applicant shall file proof of notice
5 with the cabinet concurrently with the application. The notice shall:
- 6 (a) State that an application for a pooling order has been filed with the cabinet;
7 (b) Describe the property under which the pore space proposed to be collectively
8 used is located;
9 (c) In the case of an unknown pore space owner, indicate the name of the last
10 known owner;
11 (d) In the case of a missing pore space owner, identify the owner and the
12 owner's last known address; and
13 (e) State that any person claiming an interest in the pore space proposed to be
14 collectively used shall notify the cabinet and the Class VI permit applicant
15 at the published address within twenty (20) days of the publication date.
- 16 (8) A pooling order shall authorize the injection and sequestration of carbon dioxide
17 beneath the tract or portion thereof. The pooling order shall identify the
18 compensation to be paid to unknown, missing, and nonconsenting pore space
19 owners and the basis for valuation of the collective interest. The cabinet may
20 consider evidence submitted by nonconsenting pore space owners as to the
21 valuation of their interest.
- 22 (9) Except for temporary access in cases of emergency, the pooling order issued by
23 the cabinet shall not authorize any surface entry or surface disturbance by the
24 permittee on any surface tract or tracts overlying the pore space of a
25 nonconsenting, missing, or unknown owner.
- 26 (10) A certified copy of any pooling order and a survey of the sequestration field shall
27 be maintained by the cabinet.

1 (11) If the cabinet or US EPA requires a seismic survey of lands owned by the
 2 nonconsenting surface owner and an operator is unable to reasonably obtain by
 3 negotiation with a property owner the right to conduct seismic surveys on lands
 4 owned by the nonconsenting surface owner, then:

5 (a) The cabinet may issue an order allowing the operator to conduct a seismic
 6 survey of the lands owned by the nonconsenting surface owner from outside
 7 the boundaries of the lands owned by the nonconsenting surface owner;

8 (b) The operator shall, prior to conducting the survey, pay the surface owner
 9 just and reasonable compensation as established by the cabinet; and

10 (c) Any data obtained by the operator through a seismic survey of the lands
 11 owned by a nonconsenting surface owner shall be held as confidential and
 12 shall be used only by the permittee, the cabinet, and US EPA for the
 13 purpose of satisfying statutory or regulatory requirements.

14 (12) Except for the authorized persons and circumstances in subsection (11) of this
 15 section, any person disclosing confidential seismic survey data may be liable to
 16 the nonconsenting surface owner as provided under law.

17 (13) The operator shall defend, indemnify, and hold harmless the property owner for
 18 all claims arising out of any surface or subsurface entry onto the property by the
 19 operator, its contractors, and its agents, except those claims arising from the
 20 intentional acts of a property owner.

21 ➔SECTION 21. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
 22 READ AS FOLLOWS:

23 (1) The sequestration operator shall deposit the funds due to unknown or missing
 24 pore space owners in an interest-bearing trust account.

25 (2) If the unknown or missing pore space owners remain unknown or missing for a
 26 period of seven (7) years from the date of first injection into the sequestration
 27 reservoir, the sequestration operator shall pay the funds held in trust to the

1 surface owners of the tract overlying the pore space owned by the unknown or
2 missing pore space owners.

3 (3) If a surface owner remains missing or unknown for a period of seven (7) years
4 from the date of first injection into the sequestration reservoir, the sequestration
5 operator shall deposit the funds held in trust to the carbon dioxide sequestration
6 facility trust fund established in Section 16 of this Act.

7 ➔SECTION 22. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
8 READ AS FOLLOWS:

9 If any provision of Sections 1 to 24 of this Act or its application to any person or
10 circumstances is held invalid, the invalidity does not affect other provisions or
11 applications of Sections 1 to 24 of this Act which can be given effect without the invalid
12 provision or application, and to this end the provisions of Sections 1 to 24 of this Act
13 are severable.

14 ➔SECTION 23. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
15 READ AS FOLLOWS:

16 (1) (a) If a person or operator fails to comply with the requirements of Sections 1
17 to 24 of this Act or any administrative regulation or order promulgated or
18 issued thereunder, the cabinet shall issue a notice of noncompliance to the
19 person or operator and serve the notice in accordance with subsection (5) of
20 this section. The notice shall specify the nature of the violation, the
21 remedial action required to abate the violation, and the period of time set by
22 the cabinet for abatement of the violation.

23 (b) If a person or operator fails to abate the violation within the time prescribed
24 in the notice, the cabinet shall issue a failure to abate cessation order to the
25 person or operator and serve the notice in accordance with subsection (5) of
26 this section. The order shall:

27 1. Require the person or operator to immediately complete remedial

1 actions to abate the violation described in the notice and to cease any
2 underground injection activity at the sequestration facility or site
3 where the violation is occurring; and

4 2. Remain in effect until the violation has been abated or the order is
5 vacated or terminated in writing by the cabinet.

6 (c) The cabinet shall issue a forfeiture order and order the financial
7 responsibility instruments covering the sequestration facility be forfeited to
8 the cabinet if:

9 1. An agreement has not been reached with the cabinet regarding the
10 alleged failure to comply with the notice to abate the violation; and

11 2. The director determines the operator has not complied with the
12 requirements set forth in the notice of noncompliance or the failure to
13 abate cessation order.

14 (d) The forfeiture order shall become effective thirty (30) days after the cabinet
15 gives the operator notice of the order, unless a petition has been filed
16 pursuant to KRS 353.700, in which case the forfeiture order shall become
17 effective only upon a final determination of the secretary affirming the
18 forfeiture order following the conclusion of the petition process.

19 (2) (a) In addition to a notice of noncompliance or failure to abate cessation order
20 issued pursuant to subsection (1) of this section, the cabinet may issue a
21 closure order to any person or operator where:

22 1. A sequestration facility is in violation of Sections 1 to 24 of this Act or
23 any administrative regulation or order promulgated or issued
24 thereunder, and the violation creates an imminent danger to the
25 health or safety of the public or is causing or can be reasonably
26 expected to cause significant imminent environmental harm; or

27 2. A sequestration facility is in operation by any person without first

1 posting financial responsibility and obtaining written approval of the
2 cabinet.

3 **(b) The closure order shall be affixed by a red tag marker at the conspicuous**
4 **location at the facility with a letter of violation and a copy of the closure**
5 **order mailed to the address of record for the responsible person or operator,**
6 **if an address is on file with the cabinet. The letter of violation and closure**
7 **order shall notify the person or operator to immediately:**

8 **1. Cease operation of the sequestration facility; and**

9 **2. Abate the violation.**

10 **(c) Any person operating a sequestration facility under the circumstances**
11 **described in paragraph (a)2. of this subsection may be ordered to either**
12 **submit financial responsibility and obtain transfer of the facility or**
13 **complete final reclamation and site closure for the facility, but the order**
14 **does not relieve any prior obligation owed by the current operator of record.**
15 **The closure order may be appealed pursuant to KRS 353.700 within thirty**
16 **(30) days of issuance. Any person or operator that fails to comply with a**
17 **closure order issued pursuant to this section shall be subject to a civil and**
18 **criminal penalty under KRS 353.990.**

19 **(3) (a) A copy of:**

20 **1. All enforcement documents under this section shall be served on the**
21 **surface and pore space owner, if they are different from the property**
22 **owner, where the violation occurred; and**

23 **2. The notice, at the time of issuance, shall be delivered to the**
24 **complaining party if he or she is different from the operator, and if the**
25 **enforcement document arises out of a citizen complaint.**

26 **(b) Resolution of the enforcement action issued under this section shall require**
27 **reimbursement of costs incurred by the cabinet.**

1 (4) When it appears that any person is violating or threatening to violate any
2 provision of Sections 1 to 24 of this Act or any rule, administrative regulation, or
3 order promulgated or issued thereunder, the cabinet may bring suit to restrain the
4 person from continuing the violation or from carrying out the threatened
5 violation. A suit brought under this subsection shall:

6 (a) Be filed in the:

7 1. Franklin Circuit Court;

8 2. Circuit Court of the county in which the violation occurred or is
9 threatened; or

10 3. Circuit Court of the county in which the defendant resides or in which
11 any defendant resides if there is more than one (1) defendant; and

12 (b) Give the court jurisdiction to grant without bond or other undertaking the
13 prohibitory or mandatory injunction, as the facts may warrant, including a
14 temporary restraining order or injunction.

15 (5) (a) Service of any notice or order issued under this section shall be:

16 1. Handed to the person in charge of the sequestration facility;

17 2. Sent by certified mail, return receipt requested, addressed to the
18 permanent address shown on the application for a permit;

19 3. Sent by electronic mail to the address shown on the permit application
20 or to an address provided to the cabinet voluntarily; or

21 4. Sent by certified or electronic mail to the address known to the
22 cabinet, if no address is shown on the application for a permit or the
23 address is no longer valid.

24 (b) Service in accordance with paragraph (a)3. or 4. of this subsection shall be
25 effective upon delivery of the notice or the order to the recipient's inbox by
26 email and verification sent to the cabinet by an electronic registered receipt.

27 (6) The commencement of a proceeding pursuant to KRS 353.700 shall not operate

1 as a stay of a notice or order, including a notice or order that contains the
2 requirement to complete all remedial measures to abate the cited violation, issued
3 under this section. A party served with a notice or order under this section may
4 request a stay of the notice or order by filing a written petition for temporary
5 relief with the cabinet's Office of Administrative Hearings. A hearing on the
6 petition shall occur within ten (10) days of the office's receipt of the petition for
7 temporary relief unless the petitioner waives this requirement. The hearing
8 officer shall render a decision on the petition for temporary relief within three (3)
9 working days of the hearing. A party aggrieved by the decision of the hearing
10 officer may file a written request for review by the secretary. Temporary relief
11 may be granted from a notice or order issued under this section if:

12 (a) The person requesting relief shows that there is substantial likelihood that
13 the findings on the merits in an administrative hearing conducted by the
14 cabinet will be favorable to the person; and

15 (b) The relief will not adversely affect the public health or safety or cause
16 significant imminent environmental harm to land, air, or water resources.

17 (7) (a) If the cabinet fails to bring suit to enjoin a violation or threatened violation
18 of any provision of Sections 1 to 24 of this Act or any rule, administrative
19 regulation, or order promulgated or issued thereunder within ten (10) days
20 after receipt of a written request to do so by any person who is or will be
21 adversely affected by the violation, the person making the request may bring
22 suit to restrain the violation or threatened violation in any court in which
23 the cabinet might have brought suit.

24 (b) The cabinet shall be made a party defendant in the suit in addition to the
25 person allegedly violating or threatening to violate a provision of Sections 1
26 to 24 of the Act, or any rule, administrative regulation, or order
27 promulgated or issued thereunder.

1 ➔SECTION 24. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO
2 READ AS FOLLOWS:

3 (1) In addition to the powers conferred upon the cabinet in other provisions of
4 Sections 1 to 24 of this Act, the cabinet may develop, promulgate, and submit for
5 approval a regulatory program for the purpose of accepting primary
6 responsibility for the administration of the underground injection control
7 program under 42 U.S.C. sec. 300h et seq. The cabinet shall include in any
8 regulatory program developed in administrative regulations promulgated in
9 accordance with KRS Chapter 13A:

10 (a) Regarding the plugging, conversion, maintenance, monitoring, and
11 abandonment of Class VI wells, measures to protect underground sources
12 of drinking water and to prevent their endangerment;

13 (b) A prohibition of underground injection through Class VI wells, except as
14 authorized by a Class VI permit issued pursuant thereto;

15 (c) The details of the requirements for a permit application, including:

16 1. Site characterization;

17 2. Operation of injection wells;

18 3. A permitting process, including detailed time frames and methods to
19 modify and transfer permits;

20 4. Comprehensive monitoring that addresses all aspects of well integrity,
21 carbon dioxide injection and sequestration, and air and groundwater
22 quality during the injection operation and the post-injection site care
23 period;

24 5. Financial responsibility ensuring the availability of funds for the life
25 of a carbon dioxide sequestration project, including post-injection site
26 care and emergency response; and

27 6. Reporting and recordkeeping that provide project-specific information

- 1 to evaluate the site operations and ensure environmental protection;
- 2 (d) The criteria for reviewing compliance with eligibility requirements in
- 3 subsection (12) of Section 4 of this Act and procedures for restoration of
- 4 eligibility for a permit;
- 5 (e) The requisite features of the Class VI underground injection control
- 6 program including those for the:
- 7 1. Administration of the carbon dioxide sequestration facility
- 8 administration fund established in Section 14 of this Act;
- 9 2. Issuance of determinations that certify the amount of carbon dioxide
- 10 stored pursuant to individual Class VI underground injection control
- 11 permits issued for that purpose, based upon requests for sequestration
- 12 determination;
- 13 3. Issuance of pooling orders as part of the development of a proposed
- 14 carbon dioxide sequestration project;
- 15 4. Issuance of completion certificates; and
- 16 5. Requirement for owners or operators of Class VI underground
- 17 injection control wells to demonstrate financial responsibility for the
- 18 cost of closing all Class VI underground injection control wells. The
- 19 demonstration of financial responsibility may include but is not be
- 20 limited to the qualifying instruments required by Section 4 of this Act;
- 21 (f) The requirements for reasonable public notice and public participation for:
- 22 1. Applications for Class VI underground injection control permits;
- 23 2. Applications for drilling permits;
- 24 3. Issuance of a completion certificate; and
- 25 4. Unknown or missing owners; and
- 26 (g) A schedule of fees to be assessed on applicants and operators. The fees shall
- 27 cover all costs to the cabinet for administering the underground injection

1 control program. The schedule of fees shall be reviewed and amended as
 2 necessary to ensure that the underground injection control program is fully
 3 funded at all times. The cabinet may collect application fees for the drilling
 4 of wells for use as Class VI wells prior to delegation of authority by the US
 5 EPA.

6 (2) Administrative regulations promulgated pursuant to this section to allow for
 7 assumption of primary responsibility for administration of the underground
 8 injection control program under 42 U.S.C. sec. 300h et seq. shall conform to the
 9 standards and procedures established by US EPA for Class VI wells.

10 (3) Any administrative regulations promulgated pursuant to Sections 1 to 24 of this
 11 Act shall be:

12 (a) Promulgated in accordance with KRS Chapter 13A; and

13 (b) Deemed to be necessary to prevent the loss of federal or state funds for the
 14 purposes of KRS 13A.105.

15 (4) (a) Any order or final determination of the cabinet that is issued pursuant to
 16 Sections 1 to 24 of this Act shall be subject to review in accordance with
 17 KRS 353.700 and any administrative regulation promulgated thereunder.

18 (b) As used in this subsection, "order or final determination" includes but is
 19 not limited to the issuance, denial, modification, or revocation of a permit,
 20 but does not include the issuance of a letter identifying deficiencies in an
 21 application for a permit or other nonfinal determinations.

22 ➔Section 25. KRS 278.700 is amended to read as follows:

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

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

26 (2) "Merchant electric generating facility" means, except for a qualifying facility as
 27 defined in subsection (7) of this section, an electricity generating facility or

- 1 facilities that, together with all associated structures and facilities:
- 2 (a) Are capable of operating at an aggregate capacity of ten megawatts (10MW)
- 3 or more; and
- 4 (b) Sell the electricity they produce in the wholesale market, at rates and charges
- 5 not regulated by the Public Service Commission;
- 6 (3) "Person" means any individual, corporation, public corporation, political
- 7 subdivision, governmental agency, municipality, partnership, cooperative
- 8 association, trust, estate, two (2) or more persons having a joint or common interest,
- 9 or any other entity, and no portion of KRS 224.10-280, 278.212, 278.214, 278.216,
- 10 278.218, and 278.700 to 278.716 shall apply to a utility owned by a municipality
- 11 unless the utility is a merchant plant as defined in this section;
- 12 (4) "Commence to construct" means physical on-site placement, assembly, or
- 13 installation of materials or equipment which will make up part of the ultimate
- 14 structure of the facility. In order to qualify, these activities must take place at the
- 15 site of the proposed facility or must be site-specific. Activities such as site clearing
- 16 and excavation work will not satisfy the commence to construct requirements;
- 17 (5) "Nonregulated electric transmission line" means an electric transmission line and
- 18 related appurtenances for which no certificate of public convenience and necessity
- 19 is required; which is not operated as an activity regulated by the Public Service
- 20 Commission; and which is capable of operating at or above sixty-nine thousand
- 21 (69,000) volts;
- 22 (6) "Residential ~~structure~~~~[neighborhood]~~" means **any owner-occupied residence**
- 23 **where the owner is not participating in any agreement to site the merchant**
- 24 **electric generating facility to which a setback would apply**~~[a populated area of five~~
- 25 ~~(5) or more acres containing at least one (1) residential structure per acre];~~
- 26 (7) "Qualifying facility" means a cogeneration facility as defined in 16 U.S.C. sec.
- 27 796(18)(b) which does not exceed a capacity of one hundred fifty megawatts

1 (150MW) that is located on site at a manufacturer's plant and that uses steam from
 2 the cogeneration facility in its manufacturing process, or an industrial energy
 3 facility as defined in KRS 224.1-010 that does not generate more than one hundred
 4 fifty megawatts (150MW) for sale and has received all local planning and zoning
 5 approvals; and

6 (8) "Carbon dioxide transmission pipeline" means the in-state portion of a pipeline,
 7 including appurtenant facilities, property rights, and easements, that is used
 8 exclusively for the purpose of transporting carbon dioxide to a point of sale,
 9 storage, or other carbon management applications.

10 ➔Section 26. KRS 278.704 is amended to read as follows:

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

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

23 1. The exhaust stack of the proposed facility and any wind turbine is at
 24 least one thousand (1,000) feet from the property boundary of any
 25 adjoining property owner; ~~and~~

26 2. All proposed structures or facilities used ***in connection with the***
 27 ***generation, transmission, or storage*** ~~[for generation]~~ of electricity are

1 two thousand (2,000) feet from any residential ~~structure~~~~[neighborhood]~~,
 2 school, hospital, or nursing home facility; and

3 3. With regard to a wind power facility, the maximum height of the wind
 4 turbine, as measured from the natural grade to the top of the hub
 5 where the rotor attaches, does not exceed three hundred fifty (350)
 6 feet.

7 (b) For purposes of applications for site compatibility certificates pursuant to
 8 KRS 278.216:~~[;]~~

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

17 2. Any proposed structure to be actually used for the generation of
 18 electricity from solar or wind power shall be at least one thousand
 19 (1,000) feet from the property boundary of any adjoining property
 20 owner; and

21 3. Any proposed structures or facilities used in connection with the
 22 generation, transmission, or storage of electricity from solar or wind
 23 power shall be at least two thousand (2,000) feet from any residential
 24 structure, school, hospital, or nursing home facility.

25 (3) If the merchant electric generating facility is proposed to be located in a county or a
 26 municipality with planning and zoning, then maximum height, decommissioning,
 27 and setback requirements from a property boundary, residential

1 structure~~[neighborhood]~~, school, hospital, or nursing home facility may be
2 established by the planning and zoning commission. Any decommissioning
3 requirement or setback established by a planning and zoning commission for a
4 facility in an area over which it has jurisdiction shall:

5 (a) Except with regard to the minimum decommission bonding amount
6 required in subsection (2)(m)5.a. of Section 27 of this Act, have primacy
7 over the decommissioning requirements in KRS 278.706(2)(m) and the
8 setback requirement in subsections (2) and (5) of this section; and

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

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

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

23 (6) If requested, a merchant electric generating entity considering construction of a
24 facility for the generation of electricity or a person acting on behalf of such an
25 entity shall hold a public meeting in any county where acquisition of real estate or
26 any interest in real estate is being considered for the facility. A request for such a
27 meeting may be made by the commission, or by any city or county governmental

1 entity, including a board of commissioners, planning and zoning, fiscal court,
2 mayor, or county judge/executive. The meeting shall be held not more than thirty
3 (30) days from the date of the request.

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

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

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

20 (a) The Energy and Environment Cabinet;

21 (b) The Public Service Commission;

22 (c) The Transportation Cabinet;

23 (d) The Attorney General; and

24 (e) The Office of the Governor.

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

27 ➔Section 27. KRS 278.706 is amended to read as follows:

- 1 (1) Any person seeking to obtain a construction certificate from the board to construct a
2 merchant electric generating facility shall file an application at the office of the
3 Public Service Commission.
- 4 (2) A completed application shall include the following:
- 5 (a) The name, address, and telephone number of the person proposing to
6 construct and own the merchant electric generating facility;
- 7 (b) A full description of the proposed site, including a map showing the distance
8 of the proposed site from residential ~~structures~~^{neighborhoods}, the nearest
9 residential structures, schools, and public and private parks that are located
10 within a two (2) mile radius of the proposed facility;
- 11 (c) Evidence of public notice that shall include the location of the proposed site
12 and a general description of the project, state that the proposed construction is
13 subject to approval by the board, and provide the telephone number and
14 address of the Public Service Commission. Public notice shall be given within
15 thirty (30) days immediately preceding the application filing to:
- 16 1. Landowners whose property borders the proposed site; and
17 2. The general public in a newspaper of general circulation in the county or
18 municipality in which the facility is proposed to be located;
- 19 (d) A statement certifying that the proposed plant will be in compliance with all
20 local ordinances and regulations concerning noise control and with any local
21 planning and zoning ordinances. The statement shall also disclose setback
22 requirements established by the planning and zoning commission as provided
23 under KRS 278.704(3);
- 24 (e) If the facility is not proposed to be located on a site of a former coal
25 processing plant and the facility will use on-site waste coal as a fuel source or
26 in an area where a planning and zoning commission has established a setback
27 requirement pursuant to KRS 278.704(3), a statement that the exhaust stack of

1 the proposed facility and any wind turbine is at least one thousand (1,000) feet
2 from the property boundary of any adjoining property owner and all proposed
3 structures or facilities used *in connection with the generation, storage, or*
4 *transmission*~~[for generation]~~ of electricity are two thousand (2,000) feet from
5 any residential *structure*~~[neighborhood]~~, school, hospital, or nursing home
6 facility, unless *coal or gas-fired generating* facilities capable of generating
7 ten megawatts (10MW) or more currently exist on the site. If the facility is
8 proposed to be located on a site of a former coal processing plant and the
9 facility will use on-site waste coal as a fuel source, a statement that the
10 proposed site is compatible with the setback requirements provided under
11 KRS 278.704(5). If the facility is proposed to be located in a jurisdiction that
12 has established setback requirements pursuant to KRS 278.704(3), a statement
13 that the proposed site is in compliance with those established setback
14 requirements;

15 (f) A complete report of the applicant's public involvement program activities
16 undertaken prior to the filing of the application, including:

- 17 1. The scheduling and conducting of a public meeting in the county or
18 counties in which the proposed facility will be constructed at least
19 ninety (90) days prior to the filing of an application, for the purpose of
20 informing the public of the project being considered and receiving
21 comment on it;
- 22 2. Evidence that notice of the time, subject, and location of the meeting
23 was published in the newspaper of general circulation in the county, and
24 that individual notice was mailed to all owners of property adjoining the
25 proposed project at least two (2) weeks prior to the meeting; and
- 26 3. Any use of media coverage, direct mailing, fliers, newsletters, additional
27 public meetings, establishment of a community advisory group, and any

- 1 other efforts to obtain local involvement in the siting process;
- 2 (g) A summary of the efforts made by the applicant to locate the proposed facility
3 on a site where existing electric generating facilities are located;
- 4 (h) Proof of service of a copy of the application upon the chief executive officer
5 of each county and municipal corporation in which the proposed facility is to
6 be located, and upon the chief officer of each public agency charged with the
7 duty of planning land use in the jurisdiction in which the facility is proposed
8 to be located;
- 9 (i) An analysis of the proposed facility's projected effect on the electricity
10 transmission system in Kentucky;
- 11 (j) An analysis of the proposed facility's economic impact on the affected region
12 and the state;
- 13 (k) A detailed listing of all violations by it, or any person with an ownership
14 interest, of federal or state environmental laws, rules, or administrative
15 regulations, whether judicial or administrative, where violations have resulted
16 in criminal convictions or civil or administrative fines exceeding five
17 thousand dollars (\$5,000). The status of any pending action, whether judicial
18 or administrative, shall also be submitted;
- 19 (l) A site assessment report as specified in KRS 278.708. The applicant may
20 submit and the board may accept documentation of compliance with the
21 National Environmental Policy Act (NEPA) rather than a site assessment
22 report;~~and~~
- 23 (m) A decommissioning plan that shall describe how the merchant electric
24 generating facility will be decommissioned and dismantled following the end
25 of its useful life. The decommissioning plan shall, at a minimum, include
26 plans to:
- 27 1. Unless otherwise requested by the current landowner at the time of

- 1 **decommissioning**, remove all above-ground facilities;
- 2 2. Unless otherwise requested by the **current** landowner **at the time of**
- 3 **decommissioning**, remove any underground components and
- 4 foundations of above-ground facilities. Facilities removed under this
- 5 subparagraph shall be removed **in their entirety**~~[to a depth of three (3)~~
- 6 ~~feet below the surface grade of the land in or on which the component~~
- 7 ~~was installed]~~, unless the **current** landowner and the applicant otherwise
- 8 agree **at the time of decommissioning** to a different depth;
- 9 3. Return the land to a substantially similar state **with the same or similar**
- 10 **soil quality** as it was prior to the commencement of construction;
- 11 4. Unless otherwise requested by the **current** landowner **at the time of**
- 12 **decommissioning**, leave any interconnection or other facilities in place
- 13 for future use at the completion of the decommissioning process;
- 14 5. Secure a bond or other similar security for the project to assure financial
- 15 performance of the decommissioning obligation, provided that:
- 16 a. The amount of the proposed bond or similar security shall be
- 17 determined by an independent, licensed engineer who is
- 18 experienced in the decommissioning **the type** ~~of [solar]~~ electric
- 19 generating **facility to be decommissioned**~~[facilities]~~ and has no
- 20 financial interest in either the merchant electric generating facility
- 21 or any parcel of land upon which the merchant electric generating
- 22 facility is located. The proposed amount of the bond or similar
- 23 security shall be **the greater of**~~[either]~~:
- 24 i. The net present value of the total estimated cost of
- 25 completing the decommissioning plan~~[, less the current net~~
- 26 ~~salvage value of the merchant electric generating facility's~~
- 27 ~~components]; or~~

- 1 ii. The bond amount required by a county or municipal
2 government that has established a decommissioning bond
3 requirement or similar security obligation in the county or
4 municipality where the merchant electric generating facility
5 will be located. If the facility will be located in more than
6 one (1) county or municipality that has established a
7 decommissioning bond or similar security obligation, then
8 the higher amount shall be required for the facility;
- 9 b. The bond or other similar security names:
- 10 i. For property that is leased by the applicant, each landowner
11 from whom the applicant leases land and the Energy and
12 Environment Cabinet as the primary co-beneficiaries; or
- 13 ii. For property that is owned by the applicant, the Energy and
14 Environment Cabinet as the primary beneficiary;
- 15 c. If the merchant electric generating facility is to be located in a
16 county or municipality that has not established a decommissioning
17 bond or other similar security obligation, the bond or other similar
18 security shall name the county or municipality as a secondary
19 beneficiary with the county's or municipality's consent;
- 20 d. The bond or other similar security shall be provided by an
21 insurance company or surety that shall at all times maintain at least
22 an "Excellent" rating as measured by the AM Best rating agency
23 or an investment grade credit rating by any national credit rating
24 agency and, if available, shall be noncancelable by the provider or
25 the customer until completion of the decommissioning plan or
26 until a replacement bond is secured; and
- 27 e. The bond or other similar security shall provide that at least thirty

1 (30) days prior to its cancellation or lapse, the surety shall notify
 2 the applicant, its successor or assign, each landowner, the Energy
 3 and Environment Cabinet, and each~~the~~ county or city in which
 4 the facility is located of the impending cancellation or lapse. The
 5 notice shall specify the reason for the cancellation or lapse and
 6 provide any of the parties, either jointly or separately, the
 7 opportunity to cure the cancellation or lapse prior to it becoming
 8 effective. The applicant, its successor, or its assign, shall be
 9 responsible for all costs incurred by all parties to cure the
 10 cancellation or lapse of the bond. Each landowner, or the Energy
 11 and Environment Cabinet with the prior approval of each
 12 landowner, may make a demand on the bond and initiate and
 13 complete the decommissioning plan;~~[-]~~

14 6. Communicate with each affected landowner at the end of the merchant
 15 electric generating facility's useful life so that any requests of the
 16 landowner that are in addition to the minimum requirements set forth in
 17 this paragraph and in addition to any other requirements specified in the
 18 lease with the landowner may, in the sole discretion of the applicant or
 19 its successor or assign, be accommodated; and

20 7. Incorporate the requirements of subparagraphs 1. to 6. of this paragraph
 21 into the applicant's leases with landowners; and

22 (n) For applications for the construction of wind power facilities, a statement
 23 certifying that:

24 1. Any wind turbine will not be artificially lighted except as required by
 25 law;

26 2. Wind power facilities will be sited in a manner that minimizes
 27 shadowing or flicker impacts; and

1 3. Any shadowing or flicker impacts will not have a significant adverse
2 impact on neighboring or adjacent property uses through siting or
3 mitigation.

4 (3) (a) The entity causing the decommissioning plan required under subsection
5 (2)(m) of this section to be carried out shall be entitled to the proceeds from
6 the sale of any salvaged materials or components of the merchant electric
7 generating facility recovered during the decommissioning process.

8 (b) Any proceeds that the Energy and Environment Cabinet recovers from the
9 sale of salvaged materials or components in the course of carrying out a
10 decommissioning plan under subsection (2)(m) of this section that, taken
11 with the decommissioning bond amounts that have been drawn upon,
12 exceed the cost of completing the decommissioning plan shall be deposited
13 in the merchant electric generating facility monitoring and enforcement
14 fund established in KRS 224.10-285.

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

17 ~~(5)~~~~(4)~~ Replacement of a merchant electric generating facility with a like facility, or
18 the repair, modification, retrofitting, enhancement, or reconfiguration of a merchant
19 electric generating facility shall not, for the purposes of this section and KRS
20 224.10-280, 278.704, 278.708, 278.710, and 278.712, constitute construction of a
21 merchant electric generating facility.

22 ~~(6)~~~~(5)~~ The board shall promulgate administrative regulations prescribing fees to pay
23 expenses associated with its review of applications filed with it pursuant to KRS
24 278.700 to 278.716. All application fees collected by the board shall be deposited in
25 a trust and agency account to the credit of the Public Service Commission. If a
26 majority of the members of the board find that an applicant's initial fees are
27 insufficient to pay the board's expenses associated with the application, including

1 the board's expenses associated with legal review thereof, the board shall assess a
2 supplemental application fee to cover the additional expenses. An applicant's failure
3 to pay a fee assessed pursuant to this subsection shall be grounds for denial of the
4 application.

5 ➔Section 28. KRS 278.710 is amended to read as follows:

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

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

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

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

18 (i) Whether the applicant has a good environmental compliance history;~~and~~

19 (j) Whether the decommissioning plan is complete and complies with the
 20 requirements of KRS 278.706(2)(m) and any other local requirements that
 21 may apply; **and**

22 **(k) Whether, for applications for the construction of wind power facilities, the**
 23 **applicant and facilities will comply with the certifications required in**
 24 **subsection (2)(n) of Section 27 of this Act.**

25 (2) When considering an application for a construction certificate for a merchant
 26 electric generating facility, the board may consider the policy of the General
 27 Assembly to encourage the use of coal as a principal fuel for electricity generation

1 as set forth in KRS 152.210, provided that any facility, regardless of fuel choice,
2 shall comply fully with KRS 224.10-280, 278.212, 278.216, and 278.700 to
3 278.716.

4 (3) A person that has received a construction certificate for a merchant electric
5 generating facility shall:

6 (a) File with the Energy and Environment Cabinet the copy of the bond or other
7 similar security that, pursuant to KRS 278.706(2)(m)5., is required by a
8 county or a municipal government or as part of a decommissioning plan, no
9 later than the date upon which the construction of the merchant generating
10 facility commences, and refile an updated copy at least once every five (5)
11 years thereafter;

12 (b) Not transfer rights and obligation under the certificate without having first
13 applied for and received a board determination that:

- 14 1. The acquirer has a good environmental compliance history; and
- 15 2. The acquirer has the financial, technical, and managerial capacity to
16 meet the obligations imposed by the terms of the approval or has the
17 ability to contract to meet these obligations;

18 (c) File with the Energy and Environment Cabinet a notice of the date that
19 construction is complete and the merchant electric generating facility begins
20 producing electricity for sale; and

21 (d) Following the date the merchant electric generating facility begins producing
22 electricity for sale, file a notice of any transaction involving the transfer or
23 sale of ownership, control, or the right to control the merchant electric
24 generating facility, with lessors of property where the merchant electric
25 generating facility is located, the Energy and Environment Cabinet, the county
26 judge/executive of a county and, if applicable, the mayor of a municipality in
27 which the merchant electric generating facility is located, within ten (10) days

1 of completing the transaction. The notice shall include the name, street
2 address, telephone number, and e-mail address of the person acquiring
3 ownership, control, or the right to control the merchant electric generating
4 facility.

5 (4) A person that has acquired ownership, control, or the right to control a merchant
6 electric generating facility from the applicant or its successor or assign shall file
7 with the Energy and Environment Cabinet within ten (10) days of completing the
8 acquisition:

9 (a) A written consent to assume the obligations set forth in the decommissioning
10 plan as of the date the acquisition occurred; and

11 (b) A notice of adoption of an existing bond or other similar security previously
12 filed pursuant to subsection (3)(a) of this section or a replacement bond or
13 other similar security that complies with KRS 278.706(2)(m)5. An existing
14 bond or other similar security shall be adopted, or a replacement bond or other
15 similar security shall be in place, as of the date the acquisition occurs so that
16 there is no lapse in coverage of the decommissioning bond or other similar
17 security. A person making a filing pursuant to this subsection shall file an
18 updated bond or other similar security that complies with KRS
19 278.706(2)(m)5. at least once every five (5) years.

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

26 (6) Any application approval condition that requires the approval of the transfer of
27 control of a merchant electric generating facility after construction is complete shall

1 be void and unenforceable, but any transfer of control of a merchant electric
2 generating facility shall be subject to compliance with the requirements of
3 subsections (3)(d), (4), and (5) of this section.

4 (7) Notwithstanding any provision of law to the contrary, including any order issued by
5 the board prior to June 29, 2023, after the board has approved an application for a
6 construction certificate for a merchant electric generating facility under this section,
7 the approved applicant has posted the bond or similar security required under KRS
8 278.706(2)(m)5., and the facility is constructed and begins generating electricity for
9 sale, the board's authority to enforce any conditions of the construction certificate,
10 including bonding and decommissioning requirements, shall end and the secretary
11 of the Energy and Environment Cabinet shall monitor and enforce the construction
12 certificate holder's compliance with the requirements of KRS 278.700 to 278.716
13 and the conditions of its construction certificate application approval.

14 (8) In addition to all compliance monitoring and enforcement performed by the
15 secretary of the Energy and Environment Cabinet, and notwithstanding any
16 provision of law to the contrary, the secretary shall also review the
17 decommissioning plan required by KRS 278.706(2)(m) or by local ordinance,
18 license, or permit and the bond or similar security amount required by KRS
19 278.706(2)(m)5. or by local ordinance, license, or permit as needed, including any
20 time a transfer determination is made under subsection (5) of this section, but in any
21 event at least once every five (5) years. Upon review, the secretary of the Energy
22 and Environment Cabinet shall require the decommissioning plan to be updated and
23 the bond amount to be changed to match any significant change in circumstances or
24 change to the estimated cost of effectuating the decommissioning plan ~~or to the~~
25 ~~salvage value of the facility or its components~~.

26 (9) After the facility for which an application for a construction certificate has been
27 approved is constructed and begins generating electricity for sale, the secretary of

1 the Energy and Environment Cabinet shall ensure ongoing compliance with the
2 mitigation measures that were conditions of the application approval under KRS
3 278.708(6) and any enforcement by the board of the mitigation measures shall
4 cease.

5 (10) During the period that the merchant electric generating facility is operational, if
6 solar panels *or wind turbine components* are replaced and discarded, the facility
7 owner-operator shall remove discarded solar panels *or wind turbine components*
8 from the site within ninety (90) days of completion of the work. Upon request of the
9 facility owner-operator, the secretary of the Energy and Environment Cabinet may
10 extend the time period under this subsection for removing discarded solar panels *or*
11 *wind turbine components*.

12 ➔Section 29. KRS 278.714 is amended to read as follows:

13 (1) No person shall commence to construct a nonregulated electric transmission line or
14 a carbon dioxide transmission pipeline without a construction certificate issued by
15 the board. An application for a construction certificate shall be filed at the offices of
16 the Public Service Commission along with an application fee as set forth in
17 subsection (6) of this section. The board may hire a consultant to review the
18 transmission line or carbon dioxide pipeline and provide recommendations
19 concerning the adequacy of the application and proposed mitigation measures. The
20 board may direct the consultant to prepare a report recommending changes in the
21 route of the carbon dioxide pipeline or the route of the electric transmission line.
22 Any consultant expenses or fees shall be borne by the applicant.

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

24 (a) The name, address, and telephone number of the person proposing
25 construction of the nonregulated electric transmission line or the carbon
26 dioxide transmission pipeline;

27 (b) A full description of the proposed route of the electric transmission line or the

- 1 carbon dioxide transmission pipeline and its appurtenances. The description
2 shall include a map or maps showing:
- 3 1. The location of the proposed line or pipeline and all proposed structures
4 that will support it;
 - 5 2. The proposed right-of-way limits;
 - 6 3. Existing property lines and the names of persons who own the property
7 over which the line or pipeline will cross; and
 - 8 4. a. The distance of the proposed electric transmission line from
9 residential structures~~[neighborhoods]~~, schools, and public and
10 private parks within one (1) mile of the proposed facilities; or
11 b. The distance of the proposed carbon dioxide transmission pipeline
12 from residential structures~~[neighborhoods]~~, schools, and parks,
13 either private or public, within one thousand (1,000) feet of the
14 proposed facilities;
- 15 (c) With respect to electric transmission lines, a full description of the proposed
16 line and appurtenances, including the following:
- 17 1. Initial and design voltages and capacities;
 - 18 2. Length of line;
 - 19 3. Terminal points; and
 - 20 4. Substation connections;
- 21 (d) A statement that the proposed electric transmission line and appurtenances
22 will be constructed and maintained in accordance with accepted engineering
23 practices and the National Electric Safety Code;
- 24 (e) With respect to both electric transmission lines and carbon dioxide
25 transmission pipelines, evidence that public notice has been given by
26 publication in a newspaper of general circulation in the general area
27 concerned. Public notice shall include the location of the proposed electric

1 transmission line or carbon dioxide pipeline, shall state that the proposed line
2 or pipeline is subject to approval by the board, and shall provide the telephone
3 number and address of the Public Service Commission; and

4 (f) Proof of service of a copy of the application upon the chief executive officer
5 of each county and municipal corporation in which the proposed electric
6 transmission line or carbon dioxide transmission pipeline is to be located, and
7 upon the chief officer of each public agency charged with the duty of planning
8 land use in the general area in which the line or pipeline is proposed to be
9 located.

10 (3) With respect to electric transmission lines, within one hundred twenty (120) days of
11 receipt of the application, or one hundred eighty (180) days if a local public hearing
12 is held, the board shall, by majority vote, grant or deny the construction certificate
13 either in whole or in part. Action to grant the certificate shall be based on the
14 board's determination that the proposed route of the line will minimize significant
15 adverse impact on the scenic assets of Kentucky and that the applicant will
16 construct and maintain the line according to all applicable legal requirements. In
17 addition, the board may consider the interstate benefits expected to be achieved by
18 the proposed construction or modification of electric transmission facilities in the
19 Commonwealth. If the board determines that locating the transmission line will
20 result in significant degradation of scenic factors or if the board determines that the
21 construction and maintenance of the line will be in violation of applicable legal
22 requirements, the board may deny the application or condition the application's
23 approval upon relocation of the route of the line, or changes in design or
24 configuration of the line.

25 (4) A public hearing on an application to construct a nonregulated electric transmission
26 line may be held in accordance with the provisions of KRS 278.712.

27 (5) The board shall convene a local public information meeting upon receipt of a

1 request by not less than three (3) interested persons that reside in the county or
2 counties in which the carbon dioxide pipeline is proposed to be constructed. If the
3 board convenes the local public information meeting, the meeting will be in the
4 county seat of one (1) of the counties, as determined by the board, in which the
5 proposed carbon dioxide pipeline will be located. The meeting shall provide an
6 opportunity for members of the public to be briefed and ask the party proposing the
7 carbon dioxide pipeline questions about the pipeline.

8 (6) Pursuant to KRS 278.706~~(4)~~~~(3)~~ and ~~(6)~~~~(5)~~, the board shall promulgate
9 administrative regulations to establish an application fee for a construction
10 certificate for:

- 11 (a) A nonregulated transmission line; and
- 12 (b) A carbon dioxide transmission pipeline.

13 (7) With respect to carbon dioxide transmission lines, within one hundred twenty (120)
14 days of receipt of the application or one hundred eighty (180) days if a local public
15 information meeting is held, the board shall, by majority vote, grant or deny the
16 construction certificate either in whole or in part. Action to grant the certificate
17 shall be based on the board's determination that the proposed route of the pipeline
18 will minimize significant adverse impact on the scenic assets of Kentucky and that
19 the applicant will construct and maintain the line according to all applicable legal
20 requirements. In addition, the board may consider the interstate benefits expected to
21 be achieved by the proposed carbon dioxide transmission pipeline in the
22 Commonwealth. If the board determines that locating the transmission line will
23 result in significant degradation of scenic factors or if the board determines that
24 locating the carbon dioxide transmission line will be in violation of applicable legal
25 requirements, the board may deny the application or condition the application's
26 approval upon relocation of the route of the pipeline.

27 ➔Section 30. KRS 278.718 is amended to read as follows:

1 The provisions of KRS 278.700, 278.704, 278.706, 278.708, and 278.710 shall not
2 supplant, any other state or federal law, including the powers available to local
3 governments under the provisions of home rule under KRS 67.080, 67.083, 67.850,
4 67.922, 67A.060, 67C.101, and 82.082. Except with regard to the minimum
5 decommissioning bond amount required in subsection (2)(m)5.a. of Section 27 of this
6 Act, an ordinance, permit, or license issued by a local government shall have primacy
7 over the provisions and requirements of KRS 278.700, 278.704, 278.706, and 278.708,
8 and any conflict between an order of the board and a local ordinance, permit, or license
9 shall be resolved in favor of the local government's ordinance, permit, or license.

10 ➔Section 31. The following KRS sections are repealed:

11 353.800 Definitions for KRS 353.800 to 353.812.

12 353.802 Legislative findings and declarations relating to geologic storage of carbon
13 dioxide.

14 353.804 Jurisdiction and authority over geologic storage of carbon dioxide --
15 Application for and approval of demonstration projects -- Cabinet to testify
16 annually on program's development.

17 353.806 Negotiations between storage operators and pore space owners -- Hearings and
18 findings preceding pooling of pore space -- Carbon dioxide wells exempt -- Review
19 under KRS 353.700.

20 353.808 Pooling orders -- Requirements for contents of order and notice -- Fees --
21 Recording of pooling orders with county clerks -- Review under KRS 353.700.

22 353.810 Carbon injection wells to be closed and plugged after completion of active
23 injection -- Monitoring for leaking and migration -- Transfer of ownership and
24 liability of storage facilities -- Finance and Administration Cabinet to effect
25 transfer.

26 353.812 Cabinet and bordering states to discuss and develop unified approach to
27 subsurface migration -- Reports to Governor and Legislative Research Commission.